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**RESIDENTIAL TOWER AIRSPACE LEASE**

by and between

**CITY CREEK RESERVE, INC.,**  
a Utah nonprofit corporation,

and

**CITY CREEK LIVING, LLC,**  
a Utah limited liability company

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**THE REGENT AT CITY CREEK CONDOMINIUMS**  
**SALT LAKE CITY, UTAH**

February 11, 2011

4811-1383-9624

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**RESIDENTIAL TOWER AIRSPACE LEASE  
(The Regent at City Creek Condominiums)**

This **RESIDENTIAL TOWER AIRSPACE LEASE** (this "**Lease**") is made as of the 11<sup>th</sup> day of February, 2011 (the "**Execution Date**"), by and between **CITY CREEK RESERVE, INC.**, a Utah nonprofit corporation ("**Landlord**"), and **CITY CREEK LIVING, LLC**, a Utah limited liability company ("**Tenant**").

RECITALS

A. Landlord is the fee owner of substantial portions of that certain land located in downtown Salt Lake City (the "**City**"), Salt Lake County (the "**County**"), State of Utah (the "**State**"), bounded by South Temple, State, 100 South, and West Temple Streets, and bisected by Main Street, which real property is located within Block 75 and Block 76 (the "**City Creek Center Property**").

B. Landlord intends to carry out a major redevelopment of the City Creek Center Property, incorporating mixed-use retail, office, and residential uses (the "**Project**").

C. As part of the Project, Landlord has entered into that certain City Creek Center Amended and Restated Master Declaration of Easements, recorded on January 12, 2010 as Entry No. 10877609, in Book 9796, beginning at Page 4404, in the real property records of the Salt Lake County Recorder's Office, setting forth certain exclusive and non-exclusive rights and easements to use portions of the City Creek Center Property upon the terms and conditions set forth therein (as may be amended from time to time, the "**Master Declaration**").

D. Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, subject to the Master Declaration, the three dimensional portion of the City Creek Center Property more particularly described on Exhibit A attached hereto and incorporated herein by reference (as further defined in Section 2.1 below, the "**Airspace**").

E. Landlord and Tenant intend that, during the Term (as defined in Section 3.1) of this Lease, the Airspace be developed by Tenant as a residential condominium project, to be known as "The Regent at City Creek Condominiums" (as further defined in Section 1.17 below, the "**Condominium Project**").

F. Landlord and Tenant desire to enter into this Lease to set forth in writing their rights and obligations to each other.

AGREEMENT

**NOW, THEREFORE**, Landlord and Tenant, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

## Article 1

### DEFINITIONS

The following terms shall have the meanings indicated.

1.1 “**Airspace**” shall have the meaning given in Recital D, as further defined in Section 2.1.

1.2 “**Alteration**” shall have the meaning given in Section 10.1.

1.3 “**Base Rent**” shall have the meaning given in Section 3.1.2.

1.4 “**Base Rent Commencement Date**” shall have the meaning given in Section 3.1.2.

1.5 “**Building**” shall mean and refer to those portions of the building, currently under construction within and around the Airspace, that are actually located within the Airspace (and shall not include any portion of such building located outside the Airspace).

1.6 “**Building Equipment**” means all fixtures and equipment incorporated into the Condominium Project owned by Tenant and used, useful, or necessary to operate the improvements constructed in the Condominium Project (including, without limitation, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; machinery; and pipes).

1.7 “**Building Exteriors**” shall mean and refer to those portions of the Building, such as the roof tops, terraces, building façades, exterior walls, exterior doors, exterior windows, balconies, decks, patios, and other exterior features, which may be open to the elements or may abut adjacent buildings or structures.

1.8 “**Business Day**” means any weekday on which banks in the State are open to conduct regular banking business with bank personnel. To the extent any reference to any time period or number of days in this Lease does not expressly indicate that such time period or number of days are not Business Days, then such reference shall be deemed to mean calendar days.

1.9 “**Certifying Party**” shall have the meaning given in Section 25.1.

1.10 “**City**” shall have the meaning given in Recital A.

1.11 “**City Creek Center Property**” shall have the meaning given in Recital A.

1.12 “**Commencement Date**” shall have the meaning given in Section 3.1.1.

1.13 “**Common Project Rent**” shall mean the annual rent, charge and/or fee payable by Tenant to Landlord pursuant to Article 6 below. The Common Project Rent shall be equal to \$0.50 per square foot of each Unit (as such square footage is shown on the Plat, but excluding

the square footage of any balconies, patios, decks or terraces related to each Unit), per annum, which amount shall be increased, following the initial payment of the Common Project Rent, on January 1st of each subsequent year during the remaining Term of this Lease, by the lesser of (i) five percent (5%), or (ii) the annual increase of the CPI for the CPI Period over the Base Index, as such terms are defined below. The term “CPI” shall mean the “Consumer Price Index—U.S. City Average for All Items For all Urban Consumers (1982-84=100)” published monthly in the “Monthly Labor Review” or other publication by the Bureau of Labor Statistics, United States Department of Labor. If the CPI is no longer published or used, the parties shall use such other analogous index as reasonably determined by Landlord. The term “CPI Period” means the twelve (12) month period ending on October 31 of the previous year. “Base Index” shall be the CPI in effect on October 31 of the then-previous year. For example, to determine the increase in the CPI in order to determine the increase in Common Project Rent effective January 1, 2012, the CPI Period will be the period from November 1, 2010, through October 31, 2011, and the Base Index will be the CPI in effect on October 31, 2010. Notwithstanding the foregoing, in no event shall the Common Project Rent decrease regardless of any negative or deflationary CPI. In the event the CPI is negative or deflationary, the amount of the Common Project Rent for such period shall remain the same as the immediately preceding period.

1.14 “**Condemnation Award**” shall have the meaning given in Section 17.2.

1.15 “**Condominium Act**” shall mean and refer to the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1 *et seq.*, as the same may be amended from time to time.

1.16 “**Condominium Declaration**” shall mean and refer to any declaration of condominium that may be adopted, modified, amended or supplemented from time to time with respect to the Condominium Project.

1.17 “**Condominium Project**” shall mean and refer to (i) the condominium regime created by subjecting the Premises and all improvements thereon to the Condominium Act by recording and filing the Plat and the associated Condominium Declaration, and (ii) the Building and all improvements constructed on and within the Airspace.

1.18 “**Contest**” shall have the meaning given in Section 14.1.

1.19 “**Contest Conditions**” shall have the meaning given in Section 14.1.

1.20 “**Contest Security**” shall have the meaning given in Section 14.1.1.

1.21 “**County**” shall have the meaning given in Recital A.

1.22 “**Damaged Building**” shall have the meaning given in Section 16.3.

1.23 “**Damaged Common Areas**” shall have the meaning given in Section 16.4.1.

1.24 “**Damaged Property**” shall have the meaning given in Section 16.5.

1.25 “**Damaged Units**” shall have the meaning given in Section 16.4.1.

1.26 “**Default**” shall mean Tenant’s uncured default or breach under this Lease. A Default may consist of a Monetary Default, a Use Default, a Termination Default, or a Nonmonetary Default, as further defined in Article 21 below.

1.27 “**Default Interest**” shall mean interest at an annual rate equal to the lesser of: (a) the Prime Rate plus four (4) percentage points per annum; or (b) the Usury Limit.

1.28 “**Early Repurchase**” shall have the meaning given in Section 3.2.4.

1.29 “**Early Repurchase Date**” shall have the meaning given in Section 3.2.2.

1.30 “**Early Repurchase Option**” shall have the meaning given in Section 3.2.

1.31 “**Environmental Law**” means any Law governing the following at, in, under, above, or upon the Condominium Project: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, manufacture, refinement, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

1.32 “**Estoppel Certificate**” shall have the meaning given in Section 25.1.

1.33 “**Event of Default**” shall have the meaning given in Section 21.1.

1.34 “**Execution Date**” shall have the meaning given in the introductory paragraph of this instrument.

1.35 “**Expiration Date**” shall have the meaning given in Section 3.1.1.

1.36 “**Extension Term**” shall have the meaning given in Section 3.1.4.

1.37 “**Fair Market Rent**” shall have the meaning given in Section 3.1.2.

1.38 “**Government**” means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other governmental entity or instrumentality having or claiming jurisdiction over the Condominium Project (or any activity this Lease allows), including the United States federal government, the Utah State, the Salt Lake County, and the Salt Lake City governments and their subdivisions and municipalities, and all other applicable governmental agencies, departments, authorities, and divisions thereof. “Government” shall also include any planning commission, board of standards and appeals, department of buildings, city council, zoning board of appeals or adjustment, or planning board or commission having or claiming jurisdiction over the Condominium Project or any activities on or at the Condominium Project.

1.39 “**Hazardous Substance**” means all flammable, harmful and/or dangerous substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material,

substance or waste that is defined by those or similar terms or is regulated as such under any Law, including (without limitation) any material, substance or waste that is: (a) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (b) defined as a "hazardous waste" under Section 1004 of The Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 *et seq.*, as amended; (c) defined as a "hazardous substance" or "hazardous waste" under Section 101 of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.* or any so-called "superfund" or "superlien" law, including the judicial interpretations thereof; (d) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (e) defined as "hazardous waste" under 40 C.F.R. Part 260; (f) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; or (g) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

1.40 "**Hazardous Substance Discharge**" means any deposit, discharge, generation, release, disposal, or spill of any Hazardous Substance that occurs at or from the Condominium Project, or into the City Creek Center Property, or that arises at any time from the use, occupancy, or operation of the Condominium Project or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission or migration of any Hazardous Substance from other real property to the Condominium Project, whether or not caused by a party to this Lease and whether occurring before, on, or after the Commencement Date.

1.41 "**Home Business Activities**" shall have the meaning given in Section 7.1.

1.42 "**Indemnify**" or "**Indemnified**" shall mean with respect to any particular risk or matter described herein (the "**Indemnified Risk**"), that the Indemnitor shall indemnify the Indemnitee and protect, defend, save and hold the Indemnitee harmless from and against any and all losses, costs, claims, liabilities, penalties, judgments, fines, fees, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Indemnitor's indemnity. Indemnitor's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld, conditioned, or delayed.

1.43 "**Indemnitee**" shall mean any party entitled to be Indemnified under this Lease, together with its agents, directors, officers, members, representatives, employees, lenders, attorneys and mortgagees.

1.44 "**Indemnitor**" shall mean a party that agrees to Indemnify any other Person.

1.45 "**Initial Base Rent Year**" shall have the meaning given in Section 3.1.2.

1.46 "**Landlord Improvements**" shall have the meaning given in Section 20.1.

1.47 "**Landlord's Base Rent Appraisal**" shall have the meaning given in Section 3.1.2.

- 1.48 “**Landlord’s Pay-Off Appraisal**” shall have the meaning given in Section 3.5.1.
- 1.49 “**Landscape Area Access License**” shall have the meaning given in Section 2.2.4.
- 1.50 “**Landscape Area Access License Areas**” shall have the meaning given in Section 2.2.4.
- 1.51 “**Landscape Areas**” shall mean those certain areas, planter boxes, and containers which are, or are intended to be, landscaped or otherwise planted with trees, shrubs, flowers or other plants, including without limitation, the portions of the Common Areas (as defined in the Condominium Declaration) shown on the Plat which are exposed to the elements and which are located on (i) “Level 4” (as identified on the Plat) adjacent to the balconies, patios, terraces and/or decks relating to Units 401, 402, 404, 407, 408, and 409, and (ii) on “Level 5” (as identified on the Plat) adjacent to the balcony, patio, terrace and/or deck relating to Unit 503.
- 1.52 “**Laws**” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Condominium Project or Use Areas, this Lease, or any Alterations in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Condominium Project or Use Areas, or relating to any Real Estate Taxes, or otherwise relating to this Lease or any party’s rights and remedies under this Lease, or any transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.
- 1.53 “**Lease**” shall have the meaning given in the introductory paragraph of this instrument.
- 1.54 “**Legal Costs**” of any Person shall mean all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys’ fees, court costs, and expenses, and in or as a result of any bankruptcy proceeding.
- 1.55 “**Lightning Rods**” shall have the meaning given in Section 2.3.1.
- 1.56 “**Lobby**” shall mean and refer to those portions of the first or ground floor of the Building, which are within the Airspace, and which are intended to be used as (i) lobby, reception, foyer, greeting, or similar areas, (ii) meeting rooms, and/or (iii) mail rooms.
- 1.57 “**Major Decisions**” shall have the meaning given in Section 8.1.
- 1.58 “**Master Declaration**” shall have the meaning given in Recital C.
- 1.59 “**Mediation**” shall have the meaning given in Section 25.3.2.
- 1.60 “**Monetary Default**” shall have the meaning given in Section 21.1.1.
- 1.61 “**Mortgage**” shall have the meaning given in Section 19.1.

- 1.62 “**Mortgagee**” shall have the meaning given in Section 19.2.
- 1.63 “**New Improvements**” shall have the meaning given in Section 16.7.
- 1.64 “**Nonmonetary Default**” shall have the meaning given in Section 21.1.4.
- 1.65 “**Notice**”, “**Notify**”, or “**Notifies**” shall mean the delivery of a written notice in accordance with the terms and provisions for the giving of written notices as more fully set forth herein.
- 1.66 “**Notice of Nonextension**” shall have the meaning given in Section 3.1.4.
- 1.67 “**Offsite Amenities**” shall mean any swimming pools, facilities, buildings, or other amenities located within the City Creek Center Property but outside of the Airspace, as Landlord may, but is not obligated to, designate from time to time for use by Tenant. Currently the following amenities are designated as Offsite Amenities by Landlord: (i) the swimming pool, locker room, changing area, entertainment room and all facilities related to the foregoing which are constructed, or are currently intended to be constructed, on a portion of the third floor of the structure on or within the Tower 5 Parcel (as defined and described in the Master Declaration, and which is included within the same structure and improvements as the Condominium Project, but is not a part of such Condominium Project) as currently shown in the plans and specifications for the Tower 5 Parcel and/or the structure related thereto; and (ii) the “Social Center” as defined and described in the Master Declaration.
- 1.68 “**Offsite Utility Facilities**” shall have the meaning given in Section 2.2.3.
- 1.69 “**Offsite Utility Facilities License**” shall have the meaning given in Section 2.2.3.
- 1.70 “**Option Exercise Notice**” shall have the meaning given in Section 3.2.2.
- 1.71 “**Option Exercise Period**” shall have the meaning given in Section 3.2.1.
- 1.72 “**Owners Association**” shall have the meaning given in Section 18.6.
- 1.73 “**Parking and Storage Facilities**” shall have the meaning given in Section 2.8.
- 1.74 “**Parking Facility**” shall mean the underground parking structure in Block 75 that is owned, operated, and/or managed by Landlord or its assignee, a portion of which will include parking spaces that may be licensed for use to Unit Owners within the Condominium Project.
- 1.75 “**Partial Destruction**” shall have the meaning given in Section 16.4.2.
- 1.76 “**Pay-Off Amount**” shall have the meaning given in Section 3.5.1.
- 1.77 “**Pay-Off Appraisal Date**” shall have the meaning given in Section 3.5.2.
- 1.78 “**Penalty Date**” shall have the meaning given in Section 5.1.



1.79 “**Permitted Exceptions**” shall mean only: (a) the title exceptions recorded in the office of the Salt Lake County Recorder affecting Landlord’s fee estate in the Premises and other portions of the Condominium Project subject to this Lease, as of the Commencement Date; (b) this Lease and its terms and provisions; and (c) any additional matters agreed upon in writing by Landlord and Tenant.

1.80 “**Permitted Transferee**” shall have the meaning given in Section 3.3.2.

1.81 “**Person**” shall mean any individual, association, corporation, Government, joint venture, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

1.82 “**Plat**” shall mean and refer to the condominium plat for the Condominium Project, recorded or to be recorded in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.

1.83 “**Premises**” shall have the meaning given in Section 2.1.

1.84 “**Primary Term**” shall have the meaning given in Section 3.1.1.

1.85 “**Prime Rate**” shall mean the prime rate or equivalent “base” or “reference” rate for corporate loans that is from time to time: (a) published in the Wall Street Journal; or (b) if no longer published in the Wall Street Journal, announced by any large United States “money center” commercial bank Tenant reasonably designates; or (c) if such rate is no longer so published or announced, then a reasonably equivalent rate published by an authoritative third party that Tenant reasonably designates.

1.86 “**Prohibited Lien**” shall have the meaning given in Section 11.1.

1.87 “**Project**” shall have the meaning given in Recital B.

1.88 “**Property Insurance Proceeds**” shall have the meaning given in Section 16.2.

1.89 “**Qualified Appraiser**” shall have the meaning given in Section 3.5.2.

1.90 “**Razing Costs**” shall have the meaning given in Section 16.5.2.

1.91 “**Real Estate Taxes**” shall have the meaning given in Section 5.1.

1.92 “**Rent**” shall have the meaning given in Section 4.1.

1.93 “**Repair and Reconstruction**” shall have the meaning given in Section 16.3.

1.94 “**Requesting Party**” shall have the meaning given in Section 25.1.

1.95 “**Reserved Use Areas**” shall have the meaning given in Section 2.3.4.

1.96 “**Reserved Use Easement**” shall have the meaning given in Section 2.3.4.

- 1.97 “**Reserved Ventilation Easement**” shall have the meaning given in Section 2.3.3.
- 1.98 “**ROFO**” shall have the meaning given in Section 3.3.
- 1.99 “**ROFO Exercise Notice**” shall have the meaning given in Section 3.3.1.
- 1.100 “**ROFO Offer Period**” shall have the meaning given in Section 3.3.1.
- 1.101 “**Senior Executive Settlement**” shall have the meaning given in Section 25.3.1.
- 1.102 “**State**” shall have the meaning given in Recital A.
- 1.103 “**Subject Land**” shall have the meaning given in Section 3.1.2.
- 1.104 “**Tenant**” shall have the meaning set forth in the first introductory paragraph of this Lease. For all purposes in connection with this Lease, Tenant shall also include the Owners Association and all Unit Owners except to the extent the context clearly intends otherwise.
- 1.105 “**Tenant’s Base Rent Appraisal**” shall have the meaning given in Section 3.1.3.
- 1.106 “**Tenant’s Pay-Off Appraisal**” shall have the meaning given in Section 3.5.3.
- 1.107 “**Term**” shall have the meaning given in Section 3.1.
- 1.108 “**Third Base Rent Appraiser**” shall have the meaning given in Section 3.1.3.
- 1.109 “**Third-Party Rights**” shall have the meaning given in Section 2.5.
- 1.110 “**Third Pay-Off Appraisal**” shall have the meaning given in Section 3.5.3.
- 1.111 “**Third Pay-Off Appraiser**” shall have the meaning given in Section 3.5.3.
- 1.112 “**Total Destruction**” shall have the meaning given in Section 16.4.1.
- 1.113 “**Transfer Notice**” shall have the meaning given in Section 3.3.1.
- 1.114 “**Unavoidable Delay**” shall have the meaning given in Section 26.8.
- 1.115 “**Unit**” shall have the meaning given in Section 18.2.
- 1.116 “**Unit Owner**” shall have the meaning given in Section 18.2.
- 1.117 “**Usage Rent**” shall have the meaning given in Section 2.2.1.
- 1.118 “**Use Areas**” shall have the meaning given in Section 2.2.
- 1.119 “**Use Default**” shall have the meaning given in Section 21.1.2.

1.120 "**Use Default Liquidated Damages**" shall have the meaning given in Section 21.2.3.

1.121 "**Usury Limit**" shall mean the highest rate of interest, if any, that Law allows under the circumstances.

1.122 "**Utilities**" shall mean all utilities of any kind which from time to time service the Condominium Project, including, without limitation, electrical, natural gas, steam, culinary water, fire protection, trash and rubbish clean up and recycling systems, sewer, exhaust, telecommunications and data lines, life safety and fire protection, wireless information equipment, cable television, internet service, power, heating, and cooling.

1.123 "**Utility Areas**" shall mean the closets, ducts, rooms, corridors, passageways, cavities, crevices, and other areas, as may be constructed from time to time, for all systems, pipes, and lines of Utilities within the Premises and the Building, including, without limitation, any and all utility easements granted pursuant to Section 3.5 of the Master Declaration to the extent such easements are appurtenant to the Premises.

1.124 "**Waste**" shall have the meaning given in Section 2.2.2.

1.125 "**Waste Disposal Areas**" shall have the meaning given in Section 2.2.2.

1.126 "**Waste Disposal License**" shall have the meaning given in Section 2.2.2.

## Article 2

### PREMISES AND RIGHTS

The following interests and rights are hereby leased, granted, licensed or reserved by Landlord and accepted or acknowledged by Tenant, subject to all of the terms and conditions of this Lease, the Master Declaration, any other encumbrances affecting the Premises, and all applicable Laws:

2.1. **Premises**. As further set forth below, Landlord hereby leases to Tenant the Airspace, together with the other rights expressly granted to Tenant in Section 2.2 below (collectively, the "**Premises**"). The Airspace shall exist within the elevations shown on **Exhibit A**, but in all events any minimum elevations described for any level within the Airspace shall be the top of the concrete slab for such applicable level which is immediately below the applicable finished flooring therefor (as originally constructed); provided, however, Tenant's rights in the Premises shall be limited as set forth in Section 2.3 below and as may be otherwise set forth in the other provisions of this Lease.

2.2. **Other Use Rights**. Landlord hereby grants to Tenant the following nonexclusive rights in the following described areas of the Project (collectively, the "**Use Areas**"):

2.2.1. **Offsite Amenities Use**. Landlord hereby grants to Tenant a nonexclusive license to access and use the Offsite Amenities that Landlord may designate from time to time.

Landlord has no obligation to designate any Offsite Amenities and may discontinue any Offsite Amenities at any time. Landlord may set, in its sole discretion, all operational standards for any Offsite Amenities; provided, however, that such standards must be commercially reasonable. Tenant shall access the Offsite Amenities by such routes as may be reasonably determined by Landlord, from time to time. Further, Tenant's use of the Offsite Amenities shall be subject to applicable law, and any rules and regulations relating to the use of the Offsite Amenities as Landlord or any third parties with rights of control of the Offsite Amenities may establish from time to time. Tenant shall pay to Landlord certain rent, charges and/or fees (the "**Usage Rent**"), as reasonably determined and assessed by Landlord, to pay Tenant's share of the costs of operating, maintaining, repairing and insuring the Offsite Amenities. Landlord, in its sole discretion, shall set and may adjust the Usage Rent as appropriate from time to time; provided, however, that in no event shall the Usage Rent exceed Tenant's share, as determined by Landlord, of the actual costs of operating, maintaining, repairing, and insuring the Offsite Amenities, plus an administrative fee of up to fifteen percent (15%) of such actual costs. Tenant specifically acknowledges that any non-use of the Offsite Amenities by Tenant shall not affect Landlord's calculation of the Usage Rent, and shall not excuse Tenant from payment to Landlord of the Usage Rent. Tenant acknowledges that all of the users of the Offsite Amenities may not be Unit Owners, Owners (as defined in the Master Declaration) in the Project, or lessees of an interest in the City Creek Center Property, or invitees, permittees or guests of any of the foregoing. After the Owners Association and the Unit Owners have become the Tenant hereunder (as more fully described herein below), in the event that any Unit Owner (or its occupant(s)) shall have any comments, questions and/or concerns regarding the operation of the Offsite Amenities, or the calculation of the Usage Rent, such Unit Owner (and/or its occupant(s)) shall direct such comments, questions/or concerns to Landlord, if at all, only through the Owners Association.

