

FIRST AMENDMENT TO COMMERCIAL LEASE

THIS FIRST AMENDMENT TO COMMERCIAL LEASE (the "**Amendment**") is made this ____ day of _____, 2011 (the "**Amendment Effective Date**"), by and between **RL BB-FL HILLSBOROUGH, LLC**, a Florida limited liability company (hereinafter referred to as "**Lessor**"), whose address for purposes of notice is c/o Rialto Capital Advisors, LLC, 700 NW 107th Ave, Suite 200, Miami, FL 33172; Attention: Matt Papunen, and **THE CITY OF KEY WEST**, a municipal corporation (hereinafter referred to as "**Lessee**"), whose address for purposes of notice is P.O. Box 1409, Key West, FL, 33041. Capitalized terms which are used herein which are not separately defined shall have the meanings set forth in the Lease Agreement and/or the Option Contract (each of which is itself defined below).

WITNESSETH:

WHEREAS, Hillsborough Center Associates, LLC, a New Jersey limited liability company (the "**Original Landlord**"), and Lessee entered into that certain Commercial Lease (the "**Lease Agreement**") on the 16th day of April, 2010, but effective as of April 1, 2010 (the "**Original Effective Date**") pertaining to certain premises (the "**Leased Premises**") located at (and as part of a development which includes improvements beyond the Leased Premises) 3100 through 3140 Flagler Avenue, Key West, Florida and more particularly described on the legal description attached hereto as **Schedule 1** (the "**Property**"); and

WHEREAS, the Property was encumbered by a mortgage (the "**Mortgage**"), which has been foreclosed by Lessor; and,

WHEREAS, Lessor has taken title to the Leased Premises as provided in the Certificate of Title recorded April 18, 2011 (the "**Transfer Date**") in Official Records Book 2513, Page 1896, of the Public Records of Monroe County, Florida; and

WHEREAS, prior to Lessor taking possession (and without the approval of Lessor or its predecessor in title to the Mortgage), Original Landlord and Lessee agreed verbally to reconfigure the Leased Premises to be occupied by Lessee pursuant to the Lease Agreement, represented on **Exhibits "A" through "E,"** which are attached to the Lease Agreement; and

WHEREAS, the configuration of Suites 2, 4 and 5 (a/k/a Units B, D and E respectively) has been changed slightly; and

WHEREAS, Suites 1 and 3 (a/k/a Units A and C) have been completed and are currently being occupied by Lessee, as is Suite 4 (a/k/a Unit D), in its modified configuration; and

WHEREAS, Suites 2 and 5 (a/k/a Units B and E) have not yet been completed pursuant to the estimated dates set forth on the first page of the Lease Agreement and at this time are not occupied by Lessee; and

WHEREAS, Lessee has taken the position that Lessor is in default under the terms of the Lease Agreement, all as set forth in the notice from Lessee dated February 22, 2011 (the "**Notice of Default**"), which position Lessor denies (the positions of Lessee and Lessor being hereafter defined as the "**Dispute**"); and

WHEREAS, the Lessor and Lessee now desire to amend the Lease Agreement to address the issues set forth above and to resolve the Dispute, including a new timeline for completion of Suites 2 and 5 (a/k/a Units B and E), and otherwise modify the Lease Agreement on terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. The foregoing recitations of fact are true and correct and incorporated herein by this reference. Exhibits "A," "B," "C," "D" and "E" to the original Lease Agreement are deleted in their entirety and replaced with **Exhibits "A," "B," "C," "D" and "E"** attached to this Amendment, said Exhibits reflecting the configuration of each of the applicable Suites as same may have been modified on or before the Amendment Effective Date. In addition, **Exhibits "B-1" and "E-1"** attached to this Amendment reflect the work to be performed by Lessor to Suites 2 and 5 as a condition to Lessee's obligation to pay rent with respect to such Suites.

2. The parties agree that the Rental Commencement Dates for the Suites currently being occupied by Lessee, and that the net rentable square footage of said Suites are as follows:

- a. Suite 1- June 26, 2010 - Square Footage: 8,103
- b. Suite 3- August 17, 2010 - Square Footage: 4,639
- c. Suite 4- September 1, 2010 - Square Footage: 931

Lessee further acknowledges and agrees with Lessor that all build outs, improvements and any other repair, construction and/or renovation obligations of Lessor with respect to Suite 1, Suite 3 and Suite 4 have been satisfied and completed and have been fully paid for by Lessor or Lessor's predecessors in interest, and the condition of all such Suites is satisfactory to Lessee in all respects as of the date hereof. Additionally, Lessee represents and warrants that Certificates of Occupancy have been issued for Suite 1, Suite 3 and Suite 4.

