

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

In Re: )  
MCK Millennium Centre Retail LLC )  
)  
)  
)  
)  
)  
Debtor(s) )

BK No.: 16-06369  
  
Chapter: 11  
Honorable Jack B. Schmetterer

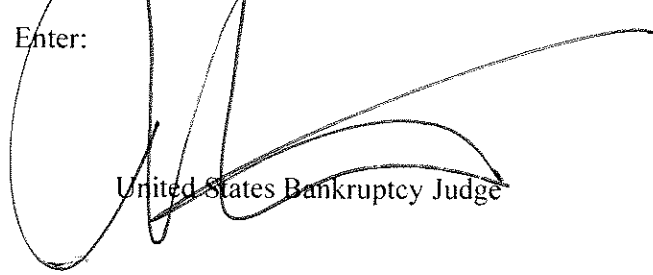
**ORDER AUTHORIZING DEBTOR TO ENTER INTO LEASE AND SHORTEN NOTICE**

This matter coming forth on motion of the Debtor for authority to enter into a lease pursuant to 11 USC §363 , due notice given and the Court being fully informed in the premises,

IT IS HEREBY ORDERED:

1. The Debtor is authorized to execute the Lease with Flight Club Chicago LLC appended hereto, and to perform its obligations thereunder.
2. The Debtor's Operating Budget under the Final Cash Collateral order [Doc. #102] is amended only to the extent to allow the Debtor to perform its obligations under the Lease.
3. Notice of this motion is deemed adequate.
4. Pursuant to Section 18 of the Lease, nothing in this order shall be construed to subordinate the liens and rights of secured lender MLMT 2005-MKB2 Millennium Centre Retail LLC, its successors and assigns, under the Stipulation and Final Order (I) Authorizing Use Of Cash Collateral Pursuant to 11 U. S.C. §§ 363 And 364, And (II) Granting Adequate Protection Pursuant To 11 U.S.C. §§ 363 And 364 [Doc. #102] or the Loan Documents identified therein, to this lease and the rights granted to the lessee thereunder.
5. Without limiting the foregoing, in the event that secured lender MLMT 2005-MKB2 Millennium Centre Retail LLC or its designee or nominee, or their successors and assigns, takes title to the property pursuant to the foregoing Final Order the Stipulation and Final Order (I) Authorizing Use Of Cash Collateral Pursuant to 11 U.S.C. §§ 363 And 364, And (II) Granting Adequate Protection Pursuant To 11 U.S.C. §§ 363 And 364 [Doc. #102], the Loan Documents identified therein or otherwise, none of the foregoing shall be deemed to be a "Landlord" for purposes of such lease unless such person shall have affirmatively and in writing assumed the obligations of "Landlord" under the lease.

Dated: 7/8/16  
Prepared by:

Enter:   
United States Bankruptcy Judge

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**Retail Lease**

**Flight Club Chicago, LLC,  
an Illinois limited liability company  
as Tenant,**

**&**

**MCK Millennium Centre Retail, LLC,  
an Illinois limited liability company,  
as Landlord**

**RETAIL LEASE  
LEASE SUMMARY PROVISIONS**

Dated for Identification Purpose: June \_\_\_\_, 2016

Landlord: MCK Millennium Centre Retail, LLC, an Illinois limited liability company

Address of Landlord: 1919 S. Highland Ave., Building D, Suite 124  
Lombard, Illinois 60148  
Attn: Mr. Joseph Khoshabe  
Telephone: (630) 396-8100 Ext.: 224

Tenant: Flight Club Chicago, LLC, an Illinois limited liability company

Address of Tenant: Mr. Alan Cichon  
90 West Blackthorn Lane  
Lake Forest, Illinois 60045

Retail Parcel: That portion of the mixed use building located at 33 West Ontario Street, Chicago, Illinois (the "Building") comprised of approximately 27,777 square feet as agreed to by the Parties.

Address of Premises: 609 North Dearborn Street, Chicago Illinois (the ("Premises"), which Premises are located within the Retail Parcel, as noted on the site plan attached hereto as Exhibit A and made a part hereof.

Size of Premises: Approximately 8,638 square feet as agreed to by the Parties.

Lease Term: Eleven (11) years, commencing upon the Commencement Date.

Commencement Date: The Initial Term of the Lease shall commence on the date following approval of this Lease by the Bankruptcy Court for the Northern District of Illinois under case number 16-06369 (the "Commencement Date").

Rent Commencement Date: One hundred eighty-four (184) days following the Commencement Date provided, however, that if the Commencement Date is other than the first day of a calendar month the initial monthly Rent payment shall be pro-rated.

Additional Rent Commencement Date: The Commencement Date provided, however, that if the Commencement Date is other than the first day of a calendar month Additional Rent shall be pro-rated for that initial month.

Monthly Base Rent: See Exhibit C for complete rent schedule

Additional Rent Charges: Each month beginning upon the Commencement Date, the Tenant will pay Tenant's Pro-Rata Share of the Additional Rent Charges; provided, however: (i) that during the first six (6) months after the Commencement Date, the Additional Rent Charges for which Tenant is responsible shall be at the agreed upon amount of \$6.00 psf; and (ii) that during the second (6) months after the Commencement Date, the Additional Rent Charges for which Tenant is responsible shall by agreement be \$16.82 psf.

Permitted Use: Any lawful permitted restaurant and bar use, including the lawful sale of beer, wine and alcohol for on-premises consumption and which does not violate any existing exclusive use for any other portion of the Retail Parcel. Tenant shall initially build out the Premises as a Flight Club bar/restaurant venue. (the "Permitted Use").

**The foregoing Lease Summary provisions are an integral part of this lease and each reference in this Lease to any such provision shall be construed to incorporate all of the terms provided under such Lease Summary Provision. In the event of any conflict between any Lease Summary provision and the balance of the Lease, the balance of the Lease provisions shall control.**

## LEASE

This Lease, made and entered into as of June \_\_\_\_\_, 2016 by and between MCK Millennium Centre Retail, LLC, an Illinois limited liability company ("Landlord"), and Flight Club Chicago, LLC, an Illinois limited liability company ("Tenant"), each a "Party" and collectively known as the "Parties".

### RECITALS

**WITNESSETH**, that for and in consideration of the mutual covenants made by the Parties including payments to be made by the Tenant to the Landlord, and other good and valuable considerations, the receipt of which is hereby acknowledged, the Tenant hereby agrees to lease the Premises from the Landlord in accordance with the terms and conditions below.

#### 1. **TERM**

**A. Initial Term.** The "Initial Term" of this Lease shall begin on the Commencement Date as defined below and shall expire on the last day of the 132nd full month following the Commencement Date, unless renewed as provided below.

**B. Renewal Term.** Tenant shall have the option to renew this Lease for four additional terms of five years each (each, a "Renewal Term"; and any Renewal Term properly exercised hereunder shall, together with the Initial Term, be referred to as the "Term"), on the same terms and conditions contained herein except that the rental for said Renewal Terms shall be as outlined in Exhibit C, however, in no event shall the rent decrease for any Renewal Term. All other terms and conditions remain the same. Notice of the exercise of said option shall be given to Landlord by Tenant in writing at least 180 days in advance of the expiration of the Initial Term or any Renewal Term, as the case may be. Notwithstanding the foregoing to the contrary, Tenant shall not be entitled to exercise any such renewal option if an Event of Default exists at the time the renewal option is exercised or as of the beginning of the applicable Renewal Term.

**C. Obligations Upon Termination.** On the last day of the Term hereof, or on any sooner termination following an Event of Default or otherwise, Tenant shall surrender the Premises and Related Improvements to Landlord in as good condition as received by Tenant, ordinary wear and tear and loss by casualty or condemnation excepted, and Tenant shall remove and properly dispose of all of Tenant's moveable equipment, fixtures, furnishings, inventory, furniture, signs and other personal property of the Tenant (collectively, "Tenant's Equipment") and repair any damage to the Retail Parcel caused by such removal. All Related Improvements made to or placed on or in the Premises by Tenant, including without limitation, black iron piping and/or exhaust system(s), scrubber system, any grease trap(s) and any connected piping thereto, light fixtures, floor coverings, wall coverings, store front, show windows, identification sign cans, toilet fixtures, electrical wiring, finished ceiling and partitions, shall become the sole property of the Landlord and shall remain in and upon the Premises upon the expiration or earlier termination of this Lease.

#### 2. **GRANT**

**A. Premises.** Landlord, hereby leases to Tenant, and Tenant hereby lets from Landlord certain premises, which Landlord and Tenant hereby stipulate and agree for purposes of this Lease, consist of approximately 8,638 square feet in the lower level and approximately 300 square feet on the ground level (which is an allocation of 50% of the approximate 600 square feet on the ground level, consisting of a vestibule, entry, elevator and stairs shared with the other lower level tenant(s)) (together, the "Premises") in the west side of the building (the "Building") commonly known as Millennium Centre on the land located at the southeast corner of Ontario

and Dearborn Streets, Chicago, Illinois 60610 (the land, together with the Building, hereinafter called the "Property"). The location of the Premises in the Property is set forth on Exhibit A, attached hereto.

Tenant acknowledges that the Premises constitute a part of a mixed use development project composed of retail uses, residential uses and parking uses (the "Mixed Use Project"). The Premises constitutes a part of that portion of the Mixed Use Project designated for retail use (the "Retail Parcel "). As part of the Mixed Use Project, Tenant acknowledges that this Lease and the Premises shall be subject to all of the terms, conditions, obligations and restrictions as imposed by the Operation and Reciprocal Easement Agreement dated as of July 11, 2003, and recorded in Cook County on July 11, 2003 as document number 0319203102 (as amended, the "REA") and applicable to all parties to the Mixed Use Project, a copy of which REA having previously been provided to, and its terms known by, Tenant prior to its execution of this Lease.

Tenant shall be granted non-exclusive access to and use of the Building's loading docks, doors, retail trash compactor, platforms, staging areas and other common areas serving the Retail Portion, in accordance with the terms and conditions contained in the Declaration. Tenant shall keep all trash within the Premises until placed in the trash compactor. Tenant shall share the use of the ground level space which includes the entry, vestibule, elevator and stairs with the other tenants located in the Retail Portion of the Building.

### 3. RENT

**A. Base Rent.** Commencing on the Rent Commencement Date, and on the 1<sup>st</sup> day of each month thereafter, Tenant shall pay to Landlord as base rent for the Premises during the Initial Term the sum as provided in Exhibit C (the "Base Rent"). Base Rent and Additional Rent shall be payable in lawful money of the United States to Landlord at the address herein provided or at any address designated by Landlord in writing as provided herein below. If the Commencement Date of the Lease is other than the first day of a calendar month both Rent and Additional Rent shall be pro-rated for that month

**B. Additional Rent.** It is the intention of Landlord and Tenant that this is a "triple net lease" and that commencing on the Commencement Date, in addition to the foregoing Base Rent, Tenant shall pay Additional Rent (as hereinafter defined) to Landlord, without any deduction whatsoever, all charges and expenses of every kind and nature, and all obligations and liabilities of every kind and nature, suffered or incurred by Landlord that are relating to the Premises or the use or occupancy of the Premises, which may arise or become due or payable during the Term of this Lease shall be paid directly or indirectly by Tenant.

Commencing on the Commencement Date, in addition to the foregoing Base Rent, during the Initial Term and any Renewals Terms, the Tenant shall pay as Additional Rent the Tenant's Pro Rata Share of any and all expenses suffered or incurred by Landlord that are attributable to the Retail Parcel and/or the operation of the business by Tenant at the Premises which for purposes of this Lease is stipulated by the parties to be 31.01% ("Tenant's Pro Rata Share") of: (i) all Real Property Taxes (defined below) for the Retail Parcel; and (ii) Landlord's expenses in the ownership, operation, management, repair, replacement and maintenance of the Retail Parcel ) (such expenses are referred to as "Operating Expenses"), including without limitation, insurance premiums and all such items as are further set forth herein; (iii) elevator maintenance and repair costs and expenses; (iv) amounts incurred or paid by Landlord in connection with the management of the Retail Parcel in an amount not to exceed 15% of the Operating Expenses; and (v) leasing or amortization of capital improvements that are necessary or desirable to reduce taxes or operating or energy expenses, improve life, safety, security or telecommunications systems, or are required under any government law or regulation that was not applicable as of the

Commencement Date, such costs to be amortized over such reasonable time as determined by Landlord's accountant in accordance with GAAP ("Acceptable Capital Expenditures"). Operating Expenses will not include: (a) depreciation on the Retail Parcel; (b) real estate brokers' commissions; (c) mortgage interest; (d) costs incurred in connection with a specific tenant (other than Tenant), such as capital costs incurred for a specific tenant, real estate taxes attributable to above-building standard tenant build-out and finishes, the cost of painting or decorating the premises of another tenant, and legal and other related expenses associated with the negotiation or enforcement of leases (other than this Lease) and any penalties or damages from such lawsuits; (e) the cost of services and utilities directly charged to another tenant; (f) unreasonable costs arising from the fact that the Landlord or its affiliates is a supplier of goods and/or services (other than the management fee referred to in (iv) above; (g) any environmental cleanup cost mandated by any governmental agency for which Landlord becomes liable to indemnify Tenant hereunder; (h) costs associated with the refinancing of existing debt such as points, broker's fees and attorney's fees; (i) all late charges, fines and penalties, assessed against Tenant, including real estate tax penalties, when such penalties and charges are not attributable to any delay on the part of Tenant; (j) costs incurred in connection with the repair, maintenance or replacement of the foundation, roof and exterior walls of the Building except to the extent said costs are assessed in accordance with the REA; and (k) capital expenditures other than Acceptable Capital Expenditures; The total Operating Expenses charged to all tenants in the Retail Parcel may not be greater than the actual total Operating Expenses of the Retail Parcel. No item of Operating Expenses shall be included more than once and no item of expense charged to a tenant as an Operating Expenses shall be charged to a tenant as a Real Property Tax or other type of chargeable expense or cost.

Landlord represents and warrants that Operating Expenses will be fairly and accurately determined. After the second full year during the Lease Term, any increase in Tenant's Pro Rata Share of Operating Expenses, on a per square foot basis, shall be capped at five percent (5%) per year on a non-cumulative basis over the previous full year during the Lease Term, excluding uncontrollable expenses such as insurance, security, and snow removal.