2.2.2. Waste Disposal License. Landlord hereby grants to Tenant a non-exclusive license (the "**Waste Disposal License**"), in common with Landlord and any other parties to whom Landlord grants, or has previously granted, rights, to use such portions of "Level P4" and/or "Level P5" (as such levels are identified on the Easements Exhibit to the Master Declaration) as designated by Landlord from time to time in Landlord's sole discretion (the "**Waste Disposal Areas**"), for disposing of, and for collecting for further disposal or recycling of, residential household waste, rubbish and garbage as is typically produced in condominium projects similar in size and nature to the Condominium Project ("**Waste**"). This Waste Disposal License shall include the right of reasonable access to and from such Waste Disposal Areas in locations determined by Landlord from time to time in Landlord's sole discretion. Landlord shall have the right in Landlord's sole discretion to designate the precise location(s) of the Waste Disposal Areas and/or such access ways thereto. Such Waste Disposal Areas and/or access ways thereto may be changed and/or relocated by Landlord at any time, or from time to time in Landlord's sole discretion, and at Landlord's expense; provided, however, that any such relocation of the Waste Disposal Areas shall not unreasonably interrupt or impair the provision of Waste disposal services to the Condominium Project. The Waste Disposal License shall be subject to any terms, rules, conditions, limitations, and/or regulations instituted by Landlord in connection therewith. The Waste Disposal License granted hereunder shall include (i) the right to use any chutes as originally constructed within the Building which are intended for trash and/or recycling and which may connect the Condominium Project to the Waste Disposal Areas through

“Level P1”, “Level P2”, “Level P3”, and “Level P4” (all as such levels are identified on the Easements Exhibit to the Master Declaration), and (ii) the right to use any facilities and/or equipment related to Waste Disposal Areas to the extent Landlord may deem such use appropriate. Tenant hereby acknowledges that the method, location, pathway, and/or process for collecting and/or disposing of Waste allowed by Landlord in accordance with the Waste Disposal License may not be the most convenient, easiest, or most direct manner of completing same. In addition, Tenant acknowledges that other parties may use the Waste Disposal Areas and Tenant hereby agrees to reasonably cooperate with all other such users. Tenant hereby agrees to pay, as part of Rent, all costs associated with the proper collection and removal of Waste. In connection with this shared use of the Waste Disposal Areas and all facilities (if any) related thereto, Tenant acknowledges that Tenant’s costs associated with the collection and disposal of such Waste may be an allocated and/or shared amount with the other uses of same. Tenant hereby agrees to pay any such shared amount as equitably determined by Landlord. The foregoing notwithstanding, Landlord may elect, in its sole discretion, to provide Waste collection and disposal services for the Condominium Project, upon terms and conditions and at rates separately agreed to between Landlord and Tenant, in which event the Waste Disposal License granted herein shall have no force or effect.

2.2.3. Offsite Utility Facilities License. Subject to the terms and conditions of the Master Declaration, Landlord hereby grants to Tenant a nonexclusive license in and to Landlord’s interest (if any) in the easements across the Parking Facility granted under Section 3.5 of the Master Declaration (the “**Offsite Utility Facilities License**”), to the extent reasonably necessary for the installation, use, maintenance, repair, relocation, and removal of electrical, emergency power, and emergency generator rooms and associated facilities and equipment, and any other applicable Utilities’ facilities and equipment (collectively, the “**Offsite Utility Facilities**”). Notwithstanding any language to the contrary herein, Tenant shall not have the right to add or install any additional Offsite Utility Facilities after the initial construction of the Building and Parking Facility without Landlord’s prior written consent. The precise location of the Offsite Utility Facilities shall be determined by Landlord, in its reasonable discretion, and may be relocated, in Landlord’s sole discretion, and at Landlord’s expense; provided, however, that any such relocation shall not unreasonably interrupt or impair the provision of applicable Utilities to the Condominium Project. In the event that it shall not be necessary to locate the Offsite Utility Facilities in the Parking Facility, the Offsite Utility Facilities License granted herein shall have no force or effect.

2.2.4. Landscape Area Access License. Landlord hereby grants to Tenant a non-exclusive license (the “**Landscape Area Access License**”), in common with Landlord and any other parties to whom Landlord grants, or has previously granted, rights, to use portions of Landlord’s property adjacent to the Condominium Project (the “**Landscape Area Access License Areas**”) to access the Landscape Areas in connection with Tenant’s maintenance, repair and/or restoration of same. Landlord shall have the right to designate the precise location(s) of the Landscape Area Access License Areas. Such Landscape Area Access License Areas may be changed and/or relocated by Landlord at any time, or from time to time in Landlord’s sole discretion, and at Landlord’s expense; provided, however, that any such relocation of the Landscape Area Access License Areas shall not unreasonably interrupt or impair the ability of Tenant to maintain, repair and/or restore the Landscape Areas as necessary. The Landscape Area

Access License shall be subject to any terms, rules, conditions, limitations, and/or regulations instituted by Landlord in connection therewith. Tenant hereby acknowledges that the method, location, pathway, and/or access way allowed by Landlord in accordance with the Landscape Area Access License may not be the most convenient, easiest, or most direct manner of obtaining access to the Landscape Areas. In addition, Tenant acknowledges that other parties may use the Landscape Area Access License Areas and Tenant hereby agrees to reasonably cooperate with all other such users. Tenant hereby agrees to pay, as part of Rent, all costs of any damages or liabilities caused by Tenant (and/or Tenant's agents, representatives, employees, contractors, and/or managers) in connection with its use of the Landscape Area Access License Areas.

2.3. **Reservation of Easements.** Landlord hereby specifically reserves for itself, and its successors and assigns, the following rights and easements, together with such rights of access through the Building and the Condominium Project as may be reasonably required for ingress to and egress to and from all areas related to said easements:

2.3.1. **Reservation of Airspace.** Landlord hereby reserves for itself, and its successors and assigns, an exclusive easement in and to all portions of the Airspace located ten feet (10') and above (i) any roof tops of the Building, and (ii) any improvements or architectural features constructed thereon, as such roof tops, improvements and architectural features shall be originally constructed. Further, Landlord hereby reserves for itself, its successors and assigns, a nonexclusive easement in and to all portions of the Airspace on and above all portions of any roof tops of the Building or any improvements and/or architectural features originally constructed thereon, and extending upwards ten feet (10') to the exclusive easement described above; provided, however, that the foregoing nonexclusive easement shall not exist over any balcony as originally constructed as part of the Condominium Project. Without limiting the generality of the foregoing, Landlord hereby reserves an easement to construct, install, maintain, repair and/or replace one or more lightning rods or similar structures (the "**Lightning Rods**") on the roof of the Building in any location or locations of Landlord's choosing. This easement for Lightning Rods, as well as the easement(s) described above in this Section 2.3.1 shall include, without limitation, the right of ingress, egress, and access through the Condominium Project and/or the Premises to the roof tops of the Building at any time, or from time to time, in Landlord's discretion. Notwithstanding the foregoing, while Landlord reserves the right to maintain, repair and/or replace any and all Lightning Rods, Tenant shall have the obligation, responsibility and duty of such maintenance, repair and replacement (including, without limitation the obligation to pay all costs related thereto) during the term of this Lease. Tenant shall continually keep such Lightning Rods in a good, clean and fully functional condition. Landlord shall have the right, but not the obligation, to maintain, repair, and/or replace same to the extent Tenant does not fulfill its maintenance obligations hereunder to Landlord's satisfaction. Any and all costs incurred by Landlord in connection with any such maintenance, repair and/or replacement shall be immediately reimbursed from Tenant to Landlord upon written demand therefor from Landlord.

2.3.2. **Reservation of Utility Easement.** Landlord hereby reserves for itself, and its successors and assigns, a nonexclusive easement in and to the Utility Areas as may be constructed within the Building from time to time, and other areas of the Building deemed reasonably necessary by Landlord, for the purposes of installing, operating, and maintaining

Utilities of any kind, as applicable; provided, however, that Landlord's use of the Utility Areas shall not unreasonably interfere with Tenant's use of such Utility Areas.

2.3.3. Reservation of Ventilation Easement. Landlord hereby reserves for itself, and its successors and assigns, a nonexclusive easement in, to, and through such portions of the Building as may be reasonably necessary, in Landlord's reasonable discretion, for the purposes of installing, operating, and maintaining ventilation and other similar systems for the Parking and Storage Facilities or other structures and improvements which may be located under or near the Building (the "**Reserved Ventilation Easement**"); provided, however, that Landlord's use of the Reserved Ventilation Easement shall not unreasonably interfere with Tenant's use of the Building as permitted hereunder.

2.3.4. Reservation of Use Easement. Landlord hereby reserves for itself, and its successors and assigns, a nonexclusive easement in, to, and through the Condominium Project, excluding the interior portions of any Units, but including such balconies, patios and/or decks as may be appurtenant to such Units (the "**Reserved Use Areas**"), as Landlord may deem reasonably necessary or desirable for purposes of (i) attaching, storing, placing, keeping, installing, constructing, repairing, replacing, relocating, and maintaining improvements, fixtures, facilities, equipment, and/or personal property on, within, or around the Reserved Use Areas for the benefit of the Project, and (ii) otherwise using for any purpose all portions of the Project located adjacent to, or around the Premises (including, without limitation the areas directly under the Premises) (the "**Reserved Use Easement**"); provided, however, that Landlord's use of the Reserved Use Easement shall not unreasonably interfere with Tenant's use of the Premises as permitted hereunder. The Reserved Use Easement granted herein shall include, without limitation, the rights of access, ingress and egress in and through all elevators, stairs, hallways, corridors, shafts, and any other access ways located outside of any Unit. In connection with this Reserved Use Easement, Landlord shall use commercially reasonable efforts to coordinate and cooperate with Tenant in connection with Landlord's access in, to, and through the Reserved Use Areas (except in the case of an emergency in which event only such coordination or cooperation as may be reasonable under the circumstances (if any) shall be required). Without limiting the generality of the foregoing, Landlord hereby specifically reserves the right, for itself and for any party to whom Landlord grants rights, to access any and all rooms and/or areas which are not within the Condominium Project, but which may be accessed though doorways, pathways, access ways, and/or hallways connected to, or located within, the Condominium Project.

2.3.5. Reservation of Easement to Attach Lighting and Decorations. Landlord hereby reserves for itself, and its successors and assigns, a nonexclusive easement, to attach, affix, hang, drape and/or suspend decorations, lighting, signage, adornments, and/or banners to the Building and/or Building Exteriors at any time, or from time to time, in Landlord's sole discretion. All such decorations, lighting, signage, adornments, and/or banners shall be and remain the property of Landlord and/or its successors and assigns.

2.4. Rights in Project. Except as otherwise set forth in this Lease or the Master Declaration, Tenant's rights in the Project and the Mall thereof (as "Mall" is defined in the Master Declaration) shall be limited to Tenant's rights in and to the Premises and the Use Areas, as governed by this Lease and the Master Declaration. Tenant acknowledges that Landlord's

rights in and to certain of the easements and other rights granted hereunder arise under the Master Declaration. Tenant further acknowledges, however, that Tenant shall have no independent rights directly in and to the easements and other rights granted by the Master Declaration by virtue of Tenant's lease of the Premises which is encumbered by the Master Declaration; rather, Tenant's rights to any easements or rights created by the Master Declaration are specifically limited to those rights specifically leased and/or granted to Tenant pursuant to the provisions of this Lease.

2.5. **Third-Party Rights.** Tenant agrees that this Lease and the Condominium Project are subject and subordinate to certain rights, easements, and/or licenses held by Landlord and/or other third parties, for access, structural support, and other purposes over, under, in, and upon the City Creek Center Property, including the Condominium Project, pursuant to, and in accordance with, the provisions of the Master Declaration, this Lease, and any other documents reserving to Landlord or granting to such third parties such easements or other rights (collectively, the "**Third-Party Rights**"). Tenant shall comply, and cause all users of the Condominium Project to comply (including, without limitation, all Unit Owners), with the terms and conditions of the Master Declaration, this Lease, and such Third-Party Rights, to the extent same are applicable to or burden the Condominium Project.

2.6. **As-Built Descriptions.** Following construction of the Building and all other improvements within the Condominium Project, Landlord and Tenant may, but shall not be required to, amend this Lease to the extent necessary or appropriate to reflect the as-built measurements and location of the Condominium Project and improvements thereon. Additionally, Landlord and Tenant may, but shall not be required to, execute such documents as are reasonably necessary to confirm said as-built conditions.

2.7. **Subdivision.** In connection with the Project, Landlord shall have the right at any time and from time to time either before or after the commencement of the Term, to subdivide (both horizontally and/or vertically) in any manner provided by Law (including without limitation the creation of a condominium regime), all or any portion of the City Creek Center Property owned by Landlord, including the Premises, all at such time and in such manner (a) as Landlord may reasonably deem prudent, or (b) as may be requested or required in accordance with any and all Laws, or by any Government, provided no such subdivision shall materially change the outer boundaries of the Premises. The method or methods of accomplishing any subdivision of the Premises may include, but shall not be limited to, (i) one or more traditional subdivision plats accomplished in accordance with Law, (ii) one or more condominium plats (as such term is defined in the Condominium Act), or (iii) any other lawful means, manner, or process. Tenant shall promptly, diligently and in good faith facilitate, aid, and cooperate with Landlord in Landlord's efforts to obtain (or cause to be obtained) any subdivision that includes the Premises, including, without limitation, (1) providing any and all necessary information and documentation, and (2) executing (and, as applicable, acknowledging) any plats, condominium declarations, boundary line agreements, or other documents reasonably requested by Landlord.

2.8. **No Parking or Storage Rights.** Tenant hereby acknowledges that notwithstanding the location of parking and/or storage stalls, areas, and facilities within the Parking Facility or otherwise under, near or adjacent to the Premises (collectively, "**Parking and**



**Storage Facilities**”), no Parking and Storage Facilities are included within or as a part of the Premises or the Condominium Project, and thus any rights to use or enjoy any Parking and Storage Facilities are not rights granted or provided to Tenant under this Lease. To the extent that Landlord may construct or cause to be constructed any Parking and Storage Facilities as part of the Project, Tenant (and the individual owners of condominium units within the Condominium Project) shall have rights to use such Parking and Storage Facilities by entering into separate licenses (or other agreements) with Landlord and/or any manager or operator of such Parking and Storage Facilities acting with due authority on behalf of Landlord pursuant to terms acceptable to Landlord. Notwithstanding the foregoing, nothing in this Section 2.8 shall be construed as any obligation or agreement of Landlord to Tenant to (a) build any Parking and Storage Facilities, (b) provide any parking or storage rights to Tenant, or (c) keep or otherwise maintain the Parking and Storage Facilities.

### Article 3

#### TERM

3.1. **Term.** The term of this Lease (the “**Term**”) shall consist of the Primary Term and any and all Extension Terms, if exercised or granted as set forth below; subject, however, to any exercise by Landlord of the Early Repurchase Option described in Section 3.2 below.

3.1.1 **Primary Term.** The primary term of this Lease shall be approximately one hundred and twenty-five (125) years (the “**Primary Term**”), unless sooner terminated or extended as set forth below. The Primary Term shall commence on the Execution Date (the “**Commencement Date**”), and shall expire on December 31, 2137 (as may be extended, the “**Expiration Date**”).

3.1.2 **Base Rent.** From and after January 1, 2113 (the “**Base Rent Commencement Date**”), Tenant shall continually pay to Landlord, in addition to all other payments, charges, fees, and/or Rent due hereunder, an amount (the “**Base Rent**”) equal to 99.0% of the then-fair market annual rental value (the “**Fair Market Rent**”) for the real property, without an elevation floor or ceiling, generally constituting the building footprint of the Building and more specifically described in Exhibit B attached hereto (the “**Subject Land**”). Such Fair Market Rent shall be determined by a Qualified Appraiser commissioned and paid for by Landlord (the “**Landlord’s Base Rent Appraisal**”). The 1.0% of the then-Fair Market Rent of the Subject Land that is not part of Base Rent is attributable to that portion of the main floor of the Building that is not within the Condominium Project. Notwithstanding the actual calculation of the square footage of the portion of the main floor of the Building which is not within the Condominium Project, the percentage set forth above shall be deemed the proper and correct percentage of the Building not included within the Condominium Project for all purposes under this Lease. Landlord’s Base Rent Appraisal shall provide the Fair Market Rent as of the date which is two hundred seventy (270) days prior to the Base Rent Commencement Date. For all purposes with respect to the Base Rent, the Fair Market Rent described in Landlord’s Base Rent Appraisal shall be deemed the Fair Market Rent of the Subject Land as of the Base Rent Commencement Date. Beginning on the Base Rent Commencement Date and ending on December 31, 2113 (the “**Initial Base Rent Year**”), one twelfth (12th) of the Base Rent will be

paid monthly, in advance, in equal payments by Tenant to Landlord at any address given to Tenant by Landlord. After the Initial Base Rent Year, monthly payments of Base Rent shall continue provided such Base Rent shall increase, on each anniversary of the Base Rent Commencement Date during the remaining Term of this Lease, by the lesser of (i) five percent (5%), or (ii) the annual increase of the CPI for the CPI Period over the Base Index (in the same manner as increases to the Common Project Rent). Notwithstanding the foregoing, in no event shall the Base Rent decrease regardless of any negative or deflationary CPI. In the event the CPI is negative or deflationary, the amount of the Base Rent for such period shall remain the same as the immediately preceding period. The Base Rent shall be deemed, for all purposes hereunder, as part of the Rent obligations of Tenant. In addition, on each and every tenth (10<sup>th</sup>) anniversary of the Base Rent Commencement Date, the Subject Land shall be re-appraised by a Qualified Appraiser commissioned and paid for by Landlord to readjust the Base Rent based on the then-Fair Market Rent. In the event Landlord exercises Landlord's Early Repurchase Option after Tenant has commenced paying Base Rent, Tenant's obligation to pay such Base Rent shall cease at the time the Lease terminates in accordance with Section 3.4 below.

3.1.3 Dispute of Landlord's Base Rent Appraisal. At least two hundred ten (210) days prior to the Base Rent Commencement Date, Landlord shall deliver to Tenant a copy of Landlord's Base Rent Appraisal. Thereafter, Tenant shall have seventy-five (75) days in which to dispute Landlord's Base Rent Appraisal by delivering to Landlord (i) a written Notice of its dispute of the Fair Market Rent set forth therein, and (ii) a second appraisal (paid for at Tenant's sole cost and expense) performed by a Qualified Appraiser of Tenant's choosing setting forth Tenant's proposed Fair Market Rent amount using the same requirements and criteria for its appraisal as set forth above in Section 3.1.2 ("**Tenant's Base Rent Appraisal**"). In the event Tenant does not timely provide the applicable written Notice of its dispute of Landlord's Base Rent Appraisal along with Tenant's Base Rent Appraisal, then Tenant shall be deemed to have agreed to and accepted Landlord's Base Rent Appraisal and the Base Rent amount determined therefrom. However, if Tenant timely provides the applicable written Notice of its dispute of Landlord's Base Rent Appraisal, together with Tenant's Base Rent Appraisal, then the Fair Market Rent shall be the average of the Fair Market Rent amount determined using Landlord's Base Rent Appraisal and the Fair Market Rent determined using Tenant's Base Rent Appraisal, provided the Fair Market Rent determined using Tenant's Base Rent Appraisal is no more than ten percent (10%) lower than the Fair Market Rent determined using Landlord's Base Rent Appraisal. If the Fair Market Rent amount determined using Tenant's Base Rent Appraisal is more than ten percent (10%) lower than the Fair Market Rent amount determined using Landlord's Base Rent Appraisal, then each of the Qualified Appraisers that performed Landlord's Base Rent Appraisal and Tenant's Base Rent Appraisal shall, within fifteen (15) days after Landlord timely receives Tenant's Base Rent Appraisal, mutually choose a third Qualified Appraiser (the "**Third Base Rent Appraiser**"). The Third Base Rent Appraiser shall, within sixty (60) days after being chosen by the Qualified Appraisers that performed Landlord's Base Rent Appraisal and Tenant's Base Rent Appraisal, perform a third appraisal (paid for equally by Landlord and Tenant) based on the same requirements and criteria for such appraisals as set forth in Section 3.1.2 above (the "**Third Base Rent Appraisal**"). In the event a Third Base Rent Appraisal is necessary, (a) the Fair Market Rent shall be the average of the values set forth in the two appraisals that are closest in value to each other, unless (b) the difference between the values

of all three appraisals is an equal amount, in which event the Fair Market Rent shall be the value set forth in the middle or second highest appraisal.

3.1.4 Landlord Extension Rights. Provided that Landlord has not exercised the Early Repurchase Option, Landlord, in its sole and absolute discretion, shall have the option and unilateral right to extend this Lease for any number of extension terms of twenty (20) years each (each, an “**Extension Term**”, and collectively, the “**Extension Terms**”). Landlord may so extend the Lease at any time and any number of times, and for any number of Extension Terms; provided, however, that (i) all Extension Terms shall be successive, with no intervening periods, and (ii) in no event shall the total Term, with all Extension Terms, exceed five hundred (500) years. In the event Landlord determines to not grant any more Extension Terms, Landlord shall deliver to Tenant written Notice of its election to not extend the Lease (the “**Notice of Nonextension**”) at any time during the Primary Term or the then-current Extension Term; provided, however, that in the event Landlord fails to deliver its Notice of Nonextension to Tenant prior to the date that is ten (10) years before the expiration of the Initial Term or the then-current Extension Term, Landlord shall be deemed to have elected to extend the Lease for one (1) Extension Term. In no event shall Tenant have any right to keep Landlord from exercising any Extension Terms or otherwise refuse any Extension Terms exercised by Landlord. Tenant shall not have an rights to either extend the Term or purchase any of Landlord’s interests in the Condominium Project.

3.2 Early Repurchase Option. Landlord shall have the right to terminate this Lease prior to the expiration of the Primary Term or any Extension Term by repurchasing Tenant’s leasehold interest (the “**Early Repurchase Option**”), as more fully set forth below.

3.2.1 Time for Exercise. Landlord may exercise the Early Repurchase Option within one hundred eighty (180) days following (i) the date which is the sixtieth (60<sup>th</sup>) year anniversary of the Commencement Date, and (ii) continuing throughout the Term (including any Extension Terms to the extent exercised), on each date which is the tenth (10<sup>th</sup>) year anniversary of same thereafter (each an “**Option Exercise Period**”).