3. The improvements required to be made to Suite 2 (a/k/a Unit B) by Lessor pursuant to the "City move-in Plan B" which is part of Exhibit "B" to the original Lease Agreement, have been modified to raise the floor for a portion of said unit; removal of the carpet; sealing of floor; and addition of acoustical ceilings tiles (as needed). As such, the breakdown/scope of work to be performed by Lessor (the "**Landlord's Work**") with respect to Suite 2 is as set forth in **Exhibit "B-1"** attached hereto.

a. The parties hereto agree that Landlord's Work with respect to Suite 2 shall be completed within ninety (90) days from the date Lessor obtains the necessary permits to complete Landlord's Work with respect to Suite 2. Lessor shall provide Lessee written notice that Lessor has substantially completed with regard to Suite 2. Thereafter, Lessee shall have 5 days within which to deliver written notice to Lessor accepting Suite 2 for occupancy or written notice specifying in detail the item or items to be corrected. Thereafter, Lessor shall correct said items within a reasonable time and provide Lessee written notice of same.

b. The parties hereto agree that the net rentable square footage of Suite 2 is 8104.

c. The Rental Commencement Date with respect to Suite 2 shall commence upon the Lessee's written notice to Lessor accepting Suite 2 for occupancy or upon Lessor's written notice to Lessee that Lessor has corrected items specified by Lessee. In the event Lessee fails to provide written notice to Lessor of acceptance or specifying items to be corrected, the Rental Commencement Date shall be the fifth (5th) business day after Lessor has provided Lessee with written notice that Landlord's Work with respect to such Suite is substantially complete (or such earlier date as Lessee may have taken occupancy of such Suite), which Rent Commencement Date is estimated to be August 18, 2011 (although such is not guaranteed by Lessor).

4. The improvements required to be made to Suite 5 (a/k/a Unit E) by Lessor pursuant to the "City move-in Plan E" which is part of Exhibit "E" to the original Lease Agreement, have been modified in accordance with the Lessee's request. As such, the breakdown/scope of Landlord's Work with respect to Suite 5 is as set forth in **Exhibit "E-1"** attached hereto.

a. The parties hereto agree that Landlord's Work with respect to Suite 5 shall be completed within ninety (90) days from the date Lessor obtains the necessary permits to complete Landlord's Work with respect to Suite 5. Lessor shall provide Lessee written notice that Lessor has substantially completed with regard to Suite 5. Thereafter, Lessee shall have 5 days within which to deliver written notice to Lessor accepting Suite 5 for occupancy or written notice specifying in detail the item or items to be corrected. Thereafter, Lessor shall correct said items within a reasonable time and provide Lessee written notice of same.

b. The parties hereto agree that the net rentable square footage of Suite 5 is 2,494.

c. The Rental Commencement Date with respect to Suite 5 shall commence upon the Lessee's written notice to Lessor accepting Suite 5 for occupancy or upon Lessor's written notice to Lessee that Lessor has corrected items specified by Lessee. In the event Lessee fails to provide written notice to Lessor of acceptance or specifying items to be corrected, the Rental Commencement Date shall be the fifth (5th) business day after Lessor has provided Lessee with written notice that Landlord's Work with respect to such Suite is substantially complete (or such earlier date as Lessee may have taken occupancy of such Suite), which Rent Commencement Date is estimated to be August 18, 2011 (although such is not guaranteed by Lessor).

5. The paragraph styled "Leased Premises" on page 1 of the Lease Agreement is hereby modified to provide that the total square footage which will ultimately be occupied by Lessee is now 24,271 square feet as a result of the change in the plans for Suites 4 and 5 (a/k/a Units D and E, respectively).

6. The parties acknowledge and agree that Lessee paid security deposits to Original Landlord for Suites 1, 3 and 4 in the total amounts of \$8,103.00, \$4553.00, and \$1,259.00, respectively (the "**Original Security Deposits**"). Concurrently with the execution of this Amendment, Lessee shall pay Lessor the security deposits for Suite 2 and Suite 5 in the amounts of \$8,104.00, and \$2,494.00 respectively (the "**New Security Deposits**"). So long as Lessee returns possession of the Leased Premises to Lessor in the condition required by terms of the Lease Agreement at the conclusion of the term of the Lease Agreement and otherwise complies with all of Lessee's obligations under the Lease Agreement (as modified by this Amendment, including but not limited to paying Lessor the Construction Reimbursement Amounts described below), Lessor shall return the Original Security Deposits and the New Security Deposits to Lessee (or such portion thereof as may remain after Lessor has applied any portion of the Original Security Deposits and/or New Security Deposits toward the cost incurred by Lessor in returning the Leased Premises to the condition required by terms of the Lease Agreement, and less any unpaid Construction Reimbursement Amounts) within 30 days of the end of the term of the Lease Agreement.