Notwithstanding anything in this Lease to the contrary, Additional Rent due from Tenant for the first six (6) months after the Commencement Date, the Additional Rent Charges for which Tenant is responsible shall be at the agreed upon amount of \$6.00 psf; and during the second (6) months after the Commencement Date, the Additional Rent for which Tenant is responsible shall by agreement be \$16.82 psf. After the first year of the Lease Term, Tenant shall be charged the full amount of Tenant's Pro Rata Share as Additional Rent.

**C. Interest.** Any and all Base Rent and/or Additional Rent or other sums due under this Lease if not paid within ten days after written notice that such amount is past due shall bear interest at a rate equal to the lesser of 10% per annum or the highest rate permitted by law from the time due until paid (the "Default Rate"). All Base Rent, Operating Expenses, Real Property Taxes, Additional Rent, and other sums due and payable under this Lease are collectively referred to as "Rent."

**D. Reconciliation.** For each calendar year during the Term, Landlord shall estimate the amount the Operating Expenses shall increase for such calendar year above the Operating Expenses incurred during the prior calendar year. Landlord shall send to Tenant a written statement of the amount of Tenant's Pro Rata Share of any estimated increase in Operating Expenses. Within ninety (90) days after the end of each calendar year, but in no event later than 180 days after the end of each calendar year, Landlord shall send a copy of the Annual Statement of Operating Expenses to Tenant. Pursuant to the Annual Statement of Operating Expenses, Tenant shall pay to Landlord Tenant's Pro Rata Share of Additional Rent as set forth in the



Annual Statement of Operating Expenses or Landlord shall adjust Tenant's Rent payments if Landlord owes Tenant a credit. After the Term expires, Landlord shall send Tenant the final Annual Statement for the Term within the time period proscribed above and if so done Tenant shall pay to Landlord Additional Rent as owed or if Landlord owes Tenant a credit, then Landlord shall pay Tenant a refund, either of which shall occur within 30 days from the delivery of the final Annual Statement. If this Lease expires or terminates on a day other than December 31, then Additional Rent shall be prorated on a 365-day calendar year (or 366 if a leap year). All payments or adjustments for Additional Rent shall be made within thirty (30) days after the applicable Statement is sent by Landlord to Tenant. The annual statement of Operating Expenses shall be accounted for and reported in accordance with generally accepted accounting principles (the "Annual Statement").

**E. Audit Rights.** Tenant shall have the right, at the Tenant's cost, upon not less than ten (10) business days prior written notice to Landlord, to audit Landlord's books and records. Such audit shall commence within three (3) months after Tenant receives the Annual Statement from Landlord. In the event that it is agreed by Landlord and Tenant that Tenant has overpaid and/or was overcharged by Landlord, then Landlord shall reimburse Tenant the amount of any such overpayment and/or overcharge. The fees and costs incurred by Tenant in conducting such audit shall be borne solely by Tenant. Any amounts determined to be owed to Tenant by Landlord shall be paid within forty-five (45) days after written notice thereof from Tenant to Landlord.

**F. Security Deposit.** Within 10 day's following the Commencement Date, Tenant shall deposit with Landlord the sum of \$108,000.00, to be held by Landlord, without liability for interest, as security for Tenant's performance of all the terms, covenants and conditions of this Lease. Following an Event of Default, Landlord, at its option, may, but is not required to, apply the deposit or any part thereof to compensate Landlord for loss, cost, damage or expense sustained due to such Event of Default. Upon Landlord's request, Tenant shall promptly remit to Landlord cash sufficient to restore said sum to the original sum deposited. If at the end of the Lease Term no Event of Default exists hereunder, the balance of such security deposit shall be returned to Tenant within 45 days following the end of the Lease less any itemized deductions to cure any defaults under the Lease. Landlord may deliver the funds deposited hereunder to any purchaser or successor to Landlord's interest in this Lease or the Premises, and thereupon Landlord shall be released from all liability with respect to such deposit. Application of the deposit shall not waive an Event of Default. Provided no Event of Default then exists, Landlord shall return one-half of the then current balance of the deposit to Tenant on the fifth anniversary of the Commencement Date.

#### 4. COMMENCEMENT DATE - POSSESSION

**A. Lease Commencement Date.** The Commencement Date of this Lease shall be the date specified above.

**B. Possession.** The Possession Date will be the date that the Landlord delivers possession of the Premises to Tenant free and clear of any and all occupants, broom swept, and in the condition required under this Lease, with all mechanical systems in good working order, and otherwise in "as is" condition. Tenant's occupancy of the Premises is Tenant's representation to Landlord that (i) Tenant has examined and inspected the Premises, (ii) finds the Premises to be satisfactory for Tenant's intended use, and (iii) constitutes Tenant's acceptance of the Premises "as is".

**C. Condition.** Tenant agrees that except as expressly set forth in this Lease, no representations about the condition of the Premises, nor promises to decorate, alter, repair or improve the Premises have been made by Landlord or its agents to Tenant.

**D. Tenant's Commencement of Work and Opening.** Following delivery of possession of the Premises to Tenant, Tenant shall perform such work to the Premises as is necessary to make the Premises suitable for the conduct of Tenant's business.

## 5. CONSTRUCTION OF IMPROVEMENTS AND UTILITIES

**A. Premises Modifications.** Tenant shall, at its sole cost and expense, perform such alterations, modifications and improvements to the Premises as Tenant desires for the purpose of operating Tenant's business, including black iron, and plans for the possible alteration of the façade of the Premises and construction of a dedicated stairwell and entry (the "Related Improvements"). Landlord acknowledges that Tenant, at Tenant's sole cost and expense, will seek to segregate the ground floor and lower level entrances to the Premises from the existing retail tenant, pursuant to the delineation plan attached as Exhibit D ("Entrance Segregation Plan"). Landlord hereby approves of the Entrance Segregation Plan, subject to Tenant complying with the requirements for Related Improvements below (other than Landlord's approval of the Entrance Segregation Plan) provided, however, that it is understood and agreed that Landlord makes no representation or warranty regarding Tenant's ability or likelihood of obtaining any approval necessary for the implementation of the Entrance Segregation Plan. Tenant agrees to construct the Premises in a first-class manner and consistent with other Bounce and Flight Club locations constructed in a first class manner and have a neat and attractive appearance at all times from all points outside of the Leased Premises. As used in this Section, "first-class manner" shall mean a restaurant: (i) providing prompt and courteous service by properly attired servers; and (ii) providing food, menu, liquor, decor and operations of a high quality that is customary for an upscale, first-class restaurant. Landlord shall have the right to approve the build out and decor of the Leased Premises, which approval shall not be unreasonably withheld, conditioned or delayed.

All such Related Improvements shall comply with the REA and all applicable laws, regulations, ordinances, and building codes. Tenant shall promptly submit to Landlord plans and specifications for such Related Improvements for Landlord's approval and Landlord shall have twenty-one (21) days after receipt thereof to notify Tenant in writing of Landlord's approval or in detail and specificity of any reasonable modification required by Landlord, failing which, Landlord shall be deemed to approve such plans and specifications. If Landlord notifies Tenant of any such required modifications, Tenant shall revise the plans and specifications appropriately and resubmit to Landlord, and this process shall be repeated until such plans and specifications are approved. Landlord shall also promptly review any Tenant's plans for alteration of the façade of the Premises and alterations to allow a dedicated stairwell and entry, as well as reasonably assist Tenant with Tenant's effort to obtain any approval necessary under the REA for such alterations, provided, however, that it is understood and agreed that Landlord makes no representation or warranty regarding Tenant's ability or likelihood of obtaining any approval necessary under the REA for such alterations.

All obligations of Tenant hereunder with respect to the Premises shall also apply to the Related Improvements. In making any such Related Improvements, Tenant shall comply with all reasonable Landlord requirements regarding any such work and all government requirements relating to design, renovation, alteration or construction. Tenant shall use only contractors approved by Landlord in writing, which shall not be unreasonably withheld. In addition, if any of such Related Improvements require changes to structural portions or common areas of the Property or penetration of the roof of the Premises or Building, such work shall be performed by Landlord's contractor, at Tenant's expense or by Tenant's contractors (reasonably approved by Landlord) and under Landlord's supervision. Tenant shall employ only labor and perform any construction work in or about the Premises or Retail Parcel as will not cause any conflict or controversy with any organization representing building trades performing work for Landlord in or about the Property. Each of

Tenant's contractors shall provide Landlord an acceptable form of waiver of contractor's lien rights as to the fee interest of Landlord in the Premises upon completion of any work.

With respect to all Related Improvements, Tenant shall comply with all applicable laws and ordinances, all orders and decrees of court and all requirements of other governmental authorities (including, without limitation, the Americans With Disabilities Act of 1990 (42 U.S.C. §§ 12101 et. seq.), as the same may be amended from time to time, and any regulations promulgated thereunder), and shall not directly or indirectly, make any use of the Premises which may thereby be prohibited by law or be dangerous to person or property or which may jeopardize any insurance coverage or may subject Landlord to any liability for injury to person or property.

As to all Related Improvements, such work shall be performed with new materials, in a good and workmanlike manner, in accordance with all applicable laws and ordinances. All Related Improvements shall be constructed in accordance with the orders, rules and regulations of the State of Illinois, and City of Chicago, and Tenant shall maintain, at all times when any work is in process in connection with any Related Improvements, commercial general liability insurance for the benefit of the Landlord and its agents, the Landlord's lender, and the Tenant and its contractors, agents and employees, as their interests may appear, along with builder's risk insurance and all other coverage required by this Lease.

Upon completion of any alterations, modifications and/or improvements to the Premises by or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord may reasonably require (including, without limitation, sworn contractors' statements and supporting lien waivers) evidencing payment in full for such work, and "as built" working drawings, if obtained. In the event Tenant performs any work not in compliance with the provisions of this Section, Tenant shall, upon written notice from Landlord, promptly correct such work. If Tenant fails to promptly correct such work within thirty (30) days after receiving written notice of such noncompliance from Landlord or such longer period of time as may be reasonably required to correct such work, then in addition to all other rights or remedies of Landlord under this Lease, at law or in equity, Landlord may enter the Premises and perform said obligation of Tenant and Tenant shall pay Landlord for the reasonable cost to the Landlord thereof, immediately upon being billed therefor by Landlord. Such entry by Landlord shall not be deemed an eviction or disturbance of Tenant's use or possession of the Premises nor render Landlord liable in any manner to Tenant. Tenant shall provide to Landlord a copy of the certificate of insurance for its general contractor, naming Landlord, Landlord's agents and Landlord's Lender as additional insureds.

So long as this Lease remains in force, the improvements constructed in the Premises after the date hereof shall be owned by Tenant, but upon termination of this Lease or Tenant's right to possession of the Premises, whether by expiration of the Term or otherwise, the improvements shall become the property of Landlord in fee simple, free and clear of all encumbrances, except those liens and encumbrances caused by Landlord, its employees, agents or any other parties claiming by, through or under Landlord.

Tenant represents and warrants that no financing shall be placed against the Related Improvements. Tenant shall, at its sole cost and expense, furnish to Landlord a performance bond, issued by a surety company approved by Landlord, in an amount equal to the estimated cost of such changes or alteration, together with a payment bond, in an amount reasonably satisfactory to Landlord, or shall otherwise furnish to Landlord other security satisfactory to Landlord which guarantees the completion of the proposed Related Improvements.

**B. Permits.** Tenant, at its own cost and expense, shall diligently pursue and procure all necessary permits, authorizations, utilities, licenses, and governmental approval for the construction of Related Improvements. The issuance of the necessary permits and authorizations

are to allow occupancy (either temporary or permanent) of the Premises and the Retail Parcel for purposes of operation of the Tenant's business. Tenant, at its own cost and expense, shall procure all necessary permits, utilities, licenses, and governmental approval for any other alterations or improvements to be made by Tenant, all in accordance with the provisions of this Lease and REA, as applicable. Landlord will cooperate with Tenant in obtaining permits for alterations or improvements to be made by Tenant, provided that Tenant pay or reimburse Landlord for any cost or expense. Tenant shall have the right to terminate the Lease if it is unable to obtain the necessary governmental permits, variances and approvals required for the lawful construction of the Premises.

**C. Utilities.** Tenant agrees to pay before delinquency to third parties providing services all charges for any utility services, including oil, fuel, gas, electricity, sewage, water, trash removal, chilled or heated water and air telephone, and other utilities (collectively referred to as "Utilities") furnished to and used by Tenant at the Premises. Landlord represents and warrants that all such Utilities are separately metered to the Premises. At Tenant's expense, and with Landlord's approval which shall not be unreasonably withheld, Tenant may arrange for one separately metered connection to 7,500 tons of condenser water. Tenant shall also be responsible for the cost and installation of the requisite piping from the valved connection point for condenser water from such connection to the Premises, following a mutually agreeable path through the Retail Parcel and other parcels of the Building as needed.

**D. Interruption of Utilities or Services.** Landlord will not be in default under this Lease or be liable to Tenant or any other person for direct or consequential damage, or otherwise, for either the failure to supply, or, the sufficiency of (if required or supplied) any heat, air-conditioning, elevator, cleaning, lighting or security service; for surges or interruptions of electricity; or for other services Landlord has agreed to supply during any period when Landlord uses reasonable diligence to supply or restore such services, nor shall any such failure to supply constitute a constructive eviction of Tenant. Landlord will use reasonable efforts to diligently remedy any interruption in the furnishing of those services required of Landlord hereunder. Landlord reserves the right to temporarily discontinue such services at such times as may be necessary by reason of accident; repairs, alterations or improvements; strikes; lockouts; riots; acts of God; governmental preemption in connection with a national or local emergency; any rule, order or regulation of any governmental agency; conditions of supply and demand that make any product unavailable; Landlord's compliance with any mandatory governmental energy conservation or environmental protection program; or Landlord's compliance with any voluntary governmental energy conservation program at the request of or with consent or acquiescence of Tenant; or any other happening beyond the control of Landlord.

Notwithstanding the aforementioned, if any water, heat, air-conditioning, gas or electricity to be provided by Landlord are interrupted for reasons other than Tenant's failure to abide by its Lease obligations such as the failure to pay for said interrupted utility then to the extent that such interruption materially interferes with Tenant's use of the Premises for a continuous period of five or more days, Tenant's obligation to pay Rent shall be abated commencing on the 6th day after continuous interruption, until the restoration of such services. In no event whatsoever shall Rent abatement exceed 30 days of Rent.