3.2.2 Method of Exercise. Landlord may exercise the Early Repurchase Option by delivering to Tenant, within any Option Exercise Period, written Notice of Landlord’s intent to exercise the Early Repurchase Option (the “**Option Exercise Notice**”). Within one hundred twenty (120) days following receipt of the Option Exercise Notice, Tenant may deliver to Landlord written Notice of its preferred termination date for the Lease; provided, however, that such preferred termination date must be not sooner than one (1) year after the date of the Option Exercise Notice and not later than five (5) years after the date of the Option Exercise Notice. In the event that Tenant does not, for any reason, timely deliver to Landlord Notice of its preferred termination date, Landlord shall determine and deliver to Tenant written Notice of the termination date, which date shall not be sooner than one (1) year after the date of the Option Exercise Notice and shall not be later than five (5) years after the date of the Option Exercise Notice (as determined by Tenant or Landlord, as applicable, the “**Early Repurchase Date**”).

3.2.3 Early Repurchase Payment. As consideration for its exercise of the Early Repurchase Option, Landlord shall pay to Tenant, on or before the Early Repurchase Date, the Pay-Off Amount, in accordance with the terms and conditions set forth in Section 3.5 below.

3.2.4 Early Repurchase of Lease. Following delivery of the Option Exercise Notice, the leasehold interest of Tenant shall be purchased by Landlord and this Lease shall terminate (the “**Early Repurchase**”) upon the latest to occur of the following: (i) delivery of the Pay-Off Amount from Landlord to Tenant, (ii) the Early Repurchase Date, or (iii) such other date as Landlord and Tenant may mutually agree in writing. Upon such Early Repurchase, the provisions of Section 3.4 below, shall apply.

3.3 Right of First Offer. In addition to Landlord’s Early Repurchase Option, Landlord hereby retains, and Tenant hereby grants to Landlord, a continuing right of first offer (the “**ROFO**”) to purchase each Unit as it becomes available for sale from time to time from each and every Unit Owner. Such ROFO shall be subject to the terms and conditions set forth in this Section 3.3.

3.3.1 Notice of Intent to Transfer. In the event a Unit Owner determines to (i) sell, convey or otherwise transfer such Unit Owner’s Unit to a party other than a Permitted Transferee, or (ii) otherwise market such Unit Owner’s Unit for sale, then such Unit Owner shall first Notify Landlord in writing, pursuant to the provisions of Article 22 herein, of the Unit Owner’s intent to sell, convey or otherwise transfer such Unit Owner’s Unit (a “**Transfer Notice**”). Such Transfer Notice shall include the asking or proposed listing price at which such Unit Owner intends to list or sell his/her Unit, and any other proposed material (including economic) terms that the Unit Owner intends will be a part of any transaction with a third party if Landlord does not exercise its right to purchase the Unit. The form and substance of such Transfer Notice shall in all respects contain all terms, provisions, items, and conditions necessary for a binding purchase contract in the event that Landlord accepts in writing the terms of such Transfer Notice. Within ten (10) Business Days after receipt (or deemed receipt as set forth below) of the Transfer Notice (the “**ROFO Offer Period**”), Landlord shall have the right to exercise its ROFO and accept in writing the terms of the sale or transfer of the Unit as set forth in the Transfer Notice (the “**ROFO Exercise Notice**”). If Landlord either (a) does not timely deliver to the applicable Unit Owner a ROFO Exercise Notice to purchase the applicable Unit, or (2) delivers a written notice to the applicable Unit Owner indicating Landlord does not intend to purchase the Unit, then such Unit Owner may sell or otherwise transfer the Unit described in the applicable Transfer Notice to any third party of its choosing based on substantially the same or better terms, provisions, items, and conditions set forth in the Transfer Notice. Without first providing Landlord with another Transfer Notice and otherwise allowing Landlord another priority right to purchase the applicable Unit in accordance with the terms of this Section 3.3, in no event shall the Unit Owner be entitled to sell, convey or otherwise transfer the applicable Unit to any third party if (1) the purchase price for the Unit is less than ninety percent (90%) of the asking or proposed listing price set forth in the Transfer Notice, (2) the closing date has not occurred within one year of the date of the Transfer Notice, or (3) the applicable third party purchaser is granted any better terms with respect to any other material term, provision, or condition set forth in the Transfer Notice. In determining if the ninety percent (90%) floor described in clause (1) above has been breached, the parties shall ignore the effect of normal

closing costs or prorations. Finally, a Unit Owner shall not take any action or enter into any arrangement that has the effect of avoiding the restrictions and rights of this Section 3.3, such as by attempting to do indirectly what is not allowed directly.

3.3.2 **Permitted Transferees.** The ROFO set forth herein shall not apply, and no Unit Owner shall have an obligation to provide any notice of its intent to sell or otherwise transfer such Unit Owner's Unit, if such Unit Owner sells, conveys or otherwise transfers his/her Unit to a Permitted Transferee. For purposes of the ROFO a "**Permitted Transferee**" shall mean (i) any entity wholly owned or controlled by or under common control with the Unit Owner, or (ii) a person who is a direct descendant (such as a child) of the Unit Owner; provided, however, in the event that any Unit is sold, conveyed or transferred to a Permitted Transferee, then such Permitted Transferee shall be subject to and shall honor Landlord's ROFO prior to any sale, conveyance or other transfer of the Unit by the Permitted Transferee to any third party.

3.3.3 **Continual Right.** Landlord's ROFO with respect to each Unit within the Condominium Project shall be a continuing and reoccurring right which shall run with the land and shall be binding upon all Unit Owners of a Unit no matter how many times the ROFO may have been exercised as to prior Unit Owners. Such ROFO shall be a right of Landlord with respect to each and every Unit sale, conveyance or transfer during the entire Term of the Lease.

3.4 **End of Term.** Upon either the expiration of the Term of this Lease or the Early Repurchase of this Lease, all rights, title, and interest of Tenant as lessee under the Lease, and all rights of both Tenant and all Unit Owners in and to all or any portion of the Premises, the Building, all Units, and/or the Condominium Project, and any other rights of Tenant and all Unit Owners of any kind granted hereunder, shall terminate and all such rights, title, and interest, together with full usage and possession of the Premises, the Building, any Units, and/or the Condominium Project, shall be vested solely in Landlord, without the requirement of any further action or documentation by Landlord, Tenant or any Unit Owner. In connection therewith, Tenant and all Unit Owners shall quietly and peaceably deliver to Landlord possession of the Premises, the Building, all Units, the Condominium Project, and the Use Areas, in the condition this Lease requires, free and clear of all liens and encumbrances, including, without limitation, all Mortgages encumbering any Unit as security for the payment of a debt or obligation of any Unit Owner. In no event shall Tenant have any right to remove, demolish or raze the Building or any improvements. The foregoing notwithstanding, Tenant and all Unit Owners may deliver to Landlord possession of the Premises, the Building, all Units, the Condominium Project, and the Use Areas subject to (a) Permitted Exceptions (other than this Lease), and (b) liens caused directly by Landlord (but in all events any Mortgages shall be removed as set forth above). Further, any and all improvements, fixtures, and equipment constructed or located upon the Premises shall automatically become the property of Landlord; provided, however, that Tenant and all Unit Owners may remove from the Premises any personal property (to the extent not affixed to the real property) acquired and owned by Tenant and Unit Owners, so long as (i) Tenant and all Unit Owners repair any damage from such removal, and (ii) Tenant and all Unit Owners complete such removal on or before the Expiration Date or Early Repurchase Date, as applicable. Tenant shall assign to Landlord, without recourse, and give Landlord copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Condominium Project. The parties shall cooperate to achieve an orderly transition of

operations from Tenant to Landlord without interruption, including delivery of such books and records (or copies thereof) as Landlord reasonably requires. The parties shall allocate and adjust, as necessary, for Real Estate Taxes (defined below), and all other expenses of the Condominium Project. Any part of the foregoing to the contrary notwithstanding, Tenant agrees to execute any and all documents reasonably requested by Landlord to evidence termination of this Lease and/or possession, use, or ownership of the Condominium Project and Use Areas, and all improvements, fixtures, or equipment constructed or located thereon, in Landlord, including without limitation a "lease termination agreement" and a recordable notice of such lease termination agreement, all in form mutually agreed upon by Landlord and Tenant consistent with the terms of this Lease. In the event Tenant refuses to provide such document, or the parties cannot agree upon the form of such documents, the Lease will nonetheless be terminated at such time as Landlord has paid the Pay-Off Amount, and thereafter Landlord shall have the unilateral right, without the need of any approvals, consents, or signatures of Tenant (or of any of the Unit Owners) to execute and record in the applicable county records a termination of this Lease, the form and substance of which shall be at the sole discretion of Landlord. The obligations of Tenant set forth in this Section 3.4 shall survive any termination of this Lease. Further, upon expiration of the Term or upon the Early Repurchase of this Lease, Tenant shall provide Landlord, at Tenant's cost, an ALTA standard title policy showing title to the Premises and Use Areas vested in Landlord or its nominee. If Landlord desires ALTA extended coverage or any endorsements with a charge therefor, the cost of such items will be paid by Landlord. Landlord shall have the right to enforce the provisions of this Section 3.4 by any legal means available, including specific enforcement, all as more fully described later in this Lease, in the event any Unit Owner or Tenant fails or refuses to abide by the provisions hereof.

### 3.5 **Landlord's Payment.**

3.5.1 **Pay-Off Amount.** At the expiration of the Term, or at the Early Repurchase Date, Landlord shall pay to Tenant the fair market value of the Condominium Project and all real property improvements located within the Premises, without regard for the then otherwise remaining Term of this Lease, less the cost of razing the Building and less the fair market value of the Subject Land (the "**Pay-Off Amount**"). The Pay-Off Amount shall be determined by Landlord obtaining (i) an appraisal of the then-fair market value of the Condominium Project as if it were a fee condominium project, which appraisal shall also include a separate line item where the appraiser sets forth the reasonable costs to raze the Building, and (ii) a second appraisal of the then-fair market value of the Subject Land (collectively, the "**Landlord's Pay-Off Appraisal**"). In calculating the cost to raze the Building, the appraiser preparing the first appraisal described above shall include the cost to remove the entire Building and all improvements thereunder, including the cost of removing that portion of the parking improvements that are within the footprint of the Building, so that razing has occurred down to the "dirt", but he shall not include the cost of bringing in fill to bring the parcel up to grade with South Temple Street. The second appraisal described in the immediately preceding subsection (ii) shall appraise the Subject Land at its highest and best use, including any and all development rights, assemblage value, and all other intangible components of value. The Pay-Off Amount shall be the fair-market value set forth in the first appraisal described in subsection (i) above, less the sum of (a) the cost to raze the Building set forth in the first appraisal described in subsection (i) above, and (b) the fair-market value of the Subject Land as set forth in the second appraisal

described in subsection (ii) above. The Pay-Off Amount shall be paid to Tenant on the Early Repurchase Date, or the expiration date of this Lease, as applicable. Upon the termination of the Lease, such Pay-Off Amount shall be divided among the individual Unit Owners pro rata based on the then-current property tax assessment values of each Unit in comparison to the property assessment values of all Units within the Condominium Project. Provided the Pay-Off Amount is paid by Landlord to the Owners Association (in its capacity of assuming Tenant's rights and obligations under this Lease as more fully set forth in Section 18.6 below), Landlord shall have no liability whatsoever with respect to the division of the Pay-Off Amount among the individual Unit Owners, and Tenant and all individual Unit Owners shall be jointly and severally indemnify, defend, and hold Landlord harmless with respect to same (which indemnification shall survive the termination of this Lease). In all events, upon the termination of the Lease, Landlord shall have the right to off-set and deduct from the Pay-Off Amount any and all unpaid Rent and any and all amounts related to any and all maintenance, repair and/or replacement obligations of Tenant not performed by Tenant in accordance to the requirements set forth herein.

3.5.2 Qualified Appraiser; Pay-Off Appraisal Date. Any appraisal obtained pursuant to the provisions of this Lease shall be performed by a qualified appraiser who has obtain an MAI or certified general appraiser designation under applicable State and Federal laws, rules and regulations (a "**Qualified Appraiser**"), which Qualified Appraiser shall perform such appraisals (i) in accordance with the "unified standards of professional appraisal practice," as the same may be revised or amended from time to time, and any substitute or replacement standards in the event such "unified standards of professional appraisal practice" cease to exist or be promulgated, and (ii) in accordance with the criteria described in Section 3.5.1 above. Landlord's Pay-Off Appraisal shall determine and specify the fair market value described above as of the date which is two hundred seventy (270) days prior to the Early Repurchase Date or the expiration of the Term, as applicable (the "**Pay-Off Appraisal Date**").

3.5.3 Dispute of Landlord's Pay-Off Appraisal. At least two hundred ten (210) days prior to the Early Repurchase Date, or the expiration of the Term, as applicable, Landlord shall deliver to Tenant a copy of Landlord's Pay-Off Appraisal. Thereafter Tenant shall have seventy-five (75) days in which to dispute Landlord's Pay-Off Appraisal by delivering to Landlord (i) a written Notice of its dispute of the values set forth therein, and (ii) a second set of appraisals (paid for at Tenant's sole cost and expense) performed by a Qualified Appraiser of Tenant's choosing setting forth Tenant's proposed Pay-Off Amount using the same requirements and criteria for its two appraisals as set forth above in Section 3.5.1 and Section 3.5.2 (collectively, the "**Tenant's Pay-Off Appraisal**"). In the event Tenant does not timely provide the applicable written Notice of its dispute of Landlord's Pay-Off Appraisal along with Tenant's Pay-Off Appraisal, then Tenant shall be deemed to have agreed to and accepted Landlord's Pay-Off Appraisal and the Pay-Off Amount determined therefrom. However, if Tenant timely provides the applicable written Notice of its dispute of Landlord's Pay-Off Appraisal, together with Tenant's Pay-Off Appraisal, then the Pay-Off Amount shall be the average of the Pay-Off Amount determined using Landlord's Pay-Off Appraisal and the Pay-Off Amount determined using Tenant's Pay-Off Appraisal, provided the Pay-Off Amount determined using Tenant's Pay-Off Appraisal is no more than ten percent (10%) higher than the Pay-Off Amount determined using Landlord's Pay-Off Appraisal. If the Pay-Off Amount determined using

Tenant's Pay-Off Appraisal is more than ten percent (10%) higher than the Pay-Off Amount determined using Landlord's Pay-Off Appraisal, then each of the Qualified Appraisers that performed Landlord's Pay-Off Appraisal and Tenant's Pay-Off Appraisal shall, within fifteen (15) days after Landlord timely receives Tenant's Pay-Off Appraisal, mutually choose a third Qualified Appraiser (the "**Third Pay-Off Appraiser**"). The Third Pay-Off Appraiser shall, within sixty (60) days after being chosen by the Qualified Appraisers that performed Landlord's Pay-Off Appraisal and Tenant's Pay-Off Appraisal, perform a third set of appraisals (paid for equally by Landlord and Tenant) based on the same requirements and criteria for such appraisals as set forth in Section 3.5.1 and Section 3.5.2 above (the "**Third Pay-Off Appraisal**"). In the event a Third Pay-Off Appraisal is necessary, (a) the Pay-Off Amount shall be the average of the values determined from the two appraisals that are closest in value to each other, unless (b) the difference between the values determined from all three appraisals is an equal amount, in which event the Pay-Off Amount shall be the value determined from the middle or second highest appraisal.

#### **Article 4**

#### **RENT**

4.1. **Rent.** The term "**Rent**" shall mean all amounts required to be paid by Tenant under the terms of this Lease. By way of example and not limitation, Tenant shall pay, without demand and without setoff or deduction, the following amounts as Rent:

- (i) All costs of Real Estate Taxes and Utilities as more specifically described in Article 5 below (which shall be paid directly to the Government and the providers of Utilities, respectively);
- (ii) The Common Project Rent, as more specifically defined and described in Article 6 below (which shall be paid directly to Landlord);
- (iii) All insurance costs for the Condominium Project, as more specifically described in Article 15 below (which shall be paid directly to the providers of such insurance);
- (iv) Tenant's Usage Rent for use of the Offsite Amenities, as more specifically defined and described in Section 2.2.1 above (which shall be paid directly to Landlord);
- (v) All amounts to be paid by Tenant as more fully set forth in Section 2.2.2;
- (vi) Base Rent as more specifically defined and described in Article 3 above (which shall be paid directly to Landlord);
- (vii) All payments described in Section 4.5 below;
- (viii) All payments described in Section 21.2.3 below; and



- (ix) All other costs, expenses, and obligations of every kind and nature relating to the Premises and/or the Condominium Project.

Further, it is the express intent of the parties that all amounts and sums paid, or to be paid, by Tenant hereunder shall be deemed for all purposes as rental payments and not simply as additional fees which are not associated with rental obligations. All payments made, or to be made, by Tenant hereunder are material considerations for Landlord's leasing of the Premises to Tenant and should be considered as part of the Rent.

4.2. **No Abatement.** Except as otherwise expressly provided in this Lease, no happening, event, occurrence or situation during the Term, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its obligation hereunder to pay Rent, or entitle Tenant to an abatement of Rent. Further, Tenant shall pay all Rent without notice, offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever, except as otherwise herein specifically provided, and nothing contained in this Article 4 shall be deemed or construed to create any obligation upon Landlord to contribute any capital necessary to fund any cost of operation, management or maintenance of the Condominium Project except as otherwise provided herein. All operating capital required for the operation of the Condominium Project shall be the sole responsibility of Tenant, except as otherwise provided herein.

4.3. **Payment.** Except as otherwise provided herein, Tenant shall pay all Rent payable to Landlord or other applicable payee by good and sufficient check payable to Landlord or such other applicable payee, or by wire transfer, at such address as Landlord or such other applicable payee shall designate from time to time. In the event the Term commences or ends on a day other than the first day of a calendar month, then the Rent for such fraction of a month shall be prorated for such period on the basis of a 30-day month and shall be paid at the then-current rate for such fractional month. When no other time is stated herein for payment, payment of any amount due from Tenant to Landlord or other applicable payee hereunder shall be made within thirty (30) days after Tenant's receipt of Landlord's or other applicable payee's invoice or statement therefor.

4.4. **Direct Payment by Landlord.** If any Rent must be paid directly by Landlord, then: (a) Landlord hereby authorizes Tenant to make such payment on Landlord's behalf; and (b) if the payee nevertheless refuses to accept payment from Tenant, and Tenant is advised that the payee refuses to accept payment from Tenant, then Tenant (at least ten (10) days prior to the date such payment becomes delinquent, provided that if Tenant is not advised that the payee refuses to accept payment on or before the date that is ten (10) days prior to the date that such payment becomes delinquent, then immediately after Tenant is so advised) shall Notify Landlord to such effect and shall pay such amount to Landlord with reasonable instructions on remittance of such payment, and upon receipt of Tenant's payment, Landlord shall with reasonable promptness comply with Tenant's reasonable instructions.

4.5. **Late Charge.** Tenant acknowledges that the late payment by Tenant to Landlord or other applicable payee of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be difficult to ascertain, including, administrative costs,

processing and accounting charges. Accordingly, if any installment of Rent shall not be received by Landlord or other applicable payee within three (3) days after the date that such amount is due and payable, then Tenant shall pay to Landlord, the amount of Rent payable by Tenant, plus Default Interest from the date when payment should have been made to the date of payment, and a late charge in the amount of five percent (5%) of the amount due. The parties agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charge by Landlord shall not constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of its rights or remedies under this Lease.

4.6. **Collection of Rent by Owners Association.** Landlord hereby expressly agrees that the Owners Association shall have the right to collect, administer, remit and/or pay any and all Rent for Tenant; provided, however, in no event shall the Owners Association receive any payment, compensation or consideration from Landlord therefor.

## Article 5

### TAXES AND UTILITIES

5.1. **Real Estate Taxes.** Tenant (and each Unit Owner with respect to his or her individual Unit) shall pay and discharge all real estate taxes and assessments, water and sewer charges, licenses and permit fees, and any other charges by any public or Government authority, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever (collectively, "**Real Estate Taxes**") that are levied against or relating to the Condominium Project, and which are payable or accruing during the Term. To the fullest extent permitted by Law, all such Real Estate Taxes shall be allocated to Tenant (and not to Landlord) throughout the Term, in the manner set forth in Section 57-8-27(2) of the Condominium Act. All payments of Real Estate Taxes shall be made directly to the authority charged with the collection thereof not less than five (5) days prior to the last date on which the same may be paid without interest or penalty (the "**Penalty Date**"); subject, however, to Tenant's right of Contest as this Lease expressly provides. Tenant shall also pay all interest and penalties any Government assesses for late payment of any Real Estate Taxes imposed as a result of Tenant not timely making any required payments under this Lease. To the extent Law allows, Tenant may apply to have any Real Estate Taxes payable in installments. Tenant shall provide to Landlord, on or before the Penalty Date, a copy of a receipted tax bill or other documentary evidence reasonably satisfactory to Landlord, showing the amount of the Real Estate Taxes due and the payment of the same prior to the Penalty Date. Tenant shall have the sole right and authority to contest Real Estate Taxes, in compliance with the Contest Conditions. In the event that, during the Term of this Lease, applicable Law allocates any Real Estate Taxes to Landlord or otherwise requires Landlord to pay any such Real Estate Taxes, Landlord shall have the right to pay same and seek reimbursement from Tenant. Landlord and Tenant hereby agree that all Real Estate Taxes, for the entire Term of this Lease, shall be the responsibility of Tenant.

5.1.1. **Separate Tax Parcels.** Landlord shall use commercially reasonable efforts to cause the Premises to be assessed and taxed as a separate tax parcel(s). If the Premises are not assessed and taxed as a separate tax parcel(s) despite Landlord's commercially reasonable

efforts, then notwithstanding anything to the contrary set forth in this Section 5.1.1, Tenant shall pay Landlord at least fifteen (15) days before such Real Estate Taxes are due and payable, Tenant's proportionate share of all Real Estate Taxes which are not separately assessed. In no event shall Landlord's failure or inability to cause the Premises to be assessed and taxed as a separate tax parcel(s) be deemed to be a Default of Landlord under this Lease.

5.2. **Personal Property Taxes.** Tenant agrees to pay or cause to be paid all taxes on personal property, including without limitation fixtures and equipment owned by Tenant or any parties claiming through Tenant, which are located in and upon the Premises during the Term.

5.3. **Utilities.** Tenant shall arrange and pay for all Utility charges, and the expenses of installation, reinstallation, maintenance, use, and service in connection with any Utilities, for the Condominium Project during the Term. Landlord shall have absolutely no liability or responsibility for the foregoing; provided, however, that Landlord agrees to reasonably cooperate with Tenant, at no cost or expense to Landlord, to the extent necessary to enable Tenant to apply for and receive such services. Notwithstanding the foregoing, Tenant hereby acknowledges that as of the Execution Date the central HVAC systems in the Building service, or are intended to service, all Units collectively. Individual Unit Owners will pay a portion of the entire Utility costs and expenses of the HVAC systems in proportion to, and based on, the HVAC usage by such Unit Owners calculated by the amount of time the fan, coil, or other applicable mechanisms within each Unit are running. Meters and/or other measuring devices will be used to measure the amount of time such fans, coils, or other applicable mechanisms are in use within each Unit.

## Article 6

### COMMON PROJECT RENT

Tenant hereby acknowledges that it derives substantial benefit from the proximity of the Condominium Project to the Project, and therefore Tenant agrees to pay to Landlord the Common Project Rent, commencing on April 1, 2012, and thereafter throughout the Term of this Lease, in equal monthly payments on or before the first day of each month, whether or not all or any portion of the Project is or may be actually used by Tenant or any Unit Owners, and their successors, assigns, lessees, guests, and other invitees.

## Article 7

### USE

7.1. **Permitted Use.** Subject to Section 7.2 below, Tenant shall, at all times, use the Condominium Project (a) exclusively for the creation and operation of a first-class residential condominium project substantially consistent with comparable residential condominium projects and any incidental purposes related thereto; (b) in compliance with the express standards set forth in this Lease and in the Master Declaration; (c) in compliance with all applicable residential zoning requirements and other Laws; and (d) at a level and quality of service, operation and cleanliness substantially consistent with the operating and maintenance standards of first class condominium projects. Tenant shall not use the Condominium Project for any other use,

including, without limitation, any business, commercial, retail, industrial, warehousing, financial, or other such use (whether intended to produce income or otherwise), without Landlord's prior written consent, which consent Landlord may withhold in its sole and absolute discretion; provided, however, (i) the Owners Association may perform business activities which are normal, usual, and customary for owners' associations of similar condominium regimes, and (ii) Unit Owners, while within their Units, may engage in work related communications and associations, consistent with the residential nature of the Condominium Project, and may perform work related to their employment, so long as such activities comply with the requirements for Home Business Activities. For purposes of this Lease, "**Home Business Activities**" are business activities conducted without: (1) any employees or business associates working in or on the Premises or the respective Unit Owner's Unit (other than incidental to an occasional event consistent with the residential use of the Unit such as a dinner hosted in a Unit by a Unit Owner for business associates), (2) any signs or other perceivable effect of business activity visible from the outside of the Unit, (3) any public advertising utilizing the address of the Unit or the Premises or the name of the Condominium Project or the Owners Association, (4) any persons regularly visiting the Unit related to the business pursuits including but not limited to customers, vendors, suppliers, employees, delivery persons, and business associates, (5) storage and/or package or mail delivery inconsistent with a typical residential home or condominium unit, (6) any interference with any other Unit Owners' right to the quiet possession and use of their Unit, (7) the use of any equipment, machinery, or other items in the Unit that are not typically found in a residential home or condominium unit (items typically found in a residential home or condominium may include telephones, small home copiers and scanners, computers, desks, filing cabinets, and similar office type equipment and related supplies), (8) any draw of electricity, air conditioning, heating, or other utilities beyond that typically associated with a residential condominium unit, or (9) disrupting the residential nature of the Condominium Project.

7.2. **Restrictions on Use.** Tenant's use and operation of the Premises as the Condominium Project shall be limited and restricted as follows:

7.2.1. **Use of Premises.** In addition to, and without limiting the generality of, the provisions of Section 7.1 above, Tenant shall use the Condominium Project in compliance with: (a) all Laws affecting or applicable to the Condominium Project or the cleanliness, safety, occupancy and use of the same, whether or not any such Law is substantial, foreseen or unforeseen, ordinary or extraordinary, shall necessitate structural changes or improvements, but in such event, only to the extent an Alteration is approved pursuant to the terms of this Lease (to the extent such approval is required by the terms of this Lease), or shall interfere with the use and enjoyment of the Condominium Project, including any Laws that may hereafter be enacted or promulgated by any Government and any Laws in effect from time to time prohibiting discrimination or segregation by reason of race, color, creed, age, religion, sex or national origin; and (b) all requirements of all insurance carriers or underwriters providing coverage on the Condominium Project, or on the Project, generally, the improvements thereon or the contents thereof. Tenant shall, at Tenant's expense, procure any and all Government or other approvals required for Tenant's permitted use of the Condominium Project and shall at all times comply with all requirements of such approvals.

7.2.2. Objectionable Uses. Tenant shall not: (i) commit or permit any waste, damage, disfigurement or injury to the Condominium Project or other areas of the Project; (ii) cause, maintain or permit a nuisance on the Condominium Project or other areas of the Project, or in any way obstruct or interfere with the rights of others; (iii) permit unpleasant noise or odors in the Condominium Project which are heard or smelled in other portions of the Project and which are reasonably objected to by Landlord; (iv) permit the operation, after 10:00 p.m. and prior to 8:00 a.m. on any day, of lights projecting from locations within the Condominium Project which reasonably may be obnoxious, offensive or otherwise disruptive to reasonable use of the other portions of the Project (provided that this clause (iv) shall not be construed as limiting lighting reasonably deployed for security purposes, safety reasons, or as otherwise reasonably required for the operation of the Condominium Project or approved by Landlord in writing); (v) store, or permit the continued storage of, anything in service or exit corridors; (vi) store or display, or permit the continued storage or display of, any goods, products, services, depictions, movies, films, signs, posters, performances, or demonstrations in the Condominium Project (including without limitation in any common areas, or on any balconies, patios, terraces, decks, or similar areas) that would be unlawful under any local decency laws if (a) minors were involved, or (b) occurring in public or in a place of business licensed by Salt Lake City; (vii) consume or permit the consumption of alcohol in the common areas of the Condominium Project or any other portions of the Condominium Project other than inside Units; (viii) open or allow any open alcoholic beverages of any kind (whether in bottles, cans, cups, or other) in the common areas of the Condominium Project or any other portions of the Condominium Project other than inside Units; (ix) smoke or permit smoking in any part of the Condominium Project; (x) store or display, or permit the continued storage or display of, any unsightly articles or items on or within any Building Exterior, or viewable from outside any portion the Building, including, by way of example and not of limitation, (1) refuse, debris, garbage, and trash; (2) storage piles; barbeques; grills; flags; banners (except as may be permitted by Landlord in writing); signs (except as may be permitted by Landlord in writing); bicycles; recreational equipment; unsightly furniture; dead plants; weeds; boxes; storage shelves; clothing or fabric hanging, drying, or airing; or other unsightly items; (xi) sunbathe, or allow or permit any sunbathing; (xii) permit, allow, perform, or participate in any rallies, protests, demonstrations, or similar events in any common areas or limited common areas within the Condominium Project (including without limitation, on any balconies, patios, terraces, decks, or similar areas); or (xiii) permit, allow, perform or participate in any public displays of affection (intended to be or which may be obnoxious, offensive, shocking or otherwise disruptive to a person of ordinary sensibility in this community). Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, megaphones, bells, sirens, speaker systems, surround sound systems, artificial noise makers or other sound devices (other than (1) security and/or emergency alarms or devices used exclusively for security and/or emergency purposes, or (2) fire, smoke, carbon monoxide or similar alarms or devices used exclusively to safety purposes) shall be located, used or placed on or within the Condominium Project or any Unit without the prior written approval of the Landlord.

7.2.3. Landlord Objections. Landlord, at its option, may by Notice advise Tenant from time to time of potential or actual uses of the Condominium Project to which Landlord objects, whether or not such potential or actual uses do or would contravene the use restrictions of this Section 7.2. Tenant agrees to respond to such objections in good faith and, by

Notice to Landlord within five (5) days of any such objections, to inform Landlord of Tenant's response to such objections, including any plan of action in connection therewith. In the event of an emergency, Landlord need only give Tenant such Notice (if any) as is reasonably practicable under the circumstances, and may enter the Condominium Project to cure such objectionable use that gives rise to such emergency.

7.2.4. Other Restrictions. In addition to, and without limiting the generality of, the foregoing, the following additional restrictions, limitations, and/or prohibitions shall apply to the Condominium Project and Tenant's use thereof:

7.2.4.1. Use of Balconies, Decks and Patios. Nothing shall be kept, stored, or left on any balconies, decks, patios, or similar structures or improvements attached to the Building Exteriors except for patio furniture (designed and constructed for outdoor use) which may include tables and chairs and which must be constructed primarily of metal, glass, or wood. No patio furniture primarily constructed of plastic, resin, or similar materials is permitted.

7.2.4.2. No Tenant Subdivision. While Landlord reserves the right to subdivide the Premises as more fully described in this Lease, Tenant shall not have the right to further subdivide any Unit or other area within the Condominium Project without the prior written approval of Landlord.

7.2.4.3. Signs. To the fullest extent permitted by applicable law, no sign, flag, banner, display, or advertisement of any kind (including, without limitation, political signs) shall be displayed to the view of any Person outside the Condominium Project, except (a) that Tenant may display signage in connection with the sale of Units (provided this right is personal to the original Tenant hereunder, City Creek Living, LLC, and is not transferable or assignable in any way to any Owner or other third party), (b) such signs of customary and reasonable dimensions as may be displayed in any area designated by the Owners Association (but not on any Unit, on any Building Exterior, on the interior portion of any window which can be seen from the outside, or on any roof, balcony, deck, patio or terrace) advertising a Unit for sale or lease (which shall be limited in number to one sign per Unit), and (c) such reasonable signs and markers as are reasonably appropriate to warn people of an emergency or dangerous condition. In addition to, and without limiting the generality of, the foregoing, any sign, flag, banner, display, or advertisement of any kind that may be seen or viewed from outside of the Condominium Project (whether displayed by an Owner or the Owners Association) shall only be permitted with the prior written consent of Landlord (including, without limitation, any sign, banner, display, or advertisement placed or situated (i) in the Lobby (ii) in any windows, (iii) on any Building Exteriors or rooftops, or (iv) on any balconies, decks, patios or terraces. In all events, the Owners, tenants, lessees and/or occupants of any and all Units, and the Owners Association, shall comply with all terms and provisions of the Master Declaration (if any) related to the placement or display of signs, banners, displays, and advertisements.

7.2.4.4. No Hazardous Activities. No activities shall be conducted on or within the Condominium Project and no improvements constructed on the Premises which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged within the Condominium Project and no open fires or

incinerators shall be ignited, lighted or permitted within the Condominium Project except within any fireplaces within any Units (provided such fireplaces shall be used only in accordance with all guidelines, rules, and regulations of (1) the manufacturer of same, and (2) the Owners Association).

7.2.4.5. Rooftop Antennas and Satellite Dishes. Except as may be required by law or approved by Landlord and originally constructed as part of the Building, or except as may be otherwise permitted under this Lease or approved by Landlord in writing in its sole discretion, no (i) television, ham radio, citizens band or radio antenna, (ii) satellite dishes of any kind, or (iii) other similar device shall be permitted upon any rooftop, exterior, patio, deck, balcony, Building Exteriors, or side of any Unit. Any authorized antenna, satellite dish, or other device shall require appropriate screening.

7.2.4.6. No Pets.

A. Pet Restrictions No pets of any kind whatsoever shall be allowed in any Unit or in the Condominium Project, except:

- (i) Domesticated birds, provided the following restrictions and limitations are satisfied:
  - (a) Limit two (2) per Unit;
  - (b) Must be kept current on all required vaccinations;
  - (c) Must be kept inside Unit and not allowed in Common Areas (provided Unit Owners are allowed to carry such birds through the Common Areas to their respective Units without loitering in any way); and
  - (d) Must be kept inside cage at all times.
- (ii) Fish, provided the following restrictions and limitations are satisfied:
  - (a) Limit one (1) aquarium per Unit with reasonable number of fish;
  - (b) Twenty (20) gallon aquarium maximum;
  - (c) Must be maintained on stand approved by the Owners Association;
  - (d) Must be kept inside Unit and not allowed in Common Areas (provided Unit Owners are allowed to carry such fish through the Common Areas to their respective Units without loitering in any way); and
  - (e) Must have odor free filter system.

B. Service Animals. Notwithstanding the foregoing policies relating to no pets within the Condominium Project, seeing-eye dogs or other similar animals necessitated for medical conditions shall be allowed within the Condominium Project and any Unit, provided (i) such dogs or pets must have taken all applicable and then-medically accepted training, classes and courses and received all applicable and then-medically accepted certifications in order to provide the applicable medical aid and help, (ii) such dogs or animals must be at least six (6) months old and housebroken, and (iii) all other terms and conditions described below are met and satisfied. All requirements set forth in this Section 7.2.4.6(B) are subject to third-party verification as deemed necessary by Landlord and/or the Owners Association.

All service animals described in this Section 7.2.4.6(B) must be registered with the Owners Association. To register a pet, the pet owner must provide the Owners Association with the following:

- (i) The pet's breed, age, gender, name, and any other distinguishing feature(s);
- (ii) Proof of current shots or vaccinations and an annual reassessment of compliance with any required updates related to shots or vaccinations; and
- (iii) Proof of spaying/neutering.

C. Pet Owner Responsibility. The Owner of a pet as described above shall satisfy the following requirements:

- (i) Provide adequate food, water, shelter and care for pet as set forth in relevant city, county, and state ordinances and in accordance with all other laws;
- (ii) Provide proper and prompt clean-up for pet;
- (iii) Not allow their pet to defecate or relieve themselves in any Common Areas or in any areas outside the interior walls of such Owner's Unit, including, any Limited Common Areas;
- (iv) Not keep, maintain, or allow any pet on any balconies, patios, decks or terraces;
- (v) Cause all pet waste double bagged and hand carried to the dumpster;
- (vi) Not flush down any toilet or throw down any garbage chute any pet waste;



- (vii) Regularly clean and change out bird cages, aquariums and/or other pet habitats so as to eliminate offensive smells and/or other pest problems;
- (viii) Keep pet noise to a reasonable minimum in the discretion of the Owners Association;
- (ix) Not allow any pet in any Common Areas off of a leash and not allow any pet to loiter within the Common Areas;
- (x) Assume all responsibility and liability for any injury sustained by any person attributable to their pet, and indemnify, save, defend and hold Landlord and the Owners Association harmless in connection therewith;
- (xi) Assume all responsibility and liability for any damage to the Project or clean-up resulting from their pet, and indemnify, save, defend and hold Landlord and the Owners Association harmless in connection therewith;
- (xii) Immediately and permanently remove from the Project any pet which causes bodily injury to any person (if any pet owner fails to do so, the Owners Association shall have the right at its option to remove pet to a pound or animal shelter under the jurisdiction of Salt Lake City by calling the appropriate authorities, all costs of which shall be the responsibility of the pet owner);
- (xiii) Not leave pet unattended for longer than twelve (12) hours (if any pet owner leaves any pet unattended for longer than twelve (12) hours, then Owners Association shall have the right at its option to remove pet after attempting to notify the pet owner, all costs of which shall be the responsibility of the pet owner);
- (xiv) Keep pet well groomed, clean, and free of offensive odors;
- (xv) Keep pet identified with ownership tag; and

- (xvi) Comply with all provisions of the Declaration and this Lease with respect to nuisances, noises, and other applicable prohibitions, limitations, and restrictions.

In the event of noncompliance of this Section 7.2.4.6, Landlord shall have the right, and the Owners Association hereby reserves the right, to (a) request any pet be permanently or temporarily removed from the Project by its owner or (b) permanently or temporarily remove such pet from the applicable Unit and the Condominium Project to a pound or animal shelter under the jurisdiction of Salt Lake City by calling the appropriate authorities, all costs of which shall be the responsibility of the pet owner. Additionally, Landlord shall have the right, and the Owners Association hereby reserves the right, to prohibit any future pet ownership within the applicable Unit and the Condominium Project as a result of noncompliance of this Section 7.2.4.6.

7.3. **Conveyances of Units.** Without limiting the foregoing, prior to any conveyance of a Unit by Tenant, Tenant shall provide written, actual notice to each transferee of the covenants and conditions set forth in Sections 7.1 and 7.2 above. Tenant shall cause all such transferees to acknowledge in writing their receipt of same. Tenant shall use commercially reasonable and diligent efforts to enforce or cause the Owners Association to enforce each such covenant against the Unit Owners, which efforts shall include doing everything that a commercially reasonable landlord would do under similar circumstances. Tenant's inability to enforce any such covenant after the exercise of reasonable commercial efforts shall not be deemed a Default hereunder.

7.4. **Exclusive Control.** Tenant shall have exclusive control, possession, occupancy, use, and management of the Condominium Project, subject to the terms of this Lease (including without limitation any and all rights and/or interests reserved by Landlord for itself and/or any third parties), the Master Declaration, the Permitted Exceptions, and the Third-Party Rights.

7.5. **Fees.** Tenant shall timely pay and discharge all fees, costs and expenses relating to or arising from the management or operation of the Condominium Project and the provision of services to the Condominium Project.

## Article 8

### MAJOR DECISIONS

8.1. **Major Decisions.** In addition to any other approval rights reserved by Landlord in this Lease, Landlord shall have review and approval rights (in its sole and absolute discretion) in connection with any of the following (collectively, "**Major Decisions**", and individually, a "**Major Decision**"):

8.1.1. **Parcelization; Subdivision.** Any parcelization, subdivision, reparcelization, or resubdivision of the Premises or any portion thereof (excluding, however, any

combination or reconfiguration of individual Units within the Condominium Project permitted under this Lease, which combination or reconfiguration of individual Units shall not be deemed to be a Major Decision);

8.1.2. Name of Condominium Project. Any naming or renaming of the Condominium Project. Landlord hereby approves the names "The Regent at City Creek" and "The Regent at City Creek Condominiums";

8.1.3. Relocation of Entrances. The relocation of any public entry points to the Condominium Project;

8.1.4. Condominium Project Documents. The creation or amendment (including, by way of example and not of limitation, the creation or amendment of provisions relating to smoking, alcohol consumption, or pets), the extension beyond the Term, or the termination of the Condominium Declaration, Plat or other document creating, governing, or in any way affecting the Condominium Project;

8.1.5. Easements. The creation, material amendment, extension, or termination of easement rights to or from any Government or any other Person with respect to the Condominium Project;

8.1.6. Rules and Regulations. The creation or modification of any rule or regulation with respect to the Condominium Project that: (a) adversely affects any improvements located within the Project (other than the Condominium Project); (b) dilutes, diminishes, or violates any of the use restrictions contained in the Master Declaration; (c) deviates from Tenant's obligations under this Lease (including Tenant's obligations to operate and maintain the Condominium Project); or (d) adversely affects any rights of Landlord in a discriminatory manner;

8.1.7. Third-Party Rights. Any material modification of any Third-Party Rights which increases the burden upon the Condominium Project, or any portion thereof;

8.1.8. Exterior Façade. Any modification to any exterior façade of the Condominium Project (not including regular and usual maintenance thereof);

8.1.9. Major Alterations. Any Alterations, except as otherwise set forth in Article 10; and

8.1.10. Vertical Transportation. Any modification to vertical transportation included within the Premises and/or the Condominium Project.

8.2. Landlord's Approval. Landlord's approvals pursuant to this Article 8 may be granted or withheld at Landlord's sole and absolute discretion. Landlord shall, within thirty (30) days after submission to Landlord of a request for approval of a Major Decision, including complete copies of any associated plans, drawings, leases, or other relevant documents pursuant to such request, approve or disapprove of same. If Landlord disapproves any such request,

Landlord shall set forth the reasons for withholding any approval, together with proposed changes, if any, that would make such item or document acceptable (it being understood that such concepts may be set forth with reasonable specificity, but need not include technical design specificity). If Landlord fails to respond within such thirty (30) day period, then Tenant shall provide Landlord with (i) a courtesy telephone communication, and (ii) a second written Notice stating in bold and all caps, and in at least 12 point font, that **“LANDLORD’S FAILURE TO RESPOND TO TENANT’S REQUEST SET FORTH BELOW WITHIN FIFTEEN (15) DAYS AFTER LANDLORD’S RECEIPT OF THIS SECOND NOTICE SHALL BE DEEMED APPROVAL BY LANDLORD,”** and if Landlord does not respond to such request within such fifteen (15) day period, then Landlord shall be deemed to have approved such Major Decision.

## Article 9

### MAINTENANCE

9.1. **Obligation to Maintain.** During the Term, Tenant, at Tenant’s sole cost and expense, shall keep and maintain (including repair and/or replacement as necessary) the Premises, the Offsite Utility Facilities, and the Condominium Project in a manner substantially consistent with first-class standards employed in the management and operation of comparable residential condominium projects, and in no event less than the standards employed in the management and operation of other areas of the Project, including without limitation (a) keeping the Condominium Project clean and clear of, and promptly removing, rubbish, debris, filth, refuse, and prohibited or unauthorized obstructions; (b) keeping the Condominium Project clear of accumulated snow, ice, and water; (c) keeping trash, rubbish and recycle containers in an attractive and good working condition and keeping major containers for trash, rubbish and recycle in the areas designated by Landlord, emptying all trash, rubbish and recycle containers located in the Condominium Project as needed, and washing them at intervals sufficient to maintain them in a clean, sanitary condition; (d) inspecting all lamps and light fixtures at regular intervals and replacing them according to a properly designed replacement program or when individual lamps or fixtures cease to function properly; (e) keeping the Condominium Project’s stairways, passageways, hallways, vestibules, common areas, Lobby, and entranceways in good repair and good working order, properly lit and cleaned; (f) making such repairs and replacements and doing such other work to keep the equipment and apparatus of the Condominium Project, including all improvements, machinery, fixtures, signs, graphics, and other equipment in good condition and operating order, including structural and non-structural repairs; (g) making all other repairs and replacements that the Condominium Project may reasonably require from time to time, including plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, structural components, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, site improvements, curb cuts, fences and signs located in, on or at the Condominium Project, together with any sidewalks immediately fronting the Condominium Project; (h) maintaining all vertical and horizontal surfaces of the structures, including open stairways, enclosed stair towers, decorative elements and Building Exteriors; (i) keeping the Condominium Project’s elevators and stairwells clean and attractive and in good working order; (j) implementing a recycling program to the extent required by applicable Laws; (k) maintaining and repainting of painted surfaces of the Building Exteriors,

including repainting graphics on such Building Exteriors; (l) maintaining and repairing all landscape architecture and corridors located within the Condominium Project (including without limitation the Landscaped Areas); (m) properly maintaining the HVAC system in good working condition and in compliance with all health and safety regulations; (n) keeping all areas of the Condominium Project clean and free from graffiti, and removing any graffiti promptly, and restoring the surface to its condition prior to application of the graffiti; (o) removing dirt and fluids from the surfaces of the Condominium Project, including its entrances and exits, on a periodic basis as reasonably necessary; and (p) keeping all common use restrooms, exercise rooms, fitness rooms, clubhouse rooms, recreation rooms, lobbies, hallways, and other facilities properly cleaned, ventilated, heated and cooled and otherwise in a first class and sanitary condition.