## 6. TAXES

**A. Payment of Taxes.** Tenant shall timely pay, as Additional Rent, Tenant's Pro Rata Share of all Real Property Taxes applicable to the Retail Parcel during the Term. Payment of taxes shall be made to Landlord on a monthly basis in an amount equal to 1/12<sup>th</sup> of Tenant's Pro

Rata Share of the annual Real Property Taxes as reasonably estimated by Landlord based on the most recent tax bills.

Landlord shall remit the payment of Real Property Taxes to the appropriate taxing authorities on or before the date when due. Landlord shall be responsible for any interest or penalties associated with taxes paid subsequent to the due date. Upon written request, Landlord shall promptly forward copies of all tax bills to Tenant. At the commencement and expiration of Term, Real Property Taxes required to be paid by Tenant under this Lease shall be apportioned, and Landlord shall pay the portion thereof applicable to the period before the Rent Commencement Date and after the expiration of the Term hereof, respectively, if not renewed, but if the Initial Term of this Lease is renewed or extended, then after the expiration of the last Renewal Term.

**B. Definition of "Real Property Taxes".** As used herein, the term "Real Property Taxes" shall include any form of personal property taxes on property and equipment used in the operation and maintenance of the Retail Parcel, all real estate taxes and other taxes and assessments, general and special, any license fee, rent tax, sales tax on rental receipts, levy, or tax imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage, or other improvement district thereof, as against any legal or equitable interest in the Retail Parcel or any portion thereof, or any improvements at any time situated thereon. Notwithstanding anything herein to the contrary, it is agreed and understood by the Parties that Tenant shall not be responsible for any income, sales, capital gains or any other taxes that are, or may be, incurred by Landlord as a result of rental payments received by Landlord pursuant to this Lease.

**C. Reconciliation of Taxes.** Following the issuance of actual tax bills, Landlord shall promptly reconcile such amounts with the payments made by Tenant and deliver a written notice of such reconciliation to Tenant (which shall include the calculations along with copies of the applicable tax bills). The payment by Tenant of its estimated pro rata share of Real Property Taxes shall not limit or alter Tenant's obligation to pay Tenant's Pro Rata Share of any increase in annual Taxes at the end of each such calendar year. If Tenant's payments applicable to such period shall have been greater than its actual Pro Rata Share of Real Property Taxes, then Landlord shall credit such overpayment to Tenant's next payment of Rent; any credits remaining at the expiration or earlier termination of this Lease shall be promptly refunded to Tenant. If Tenant's payments shall be less than its actual Pro Rata Share of Real Property Taxes, then Tenant shall pay the deficiency to Landlord within 30 days following receipt of such notice.

**D. Contest of Taxes.** Landlord shall use reasonable efforts to seek a reduction in the assessed valuation of the Premises, and the improvements on the Premises, and to contest Real Property Taxes. To the extent necessary, Tenant shall be required to join in any proceeding or contest brought by or in the name of the Landlord or any owner of the Premises. The institution of any proceedings or contests, however, shall not release Tenant from paying its Pro Rata Share of Real Property Taxes required to be paid by Tenant hereunder. Tenant shall pay the reasonable and customary expense of such contest with respect to Real Property Taxes separately assessed against the Premises or its Pro Rata Share of the expense for Real Property Taxes assessed against the entire Retail Parcel. Any resulting refund shall be applied and paid first to reimburse Landlord for the costs and expenses of the contest, then to Tenant as a credit to Rent but only to the extent the refunded tax or assessment was paid by Tenant, and the balance, if any, to Landlord.

**E. Additional Taxes.** Tenant shall not be required to pay any estate, succession, inheritance, or transfer taxes of the Landlord, but Tenant shall be required to pay any applicable rent taxes, if any.

**F. Refund.** Landlord covenants and agrees that if there shall be any refunds or rebates of the Real Property Taxes paid by Tenant, such refunds or rebates shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Tenant will, upon the request of Landlord, sign any receipts which may be necessary to secure the payment of any such refunds or rebates.

## 7. **LANDLORD'S REPRESENTATIONS**

Landlord represents and warrants that as of the date of this Lease it has title to the Retail Parcel and has the power and authority to enter into this Lease, and that, to the best of its knowledge, the Retail Parcel is in compliance with all applicable laws, statutes, codes, ordinances, and governmental rules and regulations. Landlord further represents, warrants and covenants to Tenant that as of the date of this Lease Landlord is the current and sole record holder of legal title to the Retail Parcel and that the REA is in full force and effect. Landlord further represents, warrants and covenants to Tenant that to the best of its knowledge, as of the date of this Lease, the structural and exterior portions of the Premises, including without limitation, the roof, exterior walls and foundation of the Retail Parcel (hereinafter, the "Structural Portions of the Retail Parcel"), and the plumbing, grease trap, electrical, gas, heating, HVAC system serving the Premises (the "HVAC System"), and any sprinkler and life safety systems and all utilities servicing the Premises (collectively, the "Systems") are in good working order and condition and that Landlord has not received any notice that same are not in compliance with all existing laws, codes, regulations and ordinances of any governmental authorities. Landlord further agrees to repair such Structural Portions of the Retail Parcel and Systems to the point of connection with the Premises, which are not in good working order or not in compliance in all material aspects with such laws, codes, regulations or ordinances. In addition, Landlord represents and warrants to Tenant that to the best of its knowledge: (a) neither the Premises, nor any part thereof is in breach of any federal, state, county, city or local environmental laws, rules, codes, regulations or ordinances (collectively, "Environmental Laws"), (a) there are no underground storage tanks at the Premises, or, with respect to removed tanks, at the time of removal, any contaminated soil was removed, (c) at no time has there been a release (as defined in CERCLA) of any "Hazardous Materials" (defined herein) in, on, or under the Premises, (d) Landlord has never used the Premises for, and to Landlord's knowledge the Premises has not been used for, the storage, manufacture, disposal, handling, transportation or use of any Hazardous Materials in excess of levels permitted by applicable Environmental Laws, and (e) no notice, demand or other communication has been received by Landlord of any investigation, administrative proceeding, litigation, regulatory hearing or other action proposed, threatened or pending, alleging noncompliance with or the violation of any Environmental Law and relating to the Premises, and Landlord has no knowledge of any such notice given to previous owners or tenants. "Hazardous Materials" shall mean (1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.) ("RCRA"), as amended from time to time, and regulations promulgated under such act; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated under such act; (3) petroleum, oil, diesel fuel or asbestos; (4) polychlorinated biphenyls; (5) any substance the presence of which on the Premises is prohibited by any

governmental requirement; and (6) any other substance which by any governmental requirement requires special handling in its collection, storage, treatment or disposal.

## 8. USE

**A. Commercial.** The Premises shall be used and occupied by Tenant for the Permitted Use and any ancillary use directly relating thereto. Tenant will not do or permit any act or thing that is contrary to any legal requirement. Tenant shall not conduct any activity on the Premises or use the Premises in any manner: (i) which will violate any certificate of occupancy or law, ordinance or other governmental regulation in effect from time to time affecting the Premises or the use thereof, (ii) which will violate any Environmental Laws including but not limited to the Clean Air Act, the Clean Water Act, the Toxic Substance Control Act ("TSCA"), or any other federal statute hereafter enacted dealing with the protection of the environment or with the health and safety of employees or members of the general public, or under any rule, regulation, permit or plan under any of the foregoing, or under any law, rule or regulation now or hereafter promulgated by the state or city in which the Premises are located, or any political subdivision thereof, relating to such matters; (iii) which will cause injury to the improvements, (iv) which will constitute a nuisance or waste, (v) which will cause the Premises to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Premises within the ambit of, the RCRA, or any similar state law or local ordinance; (vi) which will cause a release or threat of release of Hazardous Materials from the Premises within the meaning of, or otherwise bring the Premises within the ambit of, CERCLA, or any similar state law or local ordinance or other Environmental Law; or (vii) which will cause a discharge of pollutants or effluents into any water source or system or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Act, 33 U.S.C. § 1251, et. Seq., or the Clean Air Act, 42 U.S.C. § 741, et seq., or any similar state or local statute or ordinance; or (x) that violates any exclusive right provided by Landlord to other tenants of the Retail Parcel, such as the installation of ATM's. Without limiting the generality of the foregoing, Tenant shall not, without the prior written consent of Landlord, receive, keep, maintain or use on or about the Premises any substance as to which a filing with a local emergency planning committee, the State Emergency Response Commission or the fire department having jurisdiction over the Premises is required pursuant to Section 311 and/or Section 312 of CERCLA, as amended by the Superfund Amendment and Reauthorization Act of 1986 ("SARA") (which latter Act includes the Emergency Planning and Community Right-To-Know Act of 1986); in the event Tenant makes a filing pursuant to SARA, or maintains substances as to which a filing would be required, Tenant shall simultaneously deliver copies thereof to Landlord or notify Landlord in writing of the presence of those substances.

Landlord recognizes and accepts that Tenant's use of the Premises may cause a reasonable amount of sound and normal odors to emanate outside of the Premises and accepts such as a byproduct of Tenant's typical operations.

Notwithstanding the foregoing, Tenant agrees to take commercially reasonable measures to minimize the reproduction of sound which is audible outside the Premises, and limit the escape of cooking odors.

**B. Compliance with the Law.** Tenant shall at Tenant's sole cost and expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, and requirements in effect during the term hereof, regulating the use and occupancy by Tenant of the Premises. Landlord shall, at its sole cost and expense, be solely responsible for compliance of the Common Elements of the Retail Parcel with ADA. Tenant shall not use or permit the use of the Premises

in any manner that will tend to create waste or a nuisance, or otherwise expose Landlord or the Premises to any liability. Tenant shall not: (i) use or allow the Premises to be used or occupied in a manner that would invalidate or increase the rate of or make inoperative an insurance policy carried on the Premises or on property, buildings or improvements in the Retail Parcel; (ii) overload the floors; (iii) commit or suffer waste; (iv) install electrical equipment that overloads lines; or (v) conduct any sampling, testing, or drilling to locate any hazardous substance without Landlord's prior written approval.

**C. Tenant's Covenants and Indemnity.** Tenant shall not dispose of or otherwise allow the release of any Hazardous Materials in, on or under the Premises, or any adjacent property or in any improvements placed on the Premises. Tenant represents and warrants to Landlord that Tenant's intended use of the Premises does not involve the violation of any Environmental Laws or the use, production, disposal or bringing onto the Premises of any hazardous waste or materials, other than cleaning and other similar products customarily used in the conduct of Tenant's business, and in such case, in compliance with Environmental Laws. Tenant shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or clean-up of Hazardous Materials in, on or under the Premises or any adjacent property, or incorporated in any improvements, at Tenant's expense. After written notice to Tenant and reasonable opportunity for Tenant to effect such compliance, Landlord may, but is not obligated to, enter upon the Premises and take such actions and incur such costs and expenses to effect such compliance as required to protect its interest in the Premises. Whether or not Tenant has actual knowledge of the release of Hazardous Materials in, on or under the Premises or any adjacent property as the result of Tenant's use of the Premises, Tenant shall reimburse Landlord for the full amount of all costs and expenses incurred by Landlord in connection with such compliance activities, and such obligation shall continue even after the termination of this Lease. Tenant shall notify Landlord immediately of any release of any Hazardous Materials in, on or under the Premises of which Tenant has knowledge. Tenant will protect, indemnify, defend and hold Landlord harmless from and against any and all claims, damages, demands, losses, liens, liabilities, obligations, fines, penalties, causes of action, charges, judgments clean-up costs, remedial actions and other proceedings and costs and expenses (including, without limitation, attorneys' fees and disbursements) of whatever kind or nature, contingent or otherwise, known or unknown, incurred or imposed which may be imposed on, incurred or paid by, or asserted against Tenant or Landlord or the Premises by reason of, or in connection with (a) the alleged acts or omissions of Tenant, or any subtenant or other person for whom Tenant would otherwise be liable, resulting in the release of any Hazardous Materials, or contamination of the Premises, or (b) any Environmental Law and the alleged acts or omission of Tenant, or any subtenant or other person for whom Tenant would otherwise be liable; (c) arising directly or indirectly from or out of or in any way connected to Tenant's use, storage, ownership, possession, or control of Hazardous Materials in, on or under the Premises which directly or indirectly result in a release of Hazardous Materials or the Premises becoming contaminated with Hazardous Materials. Tenant agrees to, upon notification, clean up from the Premises or any other property any contamination caused by its activity, including, without limitation, use, storage, ownership, possession or control of Hazardous Materials in, on or under the Premises, including, without limitation, any remedial action required by any applicable governmental authorities. Tenant further acknowledges that it will be solely responsible for all costs and expenses relating to a violation of any Environmental Law or the clean-up of Hazardous Materials from the Premises or any other properties which become contaminated with Hazardous Materials as a result of Tenant's



activities in, on or under the Premises. In case any action, suit or proceeding is brought against any of the parties indemnified herein by reason of any occurrence described in this Section the Tenant, at its expense, by counsel approved by the Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended. The obligations of Tenant under this Section shall survive the expiration or earlier termination of this Lease.

## 9. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS

**A. Maintenance.** Tenant shall at its sole cost and expense keep, maintain, repair and replace (i) the entire interior of the Premises, and (ii) those systems (or portions thereof) exclusively serving the Premises. Each and every obligation of Tenant to keep, maintain, repair and replace shall include, without limitation, all nonstructural repairs and replacements. Tenant shall be responsible, to the extent applicable, for washing the interior and exterior windows of the Premises. Tenant shall keep the Premises from falling temporarily out of repair or deteriorating Tenant shall further keep and maintain the Premises safe, secure, clean and sanitary and in full compliance with all building, zoning, health safety, fire, and police regulations in force. Landlord shall not be required to repair or rebuild, or make any repairs, replacements or renewals of any nature or description to, the non-structural portions in the Premises, whether ordinary or extraordinary, or to maintain the Premises in any way (except as expressly set forth herein), and Tenant hereby expressly waives the right to make repairs or replacements at the expense of the Landlord as may be provided for in any statute, ordinance or other law in effect at the execution of this Lease or which may hereafter be enacted. Tenant shall put, keep and maintain all portions of the Premises in a clean and orderly condition, free of dirt, rubbish and unlawful obstructions, and should Tenant fail to do so within two (2) business days after having received written notice of such failure from Landlord (or within such longer period of time as may be reasonably necessary for Tenant to correct such failure so long as Tenant has promptly begun to correct such failure and Tenant thereafter diligently proceeds to correct such failure), Landlord, at its option, may do so, and any reasonable sums expended by Landlord in so doing shall be deemed Additional Rent payable upon demand to Landlord, but any such action taken by Landlord shall not be deemed to waive or release the default hereunder by Tenant until Tenant pays such Additional Rent. Landlord shall remove (or cause to be removed) snow, ice and debris from the sidewalk of the Retail Portion.