9.2. **Fire Protection Devices.** From and after the Commencement Date, Tenant, at no expense to Landlord, shall install and maintain fire extinguishers and other fire protection devices within the Premises and the Condominium Project as may be required from time to time by any agency having jurisdiction thereof. Should Tenant's insurance carrier require that Tenant's fire protection system be modified in order for Tenant to procure or maintain the insurance required under this Lease, Tenant shall promptly make such modifications at Tenant's sole expense.

9.3. **Failure to Maintain.** If Tenant fails to perform its obligations under Sections 9.1 and 9.2 above, Landlord may, at its option, after thirty (30) days' Notice to Tenant and failure of Tenant to perform such obligations within such thirty (30) day period, enter upon the Condominium Project and put the same in good order, condition and repair and perform Tenant's other obligations under Sections 9.1 and 9.2 above, and the cost thereof shall become immediately due and payable as Rent by Tenant to Landlord. Landlord need not, however, wait for the expiration of such thirty (30) day period to remedy any condition which poses an immediate danger to persons or property or which will or may result in the imposition of a fine or penalty upon Landlord if not cured prior to the expiration of such period, and in such event Landlord shall provide Tenant with Notice as may be reasonable and appropriate under the circumstances.

## Article 10

### ALTERATIONS

10.1. **Alterations.** Tenant shall be permitted to make, in Tenant's reasonable discretion, any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, restoration, replacement or other work affecting any or all of the Condominium Project, including any new construction (collectively, an "**Alteration**") to the interior walls and spaces of Units or the common areas within the Condominium Project (a) as are cosmetic, and not structural, in nature, (b) which do not affect any system or equipment that service other portions of the Project, and (c) which are not visible from other areas of the Project; provided, however, that Tenant shall Indemnify Landlord from and against any and all losses, costs, claims, liabilities, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that Landlord suffers or incurs from, as a result of, or on

account of any such Alterations made, caused to be made, or permitted to be made by Tenant. Except as expressly provided above, Tenant shall not make, and shall not permit any party to make, any other type of Alteration, without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion. The foregoing notwithstanding, Landlord may not unreasonably withhold its consent to any Alteration that does not: (i) adversely impact any of the improvements located on or in the City Creek Center Property; (ii) affect any system or equipment, including the HVAC system, mechanical, electrical, plumbing or life safety systems, that service other portions of the Project; (iii) affect the structural integrity of the Condominium Project or any vertical transportation serving the Condominium Project; (iv) violate, or create a reasonably foreseeable risk of violating, any Law; (v) violate or breach any term, provision, covenant, obligation, duty, or condition of this Lease or any recorded document affecting the Condominium Project or other areas of the Project; (vi) cause the improvements to be inconsistent with comparable condominium projects; (vii) materially change the design or quality of the materials of any improvement from standards that are timeless in nature and not "trendy," or any other applicable design requirements designated by Landlord; or (viii) alter any portion of the Building Exterior in any way. Any Alterations approved by Landlord shall be made at Tenant's sole cost and expense, and shall be subject to any conditions that Landlord may impose. Any improvements that Tenant constructs in the Premises shall become part of the Premises.

10.2. **Emergency Alterations.** Any provision of the foregoing to the contrary notwithstanding, Tenant may undertake any Alteration without any advance Notice to Landlord when necessary to address emergency situations, subject to the following: (a) for purposes of this provision, an emergency situation is one that poses a threat of imminent bodily harm or imminent and material property damage such that under the circumstances it would be unreasonable to provide Landlord Notice, (b) until such time as Tenant has obtained Landlord's approval, Tenant shall only make the minimum necessary Alterations to address the emergency and stabilize the situation, and (c) Tenant shall promptly notify Landlord by an immediate means of communication (e.g., as of the Execution Date, the telephone) as is reasonably practicable under the circumstances.

## Article 11

### PROHIBITED LIENS

11.1. **Tenant's Covenant.** If any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien arising from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, to Tenant or anyone claiming through Tenant, which lien attaches (or may attach upon termination of this Lease) to Landlord's interest in the Condominium Project (a "**Prohibited Lien**"), is filed, then Tenant shall, within thirty (30) days after receiving Notice from Landlord of such filing (but in any case within fifteen (15) days after receipt of Notice from Landlord of commencement of foreclosure proceedings), commence all appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title. Tenant shall thereafter prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any such filing, then Landlord shall promptly Notify Tenant. Tenant hereby agrees to indemnify, defend, and hold Landlord harmless from and against any Prohibited

Lien. Notwithstanding the foregoing, Landlord may (but shall not be obligated to) pay any amount related to any Prohibited Lien. If Landlord elects to pay all of any portion of any Prohibited Lien, then Tenant shall immediately thereafter reimburse Landlord for same, and in addition, for all costs expended by Landlord related thereto.

11.2. **Protection of Landlord.** NOTICE IS HEREBY GIVEN THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO TENANT OR ANY PARTY CLAIMING THROUGH TENANT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT LANDLORD'S INTEREST IN THE PREMISES. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING TENANT ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST LANDLORD'S INTEREST IN THE PREMISES. TENANT SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY TENANT OR ANYONE CLAIMING THROUGH TENANT, AND AGAINST ALL PROHIBITED LIENS.

## Article 12

### HAZARDOUS SUBSTANCES

12.1. **Restrictions.** Tenant shall not cause or permit to occur on, under or at the Condominium Project or Use Areas during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Condominium Project or Use Areas of any Hazardous Substance, unless such use, generation, release, manufacture, refining, production, processing, storage, or disposal is both: (i) in compliance with all Environmental Laws, and (ii) reasonably necessary and customary to operate and maintain the Condominium Project or Use Areas for uses this Lease permits so long as (A) such Hazardous Substance and any equipment which generates such Hazardous Substance are maintained only in such de minimus quantities as are reasonably necessary for Tenant's permitted operations in the Condominium Project or Use Areas, (B) such Hazardous Substance is used strictly in accordance with the manufacturers' instructions therefor and the highest standards prevailing in the industry for such Hazardous Substance, (C) such Hazardous Substance is not disposed of in or about the Condominium Project or Use Areas in a manner which would constitute a release or discharge thereof, and (D) unless otherwise agreed in writing by Landlord, such Hazardous Substance and any equipment which generates such Hazardous Substance are removed from the Condominium Project or Use Areas by Tenant upon the expiration or earlier termination of this Lease (provided that such removal shall not be so required to the extent that (1) such Hazardous Substance is an integral part of the physical improvements constituting the Condominium Project, (2) the

removal of such Hazardous Substance is impractical, (3) the failure to remove such Hazardous Substance does not violate Law, and (4) Tenant, at Tenant's expense, takes all steps reasonably appropriate in order to comply with Law and to reasonably mitigate any damage or risk posed by the continuing presence of such Hazardous Substance). Tenant shall, within thirty (30) days after Tenant's receipt of Landlord's written request therefor, provide to Landlord a written list identifying any Hazardous Substances then maintained by Tenant in the Condominium Project or Use Areas, the use of each such Hazardous Substance and the approximate quantity of each such Hazardous Substance so maintained by Tenant, together with written certification by Tenant stating, in substance, that neither Tenant nor any Person for whom Tenant is responsible has released or discharged any Hazardous Substance in or about the Condominium Project or Use Areas.

12.2. **Notices Relating to Hazardous Substances.** Tenant (a) shall furnish to Landlord copies of all notices or other communications received by Tenant with respect to any actual or alleged release or discharge of any Hazardous Substances in or about the Condominium Project or Use Areas, within five (5) days after receipt thereof, and (b) shall immediately Notify Landlord in writing of any discharge or release of Hazardous Substances by Tenant or, to Tenant's knowledge, anyone for whom Tenant is responsible in or about the Condominium Project or Use Areas. In the event that Tenant is required to maintain any Hazardous Substances license or permit in connection with any use conducted or any equipment operated in the Condominium Project or Use Areas, copies of each such license or permit, each renewal or revocation thereof and any communication relating to suspension, renewal or revocation thereof shall be furnished to Landlord within five (5) days after receipt thereof by Tenant. Compliance by Tenant with the two immediately preceding sentences shall not relieve Tenant of any other obligation of Tenant pursuant to this Article 12.

12.3. **Compliance; Clean-Up.** From and after the Commencement Date, Tenant shall, at no expense to Landlord: (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge on, at, or under the Premises, the Condominium Project or Use Areas, provided Landlord and not Tenant shall be responsible to clean up any Hazardous Substance Discharge that occurred prior to the Commencement Date; (b) make all submissions to, deliver all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws; (c) if any Government authority requires any clean-up plan or clean-up because of a Hazardous Substance Discharge, prepare and submit the required plans and all related bonds and other financial assurances, provided Landlord must approve any clean-up plan prior to any submittal of same to any Government authority; (d) promptly and diligently carry out all such clean-up plans and remediation; and (e) Indemnify Landlord against (i) the introduction into or about the Premises, the Condominium Project, Use Areas, any nearby properties, or any groundwater of any Hazardous Substance, (ii) the usage, storage, maintenance, generation, production or disposal of Hazardous Substances in or about the Condominium Project or Use Areas, (iii) the discharge or release in or about the Condominium Project or Use Areas of any Hazardous Substances occurring on or subsequent to the Commencement Date, (iv) any injury to or death of persons or damage to or destruction of property resulting from the use, introduction, maintenance, storage, generation, disposal, disposition, release or discharge of Hazardous Substances in or about the Condominium Project or Use Areas, and (v) any failure of any Tenant to observe the foregoing covenants of this Article



12. Any party's obligations under this Article 12 shall not limit such party's rights against third parties. All terms and provisions of this Article 12 shall survive any termination, cancellation or expiration of this Lease.

### Article 13

#### INDEMNIFICATION; LIABILITY OF LANDLORD

13.1. **Obligations.** Tenant shall Indemnify Landlord against any: (a) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their partners, members, directors, officers, shareholders, employees, agents or representatives; (b) breach or default by the Indemnitor under this Lease; or (c) breach of any representation or warranty made by Indemnitor in this Lease. In addition, to the fullest extent permitted by Law, Tenant shall Indemnify Landlord against all losses, costs, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense arising out of any of the following during the Term and so long as Tenant remains in possession after the expiration or earlier termination of this Lease: (i) any Contest Tenant initiates; (ii) any application to any Government or other authority made at Tenant's request; (iii) the use, occupancy, control, management, operation, and possession of the Condominium Project and the Use Areas, including (without limitation) any of Tenant's activities from the Commencement Date through the expiration or earlier termination of this Lease; (iv) any Alteration and any agreements that Tenant or anyone claiming through Tenant makes for any Alteration; and (v) the condition of the Condominium Project. Notwithstanding anything to the contrary in this Lease, no Indemnitor shall be required to Indemnify any Indemnitee regarding the Indemnitee's intentional acts or omissions or gross negligence. This Section 13.1 does not apply to Environmental Law and Hazardous Substance Discharges, which matters are covered by the provisions of Article 12. This Section 13.1 shall survive any expiration or termination, cancellation or expiration of this Lease.

13.2. **Liability of Landlord.** During the Term, (a) Tenant, subject to rights reserved and/or described herein, is and shall be in exclusive control and possession of the Condominium Project, and has nonexclusive rights in the Use Areas; and (b) Landlord shall not be liable for any injury or damage to any property (of Tenant or any other Person) or to any person occurring on or about the Condominium Project or the Use Areas, including injury or death to any person or property caused by or resulting from any peril which may affect the Condominium Project or the Use Areas, including fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Condominium Project or the Use Areas, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the same, whether such damage or injury results from conditions arising upon such portions of the Condominium Project or the Use Areas, or from other sources, unless caused by Landlord's intentional misconduct or gross negligence. Tenant hereby accepts full, complete and sole responsibility for any such injuries, damages and/or other liability.

13.3. **Indemnification Procedures.** Wherever this Lease requires any Indemnitor to Indemnify any Indemnitee:

13.3.1. Prompt Notice. Indemnitee shall promptly Notify Indemnitor of any claim or potential liability.

13.3.2. Selection of Counsel. Indemnitor shall select counsel reasonably acceptable to Indemnitee. Counsel to Indemnitor's insurance carrier shall be deemed satisfactory. Even though Indemnitor shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. In such event, Indemnitor's counsel shall actively consult with Indemnitee's counsel. Indemnitor and its counsel shall, however, fully control the defense.

13.3.3. Cooperation. Indemnitee shall reasonably cooperate with Indemnitor's defense, provided Indemnitor reimburses Indemnitee's actual, reasonable out of pocket expenses (including Legal Costs) in providing such cooperation (except any costs of Indemnitee's separate legal counsel described in Section 13.3.2 above which shall remain the cost of Indemnitee).

13.3.4. Settlement. Indemnitor may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall not be required for any settlement by which: (a) Indemnitor procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment or undertake any obligation to the claimant; (b) neither Indemnitee nor Indemnitor on behalf of Indemnitee admits liability; (c) the continued effectiveness of this Lease is not jeopardized in any way; and (d) Indemnitee's interest in the Condominium Project is not adversely affected in any way.

13.3.5. Insurance Proceeds. Indemnitor's obligations shall be reduced by net insurance proceeds Indemnitee actually receives for the matter giving rise to indemnification.

## Article 14

### RIGHT OF CONTEST

14.1. Tenant's Right; Contest Conditions. Notwithstanding anything to the contrary in this Lease, Tenant (and Landlord either jointly or separately) shall have the right to contest, at its sole cost, by appropriate legal proceedings diligently conducted in good faith, the amount or validity of any Real Estate Taxes attributable to the Condominium Project or any Prohibited Lien purportedly affecting the Condominium Project; the valuation, assessment, or reassessment (whether proposed, phased, or final) of the Condominium Project for Real Estate Taxes; the amount of any Real Estate Taxes; the validity of any Law or its application to the Condominium Project; the terms or conditions of, or requirements for, any Government or other applicable approval; or the validity or merit of any claim against which this Lease requires Tenant to Indemnify Landlord (any of the foregoing, a "Contest"). Tenant may defer payment or performance of the contested obligation pending outcome of the Contest, provided that Tenant causes the following conditions (collectively, the "Contest Conditions") to remain satisfied (and any dispute about Tenant's satisfaction of the Contest Conditions shall be handled in accordance with Section 25.3):

14.1.1. No Criminal Act. Such deferral or noncompliance shall not constitute a criminal act by Tenant or Landlord or subject Landlord to a material risk of any fine or penalty, except civil penalties for which Tenant has given Landlord a bond, letter of credit, or other security reasonably satisfactory to Landlord (the "**Contest Security**") in an amount equal to the reasonably estimated amount of such civil penalties.

14.1.2. No Liability. Such deferral or noncompliance creates no risk of a lien, charge, or other liability of any kind against any portion of the City Creek Center Property, unless Tenant has given Landlord Contest Security equal to 125% of the reasonably estimated amount of such lien, charge, or other liability.

14.1.3. No Forfeiture. Such deferral or noncompliance will not place any portion of the City Creek Center Property, including but not limited to the Premises, in material imminent danger of being forfeited or lost.

14.1.4. No Cost to Landlord. Such Contest shall be without cost, liability, or expense to Landlord.

14.1.5. Diligence. Tenant shall continually prosecute such Contest with reasonable diligence and in good faith.

14.1.6. Payment. If required for such Contest, Tenant shall have timely paid the contested Real Estate Taxes or any other amounts related to any other matter or Prohibited Lien.

14.1.7. Collection of Real Estate Taxes. If such Contest relates to any Real Estate Tax, then such Contest shall suspend its collection from Landlord and the City Creek Center Property.

14.1.8. No Tax Deed. If, at any time, payment of any Real Estate Taxes is necessary to prevent the imminent (i.e., within thirty (30) days) delivery of a tax deed (or other conveyance instrument) affecting any portion of the City Creek Center Property for nonpayment, then Tenant shall immediately pay or cause to be paid the sums in sufficient time to prevent delivery of such deed.

14.1.9. No Event of Default. No Event of Default shall exist (or other event which, but for the passage of time, the giving of notice, or both, would be considered an Event of Default) under this Lease at the time of such Contest.

14.1.10. Named Parties. If Landlord has been named as a party in any action, then Tenant shall cause Landlord to be removed as such party and Tenant substituted in Landlord's place, if permissible under the circumstances.

14.2. Landlord Obligations and Protections. Landlord need not join in any Contest unless (a) Tenant has complied with the Contest Conditions; and (b) such Contest must be initiated or prosecuted in Landlord's name. In such case, Landlord shall cooperate, as Tenant

reasonably requests, to permit the Contest to be prosecuted in Landlord's name. Landlord shall give Tenant any documents, deliveries, and information in Landlord's control and reasonably necessary for Tenant to prosecute its Contest. Landlord shall otherwise assist Tenant in such Contest as Tenant reasonably requires. Tenant shall pay all costs and expenses, including all Landlord's Legal Costs, of any Contest. Tenant shall, at Landlord's request, advance (when Landlord incurs them) such reasonable costs and expenses that Landlord incurs or reasonably anticipates incurring, for Tenant's Contest and Landlord's assistance with such Contest.

14.3. **Miscellaneous.** To the extent paid by Tenant previously, Tenant shall be entitled to any refund of any Real Estate Taxes attributable to the Condominium Project (and penalties and interest paid by Tenant), to the extent attributable to periods within the Term, whether such refund is made during or after the Term. When Tenant concludes Tenant's Contest of any Real Estate Taxes, Tenant shall pay the amount of such Real Estate Taxes (if any) as has been finally determined in such Contest to be due with respect to the Condominium Project, to the extent attributable to periods within the Term, and any costs, interest, penalties, or other liabilities in connection with such Real Estate Taxes. Upon final determination of Tenant's Contest of a Law, Tenant shall comply with such final determination. So long as the Contest Conditions remain satisfied, Landlord shall enter no objection to any Contest. Landlord may contest any matter for which Tenant is entitled to (but does not) prosecute a Contest, but only if: (a) Landlord Notifies Tenant of Landlord's intention to do so; (b) Tenant fails to commence such Contest within fifteen (15) days after receipt of such Notice; and (c) neither the prosecution of such Contest, nor an adverse determination with respect to such Contest, shall pose a material risk as to the interference with Tenant's use and enjoyment of the Condominium Project (it being agreed that a determination calling for the payment of money by other than Tenant shall not constitute such an adverse determination so long as Tenant is not liable therefor). In the event that Landlord makes such Contest, or has otherwise paid any amounts relating thereto, Landlord shall be entitled to any refund of any Real Estate Taxes arising from such Contest.

14.4. **Contest Security.** Landlord shall promptly release any Contest Security to Tenant after the Contest has been resolved and Tenant has performed its obligations (including, without limitation, the payment of any applicable sums to Landlord), if any, as determined by such resolution.

## Article 15

### INSURANCE

15.1. **Tenant's Obligation to Insure.** Landlord and Tenant acknowledge and agree that Landlord shall not be responsible hereunder to obtain or maintain any insurance coverage on the Condominium Project, the Premises, the Building or the Use Areas, and that it shall be Tenant's responsibility to obtain and maintain any and all insurance coverages applicable thereto. Without limiting the generality of the foregoing, Tenant shall, at no expense to Landlord, from the Commencement Date through the expiration of the Term, maintain or cause to be maintained the following insurance (or its then reasonably available equivalent):

15.1.1. Tenant's Property Insurance. Insurance providing coverage for: (a) the Condominium Project, the Premises, the Building and the Use Areas, including any land and Airspace applicable thereto, and the improvements, fixtures, and equipment thereon and therein, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage providing protection against any risk included within the classification "Causes of Loss-Special Form (ISO Form CP 10 30)," including insurance against fire, flood, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke damage, sprinkler leakage, vandalism and malicious mischief, such insurance to be in an amount not less than one hundred percent (100%) of the current replacement cost of all elements of the Condominium Project (without deduction for depreciation), exclusive of foundations and excavations. The foregoing coverage shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but no more). If the applicable policy includes a co-insurance clause, then the policy shall also include an Agreed Amount Endorsement (which waives the requirement for co-insurance). Such insurance shall also include a Flood Insurance Coverage Endorsement (or similar coverage under a separate policy); coverage for any required code upgrades with respect to the Condominium Project; an Ordinance or Law Endorsement; an Increased Cost of Construction Endorsement; and an endorsement covering demolition and cost of debris removal; and (b) all personal property of Tenant located in or on the Condominium Project, including, to the extent not considered real property, fixtures, furnishings and equipment, in an amount not less than their full replacement value, providing protection against any peril included within the classification "Causes of Loss-Special Form (ISO Form CP 10 30)," including insurance against fire, flood, sprinkler leakage, vandalism and malicious mischief.

15.1.2. Tenant's Liability Insurance. Tenant shall maintain or cause to be maintained the following forms of liability insurance, with the following limits subject to increase by Landlord up to once every three years, upon at least one hundred eighty (180) days' Notice to Tenant, provided that any increased limit generally conforms to the limits customarily required by prudent landlords or institutional lenders for similar properties in the County.

(a) commercial general liability insurance including ISO Form CG 00 01 (10/93) or equivalent, with at least the following minimum coverages: (i) \$2,000,000 general aggregate, (ii) \$2,000,000 products-completed operations aggregate, (iii) \$1,000,000 personal and advertising injury, (iv) \$1,000,000 each occurrence, (v) \$100,000 fire damage (any one fire), (vi) \$10,000 medical expense (any one person), and (vii) \$1,000,000 automobile liability insurance combined single limit per occurrence and coverage applying to "any auto," and

(b) excess or umbrella general comprehensive public liability insurance against claims for personal injury, death, or property damage occurring upon, in, or about (i) the Condominium Project and Premises, (ii) adjoining streets and passageways, (iii) the Offsite Amenities, (iv) the Use Areas, or (v) any portion or portions of the Parking and Storage Facilities licensed to Unit Owners, with coverage at least as broad as clause (a) above and providing coverage for a combined single limit of \$20,000,000 per occurrence and in the aggregate.

15.1.3. **Worker's Compensation Insurance.** Worker's compensation insurance covering Tenant's employees, if any, in the statutorily required amount, together with employer's liability coverage with minimum limits of \$1,000,000 each accident, \$1,000,000 each disease, and a policy limit of at least \$1,000,000.

15.2. **Nature of Insurance Program.** All insurance policies this Lease requires shall be issued by carriers that: (a) have a policyholders' rating of "A; X" or better, based on the latest rating publication of Property and Casualty Insurers by A.M. Best Company Key Rating Guide – Property Casualty (or its equivalent if such publication ceases to be published); and (b) are lawfully doing business in the State. Landlord or Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that such policy otherwise complies with this Lease.

15.3. **Adjustments in Coverage.** The minimum insurance coverage amounts and other dollar amounts required under this Article 15 shall be subject to adjustment, at Landlord's reasonable discretion, to reflect changes in the value of the U.S. Dollar, on which the insurance coverage amounts are based.