The parties further agree that current and/or future menus of Tenant shall not conflict with existing concepts or menus of existing tenants in the Building. Tenant shall have the right to change the concept and name of the restaurant/bar with prior written consent of the Landlord provided that the new concept is of comparable quality to the previous concept. No change in use shall violate an exclusive use then granted by Landlord to other tenants. Tenant shall at its sole cost and expense make all needed repairs to and replacements of the interior of the Premises, but specifically excluding structural, exterior and any systems serving more than the Premises as well as any systems or lines located outside of the Premises, as well as the chiller system serving the Building and Premises.

Landlord shall repair, replace and maintain (or cause to be repaired, replaced and maintained), at its sole cost and expense and in good condition, the structural portions of the Retail Portion of the Building and the Premises, including foundations, subfloor, roofs, load bearing walls and structural columns and beams of the Property and the Leased Premises and all structural defects in the Building; provided, however, that, Tenant shall have the obligation to pay for all costs and expenses attributable to any maintenance, repairs and replacements that are caused, directly or indirectly, by the act, neglect, fault or omission of any duty by Tenant, its agents, employees, invitees or contractors. Landlord shall keep and maintain the Retail Portion and its components

(other than the interior of the Leased Premises) in full compliance with all building, zoning, health, safety, fire and police regulations in force.

Landlord shall repair and maintain (or cause to be repaired and maintained) in good condition similar to other first class residential/commercial projects the sidewalks, windows (other than windows belonging to Tenant), entrances and facade of the Retail Portion.

Landlord represents and warrants that the HVAC System shall have working motor(s) and compressor(s), and shall have a five-year manufacturer's warranty for each HVAC unit if said unit(s) is/are new or less than five years old. Tenant shall have the right to inspect the HVAC System and grease trap prior to Tenant's acceptance of the Premises. If said inspection discloses that the HVAC System or grease trap is not in good working condition and repair, or if the HVAC System becomes inoperable during the first year of the Lease Term, except if due to Tenant's negligence or willful actions in damaging such HVAC System, then Landlord shall promptly make the necessary repairs or replacements to said HVAC System, without cost and expense to Tenant. Should Landlord fail to complete the work after notice of said failure from Tenant and a reasonable opportunity to cure, then Tenant shall have the option to proceed with the necessary work, and Landlord shall reimburse Tenant for the reasonable cost thereof within ten days of written notice and proof of payment of same, failing which, Tenant may offset such amounts from the date incurred until paid from Tenant's next Rent Payment. Tenant shall at its sole expense maintain during the Lease term a valid contract with a HVAC contractor reasonably acceptable to Landlord to regularly service and maintain the existing HVAC System in good working order at all times.

**B. Landlord's Self-Help Rights.** If Tenant fails to perform Tenant's obligations under any of the provisions of this Lease, Landlord may give Tenant written notice to do such acts as are reasonably required to maintain the Premises in good order and condition. If, within 30 days of such notice, Tenant fails to commence to do the work and diligently prosecute it to completion, or, with respect to items which are not reasonably susceptible to being remedied within such 30-day period, within the period during which the work may reasonably be completed, then Landlord shall have the right, (but not the obligation) to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work satisfactorily. Any amount so expended by Landlord shall be paid by Tenant within ten days after billing for same, with interest at the Default Rate from the date of such work until paid.

**C. Alterations and Additions.** Except as otherwise provided herein, Tenant shall not make any alterations to any the Premises or Retail Parcel (including, but not limited to exterior walls, foundations, roof and ceilings), or utility installations on or about the Premises without the express written consent of the Landlord, which consent Landlord will not unreasonably withhold, delay, or conditioned. As used in this section, the term "utility installations" shall include ducting, power plants, space heaters, conduit and wiring. Notwithstanding the foregoing, Tenant may, from time to time during the Term of this Lease, make non-structural repairs, alterations, and/or additions to the Premises, provided that the aggregate cost of any alterations and/or additions shall not exceed \$50,000.00 in any given year and further provided that Tenant gives Landlord no less than 30 days prior written notice All alterations, changes, additions, improvements and utility installations (whether or not such utility installations constitute trade fixtures of Tenant) which may be made to the Premises, shall at the expiration or earlier termination of this Lease, become the property of the Landlord and remain upon and be surrendered with the Premises. The equipment, inventory and any other personal property, to the extent owned by Tenant, shall remain the property of the Tenant, and may be removed by the Tenant at any time during the term of this Lease provided that Tenant repairs any damage caused

by such removal. Tenant shall obtain and pay for any and all permits and governmental approvals for all construction, removals, alteration and improvements performed by Tenant. To the extent Landlord's consent is required for any such work, Tenant shall provide Landlord a complete and accurate set of plans and specifications for any work to be done with respect to the Premises as part of Tenant's request for Landlord's written approval. Any and all work of Tenant shall be performed in compliance with all applicable laws, statues, rules, regulations and ordinances, in a good and workmanlike manner, and shall be diligently prosecuted to completion.

Tenant shall have access to the shared satellite antenna system in the Mixed Use Project, subject to the terms of the REA. If Tenant seeks additional services, Tenant shall be able to seek to erect and maintain an additional antenna, a satellite dish and/or related equipment on the roof of the Building, provided that Tenant: (i) seeks prior written approval; (ii) uses an approved roofing contractor for all roof penetrations so as not to violate or invalidate any roof warranties maintained, (iii) repairs any damage to the roof caused by the making of the roof penetrations, (iv) erects and maintains such equipment in accordance with laws, (v) complies with the REA, and (vi) indemnifies Landlord and all other parties to the REA all cost claim damage or expense, including reasonable attorneys' fees, in connection with the antenna, satellite dish and/or related equipment.

**10. LANDLORD'S ENTRY ON PREMISES.** Landlord or its authorized representative shall, following not less than twenty-four hours prior notice to Tenant (except in the event of an emergency in which there is imminent threat of harm to person or property, in which case no prior notice is required), have the right to enter the Premises at all reasonable times for any of the following purposes:

A. To determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease;

B. To serve, post or keep posted any notice as required or allowed under any provision of this Lease; or

C. To enter the Premises to inspect the same or to maintain or repair the Premises or any portion thereof or to show the Premises to prospective purchasers, lenders, or during the last six months of the Term of the Lease to any prospective tenant. Landlord shall not place on the Premises any sign advertising the Premises for sale or lease.

Landlord shall indemnify and hold Tenant harmless from and against any loss, liability or damage which Tenant suffers as result of Landlord's entry upon the Premises which is in breach of this Section, or which results from the negligence or willful act of Landlord, or its employees, agents or representatives.

Tenant further acknowledges and agrees that Landlord and other Owners of the Mixed Use Project shall have access to all access panels in and around the Leased Premises for purposes of performing maintenance and equipment service behind/above the access panels. Any access shall be upon reasonable notice to Tenant, except in case of emergency. Landlord and other Owners shall use their best efforts to schedule such access during off business hours (i.e., either before or after Tenant's peak business hours) and to minimize the interference with Tenant's business.

## **11. LIENS AND ENCUMBRANCES**

Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Premises, nor shall the fee interest or estate of Landlord in the Leased Premises in any way be subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Any claim to, or lien upon, the Premises arising from any

act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall be subject and subordinate to the paramount title and rights of Landlord in and to the Premises.

Tenant shall not permit the Premises to become subject to any mechanics, laborers or materialmen's lien on account of labor or material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Premises by, or at the direction or sufferance of, Tenant; provided, however, that at all times during the term of this Lease, Tenant shall indemnify, defend and hold harmless Landlord against all liens and claims of liens for labor, services, materials, supplies, or equipment performed on or furnished to the Premises at the direction or order of Tenant. Tenant may contest any claim, charge or lien (including but not limited to mechanics' and material men's liens) and such contest on the part of Tenant and any failure to pay or perform the matter under contest, shall not be or become an Event of Default under this Lease so long as Tenant bonds over the lien within 30 days of receipt of notice of said lien, in an amount equal to 125% of the amount claimed to be due and owing (or furnish to Landlord such other security as Landlord may reasonably require). If Tenant does not (a) cause the lien to be bonded over or secured as described above, or (b) cause the lien to be released within 30 days of filing thereof so that it no longer encumbers the Premises, Landlord may pay the cost of such lien to cause to be released and any and all costs incurred by Landlord, including attorneys' fees, filing fees and recording costs, shall become so much Additional Rent due hereunder on demand. Tenant also agrees to immediately pay any judgment rendered with regards to any mechanics, laborers or materialmen's lien on account of labor or material furnished to Tenant for the Premises and shall have the lien released and any judgment satisfied with thirty days of its entry.

## 12. INDEMNITY

A. Tenant shall defend, indemnify and hold harmless Landlord and its agents from and against any and all: actual and direct damages, liabilities, obligations, claims, demands, damages, judgements, orders, decrees, actions, fines, penalties, suits, causes of action, proceedings, losses, costs and expenses, including without limitation court costs and reasonable attorneys' fees (collectively, "Damages"), arising from, related to, imposed upon, incurred by or asserted against the Landlord and/or or its agents, invitees or contractors by reason of (i) Tenant's use and occupancy of the Premises; (ii) the conduct of Tenant's business, operations and activities, (iii) any failure on the part of Tenant to perform or comply with any law or any of the terms of this Lease; (iv) the performance of any labor or services or the furnishing of any materials or other property by Tenant or its agents or contractors; (v) personal injury or the loss of or damage to property occurring in or arising out of or in connection with the use, possession or occupancy of the Premises by Tenant or Tenant's assignees, subtenants, agents, employees or invitees; (vi) the act or omission of Tenant, or any concessionaire, subtenant or assignee or their respective contractors, invitees, licensees, agents, servants, employees or other persons in or about the Premises (provided that Tenant shall have no obligation under this Section with respect to any indemnified matters caused by or resulting from the gross negligence of the Landlord; (vii) any violation of law, loss of life, damage or injury to person or property occurring in, about or from the Tenant's use or occupation of the Premises or Retail Parcel or directly or indirectly caused by or in connection with the use of same by Tenant's agents, employees, invitees, licensees or contractors. In case any action, suit or proceeding is brought against the Landlord or its agents by reason of any occurrence described in this Section, Tenant will, at Tenant's expense, by counsel reasonably approved by Landlord, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended and shall indemnify, protect Landlord and hold it harmless and pay, as the same becomes due and payable, all costs, expenses and reasonable attorneys' fees and court costs incurred or paid by them in connection with such litigation. In the event Tenant fails to assume the defense upon notice from Landlord,

Landlord shall have the right to assume the defense, upon notice from Landlord, Landlord shall have the right to assume the defense, all at the cost and expense of Tenant. The obligations of Tenant under this Section shall survive the expiration or earlier termination of this Lease.

**B.** Except to the extent arising from the intentional or willful acts or omissions or negligence of Tenant or Tenant's agents, employees, contractors or invitees, Landlord shall defend, indemnify and hold harmless Tenant from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including without limitation, court costs and attorneys' fees, arising from or relating to any violation of law, loss of life, damage or injury to persons, property or business occurring in, about or from the Retail Parcel or directly or indirectly caused by or in connection with or use of the Retail Parcel by Landlord or Landlord's agents, employees, invitees, licensees or contractors. Without limiting the generality of the foregoing, Landlord specifically acknowledges that the indemnity undertaking herein shall apply to claims in connection with or arising out of any repairs or other work conducted by or for Landlord under this Lease. In case Tenant or any other party so indemnified shall be made a party to any litigation commenced by or against Landlord, then Landlord shall defend, indemnify, protect and save them harmless and shall pay, as the same becomes due and payable, all costs, expenses and reasonable attorneys' fees and court costs incurred or paid by them in connection with such litigation.

### **13. INSURANCE**

**A. Allocation of Risks.** The Parties desire, to the extent permitted by law, to allocate certain risks of personal injury, bodily injury or property damage, and risks of loss of real or personal property by reason of fire, explosion or other casualty, and to provide for the responsibility for insuring those risks. It is the intent of the parties that, to the extent any loss, costs, damage, claim or expense is covered by insurance carried by Landlord or Tenant (or would be covered by insurance had the parties carried the insurance required under this Lease), any loss, costs, damage or expense, including, without limitation, the expense of defense against claims or suits, be covered by such insurance, without regard to the fault of Tenant, Tenant's affiliates or any of their agents, directors, officers and employees ("Tenant Protected Parties"), and without regard to the fault of Landlord, Landlord's affiliates or any of their agents, partners, directors, officers and employees ("Landlord Protected Parties"). To the extent such loss or claim is not covered by insurance, then, as between Landlord Protected Parties and Tenant Protected Parties, such risks are allocated as follows:

(a) Tenant shall bear the risk of bodily injury, personal injury or death, or damage to the property of third persons, occasioned by events occurring on or about the Leased Premises, unless due to the grossly negligent acts of Landlord or Landlord's agents, or due to Landlord's breach of its obligations hereunder.

(b) Except if caused by the gross negligence of Landlord, Tenant shall bear the risk of damage to the improvements on the Premises and to Tenant's contents, trade fixtures, machinery, equipment, furniture and furnishings in the Premises.

(c) Landlord shall bear the risk of damage to the structural components of the Premises.

If both Landlord and Tenant have coverage, Tenant's coverage shall be deemed primary in connection with the risks set forth in subparagraphs (a) and (b), above.

**B. Tenant's Insurance.** Tenant shall procure and maintain policies of insurance, at its own cost and expense, insuring:

(a) The Landlord Protected Parties, and Landlord's mortgagee, if any, of which Tenant is given written notice, as additional insureds, and Tenant Protected Parties, from all claims, demands or actions (which may be insured against under a commercial general liability policy containing standard provisions) made by or on behalf of any person or persons, firm or corporation and arising from, related to or connected with the Leased Premises, for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than \$3,000,000, combined single limit per occurrence/aggregate. Said insurance shall be written on an "occurrence" basis and not on a "claims made" basis. If at any time during the term of this Lease, Tenant owns or rents more than one location, the policy shall contain an endorsement to the effect that the aggregate limit in the policy shall apply separately to each location owned or rented by Tenant. Tenant agrees that the insurance coverage limits of Tenant shall be increased (no more than once per year) if reasonably requested by Landlord and provided the increases are in line with the amounts required by lessors of comparable buildings in the Chicago area.

(b) The improvements and fixtures at any time situated in the Premises against loss or damage by fire, lightning, wind storm, hail storm, aircraft, vehicles, smoke, explosion, riot or civil commotion as provided by the Standard Fire and Extended Coverage Policy and all other risks of direct physical loss as insured against under Special Form coverage. The insurance coverage shall be for not less than the replacement cost of such improvements and fixtures with agreed amount endorsement or its equivalent, replacement cost endorsement and building ordinance coverage, all subject only to reasonable deductibles. Landlord and Tenant shall be named as loss payees as their interests may appear and all proceeds of such insurance shall be payable jointly to Landlord and Tenant as their interests may appear. Said insurance shall contain an endorsement waiving the insurer's right of subrogation against any Landlord Protected Party or any Tenant Protected Party, provided that such waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (except that either party shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such waiver in full force and effect).

(c) Tenant's business income, protecting Tenant from loss of income and other expenses during the period while the Premises are untenable due to fire or other casualty, for a period of not less than twelve (12) months.

(d) All contents and Tenant's Trade Fixtures (as hereinafter defined), machinery, equipment, furniture and furnishings in the Premises to the extent of at least ninety percent (90%) of their replacement cost under Standard Fire and Extended Coverage Policy and all other risks of direct physical loss as insured against under a standard "all risk" policy. Said insurance shall contain a replacement cost endorsement and an endorsement waiving the insurer's right of subrogation against any Landlord Protected Party, provided that such waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof (except that Landlord shall have the right, within thirty (30) days following written notice, to pay such increased cost, thereby keeping such waiver in full force and effect). Tenant shall be the sole loss payee on such policy.

(e) Tenant Protected Parties from all workers' compensation claims.

(f) Tenant shall purchase and at all times keep in full force and effect during the entire term of this Lease, at its sole cost and expense, dram shop insurance (as hereinafter described) covering the use, sale or gift of so-called "alcoholic liquors" (within the meaning of the Illinois Liquor Control Act, as now or hereafter amended) on or from the Premises. Tenant shall, at least ten (10) days before the commencement of such activity and continuously thereafter, deliver to Landlord, shall deliver to Landlord a policy of dram shop insurance in form, substance and with insurers satisfactory to Landlord, with total limits of liability for bodily injury, loss of means of support, and property damage because of each occurrence of not less than Five Million Dollars (\$5,000,000.00), indemnifying Landlord against any and all liability by virtue of the Illinois Liquor Control Act, any amendments or supplements thereto, or any kindred legislation concerning the use, sale or giving away of alcoholic liquors. insuring Landlord Protected Parties, Landlord's mortgagee and Tenant Protected Parties, against any and all insurable liability by virtue of the Illinois Liquor Control Act, any amendments or supplements thereto, or any kindred legislation concerning the use, sale or giving away of alcoholic liquors. During any time that the required dram shop insurance is for any reason not in force, then, during all and any such times, no sale, merchandising, transfer, giving away, or exchange of so-called "alcoholic liquors" shall be made by Tenant in, upon or from any part of the Premises.

(g) Tenant shall, at Tenant's sole cost and expense, maintain during the entire Term hereof, adequate plate glass insurance satisfactory to Landlord with respect to all plate and other glass on the Leased Premises.

(h) An excess umbrella policy for an additional \$3,000,000.00 insurance coverage.

**C. Form of Insurance.** All of the aforesaid insurance carried by Tenant pursuant hereto shall be issued by insurance companies which have a Best's Rating of "A" or better and are included within Best's Financial Size "Class VIII" or larger in the most current available "Best's Insurance Reports," and which are qualified to do business in Illinois. The insurer and the form, substance and amount shall be reasonably satisfactory from time to time to Landlord and any mortgagee of Landlord, and shall unconditionally provide that it is not subject to cancellation or non-renewal except after at least thirty (30) days' prior written notice to Landlord and any mortgagee of Landlord. Tenant shall, at Tenant's option, provide Landlord with either originals of Tenant's insurance policies, or certificates thereof which are reasonably satisfactory to Landlord, together with satisfactory evidence of payment of the premiums thereon, prior to Tenant's possession of the Premises and annually thereafter. Tenant shall provide Landlord with proof of the aforementioned. Landlord shall have the right from time to time during the Term of this Lease to require Tenant to carry greater amounts of insurance to the extent such greater amounts of insurance are customarily carried by comparable tenants in similar buildings in the area in which the Premises is located. Each policy of insurance for the Commercial General Liability, Comprehensive Automobile Liability, liquor liability and umbrella insurance shall name as additional insured parties thereunder Landlord and any mortgagee of Landlord.

**D. Special Provisions Relating to Alcoholic Beverages.** Tenant agrees as follows:

(a) Tenant agrees to use all reasonable efforts to ensure that no person on the Premises who appears to be intoxicated shall be sold, served or continue to be served any alcoholic beverages;

(b) Tenant will not serve alcoholic beverages for consumption outside of the Premises (except the Outside Space in accordance with all applicable laws) and will use all reasonable efforts

to ensure that its customers do not carry such beverages outside of the Premises, and to that end will not serve alcoholic beverages in disposable containers.

(c) Tenant will comply with all applicable laws, codes and ordinances from time to time in effect in regard to the serving or sale of alcoholic beverages, including but not limited to restrictions as to the serving of alcoholic beverage to minors, the age of persons serving alcoholic beverages and the hours and days during which such beverages may be served;

(d) Tenant will use all reasonable efforts at all times, at Tenant's sole cost and expense, to obtain and keep in full force and effect all necessary licenses, permits, authorizations and approvals from all governmental authorities having jurisdiction in respect to the serving or sale of alcoholic beverages;

(e) Tenant will hold Landlord Protected Parties harmless from and indemnify them against any and all liability, loss, cost, damage and/or expense (including reasonable attorney's fees and expenses) of any kind or nature whatsoever, including but not limited to that resulting from any injury to or death of any persons or damage to or loss of property, by reason of or in any way relating to Tenant's serving or sale of alcoholic beverages in or from the Leased Premises, including but not limited to liability under any Dram Shop law, host liquor law or similar laws, statutes or ordinances, whether now in effect or hereafter adopted by the State of Illinois, County of Cook, the City of Chicago or any other governmental authority having jurisdiction or under common law; and

(f) If at any time the required dram shop insurance is for any reason not in force (other than because it is not legally required and such insurance is not available), then during all and any such times no sale, merchandising, transfer, giving away, or exchange of so-called "alcoholic liquors" shall be made by Tenant in, upon or from any part of the Leased Premises.

**E. Landlord's Insurance.** Landlord shall maintain or cause to be maintained, special form property insurance and commercial general liability insurance on the Retail Portion in accordance with the REA.

**F. Other Coverage.** Tenant shall provide and maintain at all times during the term of this Lease, a policy or policies of insurance for the builder's risk insurance in an amount of no less than \$500,000.00 during any and all times during which construction is taking place on the Premises. Tenant shall prior to starting any construction or demolition present to the Landlord insurance valid and current certificates of insurance for all general and other contractors coming onto the Premises to do work for workmen's compensation and general liability in amounts specified above or if not specified than in an amount reasonably acceptable to Landlord.

**G. Policies; Waiver of Subrogation.** All insurance policies required to be provided by Tenant under this Lease shall name the Landlord and Landlord's lender(s) (of which Tenant has written notice) as the case may be as additional named insureds. Anything in this Lease to the contrary notwithstanding, Landlord and Tenant each hereby waives any claim it ("Injured Party") may now or hereafter have (and to the extent permitted by applicable law, any claim any of its insurers may now or hereafter have based on subrogation or an assignment from its insured) against the other or the other's directors, officers, employees or agents (each a "Released Party"), for loss of or damage to any of Injured Party's property located in or constituting a part or all of the Premises, now or hereafter occurring, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY THE NEGLIGENCE OF ANY RELEASED PARTY, OR IF ANY RELEASED PARTY IS STRICTLY LIABLE FOR THE LOSS OR DAMAGE, if the loss or damage is



covered by insurance, without regard to the amount of deductible or the amount of proceeds, if any, which is covered by insurance actually maintained by the Released Party.

#### 14. DAMAGE TO PREMISES

**A. Partial or Total Damage-Insurance Available.** If 50% or less of the Premises shall be destroyed or damaged by fire or other casualty, then Landlord shall repair, restore, reconstruct or rebuild only the structural components and demising walls of the Premises. Landlord shall repair and restore the same with reasonable promptness, subject to reasonable delays for insurance adjustments and Force Majeure. If the Building is damaged but not the Premises, Landlord (subject to the terms of the Declaration) shall make repairs so Tenant is able to operate in the Premises and use the other areas available to Tenant in the Building. If greater than 50% of the Premises shall be destroyed or damaged by fire or other casualty, then Landlord shall have the right, at its option to (i) to rebuild and restore the Premises as set forth above, or (ii) terminate this Lease as of the date of such damage, in which event this Lease shall automatically be canceled and terminated as of the date of such damage. If greater than 50% of the Premises shall be destroyed or damaged by fire or other casualty and the time required to restore is greater than 12 months, then Tenant may terminate this Lease upon written notice to Landlord. Upon either Parties' termination, all proceeds of the insurance required to be maintained pursuant to Section 15 of this Lease shall be paid to the Parties as their interests may appear; provided that Landlord shall be entitled to receive all insurance proceeds received by Tenant with respect to Tenant Related Improvements and other property which becomes property of Landlord at the termination of the Lease. Landlord shall not be liable for delays in the making of any repairs which are due to unreasonable delays for insurance adjustments or Force Majeure. Rent shall not be reduced or abated during the period of any such repair, restoration or rebuilding even if the Premises are not tenantable; provided, however, that if Landlord shall take longer than one (1) year to repair or rebuild the Premises and Tenant shall not elect to terminate this Lease, Tenant shall receive an abatement of Rent after such one (1) year period if it shall not have business interruption insurance coverage in effect beyond one (1) year. If the Premises cannot be restored or rebuilt within one (1) year or (ii) such casualty shall occur in the last year of this Lease, Tenant shall have the right to terminate the Lease upon notice to Landlord. Any right to terminate or any other option provided for any party in this Article VII must be exercised by written notice to the other party served within thirty (30) days after such damage or right shall have occurred or arisen.

**B. Damage to Retail Parcel or Personal Property during Last 12 Months of Term.** In the event of any total or partial destruction of the Premises or the Retail Parcel occurring during the last 12 months of the Term of this Lease, and notwithstanding the provisions of this Section, each of Landlord and Tenant shall have the right to terminate this Lease upon written notice to the other within 30 days following the date of such casualty.

#### 15. CONDEMNATION

If the whole of the Premises shall be taken or condemned or sold in lieu of condemnation by any competent authority for any public use or purpose, or sold to any such authority which has the power of eminent domain and has threatened to exercise such power with respect to the Premises, this Lease shall terminate upon the vesting of title to the condemning authority and Landlord shall be entitled to any and all condemnation awards or judgments and Tenant hereby assigns such award or judgment to Landlord. The foregoing shall not prevent Tenant from claiming and receiving an award made by the governmental body to Tenant for its leasehold estate, personal property and trade fixtures, as well as costs and expenses.

If a portion of the Premises shall be taken or condemned or sold in lieu of condemnation for a public or quasi-public use or purpose by a competent authority such that as a result thereof the balance of the Premises cannot, in the reasonable judgment of Landlord, be used for the same purpose and with substantially the same utility to Tenant as immediately prior to such taking, Tenant shall have the right to terminate this Lease, which election shall be made by giving written notice thereof to Landlord within ten (10) days after the vesting of title in the condemning authority. Upon termination, Landlord shall be entitled to receive the entire condemnation award or judgment without any payment to Tenant and Tenant hereby assigns such award or judgment to Landlord. In such event, Tenant shall have the right to retain its trade fixtures. The foregoing shall not prevent Tenant from claiming and receiving an award made by the governmental body to Tenant for its leasehold estate, personal property and trade fixtures, as well as costs and expenses.

If this Lease is terminated pursuant to Subsections (a) or (b) above, Tenant shall continue to pay Rent and other charges hereunder until this Lease is terminated. Notwithstanding the foregoing, Tenant shall have the right to make a claim for an award for the loss of its leasehold interest, separate and apart from any claims made by Landlord.

If only a part of the Premises shall be so taken or condemned, but the Lease is not terminated pursuant to Subsection (b) hereof, Rent shall abate ratably as to the portion of the Premises so taken from and after the date title vests in the condemning authority. Landlord shall make any structural repairs or restoration necessary to make a complete architectural unit of the remainder of the Premises. Tenant shall be responsible for all other repairs or restoration of the Premises. In the event the Premises are not returned to substantially the same condition (other than size) as prior to the taking, Tenant shall have the right to terminate the Lease after giving 30 days advance written notice and right to cure to Landlord.

## 16. ASSIGNMENT AND SUBLETTING

A. **Landlord's Consent Required.** Tenant shall not assign, transfer, mortgage, pledge, hypothecate, or encumber this Lease or any of Tenant's interest therein, nor permit such assignment by operation of law, and shall not sublet the Premises or any part thereof, without the prior express written consent of the Landlord, which consent shall not be unreasonably withheld or delayed. Landlord may condition such consent upon Tenant providing Landlord with a copy of the proposed sublease or assignment, an expression of intended use, and evidence of financial capability of the proposed subtenant or assignee reasonable satisfactory to Landlord. Any attempt to do so without such consent being in hand, shall be wholly void and shall constitute a breach of this Lease. Landlord's consent to a transfer shall not constitute a waiver of Landlord's right to consent to a subsequent transfer. If Tenant proposes to assign this Lease or enter into any sublease of the Premises, Tenant shall deliver written notice thereof to Landlord, together with a copy of the proposed assignment or sublease agreement at least forty-five (45) days prior to the effective date of the proposed assignment, or the commencement date of the term of the proposed sublease. Any proposed assignment or sublease shall be expressly subject to all of the terms, conditions and covenants of this Lease. Any proposed assignment shall contain an express written assumption by assignee of all of Tenant's obligations under this Lease. Any proposed sublease shall (i) provide that the sublessee shall procure and maintain policies of insurance as required of Tenant under the terms of the Lease (ii) provide for a copy to Landlord of notice of default by either party, and (iii) otherwise be reasonably acceptable in form and substance to Landlord. No permitted assignment shall be effective and no permitted sublease shall commence unless and until any

default by Tenant hereunder shall have been cured unless such default is waived by Landlord in writing. No permitted assignment or subletting shall relieve Tenant from Tenant's obligations and agreements hereunder and Tenant shall continue to be liable as a principal and not as a guarantor or surety to the same extent as though no assignment or subletting had been made.