15.4. **Policy Requirements and Endorsements.** All insurance policies this Lease requires shall contain (by endorsement or otherwise) the following provisions:

15.4.1. **Insureds.** Liability insurance policies shall name Landlord or Tenant, as the case may be, as an "additional insured" and all Mortgagees this Lease allows as "additional insureds." Property insurance policies shall name Landlord as loss payee as its interest may appear and each Mortgagee this Lease allows under a standard noncontributing mortgagee clause shall also be a loss payee. Notwithstanding anything to the contrary in this Section 15.4.1, all Property insurance Proceeds shall be paid and applied as this Lease provides.

15.4.2. **Primary Coverage.** All policies required to be maintained by Landlord or Tenant shall be written as primary policies not contributing to or in excess of any coverage that the other party may carry.

15.4.3. **Contractual Liability.** Liability insurance policies shall contain contractual liability coverage, for each party's Indemnity obligations under this Lease, to the extent covered by customary contractual liability insurance coverage. Any party's compliance with this provision, or such party's failure to obtain such contractual liability coverage, shall not relieve it from any Indemnity obligation under this Lease.

15.4.4. **Notice to Landlord.** Each such policy shall contain a provision (by endorsement or otherwise) requiring not less than thirty (30) days' Notice to Landlord prior to any cancellation, non-renewal or material amendment thereof and requiring that the proceeds of the policy maintained pursuant to Section 15.1 shall be payable to Landlord to repair or replace the parts of the Condominium Project, the Premises, the Building and/or the Use Areas, any improvements thereto and personal property so insured, so long as this Lease remains in effect. Inability to obtain such notice shall not be deemed a default hereunder.

15.4.5. **Deductibles.** Any and all deductibles which Tenant elects to maintain shall be commercially reasonable. In addition, Tenant shall keep applicable and appropriate reserves in its accounts in order to cover all such deductibles.

15.5. **Failure to Comply.** If, on account of the failure of Tenant to comply with any provision of this Article 15, Landlord or any additional insured is adjudged a co-insurer by its insurance carrier, then any loss or damage Landlord or such additional insured shall sustain by reason thereof shall be borne by Tenant and shall be paid by Tenant upon receipt of a bill therefor and evidence of such loss.

15.6. **Failure to Maintain Insurance.** If Tenant fails to maintain any coverage required by Section 15.1, or fails to comply with any provision of this Article 15, and such failure continues for ten (10) days after Notice thereof from Landlord to Tenant, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and at Tenant's cost, which cost shall be paid by Tenant as Rent.

15.7. **Waiver of Certain Claims.** To the fullest extent allowable under applicable law, Tenant hereby waives any and all rights of recovery against Landlord, and against the officers, directors, partners, members, employees, agents, representatives, customers and business visitors of Landlord, for loss of or damage to Tenant or its property or the property of others under its control, arising from any cause insured against under any policy of insurance required to be carried by Tenant pursuant to the provisions of this Lease (or any other policy of insurance carried by Tenant in lieu thereof) at the time of such loss or damage. Tenant shall, upon obtaining the policies of insurance which it is required to maintain hereunder, give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in this Lease.

## Article 16

### DAMAGE OR DESTRUCTION

16.1. **Landlord as Attorney-in-Fact.** Notwithstanding any language to the contrary in this Lease, in all events in which Landlord is entitled to the "Property Insurance Proceeds" (as defined in Section 16.2 below), Tenant irrevocably constitutes and appoints Landlord its true and lawful attorney-in-fact in its name, place and stead for all purposes related to (i) the Condominium Project, Premises, the Use Areas, and the applicable damage or destruction, and (ii) the collection of all Property Insurance Proceeds. Execution of this Lease by Tenant shall constitute an appointment by Tenant of Landlord as its attorney-in-fact as herein provided. As attorney-in-fact, Landlord shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of Tenant which may be necessary or appropriate to exercise the powers herein granted.

16.2. **Property Insurance Proceeds.** For purposes of this Lease, "Property Insurance Proceeds" shall mean any and all proceeds or compensation of any kind in connection with, related to, or provided as a result of, any and all property insurance or similar insurance policies required to be obtained and maintained under this Lease or the Condominium Declaration,

whether actually received or not, and any and all claims for such proceeds or compensation, less all actual and reasonable costs and expenses of obtaining same. In the event that Tenant shall fail to obtain and maintain any applicable insurance policies required under this Lease or the Condominium Declaration, Tenant shall be obligated to pay to Landlord, as Property Insurance Proceeds, the amount equal to the Property Insurance Proceeds that would have been payable under such policies had such policies been obtained and maintained. Except as may be otherwise specifically provided herein, Landlord shall be entitled to immediately receive all Property Insurance Proceeds. Tenant shall (i) use its best and most diligent efforts to promptly acquire all Property Insurance Proceeds and immediately deliver all such Property Insurance Proceeds received or payable by Tenant to Landlord, (ii) cause all of Tenant's insurance providers and any other applicable third parties to immediately deliver all Property Insurance Proceeds to Landlord, and (iii) cooperate in all respects with Landlord to aid Landlord in obtaining all Property Insurance Proceeds, including without limitation, the execution and delivery of any documentation, letters or other agreements requested by Landlord.

16.3. **Repair and Reconstruction.** For purposes of this Lease, "**Repair and Reconstruction**" of the applicable improvements shall mean repairing, restoring, and/or reconstructing, as applicable, the applicable improvements to substantially the same condition in which such improvements existed prior to the damage or destruction, with all aspects of the Condominium Project and the Use Areas having substantially the same vertical and horizontal boundaries as before (subject to any modifications required by then-applicable law); provided, however, in the event that Landlord elects to repair a portion of the Building damaged or destroyed as more fully described in Section 16.4 below (the "**Damaged Building**"), but not one or more "Damaged Units" or certain "Damaged Common Areas" (each as defined in Section 16.4.1 below) as set forth in Sections 16.4.1 and 16.4.2 below, then Repair and Reconstruction shall mean the repairing, restoring, and/or reconstructing, as applicable, of the remainder of the Damaged Building in accordance with the terms of Section 16.5.1 below. Notwithstanding any language to the contrary herein, in no event shall Landlord be required to perform, or cause to be performed, any work of any kind related any Repair and Reconstruction prior to Landlord's actual receipt of all Property Insurance Proceeds.

16.4. **Scope of Damage or Destruction.** The rights of the parties in the event of damage or destruction shall be determined based on the scope of such damage or destruction, which shall be determined as follows:

16.4.1. **Total Damage or Destruction.** Any damage or destruction that causes sixty (60) or more Units within the Condominium Project to be deemed by Landlord, in Landlord's reasonable judgment, to be uninhabitable for any period of time (collectively, the "**Damaged Units**"), shall be deemed a "**Total Destruction**" of the Condominium Project. In the event of a Total Destruction, Landlord shall have the right and option, in its sole and absolute discretion, to either (i) perform, or cause to be performed, the Repair and Reconstruction of the Condominium Project, (ii) terminate this Lease and the entire Condominium Project, or (iii) terminate this Lease and the Condominium Project with respect only to the Damaged Units and any common areas or other areas within the Condominium Project that are also damaged (collectively, the "**Damaged Common Areas**"), and perform, or cause to be performed, the Repair and Reconstruction of the remaining portions of the Condominium Project, which shall



include razing, clearing and disposing of the Damaged Units and Damaged Common Areas, all as more fully set forth in Section 16.5 below.

16.4.2. Partial Damage or Destruction. Any damage or destruction that causes fewer than sixty (60) Units within the Condominium Project to be deemed by Landlord, in Landlord's reasonable judgment, to be Uninhabitable shall be deemed a "**Partial Destruction**" of the Premises and the Building. In the event of a Partial Destruction, if the Property Insurance Proceeds are sufficient to pay all costs and expenses of the Repair and Reconstruction of the Damaged Building, then Landlord shall perform, or cause to be performed, all Repair and Reconstruction of the Damaged Building. If the Property Insurance Proceeds are not sufficient to pay all costs and expenses of the Repair and Reconstruction of the Damaged Building, then Landlord shall have the right and option, in its sole and absolute discretion, to (i) perform, or cause to be performed, the Repair and Reconstruction of the Damaged Building, (ii) terminate this Lease and the entire Condominium Project, or (iii) terminate this Lease and the Condominium Project with respect only to the Damaged Units and any Damaged Common Areas and perform, or cause to be performed, the Repair and Reconstruction of the remaining portions of the Damaged Building, which shall include razing, clearing and disposing of the Damaged Units and Damaged Common Areas, all as more fully set forth in Section 16.5 below.

16.5. Procedures in the Event of Damage or Destruction. In the event of any damage or destruction to the Condominium Project, the rights and obligations of the parties with respect to the damaged or destroyed portion of the Condominium Project, including, as applicable, Damaged Units, or Damaged Common Areas (as applicable, the "**Damaged Property**") shall be as set forth below:

16.5.1. Repair and Reconstruction. In the event that Landlord elects or is required to perform, or cause to be performed, the Repair and Reconstruction of the Damaged Property, then upon receipt of all Property Insurance Proceeds, or at such earlier time as determined by Landlord in its sole discretion, Landlord shall perform, or caused to be performed, all Repair and Reconstruction of the Damaged Property. In addition, in the event that Landlord elects to terminate this Lease with respect only to the Damaged Units and any Damaged Common Areas, as set forth above, then Landlord shall perform, or cause to be performed, the Repair and Reconstruction of the remainder of the Damaged Building, without repairing, reconstructing, and restoring the Damaged Units or the Damaged Common Areas (but shall raze and clear the Damaged Units and Damaged Common Areas), so that the remainder of the Damaged Building: (i) is reasonably repaired so as not to include the Damaged Units or the Damaged Common Areas, (ii) is structurally sound; harmonious with the surrounding properties, buildings and improvements (including, without limitation, any remaining portions of the Condominium Project), and with the remainder of the Project; and aesthetically pleasing in Landlord's sole and absolute discretion, and (iii) satisfies all applicable building codes, zoning ordinances, and other applicable laws.

16.5.2. Termination of Lease and the Condominium Project. In the event that Landlord elects to terminate this Lease and the Condominium Project with respect to the Damaged Property in accordance with the rights granted to Landlord herein related thereto, then: (i) this Lease shall immediately be terminated with respect to the Damaged Property, and neither

party shall have any further obligations to the other except as otherwise expressly set forth herein, (ii) the Damaged Property shall no longer be subject to this Lease, the Condominium Project, the Plat or the Condominium Declaration, (iii) in the event of a Partial Destruction, the remaining property, without the Damaged Property, shall continue in all respects as the Condominium Project under the Condominium Act, (iv) to the extent required by applicable law, or requested by Landlord, all applicable parties (including, without limitation, all Unit Owners and the Owners Association) shall promptly execute, deliver and record a termination of this Lease, the Condominium Project, the Plat, and/or the Condominium Declaration, with respect to the Damaged Property, (v) all easements, rights, licenses and benefits granted to Tenant herein or in connection herewith, to the extent same are appurtenant to the Damaged Property, shall be terminated, and (vi) the Damaged Property and/or improvements related thereto shall immediately revert back, in fee simple, to Landlord in the same manner as described in Section 3.4 of this Lease. In addition, Landlord shall apply the Property Insurance Proceeds to the razing, clearing, removing, and disposing of the Damaged Property from the Airspace (collectively, the "Razing Costs").

16.5.2.1. Reimbursement to Tenant. In the event that Landlord elects to terminate this Lease and the Condominium Project with respect to the Damaged Property in accordance with the rights granted to Landlord herein related thereto, Tenant shall be entitled to reimbursement equal to the fair market value of Tenant's interest in the Damaged Property, valued immediately prior to the applicable damage or destruction, pursuant to the method of valuation set forth in Sections 3.5.2 and 3.5.3 above; provided, however, that Tenant's right to such reimbursement shall be limited to the amount of any Property Insurance Proceeds remaining after payment of all Razing Costs. Following payment of all Razing Costs, Landlord shall deliver to Tenant any such remaining Property Insurance Proceeds, to the extent of Tenant's interest in the Damaged Property, valued as set forth above, as reimbursement for Tenant's interest in the Damaged Property. In no event shall Landlord be liable to pay to Tenant any amount of any difference between the fair market value of Tenant's interest in the Damaged Property, valued as set forth above, and the amount of any Property Insurance Proceeds remaining following payment of all Razing Costs. In the event that the amount of the remaining Property Insurance Proceeds exceeds the value of Tenant's interest in the Damaged Property, valued as set forth above, Landlord shall be entitled to retain such remaining Property Insurance Proceeds as compensation for damage to Landlord's reversionary and other interests in the Damaged Property.

16.6. Continuation of Lease. Unless Landlord exercises any one of its options to terminate all or a portion of this Lease as set forth herein, this Lease shall not terminate, be forfeited, or be affected in any other manner, and to the fullest extent permitted by applicable law, Tenant hereby waives any right to quit or surrender the Premises or any part of the Premises, because of any damage or destruction or any resulting untenability or uninhabitability. Unless and until this Lease has been validly terminated, all of Tenant's obligations under this Lease, including, without limitation, the obligation to pay Rent, shall continue unabated, subject to all other terms and provisions of this Lease.

16.7. Use by Landlord of Airspace Removed from the Lease. If Landlord elects to terminate this Lease with respect to all or any portion of any Damaged Property as set forth

above, then Landlord, at any time, and from time to time, thereafter may (but shall not be obligated to) construct other buildings or improvements on, within, around, or near the previous location of the Damaged Property (the "New Improvements"). The New Improvements and/or any Airspace removed from the Lease may be used for any purpose whatsoever in Landlord's sole and absolute discretion and shall not be subject to this Lease, the Condominium Declaration or any conditions, covenants, or restrictions of same.

## Article 17

### CONDEMNATION

17.1. **Condemnation.** If at any time, or from time to time, all or any part of the Premises or any improvements therein or thereon shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article 17 shall apply. A voluntary sale or conveyance of all or any part of the Premises in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If the Premises, any improvements therein or thereon, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, Landlord or Tenant, as applicable, shall give prompt written Notice to the other party of any such proceeding or proposed acquisition. Landlord may, at its option, represent Tenant in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Premises, any improvements therein or thereon, or any portion thereof, and Tenant hereby appoints Landlord as Tenant's attorney-in-fact for the purposes of such representation.

17.2. **Condemnation Awards.** Tenant hereby agrees that any and all compensation, damages and other proceeds from any such taking by power of eminent domain ("Condemnation Award") shall be made payable to Landlord, and shall be distributed by Landlord to Tenant only after Landlord has received its fair share of same, as further set forth in Section 17.3 below.

17.3. **Allocation of Condemnation Awards.** Whether any condemnation of the Premises (or any improvements therein or thereon) is complete or partial, (i) Tenant shall only receive that portion of the Condemnation Award that relates directly to Tenant's interest in the Premises, which interest shall be valued as a leasehold interest for the then-remaining portion of the Term of the Lease (assuming no exercise of any Extension Term, unless an Extension Term has then actually been exercised), and (ii) Landlord shall receive its fair share of such Condemnation Award based on the value of its fee estate hereunder (assuming no exercise of any Extension Term, unless an Extension Term has then actually been exercised).

17.4. **Repair and Reconstruction.** Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article 16 above for cases of damage or destruction. In connection therewith, the provisions of said Article 16 dealing with sufficiency or insufficiency of insurance proceeds shall be applicable to the Condemnation Award as received by Landlord.

## Article 18

### TRANSFER OF TENANT'S INTERESTS

18.1. **Transfers Prohibited**. Except for such assignment as may be deemed to have occurred upon Tenant subjecting its leasehold interest as Tenant under this Lease to the Condominium Declaration at the time the Condominium Project was created, as further described below, Tenant shall not, whether by operation of Law or otherwise, whether voluntary or involuntary, and whether directly or indirectly, transfer, assign or convey any of its interest in this Lease, the Premises (any improvements therein or thereon) or any portion thereof without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion.

18.2. **Conveyance to Unit Owners**. Any provision of Section 18.1 to the contrary notwithstanding, Tenant shall be permitted to subject the Premises to and encumber the Premises with a leasehold condominium regime in accordance with applicable Laws, including, without limitation, the Condominium Act, and in connection with same, Tenant shall be permitted to convey the individual units related to such condominium regime, together with any applicable undivided interests in the common elements of the condominium regime, and all other applicable portions of its interests in its leasehold estate herein related thereto (each, collectively a "Unit") to third parties (each, a "Unit Owner"); provided, however, that all such conveyances shall be subject to all of the terms and conditions of this Lease and the Master Declaration, and in no event shall any such conveyances affect any obligations of Tenant or rights of Landlord under this Lease, including, without limitation, Landlord's Early Repurchase Option, all of which shall continue in full force and effect notwithstanding any such conveyance. In addition, Landlord may require, upon each and every sale, conveyance or other transfer of any Unit from one Unit Owner to any successor Unit Owner, a reasonable administrative fee in an amount determined by Landlord, to reimburse Landlord for the reasonable costs and time expended by Landlord related to any transfer. Landlord shall recoup such costs from the transferring Unit Owner through the Owners Association.

18.3. **Term of Unit Conveyance**. The interests of Unit Owners in the Premises shall expire simultaneously upon the earlier to occur of expiration of the Term of this Lease, or the Early Repurchase of this Lease, unless otherwise approved by Landlord in writing, which approval may be granted or withheld in Landlord's sole and absolute discretion.

18.4. **Required Provisions of Unit Conveyances**. Tenant shall not grant any Unit Owner any rights greater than Tenant's rights under this Lease, the Master Declaration, and all applicable Laws. For purposes of clarity, each conveyance of a Unit shall contain provisions that are at least as restrictive as the restrictions contained in this Lease, including, without limitation, Article 7 (Use), Article 9 (Maintenance), Article 10 (Alterations), Article 11 (Prohibited Liens), Article 12 (Hazardous Substances), and Section 25.1 (Estoppel Certificates). To that end, each and every Unit conveyance shall contain the following provision:

GRANTEE, BY ACCEPTING THIS CONVEYANCE OF THE PROPERTY,  
HEREBY ACKNOWLEDGES AND UNDERSTANDS that (a) the conveyance

of the Property described in this instrument is subject and subordinate to that certain Residential Tower Airspace Lease, recorded in the Recorder's Office of Salt Lake County, State of Utah, as Entry No. 11134083, in Book 9905 beginning at Page 3602, on February 14, 2011, and any extensions or modifications thereof, including without limitation, (i) any and all restrictions, limitations, prohibitions, terms and conditions set forth therein, and (ii) all rights and benefits of the "Landlord" (defined therein) and other third parties described therein, and (b) the Property is a leasehold condominium as defined in the Utah Condominium Ownership Act.

18.5. **Unit Owners.** Subject to Section 26.1, Tenant shall, upon request by Landlord from time to time, furnish to Landlord a list of the then existing Unit Owners, together with the names and notice addresses of such Unit Owners, the Units conveyed to each such Unit Owners, copies of each such conveyance document, and such other information as may reasonably be requested by Landlord.

18.6. **Owners Association.** Landlord acknowledges that in conjunction with the establishment of the Condominium Project and the conveyance of Units to Unit Owners, Tenant has established, has caused to be established, or will establish an owners' association (the "**Owners Association**") to manage and govern the affairs of the Condominium Project and the rights and obligations of the Unit Owners therein. Subject to all other provisions of this Lease, Landlord acknowledges and agrees that pursuant to and upon recordation of the Plat and accompanying Condominium Declaration, the Owners Association will automatically and without further action become the "Tenant" under the Lease, and thereby shall be deemed to have accepted and assumed all of Tenant's rights, duties, liabilities, responsibilities, and obligations under this Lease (including without limitation all obligations of Tenant to Indemnify Landlord), and such Owners Association shall thereafter take and do all such actions as are required or permitted by Tenant to take and do under this Lease, and shall be deemed to have agreed to Indemnify City Creek Living, LLC from and against any and all losses, costs, claims, liabilities, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that City Creek Living, LLC suffers or incurs as a result of the Owners Association acts or omissions in connection with such assumption of City Creek Living, LLC's rights and obligations under this Lease. Further, by acceptance of a Unit conveyance, each Unit Owner shall be deemed to have assumed, jointly and severally with the Owners Association, all obligations, duties, and responsibilities of Tenant under the Lease to the extent such obligations, duties, and responsibilities relate to such Unit Owner's Unit, and shall be deemed to have agreed to Indemnify Tenant, jointly and severally with the Owners Association, from and against any and all losses, costs, claims, liabilities, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that Tenant suffers or incurs as a result of such Unit Owner's acts or omissions in connection with such assumption of Tenant's rights and obligations, duties, and responsibilities relating to such Unit Owner's Unit. Any part of the foregoing to the contrary notwithstanding, Tenant shall have the right to formally assign to the Owners Association, by written document, all of its rights and obligations under this Lease (provided no such written documents shall be necessary to effectuate such assignment).

18.7. **Rental Restrictions.** After the Condominium Project is constructed, the Unit Owners may rent, lease or allow occupancy of their respective Units by other third parties, subject to all other terms and conditions of this Lease (including, without limitation, the terms and provisions of Article 7 above) and the Master Declaration, provided such renting, leasing, or other occupancy is evidenced by a written agreement.

## Article 19

### MORTGAGES

19.1. **No Mortgages.** No mortgages, deeds of trust, or other encumbrances (or documents related thereto) (each a "Mortgage") shall be placed on any portion of the Premises as security for the payment of a debt or obligation, except that a Mortgage may be placed on a Unit in the Condominium Project (subject to this Lease). The foregoing notwithstanding, Landlord hereby reserves the right to encumber any portion of Landlord's interest in the Premises by a Mortgage.

19.2. **Subordination of Unit Owner Mortgages.** Landlord acknowledges and agrees that Unit Owners may encumber their interests in their respective Units by a Mortgage. Except as otherwise expressly agreed by Landlord in writing, any and all such Mortgages shall in all respects encumber only a Unit Owner's interest in such Unit Owner's Unit, and shall be in all respects subject and subordinate to (i) the terms and provisions of this Lease and all amendments hereto and replacements hereof, (ii) Tenant's leasehold estate, and (iii) Landlord's fee estate, including, without limitation, Landlord's Early Repurchase Option, and upon any expiration or earlier termination of this Lease, any and all Mortgages encumbering any Unit Owner's interest in such Unit Owner's Unit shall cease to exist and shall be of no further force or effect, as set forth in Section 3.4 above. Further, this Lease and all amendments hereto and replacements hereof, Tenant's leasehold estate, and Landlord's fee estate, shall be prior and superior to any and all Mortgages and the rights of all beneficiaries or lenders of such Mortgages (each, a "Mortgagee"). Any inconsistency between the terms of any Mortgage and the terms of this Lease, as same may be amended, shall be resolved in favor of this Lease, as same may be amended. In no event shall Landlord be obligated to subordinate its fee estate to any Mortgage.