**B. Permitted Transfers.** Notwithstanding anything contained in this Section 18 to the contrary, upon thirty days prior written notice to Landlord, Tenant may assign this Lease or sublet all or a portion of the Premises to Tenant's Affiliate (as hereafter defined) without the prior written consent of Landlord provided that: (a) no Event of Default exists at the time of such notice or assignment/sublet; and (b) Tenant's Affiliate shall execute an instrument in writing assuming by assignment the terms of this Lease or acknowledging that such sublease is subject and subordinate to all terms and conditions of this Lease, and Tenant delivers the same to Landlord. For purposes of this Section 18, the term "Affiliate" shall mean: (i) any entity resulting from a merger or business combination with Tenant; or (ii) any entity succeeding to the business or substantially all of the assets of Tenant; or (iii) any parent or subsidiary of Tenant; or (iv) any entity having common ownership with Tenant. In addition, nothing in this Section 18 shall be deemed to prohibit the right of Tenant or its shareholders (w) to transfer shares of Tenant including, without limitation, between each other or to third parties or family members; or (x) from providing ESOP benefits for its employees; (y) from the transfer of shares in donative transactions; or (z) from engaging in a "going public" transaction where the shares of Tenant are or become traded on a national securities exchange.

**C.** Tenant further agrees to reimburse Landlord as Additional Rent, for Landlord's reasonable costs and expenses, including reasonable attorney's fees incurred in connection with the processing and documenting any such requested assignment, subletting or change of ownership of this Lease by or for the benefit of Tenant. Tenant further agrees to reimburse Landlord as Additional Rent, for Landlord's reasonable costs and expenses, including reasonable attorney's fees incurred in connection with the processing and documentation of such requested assignment, subletting or change of ownership of this Lease.

**D. By Landlord.** This Lease shall be fully assignable by Landlord or its assigns without Tenant's consent. Tenant shall attorn to any such assignee or purchaser.

## 17. **DEFAULT-REMEDIES**

**A. Default.** The occurrence of any one or more of the following shall constitute an "Event of Default" of this Lease by Tenant: (i) default in the payment of Rent due hereunder for a period of five days after written notice that such amount is past due; (ii) default on the payment of Additional Rent or any other sum due hereunder for a period of five days after written notice that such amount is past due; (iii) default by Tenant in the observance or performance of any term, condition or covenant of this Lease (other than the payment of Rent, Additional Rent or any other sum due hereunder) to be kept, observed or performed by Tenant which is not cured within such time as may be specified in this Lease to cure such default, or if not such cure period is specified then than within 30 days or such additional time as is reasonably necessary to cure such default in the exercise of all due diligence provided cure has commenced within 30 days after written notice of such default shall have been given to Tenant and the total time to cure does not exceed 90 days following written notice except in the event of imminent threat of harm or damage to person or property and then as soon as reasonably possible; (iv) intentionally falsifying or causing to be falsified any document or instrument required to be furnished to Landlord pursuant to the terms of this Lease or failing to timely

deliver any estoppel or subordination agreement required under this Lease; (v) voluntarily instituting or consenting to the filing of any bankruptcy petition pursuant or purporting to be pursuant to any bankruptcy or insolvency law(s) or any law(s) relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangements, composition or extension; (vi) being adjudicated as bankrupt or insolvent; (vii) voluntarily having a receiver appointed for all or substantially all of its business or assets on the ground of a Tenant's insolvency; (viii) having a Trustee appointed for it pursuant to any petition in bankruptcy or insolvency or for reorganization filed pursuant to any statute either of the United States or of any state; (ix) making an assignment for the benefit of creditors; or (x) in case of involuntary bankruptcy, insolvency or reorganization proceedings not consented to by Tenant, being adjudicated bankrupt or insolvent or subject to an order or decree of reorganization and failing to have said adjudication or order effectively stayed or set aside within 60 days of the filing thereof.

#### **B. Remedies.**

(a) Upon the occurrence of any one or more Event of Default, Landlord may at its election terminate this Lease, or terminate Tenant's right to possession only without terminating the Lease. Upon termination of the Lease, or upon any termination of the Tenant's right to possession without termination of the Lease, the Tenant shall voluntarily surrender possession and vacate the Premises immediately, and deliver possession thereof to the Landlord and Tenant hereby grants to the Landlord the full and free right, without demand or notice of any kind to Tenant to enter into and upon the Leased Premises in such event with process of law and to repossess the Premises as the Landlord's former estate and to expel or remove the Tenant and any others who may be occupying or within the Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom and without relinquishing the Landlord's rights to Rent or any other right given to the Landlord hereunder or by operation of law.

(b) If the Landlord elects to terminate the Lease, Landlord shall be entitled to recover as damages all Rent and other sums due and payable by Tenant on or before the date of termination, plus the cost of performing any other covenants to be performed by the Tenant. If the Landlord elects to terminate the Tenant's right to possession only without terminating the Lease, the Landlord may, at the Landlord's option, enter into the Leased Premises, remove the Tenant's signage and other evidences of tenancy, and take and hold possession thereof as hereinafter provided, without such entry and possession terminating the Lease or releasing the Tenant, in whole or in part, from the Tenant's obligations to pay the Rent hereunder for the full term or from any other of its obligations under this Lease provided that Landlord shall use commercially reasonable efforts to relet all or any part of the Premises for such rent and upon such terms as shall be reasonably satisfactory to Landlord (including the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises). For the purpose of such reletting, Landlord may decorate or make any repairs, changes, alterations or additions in or to the Premises that may be reasonably necessary or convenient. If Landlord is not able to relet the Premises, Tenant shall pay to Landlord, on demand, damages equal to the amount of the Rent, and other sums provided herein to be paid by Tenant for the remainder of the Lease Term discounted at a rate of six percent per annum. If the Premises are relet and a sufficient sum shall not be realized from such reletting after paying all of the expenses of such decorations, repairs, changes, alterations, additions, the reasonable expenses of such reletting and the collection of the rent accruing therefrom (including, but not by way of limitation, reasonable attorneys' fees and brokers' commissions) (collectively, "Costs of Reletting"), to satisfy the Rent and other charges herein provided to be paid for the remainder of the

Lease Term, Tenant shall pay to Landlord on demand any deficiency and Tenant agrees that Landlord may file suit to recover any sums falling due under the terms of this Section from time to time. Landlord shall, however, use reasonable efforts to mitigate its damages arising out of Tenant's default; provided that Landlord shall not be deemed to have failed to use such reasonable efforts by reason of the fact that Landlord has sought to relet the Premises at a rental rate higher than that payable by Tenant under the Lease (but not in excess of the then current market rental rate).

(c) Landlord shall at all times have the right, without prior demand or notice except as required by applicable law, to: (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision thereof, and (ii) sue for and collect any unpaid Rent which has accrued. Notwithstanding anything to the contrary contained in this Lease, to the extent not expressly prohibited by applicable law, in the event of any Event of Default by Tenant, if Landlord elects to terminate this Lease instead of terminating only Tenant's right to possession, Landlord shall have the right to recover against Tenant as damages for loss of the bargain, and not as a penalty, the excess (if any), as reasonably determined by Landlord, of (i) the then present value of the projected Rent and all other sums payable by Tenant hereunder that would have accrued for the balance of the Term of this Lease less (ii) the then present value of the fair market value of the Premises for the balance of such Term ("Benefit of the Bargain Damages"). Notwithstanding anything to the contrary contained in this Lease, if, subsequent to the termination of this Lease and the recovery of damages from Tenant pursuant to this Section, Landlord relets the Premises for an effective rent higher or lower than the effective rent assumed for purposes of calculating Benefit of the Bargain Damages pursuant to this Section, the Benefit of the Bargain Damages shall be recalculated to account for such reletting. For purposes of determining present value, Landlord and Tenant shall use a discount rate equal to six percent (6%) per annum.

(d) If Tenant shall default under this Lease, Landlord shall have the right (in addition to all other rights hereunder) to retain Tenant's Trade Fixtures, as well as all other furniture, fixtures and equipment.

(e) No remedy herein or otherwise conferred upon or reserved to Landlord shall be considered to exclude or suspend any other remedy but the same shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised from time to time and so often as the occasion may arise or as may be deemed expedient.

**C. Late Charges.** Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or deed of trust covering the Premises. Accordingly, if any installment of Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within five days after written notice that such amount is past due, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of late payment by Tenant.

**D. Default By Landlord.** Landlord shall perform all conditions and covenants required to be performed by Landlord, as set forth in this Lease, including, but not limited to, making all payments required by Landlord to be made on any obligation secured by the real property subject

to this Lease. Notwithstanding anything herein to the contrary, Landlord shall not be deemed to be in default under this Lease unless and until Tenant has given written notice to Landlord of any such default by Landlord and Landlord has failed to cure such default within (i) 30 days after Landlord received notice thereof (provided, however, that if the nature of Landlord's default is such that more than 30 days are reasonably required for a cure, then Landlord shall not be deemed to be in default if Landlord commences such cure within the original 30-day period and thereafter diligently prosecutes the cure to completion and complete same within 90 days after written notice), (ii) as soon as reasonably practical in the event of imminent threat of harm to person or property, or (iii) such other time as specified in this Lease. If Landlord fails to cure any such default within the time specified above, after ten day written notice of intent of same, Tenant shall be entitled to pursue any remedy now or hereafter permitted or available to Tenant at law, equity, or both. Further, in connection with any repair obligations of Landlord, Tenant shall have the right to self-help if Landlord shall fail to cure within the time allotted above and Tenant may offset all costs and expenses reasonably incurred to make the repair against the next due installment of Rent under this Lease.

#### **18. MORTGAGING OF LANDLORD'S ESTATE**

The Landlord shall have the right, at any time or from time to time during the continuance of this Lease, as security for any indebtedness owed by it, to create an encumbrance against its estate in the Premises or any part thereof, but such encumbrances shall be subject to and limited by the following express conditions:

**A. Subordination; Non-Disturbance.** This Lease and Tenant's rights hereunder shall be subject and subordinate to the lien of any mortgage or deed of trust in force or later placed against the Retail Parcel, upon any building placed later upon the Retail Parcel (including any and all renewals, modifications, consolidations, replacements or extensions thereof) and to all advances made upon the security thereof, provided that future mortgagees shall not disturb Tenant's possession as long as it is not in default beyond applicable cure periods. Notwithstanding any subordination of Tenant's interest hereunder, so long as no Event of Default then exists, Landlord agrees that neither this Lease nor any of the Tenant's rights hereunder, nor any of Tenant's assignee or subleases shall be terminated by Landlord or subject to termination by Landlord in any action to enforce the lien of any mortgage or deed of trust in force or later placed against the Retail Parcel, or by any proceeding to foreclosure any mortgage or trust deed encumbering the Retail Parcel and Landlord shall not object to Tenant and its permitted assignees or subtenants remaining in possession of the Premises pursuant to the terms of this Lease in any such proceedings. Any mortgagee or beneficiary of Landlord may, at its option, subordinate its mortgage or deed of trust to this Lease. This paragraph is self-operative, and no further documentation of Tenant's subordination and attornment is required. Tenant agrees to execute and deliver at any time and from time-to-time, any such instrument(s) as may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment and subordination that is requested by Landlord, any mortgagor or beneficiary of Landlord upon written request so long as such agreement (i) contains non-disturbance language acceptable to Tenant and its attorneys, (ii) does not increase Tenant's obligations under this Lease, and (iii) does not diminish Tenant's rights under this Lease. If Tenant shall fail to execute such instrument(s) within fourteen (14) days after receipt, Tenant hereby irrevocably appoints Landlord and the holder of such mortgage, or either of them, the attorney-in-fact of Tenant to execute and deliver any such instrument for and on behalf of Tenant.

**B. Foreclosure; Attornment.** If any proceedings are brought for foreclosure, or if the power of sale under any mortgage, deed of trust or deed to secure debt made by Landlord covering the Premises is exercised, Tenant shall attorn to the purchaser upon the foreclosure or

sale and recognize the purchaser as the Landlord under this Lease without any deductions or set-off whatsoever, to the purchaser upon any such foreclosure sale if so requested to do by such purchaser, and to recognize such purchaser as the Landlord under this Lease. Tenant agrees to execute and deliver at any time and from time-to-time, upon the request of Landlord or of any holder of such mortgage or of such requesting party, such instruments as may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment provided purchaser agrees not to disturb Tenant's possession.

#### **19. RIGHT TO ESTOPPEL CERTIFICATES**

Each party, upon not less than ten business days after written notice from the other party, shall execute and deliver to the other party a certificate stating (if true) that this Lease is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications and specifying the existence or absence of any default hereunder and whether or not any rights to renew the Term of the Lease have been exercised and the date on which this Lease will terminate and whether or not there are any existing defaults under this Lease to the knowledge of the party executing the certificate and specifying the nature of such defaults, if any. The certificate shall also state the amount of Rent, the dates to which the Rent has been paid in advance, and the amount of any security deposit or prepaid Rent.

#### **20. SIGNAGE**

No sign, other advertising or any other object may be placed by Tenant or anyone claiming under Tenant on the exterior of the Premises or on the interior part of either windows or doors without Landlord's prior written approval, which approvals shall not be unreasonably withheld, delayed or conditioned; provided, however, that the Parties understand and agree that and such request or approval is subject to the terms, conditions and limitations of the REA. . All work on any signs of or at the direction of Tenant are subject to and shall be performed in compliance with the REA all applicable laws, statutes, codes, ordinances, and governmental rules and regulations. Subject to the foregoing, and any restrictions in the REA including the need for prior approval, Tenant may seek permission to install on the Retail Parcel façade, its standard signage and trade dress package to the maximum extent allowable by the REA, applicable laws, codes and ordinances which approval from Landlord shall not be unreasonably withheld, delayed or conditioned. In the event that any signs are installed on the Premises, the same shall be in compliance with the REA and all applicable laws, rules and regulations. Tenant, at Tenant's sole cost and expense, shall obtain all requisite permits and licenses required in connection with any sign and shall be fully responsible for the installation and maintenance thereof. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have the right to maintain on the glass of any windows or doors of the Premises, anywhere within the Premises and within any display windows of the Premises such professionally designed and/or manufactured signs and displays as Tenant deems reasonably necessary, provided such signs and displays are consistent with first class retail operations. Landlord hereby grants Tenant a right to use certain agreed upon sign bands identified in the Declaration which may be available for use by the Tenant and as reasonably agreed to by the Parties hereto. Upon the expiration or termination of the Lease or Tenant's possession thereunder for any reason, then, Tenant shall have the obligation at Landlord's option, to remove and retain such signage, provided Tenant repairs any damage to the structure or Property to which such signage is attached.