19.3. **Foreclosure Events.** Any: (a) foreclosure sale (or trustee's sale, assignment in lieu of foreclosure, bankruptcy sale, or similar transfer) affecting any Unit Owner's Unit; or (b) Mortgagee's exercise of any other right or remedy under a Mortgage or Law that divests any Unit Owner of its Unit, shall not impair any estate of Landlord or right of Landlord under this Lease and shall transfer only such Unit Owner's interest in such Unit Owner's Unit.

## Article 20

### QUIET ENJOYMENT

20.1. **Quiet Enjoyment.** So long as Tenant is not in Default under this Lease and as otherwise permitted by this Lease, Landlord covenants that Tenant shall and may peaceably and quietly have, hold, and enjoy the Premises for the Term without molestation, hindrance, or

disturbance by or from Landlord, subject to the terms of this Lease (including without limitation that provisions of Section 20.5 below), the Permitted Exceptions and the Third-Party Rights. Notwithstanding the foregoing, the parties agree that other future improvements are anticipated by Landlord on or within the City Creek Center Property and/or surrounding areas (the "**Landlord Improvements**"). Such Landlord Improvements may affect Tenant's use and quiet enjoyment of the Premises for Tenant's normal permitted operations. Tenant hereby (a) accepts any and all inconveniences associated with any construction of the Landlord Improvements, (b) agrees that the performance of any construction of the Landlord Improvements shall not constitute a constructive eviction nor shall Tenant be entitled to any damages, indemnity, or suspension, diminution, abatement, or reduction of Rent, (c) agrees that such construction shall not breach this covenant of quiet enjoyment, and (d) acknowledges and agrees that Landlord shall not, for any reason, be responsible or liable to Tenant for any direct or indirect injury to Tenant, or interference with Tenant's business, arising from the construction, repair or maintenance of any Landlord Improvements.

20.2. **Access and Inspection.** Notwithstanding anything to the contrary in this Lease, Landlord and its agents, representatives, and designees shall have the right to enter the Condominium Project, including any Unit, during regular business hours; provided, however, Landlord shall provide Tenant at least three (3) Business Days Notice, or in an emergency such Notice (if any) as is reasonably practicable under the circumstances, before it enters the Condominium Project, including any Unit, to: (a) ascertain whether Tenant is complying with this Lease; (b) cure Tenant's Defaults; (c) inspect the Condominium Project, any Alteration, and any Unit; or (d) perform such tests, borings, and other analyses as Landlord determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substance Discharge, which tests shall be performed only at such times as are reasonably approved by Tenant; provided, further, (i) Landlord shall provide Tenant at least five (5) days' Notice, or in an emergency such Notice (if any) as is reasonably practicable under the circumstances, before it conducts any invasive testing on, inspects non-public areas of, or conducts formal third-party inspections of, the Condominium Project or any Unit; (ii) Tenant shall have the right to accompany Landlord during such activities; and (iii) access to any portion of the Condominium Project conveyed to any Unit Owner shall be further subject to the rights of and reasonable advance notice to such Unit Owner. In entering the Condominium Project, Landlord and its designees shall not unreasonably interfere with operations on the Condominium Project and shall comply with Tenant's reasonable instructions. Landlord shall Indemnify Tenant against any claims arising from Landlord's entry upon the Condominium Project (except upon termination of this Lease or an Event of Default), except to the extent such claims arise out of Tenant's willful acts or omissions or its negligence.

20.3. **Landlord's Improvements.** This Lease shall not be construed as limiting Landlord's rights in any way to develop, construct, renovate, demolish, replace, or operate (or permit the development, construction, renovation, demolition, replacement, or operation of) any improvements and uses (including, without limitation, retail, residential, commercial, business, or office improvements and uses) within or upon any portion of the City Creek Center Property (including, without limitation, under, over, or around the Airspace).

20.4. **Title.** Notwithstanding anything to the contrary in this Lease, all improvements and all equipment constituting part of the Condominium Project shall during the Term be owned by, and belong to Tenant, and Tenant shall be entitled to all benefits and burdens of ownership of such improvements and equipment, including title, depreciation, tax credits, and all other tax items with respect thereto.

20.5. **Noise; Dust; Vibrations; Odors.** Notwithstanding any language to the contrary in this Lease, Tenant and, upon acquisition of any Unit each Unit Owner, hereby acknowledges and understands that the Premises, the Use Areas, and the Condominium Project is located within a downtown urban setting surrounded by buildings, structures and improvements that are, or may be, used for commercial, residential, office, retail, industrial, manufacturing and other various purposes during all hours of the day and night. These uses located near or around the Premises, the Use Areas, and the Condominium Project may cause, create or emit dust, dirt, smoke, steam, vibrations, shaking, noises, sounds, odors, smells, lights or other emissions, discharges or conditions at any or all hours of the day and/or night that Tenant, Unit Owners and/or other Persons may find disturbing, disruptive, annoying, or irritating, or which may interrupt, inconvenience, or interfere with the lifestyles, routines, rituals, customs, habits, standards, schedules, or practices of Tenant, such Unit Owners and/or such other Persons. All such parties understand that such dust, dirt, smoke, steam, vibrations, shaking, noises, sounds, rackets, odors, smells, lights, glows or other emissions, discharges or conditions may directly or indirectly affect all or portions of the Premises, the Use Areas, and the Condominium Project, and, by the acceptance of this Lease and any and all instruments of conveyance, Tenant, all Unit Owners and/or all other applicable Persons shall be deemed to have understood, accepted and agreed to same. Tenant, all Unit Owners and/or all other applicable Persons further agree and acknowledge that the Owners Association and Landlord (together with all affiliates, subsidiaries, employees, directors, members, managers, and/or officers of each of the foregoing) shall not have any liability, duty or responsibility of any kind for any such dust, dirt, smoke, steam, vibrations, shaking, noises, sounds, rackets, odors, smells, lights, glows or other emissions, discharges or conditions, or for any mitigation or remediation thereof, and all Unit Owners accept the conveyance or transfer of their respective Units subject thereto.

## Article 21

### EVENTS OF DEFAULTS; REMEDIES

21.1. **Definition of Event of Default.** An "Event of Default" means the occurrence of any one or more of the following:

21.1.1. **Monetary Default.** Any failure by Tenant (i) to pay any Rent or other sums and amounts (including without limitation, Base Rent, Real Estate Taxes and insurance premiums), or (ii) to maintain any insurance required under Article 15 hereof, when and as this Lease requires, which failure continues for fifteen (15) days after Notice from Landlord (a "Monetary Default").

21.1.2. **Use Default.** Any failure by Tenant to comply with (i) any use restrictions, limitations, or prohibitions in Article 7 above, or (ii) any other terms, provisions, conditions,



covenants, duties, or obligations described in Article 7 above, shall be considered a default without any need for any notice, grace, or cure periods (any of the foregoing shall be known as a "Use Default").

21.1.3. Termination Default. Any failure by Tenant to (i) timely and peaceably turn over to Landlord possession to, and otherwise move out of, the Condominium Project and/or all Units on or before the Early Repurchase Date, or the expiration of the Term, as applicable, (ii) deliver the Condominium Project and/or all Units in the Condominium Project to Landlord on or before the Early Repurchase Date, or the expiration of the Term, as applicable in the condition required by Section 3.4 above, (iii) timely provide any documentation requested by Landlord under Section 3.4 above, and (iv) otherwise timely satisfy all terms, condition, and obligations of Tenant and/or all Unit Owners described in Section 3 above (any of the foregoing shall be known as a "Termination Default").

21.1.4. Nonmonetary Default. Any failure of Tenant to comply with any affirmative or negative covenant or obligation in this Lease other than the Events of Default described in Section 21.1.1, Section 21.1.2 and Section 21.1.3 above, or any breach by Tenant of any representation or warranty hereunder (as of the date made or deemed made), which failure Tenant does not cure within thirty (30) days after Notice from Landlord, or, in the case of a nonmonetary default that cannot with due diligence be cured within thirty (30) days after the date of such Notice, if Tenant shall not (a) within thirty (30) days after the date of such Notice advise Landlord of Tenant's intention to take all reasonable steps to cure such Nonmonetary Default; (b) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (c) complete such cure within a reasonable time under the circumstances, but in no event later than ninety (90) days after Landlord's delivery of such Notice (a "Nonmonetary Default"). Nonmonetary Defaults shall further include, without limitation, the following:

21.1.4.1. Bankruptcy or Insolvency. Tenant ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any bankruptcy proceeding, whether voluntary or involuntary, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Tenant's assets or Tenant's interest in this Lease (unless such appointment, attachment, execution or other seizure was involuntary and is contested with diligence and continuity and is vacated and discharged all within ninety (90) days).

21.1.4.2. Assignment to Creditors. The making by Tenant of any general assignment for the benefit of creditors.

21.1.4.3. Maintenance. Any failure by Tenant to timely perform any maintenance obligations of any kind hereunder.

21.1.4.4. Other Obligations. Any failure by Tenant to timely perform any other obligations or duties of any kind hereunder.

21.2. **Remedies.** If an Event of Default occurs, then Landlord shall, at Landlord's option, have any and all remedies as may be available at law or in equity or under any other terms of this Lease, including specifically, without limitation, any or all of the remedies set forth below, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), and except as provided by Utah statutory law in effect at the time, Landlord may, subject to the express limitations herein provided, pursue any or all of such rights and remedies, at the same time or otherwise.

21.2.1. **Suits Before Expiration Date.** Landlord may sue for damages or to recover Rent from time to time at Landlord's election.

21.2.2. **Damages.** Landlord may recover from Tenant all damages Landlord incurs by reason of Tenant's Default, including reimbursement of Landlord's reasonable out of pocket costs, including Legal Costs and bank fees for checks returned by the bank, and any and all other damages legally recoverable by Landlord. Landlord may recover such damages at any time after Tenant's Default, including after expiration of the Term. Notwithstanding any Law to the contrary, Landlord need not commence separate actions to enforce Tenant's obligations for each month's Rent not paid, or each month's accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such Rent and damages.

21.2.3. **Damages for Use Defaults.** Tenant hereby acknowledges that the Condominium Project is part of the overall Project and that certain actions or omissions by Tenant and/or any Unit Owner could have consequences, effects, implications, and/or ramifications (whether positive or negative) on the entire Project (or portions thereof) and/or properties surrounding the Project. Consequently, the parties agree that in addition to and without limiting the generality of the foregoing provisions of this Section 21.2.3, Landlord shall be entitled to certain special damages in connection with any Use Default. Landlord and Tenant hereby further agree that damages relating to Use Defaults would be very difficult and/or impossible to quantify. Therefore, in the event of each and every distinct Use Default, in addition to any other remedies described herein, Landlord shall be entitled to liquidated damages in the amount of two percent (2%) of the then-current cumulative total annual Common Project Rent amount, which total annual two percent (2%) amount can be charged for each and every day, and for each and every Use Default that occurs (the "**Use Default Liquidated Damages**"). Tenant shall not be entitled to any notice, grace, or cure periods with respect thereto. In addition, Landlord and Tenant hereby agree that after the creation of the Condominium Project, Landlord will have the right to directly enforce the Use Default Liquidated Damages (and all other damages) against both the Owners Association and/or any and all specific Unit Owners. Further, each Unit Owner (or each occupant, lessee, or permittee of any Unit Owner) and/or each Unit that incurs a Use Default shall constitute a separate and distinct Use Default giving rise to additional Use Default Liquidated Damages. By way of example only, if (whether simultaneously or at different times) Unit Owner "A" is causing a single (1) Use Default for five (5) days; Unit Owner "B" is causing a single (1) Use Default for (5) days (which may or may not be the same Use Default as Unit Owner "A"); and Unit Owner "C" is causing two (2) Use Defaults for ten (10) days, then Landlord shall be entitled to Use Default Liquidated Damages equal to (i) two percent (2%) of the then-current cumulative total annual Common Project Rent amount, multiplied by (ii) thirty (30) [which thirty (30) is derived by adding five (5) Use

Defaults from Unit Owner "A" (one (1) Use Default for each day the applicable Use Default occurred); five (5) Use Defaults from Unit Owner "B" (one (1) Use Default for each day the applicable Use Default occurred); and twenty (20) Use Defaults from Unit Owner "C" (two (2) Use Defaults for each day the applicable Use Defaults occurred)]. The entire amount of the Use Default Liquidated Damages may, at Landlord's option, be enforced against the Owners Association, or against each Unit Owner based on their respective Use Defaults (5/30ths to Unit Owner "A"; 5/30ths to Unit Owner "B"; and 20/30ths to Unit Owner "C"). All Use Default Liquidated Damages shall be immediately due and payable on demand from Landlord. Any Use Default Liquidated Damages not paid within ten (10) days after any demand is made therefor shall incur Default Interest. In addition to the foregoing remedies, Landlord shall have the right (but not the obligation) to enter into any Units; any part of the Building; the Common Areas; any balconies; terraces, and/or decks; and/or the Use Areas, using any means necessary to cure, in any manner deemed reasonable and/or necessary by Landlord in Landlord's sole and absolute discretion, any Use Default. Notwithstanding any language to the contrary in this Lease or the Condominium Declaration, such self-help remedy may be exercised by Landlord without Tenant being entitled to any notice, grace, or cure periods with respect thereto.

21.2.4. Damages for Termination Defaults. In the event of a Termination Default, Landlord shall be entitled to the following remedies, which are in addition to, and not in lieu of, any and all other remedies available under the terms of this Lease, at law or in equity:

(A) Landlord shall have the right to unilaterally record with the Salt Lake County Recorder a notice of termination against one, some or all of the Units and/or against the Condominium Project in general, which notice shall evidence the extinguishment of (i) all rights of any kind of Tenant and/or any Unit Owner as granted under this Lease, or (ii) of any use, occupancy or possession of any Unit or any other portion of the Condominium Project. No approval, consent, or signature of Tenant or any Unit Owner shall be necessary or required prior to Landlord's recordation or same;

(B) Landlord shall have the right to evict any and all Unit Owners and/or obtain full rights of use, occupancy and possession of the Condominium Project through an unlawful entry and/or detainer action (or any similar action);

(C) Tenant shall pay to Landlord one hundred percent (100%) of all of Landlord's costs in removing, or causing to be removed, from the Condominium Project, any Unit Owner or other occupant in any Unit (including without limitation, any and all court costs, attorneys' fees and other similar costs); and

(D) The Pay-Off Amount shall be decreased by ten percent (10%) as liquidated damages, which amount the parties hereby agree is a fair estimate of the value of Landlord's damages in connection with a Termination Default.

Tenant shall not be entitled to any notice, grace, or cure periods with respect to any Termination Default and in all events Tenant and all Unit Owners must timely comply with all aspects of Section 3.4 above.

21.2.5. Injunction of Breaches. Whether or not an Event of Default has occurred, Landlord may seek and obtain a court order enjoining Tenant and/or any Unit Owner from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Use Default, Termination Default or Nonmonetary Default.

21.2.6. Termination. To the fullest extent permitted by applicable law, and in accordance with all applicable law, Landlord shall have the right, at its option, to terminate this Lease in the event any Event of Default continues after any notice, cure or grace periods provided herein.

21.2.7. Equitable Remedies. Without limiting the generality of any of the forgoing, Landlord shall have the right to pursue and obtain a remedy for specific performance in all instances if an Event of Default occurs.

21.3. Landlord's Right to Cure. If Tenant and/or any Unit Owner at any time fails to make any payment or take any action this Lease requires, then Landlord, after five (5) Business Days' Notice to Tenant and/or any Unit Owner, or in an emergency such Notice (if any) as is reasonably practicable under the circumstances, and without waiving or releasing Tenant and/or any Unit Owner from any obligation or Default and without waiving Landlord's right to take such action as this Lease may permit as a result of such Default, may (but need not) make such payment or take such action. Tenant and/or any Unit Owner shall reimburse Landlord, as Rent, for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred, by Landlord in exercising its cure rights under this Section 21.3; and (b) Default Interest on the amounts referenced in clause (a) above.

21.4. Waivers. LANDLORD AND TENANT (FOR ITSELF AND ALL UNIT OWNERS) IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD, TENANT AND/OR ANY UNIT OWNER(S) REGARDING THE PREMISES, TENANT'S USE OR OCCUPANCY, AND/OR ANY UNIT OWNER'S USE OR OCCUPANCY, OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN LANDLORD, TENANT, AND/OR ANY UNIT OWNER(S), OR ANY ACTIONS OF LANDLORD IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS LEASE. TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT (FOR ITSELF AND ALL UNIT OWNERS) WAIVES ANY RIGHT OF REDEMPTION PROVIDED FOR BY LAW. IN ADDITION, TO THE FULLEST EXTENT PERMITTED BY LAW, TENANT WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION BY LANDLORD TO ENFORCE THIS LEASE OR LANDLORD'S RIGHTS AND REMEDIES UNDER THIS LEASE.

21.5. No Waiver. No failure by Landlord to insist upon strict performance of any covenant, agreement, term, or condition of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default, shall waive any such Default or such covenant, agreement, term, or condition. No covenant,

agreement, term, or condition of this Lease to be performed or complied with by Tenant or any Unit Owner, and no Default, shall be modified except by a written instrument executed by Landlord. No waiver of any Default shall (i) affect or alter this Lease, or (ii) be construed or deemed as a waiver of any other Default hereunder. Each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default of such covenant, agreement, term or condition of this Lease.

## Article 22

### NOTICES

All Notices shall be in writing and shall be addressed to Landlord and Tenant (and their designated copy recipients) as set forth below:

To Landlord: City Creek Reserve, Inc.  
15 East South Temple, Suite 800  
Salt Lake City, UT 84150  
Attn: Mark Gibbons

With Copies To: City Creek Reserve, Inc.  
15 East South Temple, Suite 800  
Salt Lake City, UT 84150  
Attn: Vice President

Office of General Counsel  
50 East North Temple Street, 2WW  
Salt Lake City, UT 84150-5100  
Attn: Associate General Counsel - Domestic

To Tenant: City Creek Living, LLC  
15 East South Temple, Suite 800  
Salt Lake City, UT 84150  
Attn: Mark Gibbons and Steve Romney

Notices (including any required copies) shall be delivered by personal delivery or by Federal Express or other overnight (one-night) courier service to the addresses set forth above, in which case they shall be deemed delivered on the date of actual delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either party may change its address by giving Notice in compliance with this Lease. Notice of such a change of address shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of its client.

### Article 23

#### NO BROKER

Each party represents and warrants that it did not engage or deal with any broker or finder, in connection with this Lease and no Person is entitled to any commission or finder's fee on account of any agreements or arrangements made by such party. Each party shall Indemnify the other party against any breach of the representation forth in this Article 23.

### Article 24

#### NONRECOURSE

Notwithstanding anything to the contrary in this Lease, the liability under this Lease of Landlord for damages or otherwise, shall be enforceable against, and shall not extend beyond, its interest in the Premises. To the fullest extent permitted by Law, no property or assets whatsoever, except Landlord's interest in the Premises (including the proceeds thereof), shall be subject to levy, execution or any other enforcement procedure for the satisfaction of any remedies (monetary or otherwise) of Tenant arising under or in connection with this Lease. No shareholder, officer, member, manager, director, agent, representative, or employee of Landlord shall have any liability of any kind under this Lease.

### Article 25

#### ADDITIONAL DELIVERIES; THIRD PARTIES

25.1. **Estoppel Certificates.** Up to twice each calendar year, each party to this Lease (the "**Requesting Party**") may require the other party (the "**Certifying Party**"), to execute, acknowledge, and deliver to the Requesting Party (or directly to a designated third party) up to four original counterparts of a written statement, addressed to the Requesting Party or as such Requesting Party directs, certifying: (a) that this Lease is unmodified and in full force and effect or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications; (b) as to the Commencement Date and the scheduled Expiration Date of the Term; (c) as to the dates to which the Rent and other charges hereunder have been paid in advance, if any; (d) as to any conveyance of Tenant's interests in the Premises and this Lease to any Unit Owners; (e) whether or not, to the current actual knowledge of the Certifying Party, the Requesting Party is in Default in the performance of any covenant, agreement or condition contained in this Lease, and if so, specifying each such Requesting Party Default of which Certifying Party may have knowledge; and (f) any other information reasonably requested by the Requesting Party (an "**Estoppel Certificate**"). The Certifying Party shall sign, acknowledge, and return such Estoppel Certificate within thirty (30) days after request, even if the Requesting Party is in Default.

25.2. **Further Assurances.** Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Lease.

25.3. **Dispute Resolution Procedures.** In the event: (a) a party is in default (other than a Monetary Default by Tenant) under this Lease, subject to any applicable notice or cure provisions set forth in this Lease, and to any provisions of this Lease relating to any other remedy of Landlord, or (b) a party in good faith disputes the application of this Lease or the satisfaction of the standards specified herein:

25.3.1. **Senior Executive Settlement.** Either party may from time to time call a special meeting for the resolution of disputes. Such meeting shall be held at Landlord's offices located at Joseph Smith Memorial Building, 15 East South Temple, 8th Floor, Salt Lake City, Utah 84150 (or such other office designated by Landlord), unless another location is mutually agreed upon, within ten (10) Business Days after written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by one or more senior executives of Landlord, Tenant and any other person who may be affected in any material respect by the resolution of such dispute. Such senior executives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute ("**Senior Executive Settlement**").

25.3.2. **Mediation.** If the dispute has not been resolved through Senior Executive Settlement within thirty (30) days after the meeting described in Section 25.3.1 above, the parties shall endeavor to resolve their claims and/or disputes by mediation which, unless the parties mutually agree otherwise, shall be conducted by a recognized mediation service designated by Landlord ("**Mediation**"). The cost of the mediator shall be shared equally by the parties. Each party shall bear its own attorneys' fees and other costs incurred in connection with the Mediation. The dispute shall be mediated through informal, nonbinding joint conferences and separate caucuses with the mediator who will seek to guide the parties to a consensual resolution of the dispute. The Mediation proceeding shall be conducted within ninety (90) days (or any mutually agreed longer period) after the meeting described in Section 25.3.1 above, and shall continue until any party involved concludes, in good faith, and Notifies the other party, that the dispute will not be resolved without resort to a legal action or proceeding. The Mediation shall be held at a location within Salt Lake City, Utah, to be determined by the mediator, unless another location is mutually agreed upon by Landlord and Tenant. No minutes shall be kept with respect to any Mediation proceedings, and the comments and/or findings of the mediator and the parties, together with any written statements created solely for purposes of such Mediation, shall be non-binding, confidential, nondiscoverable, and without prejudice to the rights and remedies of any party. If the dispute is settled through the Mediation process, the decision will be implemented by written agreement signed by the parties. Written agreements reached in Mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

25.3.3. **Dispute Resolution.** If after using good faith efforts to resolve their dispute through Mediation, the dispute is not resolved, the parties shall have the right to pursue all rights and remedies available at law or equity, including, where applicable, the right of specific performance (but subject to the waiver of trial by jury as more fully described in Section 21.4 above).

25.4. **Modification.** Any modification of this Lease must be in writing signed by the party to be bound.