#### **21. SURRENDER**

Upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's right to possession of the Premises, Tenant will at once surrender and

deliver up the Premises, together with all improvements thereon to Landlord, broom swept, in good condition and repair, reasonable wear and tear excepted (except for damage occasioned by casualty). Conditions existing because of Tenant's failure to perform maintenance, repairs or replacements as required herein, shall not be deemed "reasonable wear and tear". Tenant shall deliver to Landlord all keys to all doors therein. As used herein, the term "improvements" shall include, without limitation, all plumbing, lighting, electrical, heating, cooling and ventilating fixtures and equipment, and all Related Improvements. All improvements, temporary or permanent, made in or upon the Leased Premises by Tenant shall become Landlord's property and shall remain upon the Leased Premises on any such termination without compensation, allowance or credit to Tenant. All kitchen hoods (and associated non-moveable mechanicals) and walk-in coolers and freezers in the Leased Premises as of the date of this Lease or installed later shall become Landlord's property and remain upon the Leased Premises on any such termination without compensation, allowance or credit to Tenant. The foregoing provision is not intended to act as a waiver of Tenant's rights to such improvements in the event of a breach of the Lease by Landlord. Further, upon the termination of this Lease, whether by forfeiture, lapse of time or otherwise, or upon termination of Tenant's right to possession of the Leased Premises, Tenant shall remove Tenant's articles of personal property incident to Tenant's business and Tenant's trade dress items provided, however, that Tenant shall repair any injury or damage to the Premises which may result from such removal, and shall restore the Premises to the same condition as prior to the installation thereof. Tenant shall not remove (at Landlord's option) all built in fixtures such as coolers, freezers and hoods. If Tenant does not remove Tenant's Trade Fixtures from the Premises upon the expiration or earlier termination of the Lease term or Tenant's right to possession of the Premises, Landlord may, at its option, (i) remove the same (and repair any damage occasioned thereby) and dispose thereof or deliver the same to any other place of business of Tenant or warehouse the same, and Tenant shall pay the cost to Landlord, on demand, of such removal, repair, delivery and warehousing, or (ii) Landlord may treat such Trade Fixtures as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment, allowance or credit by Landlord to Tenant.

## 22. SERVICE OF NOTICE

All notice(s) or demand(s) required under this Lease shall be in writing signed by the party serving the same and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, any nationally recognized overnight courier (i.e. Fed Ex, UPS, DHL), or personal delivery. Any such notice shall be addressed to the parties at the addresses appearing below or to such other address as either party may have furnished to the other as a place for service of notice. Any notice shall be deemed to have been given as of the time said notice is deposited in the United States Mail, one business day following deposit with any nationally recognized overnight courier, or upon receipt or refusal to accept delivery if sent by personal delivery.

### **Landlord:**

MCK Millennium Centre Retail, LLC  
c/o Commercial Credit Corp.  
1919 South Highland Avenue  
Building D, Suite 124  
Lombard, Illinois 60148  
Attn: Joseph Khoshabe

With a copy via email to:



Michael Kraft  
Kraft Law Office  
email:mike@mkraftlaw.com

*(In no event, however, shall notice to the Kraft Law Office constitute notice to Landlord)*

**Tenant:** Flight Club Chicago, LLC

c/o Alan Cichon  
90 West Blackthorn Lane  
Lake Forest, Illinois 60045

**With a copy to:** Bronson & Kahn LLC  
150 North Wacker Drive, Suite 1400  
Chicago, Illinois 60606  
Attn: Harlan Kahn

### 23. RESTAURANT PROVISIONS

A. **Conflict.** In the event of any conflict between the terms and provisions of this Section 24 and the remainder of this Lease, the terms and provisions of this Section 24 shall control.

B. **Refuse.** Landlord shall provide dumpsters for Tenant's use in the loading docks of the Building.

C. **Grease Traps; Exhaust Systems.** Subject to the obligations of Landlord in Section 6, above, Tenant shall be solely responsible for the maintenance of any grease traps and connecting pipes thereto serving the Premises and any equipment installed therein, provided Landlord represents and warrants that any such existing pipes are in good working order at the Commencement Date. Tenant, at its sole cost and expense, shall procure and maintain in full force and effect a contract for the maintenance of any grease traps, including the treatment, emptying and flushing thereof, with a service and maintenance firm reasonably acceptable to Landlord. All kitchen waste and exhaust systems, including all risers, piping and fans used in connection with such waste and exhaust systems, whether located in or outside of the Premises, and all other pipes or ducts used by Tenant, shall be maintained by Tenant in good repair, and so as to meet the highest standards of cleanliness and health, in a manner consistent with the operation of a first-class restaurant in a first-class building and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction, at Tenant's expense.

D. **Extermination Services.** Tenant shall cause extermination services, including treatment for insects, spiders, rats, mice, moles and other rodents, to be provided to the Premises by a reputable exterminator on a monthly basis, or as often as determined by Tenant in its reasonable discretion and expense.

E. **No Migration.** Tenant shall use commercially reasonable means to prevent liquids, materials and commercially unreasonable odors from migrating into adjacent occupant's spaces or into the common areas. Landlord's acceptance of the Tenant's plans, which includes Tenant's exhaust system and facilities, shall serve as: (1) Landlord's representation that Landlord

is satisfied with Tenant's initial measures to prevent such migration. It being further understood and agreed that unless required under the REA, all applicable law(s), regulation(s), ordinance(s), and/or any building code(s) in no other event shall Tenant be required by Landlord to install an air scrubber system.

F. **Liquor License.** Tenant shall be solely responsible for obtaining any liquor license required for its Permitted Use.

## 24. MISCELLANEOUS PROVISIONS

A. **Captions.** The captions appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such paragraphs or this Lease or in any way affect this Lease. Any gender used herein shall be deemed to refer to any other gender more grammatically applicable to the party to whom such use of gender relates. The use of singular herein shall be deemed to include the plural and conversely, the plural shall be deemed to include the singular.

B. **Binding on Successors and Assigns.** The terms, conditions, and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the Parties hereto, their heirs, personal representatives, permitted successors, or assigns, and where more than one party shall be Landlords under this Lease, the word "Landlord" whenever used in this Lease shall be deemed to include all parties who make up the Landlord, jointly and severally.

C. **Invalidity of Provisions.** If any term or provision of this Lease or the application thereof to any reason or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to the persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

D. **Exhibits.** Exhibits attached hereto and addendums and schedules initialed by the parties are deemed by attachment to constitute part of this Lease and are incorporated as if set forth herein.

E. **Entire Agreement.** This Lease along with any Exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises. This Lease and the Exhibits and attachments may be altered, amended, or revoked only by an instrument in writing duly signed and delivered by both Landlord and Tenant. Landlord and Tenant hereby agree that all prior or contemporaneous written and oral agreements between and among themselves and their agents or representatives relating to the leasing of the Premises are merged into or revoked by this Lease.

F. **Waiver.** No obligation, term, covenant, condition, or agreement in this Lease (collectively, "**Obligation**") shall be deemed waived by either of Landlord or Tenant unless such waiver is in writing and signed by such party in whose favor the obligation runs. No waiver of any Obligation by either Landlord or Tenant will imply or constitute the further waiver of that or any other Obligation. The failure of either of Landlord or Tenant to (i) seek redress for the breach of, or default in, or (ii) insist upon the strict performance of any Obligation, shall not be deemed a waiver of any rights or remedies such respective party may have, and shall not be deemed a waiver of any subsequent breach of, or default in, such Obligation.

G. **Reasonable Consent.** In the event of any instance by which Landlord's express consent is required under this Lease, Landlord shall not unreasonably withhold, delay or condition such consent.

**H. Interest on Past-Due Obligations.** Except as expressly herein provided, any amount due to either party and not paid when due, shall bear interest from the due date at the Default Rate, except to the extent of any other specified notice or cure period provided in this Lease.

**I. Recording of Lease.** Neither party shall record this Lease.

**J. Binding Effect; Choice of Law.** The parties hereto agree that all provisions hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate paragraph hereof. Subject to any provisions hereof restricting assignment or subletting by the Tenant, all of the provisions hereof shall bind and inure to the benefit of the parties hereto, their respective heirs, legal representatives, assigns, and successors. This Lease shall be governed by the laws of the State of Illinois, and the parties agree to submit to the jurisdiction of the courts located in Cook County, Illinois in any matter arising under this Lease.

**K. Waiver of Jury Trial.** EACH OF THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS LEASE OR ANY EXHIBIT HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER VERBAL OR WRITTEN) MADE BY THE PARTIES.

**L. Authority.** Landlord and Tenant each hereby represent and warrant to each other that all consents or approvals required (including, but not limited to, any Board of Directors) for the execution, delivery and performance of this Lease have been obtained and that each party has the right and authority to enter into and perform its covenants contained in this Lease, each individual executing this Lease on behalf of said Party represents and warrants that he is duly authorized to execute and deliver this Lease on its behalf and that this Lease is binding upon each Party in accordance with its terms.

**M. Attorneys' Fees and Court Costs.** In connection with any litigation arising out of the enforcement of any rights or obligations arising hereunder the prevailing Party shall be entitled to recover all costs incurred, including court costs, reasonable attorneys' fees (and fees charged by paralegals and other professionals working under the direction of an attorney), including, without limitation, trial appellate, arbitration, and bankruptcy proceedings, plus accrued interest thereon at the Default Rate from the date any such sums were incurred as legal fees hereunder.

**N. Holding Over.** In the event of a holding over by Tenant after expiration or termination of this Lease without the consent in writing of Landlord, Tenant shall be deemed a tenant at sufferance and may be evicted by Landlord without any notice (except such notice as may be required by applicable Laws), and such tenancy shall be subject to all the provisions hereof, except that the monthly Base Rent for the occupancy shall be at the rate of 150% of Base Rent in effect immediately prior to such holding over, as liquidated damages and not as a penalty, prorated for the entire holdover period, plus all attorneys' fees and expenses incurred by Landlord in enforcing its rights hereunder, plus any other actual and direct damages occasioned by the holding over. The acceptance by Landlord of any lesser sum shall be construed as a payment on account and not in satisfaction of damages for such holding over.

**O. Brokers.** Except for Joseph Khoshabe of United Realty & Development ("Landlord's Broker") and Todd Siegel and Philip Golding of CBRE ("Tenant's Broker"); Landlord's Broker and Tenant's Broker are collectively referred to as "Broker", no broker has

represented the Landlord or Tenant in the negotiation and execution of this Lease. Tenant agrees to defend, indemnify and hold Landlord harmless from and against all claims, damages, costs expenses, attorneys' fees and other liabilities for commissions or other compensation claimed by any broker or agent through Tenant other than Broker. Landlord agrees to defend, indemnify and hold Tenant harmless from and against all claims, damages, costs, expenses, attorneys' fees and other liabilities for commissions or other compensation claimed by any broker or agent through Landlord other than Broker.

**P. Sale of Premises by Landlord.** In the event of the sale, transfer, conveyance, or exchange of the Premises or the Retail Parcel and/or the assignment of this Lease by Landlord, Landlord shall be automatically freed and relieved of all liability as respects the performance of any covenant(s) and/or obligation(s) on the part of the Landlord in or derived from this Lease, or arising out of any act, occurrence or omission or omission relating to the Premises or this Lease. The covenants, representations and obligations of Landlord shall be binding on the Landlord only during the period that Landlord has an ownership interest in the Retail Parcel and the Premises.

**Q. Title to Premises; Quiet Enjoyment.** Landlord represents and warrants to Tenant that Landlord has full legal right, authority and sufficient title to enter into this Lease. Upon Tenant paying the Base Rent and Additional Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Landlord covenants, represents and warrants that Tenant shall have quiet possession of the Premises which shall not be disturbed by Landlord or any party claiming by, through or under Landlord.

**R. Force Majeure.** Neither party shall be liable for any delay or failure to perform its non-monetary obligations (except for the payment of any sums due under this Lease) hereunder due to (and the time for performance of any covenant shall be deemed extended by the time lost due to) any causes beyond its reasonable control, including, without limitation, fire, accident, act of the public enemy, war, rebellion, insurrection, sabotage, transportation delay, labor dispute, shortages of material, labor, energy or machinery, or act of God, act of government or the judiciary.

**S. Governmental Approvals.** Tenant shall, at its sole cost and expense, diligently and in good faith pursue the obtaining of all governmental approvals, authorizations and permits (including, without limitation, a liquor license) required for the lawful operation of the Premises for the Permitted Use (collectively, the "Required Permits"). Tenant shall promptly commence applying for and thereafter diligently pursue the obtaining of those Required Permits necessary for the sale of food and alcoholic beverages. Tenant shall keep Landlord reasonably informed of Tenant's efforts to obtain the Required Permits. Tenant shall notify Landlord in writing promptly after obtaining all of the Required Permits.

**T. Continuing Operation.** Notwithstanding anything contained in the Lease to the contrary, nothing therein shall be construed as an obligation by Tenant, or be deemed to be an Event of Default under the Lease should Tenant fail, to continuously operate its business or maintain any specific office hours in the Premises; provided however, that Tenant keeps and observes the other covenants and conditions set forth in the Lease applicable to Tenant including but not limited to the timely payment of Rent and all other monetary obligations of Tenant set forth in this Lease.

**U. Exclusive Use.** Landlord shall not enter into a lease with another tenant for space in the Retail Parcel which is to be used as a gaming facility, which includes miniature golf,

bowling, dart, or other gaming activities or primarily as a bar or tavern provided that it is understood that any other tenant operating a restaurant business may serve alcoholic beverages. Landlord shall enforce such restriction and exclusive right of Tenant herein, and cause all such other tenants in the Retail Parcel to comply with such restriction, during the Lease Term.

V. **Exculpatory Provisions.** Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed by and between the Parties hereto that the recourse of Tenant or its successors or assigns against Landlord with respect to the alleged breach by or on the part of Landlord of any representations, warranty, covenant, undertaking or agreement contained in this Lease shall extend only to Landlord's interest in the Premises and not to any other assets of Landlord or its constituent partners.

W. **Approval.** If this Lease is subject to the approval by the Bankruptcy Court for the Northern District of Illinois under case number 16-06369 (the "Bankruptcy Court") or Landlord's lender(s), such approval will be obtained promptly after execution of this Lease ("Court Approval"). In the event Court Approval is required but not obtained prior to August 1, 2016, then either Tenant or Landlord shall have the right to terminate this Lease by providing written notice within 5 business days after said non-approval, in which case this Lease shall be terminated and of no further force and effect. Further, in the event Tenant is unable to obtain a liquor license for the Premises, Tenant shall have the right to terminate this Lease by providing written notice to Landlord, in which case this Lease shall be terminated and of no further force and effect, provided, however: (i) such termination right shall be waived if not exercised within 9 months following the date of this Lease; and (ii) if so terminated after the end of the 6<sup>th</sup> month following the date of this Lease, Landlord shall retain the Security Deposit.

X. **Rules and Regulations.** Landlord shall have the right (upon reasonable notice) to adopt reasonable rules and regulations for the safety, care and cleanliness of the Premises and the preservation of good order thereon. Such rules and regulations are hereby expressly made a part hereof, and Tenant agrees to obey all such rules and regulations. Landlord shall not be responsible to Tenant for the non-performance by any other tenant or occupant of the Building of any of said rules and regulations. Landlord agrees all rules and regulations shall be uniformly enforced, except as may be specifically applicable to Tenant's use. In the event a conflict between rules and this Lease occurs, the Lease shall control, provided, however, that the lack of a provision in this Lease covering the subject matter of the rule or regulation shall not be deemed a "conflict" for purposes of this sentence

Y. **Outdoor Seating.** Tenant shall be entitled to utilize the sidewalk area immediately adjacent to the Premises for outdoor seating ("Outdoor Space"), if permitted under the REA, and subject to all applicable licensing requirements, laws and ordinances of the City of Chicago. Tenant shall be required to furnish any furniture used in such outdoor seating and the Outdoor Space seating design and space utilized by Tenant shall be subject to the written approval of Landlord, such approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall pay any special governmental fees, and obtain any permit(s) specifically required for Tenant's use and operation of the Outdoor Space, if any. Landlord makes no representation that Tenant will be able to obtain such permit. Notwithstanding the aforementioned, it is understood that Tenant is solely responsible for all costs and expenses associated with obtaining and maintaining such Permit(s).

Z. **Landlord Security Interest.** Tenant hereby conveys to the Landlord a security interest in all the fixtures owned and installed by Tenant situated on the Leased Premises as security for the payment of all Rent and Additional Rent due or to become due hereunder subject only to any institutional lender providing financing for the purchase of said fixtures (in which event Tenant

may grant such institutional lender a priority lien and Landlord will execute a reasonable subordination agreement in favor of such institutional lender upon Tenant's written request). Said property shall not be removed therefrom without the consent of the Landlord (except for replacements in ordinary course of business), Tenant further agrees that, subject to the aforementioned right of any institutional lender providing financing, the Landlord may file any financing statements as Landlord may reasonably require to perfect Landlord's interest in such property.

**AA. Counterparts.** This Lease may be executed in any number of counterparts, all of which will be considered one and the same Lease notwithstanding that all parties hereto have not signed the same counterpart. Signatures on this Lease which are transmitted by facsimile shall be valid for all purposes. Any party shall, however, deliver an original signature on this Lease to the other party upon request.

**IN WITNESS WHEREOF,** the parties have executed this Retail Lease as of the date set forth above.

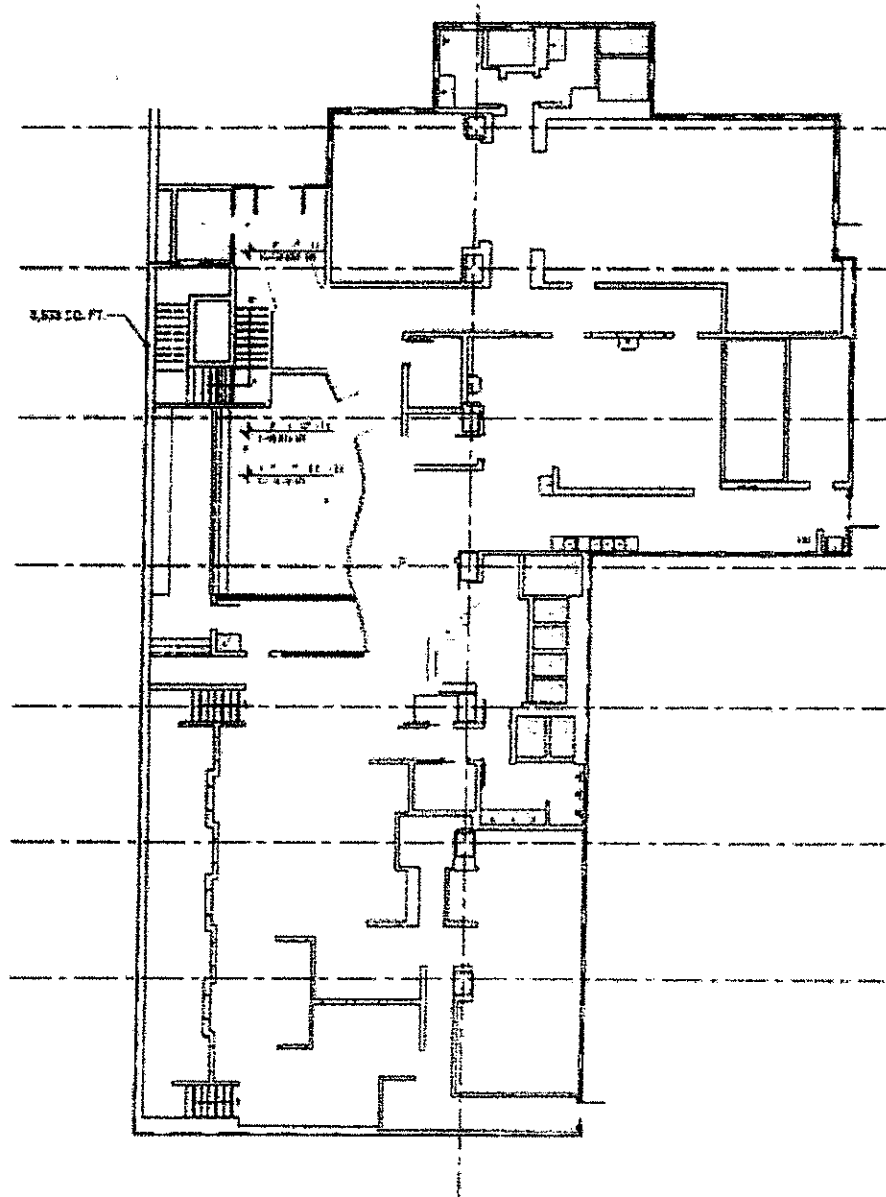
<b>TENANT:</b>	<b>LANDLORD:</b>
FLIGHT CLUB CHICAGO, LLC, an Illinois limited liability company	MCK Millennium Centre Retail, LLC, an Illinois limited liability company
By: Flight Club US, Inc., a Delaware corporation Its: Manager	By: MCK Millennium Corp, an Illinois corporation Its: Manager
By: _____ Name: _____ Title: _____	By: _____ Name: _____ Title: _____

**EXHIBIT A**

**THE PREMISES**

Flight Club - Letter of Intent  
Page 7 of 7

**EXHIBIT A:**  
**New Floor Plan**





**EXHIBIT B**

**COMMENCEMENT DATE NOTICE**

**FROM:** FLIGHT CLUB CHICAGO, LLC, an Illinois limited liability company

**TO:** MCK Millennium Centre Retail, LLC, an Illinois limited liability company

**RE:** 609 N. Dearborn, Chicago, Illinois

**DATED:** \_\_\_\_\_, 2016

By executing this letter, the Landlord and Tenant acknowledge as follows:

1. The Premises has been delivered to Tenant in accordance with the Lease.
2. The Commencement Date is \_\_\_\_\_.
3. Rent Commencement Date is \_\_\_\_\_.
4. The Initial Term expires on \_\_\_\_\_.

<b>TENANT:</b>	<b>LANDLORD:</b>
<p>FLIGHT CLUB CHICAGO, LLC, an Illinois limited liability company</p> <p>By: Flight Club US, Inc., a Delaware corporation Its: Manager</p> <p>By: _____ Name: _____ Title: _____</p>	<p>MCK Millennium Centre Retail, LLC, an Illinois limited liability company</p> <p>By: MCK Millennium Corp, an Illinois corporation Its: Manager</p> <p>By: _____ Name: _____ Title: _____</p>

**EXHIBIT C**

**RENT SCHEDULE**

<b>Period</b>	<b>Base Rent PSF</b>	<b>Annual Base Rent</b>
Months 1-6	\$0.00	See below
Months 7-12	\$0.00	See below
Months 12-18	██████████	██████████
Months 19-24	\$0.00	See below
Months 25-60	██████████	\$██████████
Months 61-132	\$27.50	\$237,545.00
<b>Renewal Terms</b>		
Years 11-15	██████████	\$██████████
Years 16-20	██████████	\$██████████
Years 21-25	██████████	\$██████████
Years 26-30	██████████	\$██████████

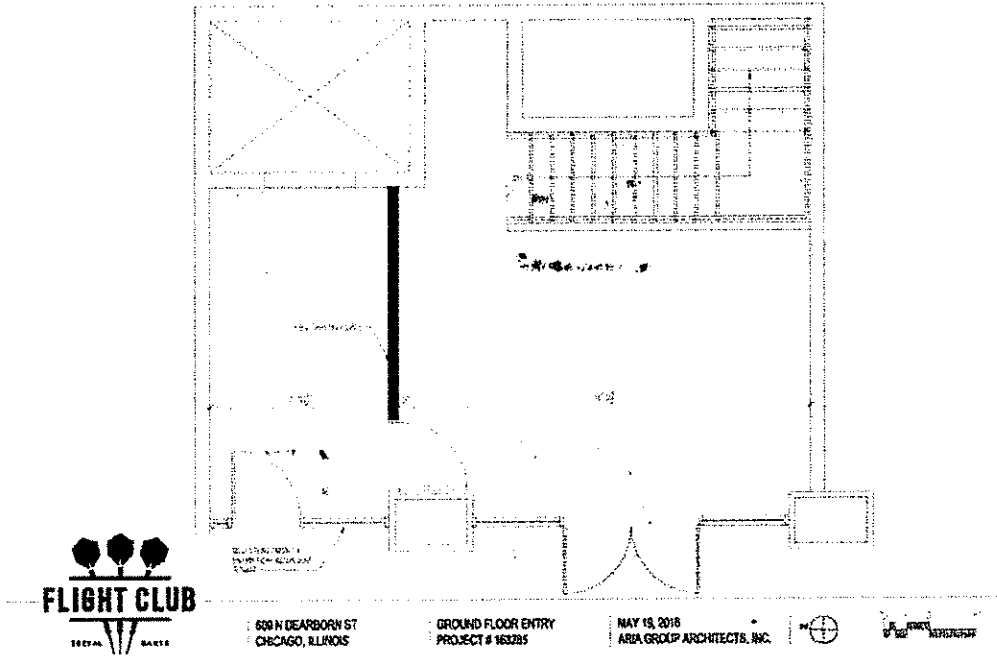
**Additional Notes/Abatements:**

- Base Rent shall be 100% abated for Months 1-6 and Additional Rent for Months 1-6 shall be at the agreed rate of ██████████ PSF per month.
- Base Rent shall be 100% abated for Months 6-12 and Additional Rent for Months 6-12 shall be at the agreed rate of ██████████ PSF per month.
- Base Rent (but not Additional Rent) shall be 100% abated for Months 19-24.
- In each of the following Months (36, 48, 60, 72, 84, 96, 108, 120 and 132) the Base Rent (but not Additional Rent) shall be 100% abated. These 9 months of Base Rent only abatements shall be in addition to the certain abatements provided above relating to months 1-24.

**EXHIBIT D**

**ENTRANCE SEGREGATION PLAN**

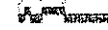
**Ground Floor Lobby:**



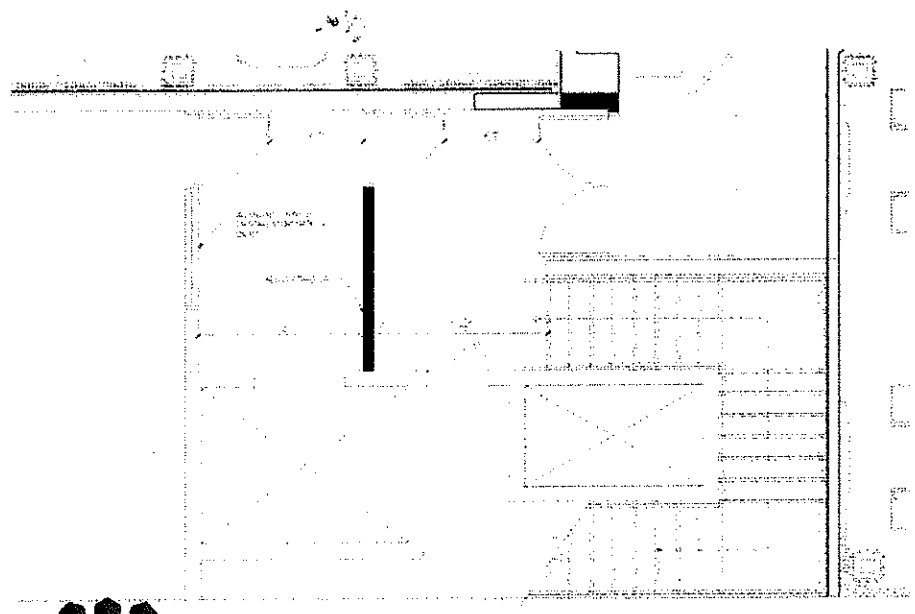
608 N DEARBORN ST  
CHICAGO, ILLINOIS

GROUND FLOOR ENTRY  
PROJECT # 163285

MAY 19, 2016  
ARIA GROUP ARCHITECTS, INC.



**Lower Level:**



608 N DEARBORN ST  
CHICAGO, ILLINOIS

REVISED ENTRY  
PROJECT # 163285

MAY 19, 2016  
ARIA GROUP ARCHITECTS, INC.