25.5. **Successors and Assigns.** This Lease shall bind and benefit Landlord and Tenant and their successors and assigns, but this Section 25.5 shall not limit or supersede any assignment or transfer restrictions otherwise set forth in this Lease. Nothing in this Lease confers on any Person (except Landlord and Tenant, or their successors and assigns, which shall include, without limitation, the Owners Association and Unit Owners) any right to insist upon, or to enforce against Landlord or Tenant or their successors or assigns, the performance or observance by either party of its obligations under this Lease.

## Article 26

### MISCELLANEOUS

26.1. **Confidentiality.** Neither party shall disclose or release to any third party any nonpublic financial information or nonpublic information about the other party's ownership structure given to such party by such other party, except (a) if required by Laws or in any judicial proceeding, provided that the releasing party has given the other party reasonable Notice of such requirement, if feasible, and (b) to a party's attorneys, accountants, brokers and other bona fide consultants or advisers in connection with this transaction, provided such third parties agree to be bound by this Section 26.1.

26.2. **Costs and Expenses; Legal Costs.** In the event of any litigation or dispute (except Senior Executive Settlement or Mediation) between the parties, or claim made by either party against the other, arising from this Lease or the landlord-tenant relationship under this Lease, or Landlord's enforcement of this Lease upon a Default, or to enforce or interpret this Lease or seek declaratory or injunctive relief in connection with this Lease, or to exercise any right or remedy under or arising from this Lease, or to regain or attempt to regain possession of the Premises or terminate this Lease, or in any bankruptcy proceeding affecting the other party to this Lease, the prevailing party shall be entitled to reimbursement by the non-prevailing party of its Legal Costs with Default Interest and all other reasonable costs and expenses incurred in enforcing this Lease or curing the other party's default.

26.3. **No Consequential Damages.** Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Lease by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), to the fullest extent permitted by Law, Landlord and Tenant each hereby waive, and neither party shall seek, or be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. Each party hereby specifically waives its rights to any of the above-mentioned types of damages with respect to this Lease. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.



26.4. **No Merger.** If Tenant's leasehold estate and Landlord's fee estate are ever commonly held during the Term, they shall remain separate and distinct estates and not merge. Any part of the foregoing to the contrary notwithstanding, in the event that Tenant's leasehold estate, Landlord's fee estate, and all Unit Owners' interests in all Units, are ever commonly held during the Term, the party holding such estates and interests shall have the right, in such party's sole and absolute discretion, to cause, by written, recorded instrument, the merger of such estates and interests. Absent such written, recorded instrument, however, such estates and interests shall remain separate and distinct estates and not merge.

26.5. **No Waiver by Silence.** Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Lease. No waiver by either party at any time, express or implied, of any breach of this Lease shall waive any other breach.

26.6. **Performance Under Protest.** If a dispute arises regarding performance of any obligation under this Lease, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the lesser of: (i) the Prime Rate plus two (2) percentage points, and (ii) the Usury Limit.

26.7. **Survival.** All rights and obligations that by their nature are to be performed after any expiration or termination of this Lease shall survive any such expiration or termination, whether or not expressly so stated in this Lease.

26.8. **Unavoidable Delay.** Each party's obligation to perform or observe any nonmonetary obligation under this Lease shall be suspended during such time as such performance or observance is prevented or delayed by or arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonable diligent efforts, including (without limitation) industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), loss, accidents, Laws, Government preemption, war, or riots ("**Unavoidable Delay**"). Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (a) within ten (10) days after such obligor knows of any such Unavoidable Delay; and (b) within ten (10) days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where performance of any obligation under this Lease is subject to Unavoidable Delay(s), such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance.

26.9. **No Joint Venture or Partnership.** Landlord and Tenant intend that the relationships created hereunder be solely that of landlord and tenant. Nothing herein is intended to create a joint venture, partnership, tenancy-in-common, or joint tenancy relationship between

Landlord and Tenant. Neither Landlord nor Tenant shall hold themselves out as, or represent that they are, the partner or joint venturer of the other. Without limiting the generality of the foregoing, neither Landlord nor Tenant owes any fiduciary duties to the other party.

## Article 27

### INTERPRETATION, EXECUTION, AND APPLICATION OF LEASE

27.1. **Captions.** The captions of this Lease are for convenience and reference only, and in no way affect this Lease.

27.2. **Counterparts.** This Lease may be executed in counterparts, and all counterparts taken together shall constitute one and the same agreement.

27.3. **Entire Agreement.** This Lease contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Tenant's use or occupancy of, or any interest of Tenant in, the Premises.

27.4. **Governing Law.** This Lease, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the Laws of the State of Utah, without regard to principles of conflict of laws.

27.5. **Partial Invalidity.** If any term or provision of this Lease or its application to any party or circumstance shall to any extent be invalid or unenforceable, then, at Landlord's option, in its sole and absolute discretion, (i) the remainder of this Lease, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity, and all remaining provisions of this Lease shall be valid and be enforced to the fullest extent Law allows, or (ii) Landlord may terminate this Lease.

27.6. **Principles of Interpretation.** No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Lease. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Lease. The words "include" and "including" shall be construed to be followed by the words "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Building Equipment; fee estate; leasehold estate; Premises; Use Areas; Condominium Project; structure; Building; and any other similar collective noun. Every reference to any document, including this Lease, refers to such document as modified from time to time (except, at Landlord's option, any modification that violates this Lease), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and." Any consent not to be unreasonably withheld shall also not be unreasonably conditioned or delayed.

27.7. **Notices, Consents and Approvals**. Any notice, consent, approval or other communication required or permitted to be given hereunder shall be in writing and shall be given in accordance with Article 22.

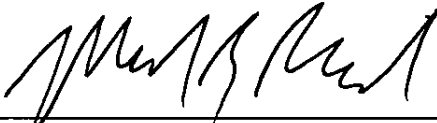
*[Signature Page Follows]*

SIGNATURE PAGE  
TO  
RESIDENTIAL TOWER AIRSPACE LEASE

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the Execution Date.


**LANDLORD:**

**CITY CREEK RESERVE, INC.,**  
a Utah nonprofit corporation

MSM By:   
Mark B. Gibbons, President

**TENANT:**

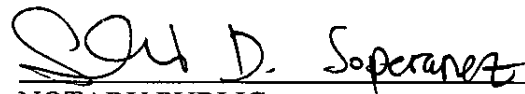
**CITY CREEK LIVING, LLC,**  
a Utah limited liability company

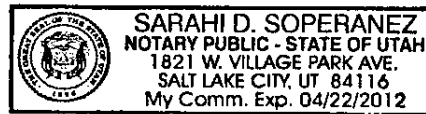
MSM By:   
Mark B. Gibbons, Manager

SIGNATURE PAGE  
TO  
RESIDENTIAL TOWER AIRSPACE LEASE

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF SALT LAKE )

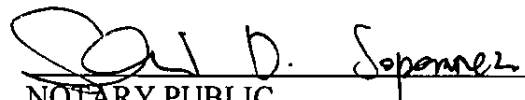
On this 11<sup>th</sup> day of February, 2011, personally appeared before me Mark B. Gibbons who, being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as President of City Creek Reserve, Inc. a Utah nonprofit corporation, for and on behalf of said corporation.

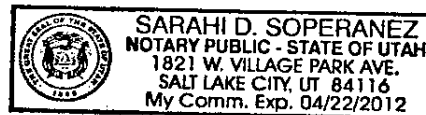
  
\_\_\_\_\_  
NOTARY PUBLIC



STATE OF UTAH            )  
                                      : ss.  
COUNTY OF SALT LAKE )

On this 11<sup>th</sup> day of February, 2011, personally appeared before me Mark B. Gibbons, who being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as the Manager of City Creek Living, LLC, a Utah limited liability company, for and on behalf of said limited liability company.

  
\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT A**  
to  
**Residential Tower Airspace Lease**  
**(The Regent at City Creek Condominiums)**

Description of Airspace

An airspace lease parcel lying and situate in the Northwest Quarter of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being a part of Lot 2, Block 75, Plat "A", Salt Lake City Survey. Basis of bearing for subject parcel being South 89°57'24" West 794.18 feet coincident with the center line of 100 South Street from the stone well monument monumentalizing the center of intersection of said 100 South Street and State Street (100 East) and a one inch copper rivet monument set flush with concrete at the intersection of Main Street and said 100 South Street. Project Benchmark being the Salt Lake Initial Point Sand Stone Monument, located at the northwest corner of South Temple and Main Streets, at the southeast corner of the Temple Square Wall, elevation 4330.83, North American Vertical Datum 1929, on the top of said sand stone monument (twelve inches square at the base, ten inches square at the top tapering the last six inches to a pyramidal point, with "Great Salt Lake Base and Meridian" chiseled on the side), elevation at the base of the monument being 4327.62 feet. Subject parcel being more particularly described as follows:

Commencing at the stone well monument monumentalizing the center line intersection of 100 South and State Streets thence South 89°57'24" West 65.03 feet coincident with the monument line of said 100 South Street; Thence North 00°02'36" West 62.69 feet to the southeast corner of said Block 75; Thence South 89°58'14" West 463.16 feet coincident with the south boundary of said Block 75; Thence vertical up to elevation 4311.00 feet and the True point of beginning of an airspace lease parcel contained between elevations 4311.00 and 4337.50 feet (Level 1); Thence South 89°58'14" West 20.02 feet coincident with said south block boundary; Thence NORTH 7.92 feet; Thence North 23°18'56" West 2.95 feet to a point on the arc of a 208.50 foot radius curve to the right center bears North 67°05'22" East; Thence northerly 14.99 feet along the arc of said 208.50 foot radius curve through a central angle of 04°07'11" to a point of compound curvature; Thence northerly 16.40 feet along the arc of a 50.00 foot radius curve to the right (center bears North 71°12'33" East) through a central angle of 18°47'27" to a point of tangency; Thence NORTH 78.65 feet; Thence EAST 21.17 feet; Thence NORTH 8.38 feet; Thence EAST 76.71 feet; Thence SOUTH 3.50 feet; Thence EAST 5.69 feet; Thence SOUTH 6.09 feet Thence WEST 5.64 feet; Thence NORTH 1.11 feet; Thence WEST 8.09 feet; Thence NORTH 4.12 feet; Thence WEST 63.21 feet; Thence SOUTH 4.03 feet; Thence EAST 4.38 feet; Thence SOUTH 45.45 feet; Thence EAST 9.30 feet; Thence SOUTH 29.88 feet; Thence WEST 11.11 feet; Thence SOUTH 44.05 feet to the point of beginning.

Thence vertical up to elevation 4337.50 feet; Thence NORTH 13.83 feet; Thence EAST 0.32 feet to the point of beginning of an airspace lease parcel contained between elevations 4337.50 and 4355.25 feet (Level 2); Thence SOUTH 1.36 feet; Thence South 76°40'52" West 18.63 feet to a point on the arc of a 300.00 foot radius curve to the left center bears North 66°01'17" East; Thence southerly 2.47 feet along the arc of said 300.00 foot radius curve through a central angle of 00°28'16"; Thence South 76°43'42" West 2.55 feet to a point on the arc of a 302.50 foot

radius curve to the right center bears North 65°38'38" East; Thence northerly 3.18 feet along the arc of said 302.50 foot radius curve through a central angle of 00°36'07"; Thence EAST 1.50 feet to a point on the arc of a 207.50 foot radius curve to the right center bears North 66°15'36" East; Thence northerly 15.55 feet along the arc of said 207.50 foot radius curve through a central angle of 04°17'41"; Thence WEST 3.74 feet; Thence NORTH 96.62 feet; Thence EAST 34.02 feet; Thence NORTH 8.95 feet; Thence EAST 26.38 feet; Thence SOUTH 6.55 feet; Thence WEST 13.34 feet; Thence SOUTH 12.28 feet; Thence EAST 9.36 feet; Thence SOUTH 6.08 feet to the point of beginning of an airspace lease parcel contained between elevations 4337.50 and 4349.04 feet; Thence EAST 33.08 feet to the point of beginning of an airspace lease parcel contained between elevations 4337.50 and 4355.25; Thence NORTH 8.33 feet; Thence WEST 20.44 feet; Thence NORTH 16.44 feet; Thence EAST 20.08 feet; Thence SOUTH 2.27 feet; Thence EAST 14.11 feet; Thence SOUTH 17.78 feet; Thence EAST 4.17 feet; Thence SOUTH 4.72 feet to the point of beginning of an airspace lease parcel contained between elevations 4337.50 and 4349.60; Thence SOUTH 90.45 feet; Thence WEST 18.07 feet to the point of beginning of an airspace lease parcel contained between elevations 4337.50 and 4349.04; Thence WEST 31.26 feet to the point of beginning of an airspace lease parcel contained between elevations 4337.50 and 4355.25; Thence WEST 4.87 feet; Thence SOUTH 1.58 feet; Thence WEST 2.00 feet; Thence NORTH 2.50 feet; Thence WEST 22.37 feet to the point of beginning.

Thence vertical up to elevation 4355.25 and the point of beginning of an airspace lease parcel contained between elevations 4355.25 and 4373.25 feet (Level 3); Thence SOUTH 1.36 feet; Thence South 76°40'52" West 18.63 feet to a point on the arc of a 300.00 foot radius curve to the left center bears North 66°01'17" East; Thence southerly 2.47 feet along the arc of said 300.00 foot radius curve through a central angle of 00°28'16"; Thence South 76°43'42" West 3.30 feet; Thence SOUTH 5.18 feet to the south boundary of said Block 75; Thence South 89°58'14" West 86.85 feet coincident with said south boundary at said elevations 4355.25 to 4373.25 feet; Thence NORTH 61.75 feet; Thence EAST 34.91 feet; Thence NORTH 4.99 feet; Thence EAST 5.66 feet; Thence NORTH 39.49 feet; Thence EAST 30.12 feet; Thence NORTH 5.68 feet; Thence WEST 6.79 feet; Thence NORTH 15.92 feet; Thence EAST 13.82 feet; Thence SOUTH 8.72 feet; Thence EAST 21.08 feet; Thence SOUTH 9.66 feet; Thence EAST 10.14 feet; Thence SOUTH 5.31 feet; Thence WEST 0.25 feet; Thence SOUTH 42.47 feet; Thence WEST 4.04 feet; Thence SOUTH 5.58 feet; Thence EAST 4.04 feet; Thence SOUTH 16.36 feet; Thence EAST 0.27 feet; Thence SOUTH 14.41 feet; Thence WEST 2.22 feet; Thence SOUTH 11.29 feet; Thence EAST 0.46 feet; Thence SOUTH 0.15 feet to the point of beginning.

Thence vertical up to elevation 4373.25 and the point of beginning of an airspace lease parcel contained between elevations 4373.25 and 4383.58 feet (Level 4); Thence SOUTH 1.36 feet; Thence South 76°40'52" West 18.63 feet to a point on the arc of a 300.00 foot radius curve to the left center bears North 66°01'17" East; Thence southerly 2.47 feet along the arc of said 300.00 foot radius curve through a central angle of 00°28'16"; Thence South 76°43'42" West 3.30 feet; Thence SOUTH 5.18 feet to the south boundary of said Block 75; Thence South 89°58'14" West 86.85 feet coincident with said south boundary at said elevations 4373.25 to 4383.58 feet; Thence NORTH 72.97 feet; Thence EAST 0.52 feet; Thence NORTH 91.55 feet; Thence EAST 80.57 feet; Thence SOUTH 11.22 feet; Thence EAST 12.64 feet; Thence SOUTH 8.71 feet; Thence EAST 7.81 feet; Thence NORTH 14.83 feet; Thence EAST 36.06 feet; Thence SOUTH 22.83 feet to a point on the arc of a 1.08 foot radius curve to the right center bears South

17°38'18" East; Thence southerly 1.52 feet along the arc of said 1.08 foot radius curve through a central angle of 80°09'07"; Thence EAST 11.29 feet; Thence SOUTH 6.05 feet; Thence EAST 0.38 feet; Thence SOUTH 12.07 feet; Thence EAST 14.12 feet; Thence NORTH 9.66 feet; Thence EAST 8.67 feet; Thence SOUTH 25.51 feet; Thence WEST 22.79 feet; Thence SOUTH 81.37 feet; Thence WEST 20.90 feet; Thence SOUTH 6.52 feet; Thence WEST 22.48 feet; Thence SOUTH 0.31 feet to the point of beginning.

Thence vertical up to elevation 4383.58 and the point of beginning of an airspace lease parcel contained between elevations 4383.58 and 4393.83 feet (level 5); Thence SOUTH 1.36 feet; Thence South 76°40'52" West 18.63 feet to a point on the arc of a 300.00 foot radius curve to the left center bears North 66°01'17" East; Thence southerly 2.47 feet through a central angle of 00°28'16"; Thence South 76°43'42" West 2.55 feet to a point on the arc of a 302.50 foot radius curve to the right center bears North 65°38'38" East; Thence northerly 10.31 feet through a central angle of 01°57'07"; Thence South 79°44'07" West 13.51 feet; Thence South 56°52'18" West 1.22 feet to a point on the arc of a 135.58 foot radius curve to the right center bears North 56°52'18" East; Thence northerly 115.60 feet through a central angle of 48°51'03"; Thence South 74°16'39" East 0.42 feet along a radial line to a point on the arc of a 135.17 foot radius curve to the right; Thence northerly 35.17 feet through a central angle of 14°54'25"; Thence South 59°24'18" East 0.17 feet along a radial line to a point on the arc of a 132.96 foot radius curve to the right; Thence northerly 6.85 feet along the arc of said 132.96 foot radius curve through a central angle of 02°57'06"; Thence EAST 10.90 feet; Thence SOUTH 7.17 feet; Thence EAST 10.83 feet; Thence NORTH 6.76 feet; Thence EAST 0.70 feet; Thence NORTH 1.98 feet; Thence EAST 56.88 feet; Thence SOUTH 28.50 feet; Thence WEST 8.75 feet; Thence SOUTH 112.83 feet; Thence WEST 11.10 feet; Thence SOUTH 6.52 feet; Thence WEST 22.48 feet; Thence SOUTH 0.31 feet to the point of beginning;

Thence vertical up to elevation 4393.83 feet and the point of beginning of an airspace lease parcel contained between elevations 4393.83 and up (level 6); Thence SOUTH 1.36 feet; Thence South 76°40'52" West 18.63 feet to a point on the arc of a 300.00 foot radius curve to the left center bears North 66°01'17" East; Thence southerly 2.47 feet through a central angle of 00°28'16"; Thence South 76°43'42" West 2.55 feet to a point on the arc of a 302.50 foot radius curve to the right center bears North 65°38'38" East; Thence northerly 10.31 feet through a central angle of 01°57'07"; Thence South 79°44'07" West 13.51 feet; Thence South 56°52'18" West 1.22 feet to a point on the arc of a 135.58 foot radius curve to the right center bears North 56°52'18" East; Thence northerly 115.60 feet through a central angle of 48°51'03"; Thence South 74°16'39" East 0.42 feet along a radial line to a point on the arc of a 135.17 foot radius curve to the right; Thence northerly 35.17 feet through a central angle of 14°54'25"; Thence South 59°24'18" East 0.17 feet along a radial line to a point on the arc of a 132.96 foot radius curve to the right; Thence northerly 6.85 feet along the arc of said 132.96 foot radius curve through a central angle of 02°57'06"; Thence EAST 10.29 feet to a point on the arc of a 209.30 foot radius curve to the right center bears South 70°49'07" East; Thence northerly 2.39 feet along the arc of said 209.30 foot radius curve through a central angle of 00°39'12"; Thence EAST 2.66 feet to a point on the arc of a 206.80 foot radius curve to the left center bears South 69°54'54" East; Thence southerly 2.30 feet along the arc of said 206.80 foot radius curve through a central angle of 00°38'16"; Thence EAST 47.06 feet; Thence SOUTH 2.50 feet; Thence EAST 6.08 feet; Thence SOUTH 19.67 feet; Thence EAST 4.46 feet; Thence SOUTH 117.67 feet; Thence WEST



11.10 feet; Thence SOUTH 6.52 feet; Thence WEST 22.48 feet; Thence SOUTH 0.31 feet to the point of beginning.

TOGETHER WITH an easement in, on, above, and over all adjacent property for any and all protrusions, awnings, overhangs, and/or other encroachments of architectural features and/or other portions of the building, structures, and/or improvements as originally designed and constructed within the airspace described above.

For tax information purposes only: A portion of Tax Parcel ID No. 16-06-101-028

**EXHIBIT B**  
to  
**Residential Tower Airspace Lease**  
**(The Regent at City Creek Condominiums)**

Description of Subject Land

A parcel lying and situate in the Northwest Quarter of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being a part of Lot 2, Block 75, Plat "A", Salt Lake City Survey. Basis of bearing for subject parcel being South 89°57'24" West 794.18 feet coincident with the center line of 100 South Street from the stone well monument monumentalizing the center of intersection of said 100 South Street and State Street (100 East) and a one inch copper rivet monument set flush with concrete at the intersection of Main Street and said 100 South Street. Subject parcel being more particularly described as follows:

Commencing at the stone well monument monumentalizing the center line intersection of 100 South and State Streets thence South 89°57'24" West 65.03 feet coincident with the monument line of said 100 South Street; Thence North 00°02'36" West 62.69 feet to the southeast corner of said Block 75; Thence South 89°58'14" West 440.37 feet coincident with the south boundary of said Block 75 to the True point of beginning;

Thence South 89°58'14" West 51.88 feet coincident with said south block boundary to a point on the arc of a 135.58 foot radius curve to the right, center bears North 50°42'57" East;  
Thence northerly 130.17 feet along the arc of said 135.58 foot radius curve through a central angle of 55°00'24";  
Thence South 74°16'39" East 0.42 feet along a radial line to a point on the arc of a 135.17 foot radius curve to the right;  
Thence northerly 35.17 feet along the arc of said 135.17 foot radius curve through a central angle of 14°54'25";  
Thence South 59°24'18" East 0.17 feet along a radial line to a point on the arc of a 132.96 foot radius curve to the right;  
Thence northerly 6.85 feet along the arc of said 132.96 foot radius curve through a central angle of 02°57'06";  
Thence EAST 10.29 feet to a point on the arc of a 209.30 foot radius curve to the right center bears South 70°49'07" East;  
Thence northerly 2.39 feet along the arc of said 209.30 foot radius curve through a central angle of 00°39'12";  
Thence EAST 2.66 feet to a point on the arc of a 206.80 foot radius curve to the left center bears South 69°54'54" East;  
Thence southerly 2.30 feet along the arc of said 206.80 foot radius curve through a central angle of 00°38'16";  
Thence EAST 47.06 feet;  
Thence SOUTH 2.50 feet;  
Thence EAST 6.08 feet;

Thence SOUTH 19.67 feet;  
Thence EAST 4.46 feet;  
Thence SOUTH 117.67 feet;  
Thence WEST 11.10 feet;  
Thence SOUTH 20.65 feet to the point of beginning.

Contains approximately 13,298.88 square feet

For tax information purposes only: A portion of Tax Parcel ID No. 16-06-101-028