7. The parties agree that Lessee is obligated to reimburse Lessor for construction and renovation expenses (the "**Construction Reimbursement Amounts**") in the total amount of \$154,390.76. Further, the parties herein expressly agree that Lessee's liability for construction and renovation expenses shall not exceed \$154,390.76 in the event Lessor's actual expenditures for construction and renovation exceeds \$154,390.76.

a. As provided for in the Lease Agreement, Lessee began to reimburse Lessor for construction and renovation improvements by making payments (the "**Construction Reimbursement Payments**") for Suites 1, 3 and 4 at the rate of \$00.17 per square foot per month, commencing June 26, 2010, August 17, 2010 and September 1, 2010 respectively, and has made Construction Reimbursement Payments totaling \$24,694.00 as of April 13, 2011.

b. Lessee shall make Construction Reimbursement Payments to reimburse Lessor for construction and renovation improvements for Suites 2 and 5 at the rate of \$00.17 per square foot per month commencing on the Rental Commencement Dates for such Suites.

c. Lessee shall pay Lessor on December 31, 2013 (or, in the event of an earlier termination of the Lease or Lessee's right to possession of the Leased Premises, upon the date of such termination of the Lease or Lessee's right to possession) an amount equal to total of all Construction Reimbursement Amounts (i.e., \$154,390.76) LESS the total of all Construction Reimbursement Payments previously made by Lessee to Lessor

8. Lessor and Lessee hereby agree that Section I Paragraph 3 of the Lease Agreement erroneously stated that Base *Monthly* Rent shall be \$12.00 per square foot. The

parties hereby agree that the Base *Annual* Rent shall be \$12.00 per square foot and all references in the Lease Agreement to Base *Monthly* Rent of \$12.00 shall be modified to reflect a Base *Annual* Rent of \$12.00 per square foot. All payments of rent, additional rent, and all Construction Reimbursement Payments shall be paid to Lessor at the address set forth below for notice to Lessor.

9. Lessee hereby acknowledges and agrees that upon the execution of this Amendment and Lessor's commencement of Landlord's Work with respect to Suite 2 and Suite 5 pursuant to the terms of this Amendment, Lessor shall be in full compliance with its obligations under the Lease Agreement as modified by this Amendment, that the Dispute shall have been fully and satisfactorily resolved, and that Lessee withdraws the Notice of Default and waives any and all rights to declare Lessor in breach of the Lease Agreement for any matter in existence (or which would exist but for passage of time or giving of notice) as of the Amendment Effective Date. Lessee and Lessor acknowledge that the Lease Agreement, as modified by this Amendment, is in full force and effect, binding upon the parties in accordance with its terms and as of the date of execution of this Amendment, and with the exception of prepaid common area maintenance payments made from and after the Transfer Date, and prepaid security deposits, neither party has any claim, charge, lien, or right to setoff under this Lease Agreement or otherwise against Rent or other charges due under this Lease Agreement.

10. Upon obtaining final certificate(s) of occupancy for both of Suite 2 and Suite 5, Lessor shall provide signage for the Leased Premises which is comparable to signage currently existing at the Leased Premises, at Lessor's sole cost and expense, so long as said cost does not exceed the estimate provided to Lessor in the amount of \$9,916.88. In the event that the cost of providing such signage (determined by Lessor after receipt of a proposal for the construction of such signage) exceeds the estimated cost, then Lessor shall provide such signage only after Lessee shall have paid Lessor an amount equal to the difference between the actual cost and the estimated cost.

11. Section I, paragraph 2 of the Lease Agreement, styled "Term of Lease," is deleted in its entirety and replaced with the following:

"This Lease Agreement shall be effective for the period beginning on April 1, 2010, and ending on December 31, 2013; provided, however, that the specific Effective Dates and Rental Commencement Dates for each unit of the Leased Premises may vary, but (subject to the Lessee's right to renew as provided for in Section I, paragraph 19 of the Lease Agreement, as amended) this Lease Agreement shall terminate as to all Suites comprising the Leased Premises on December 31, 2013."

12. Section I, paragraph 19 of the Lease Agreement, styled "Renewal," is deleted in its entirety and replaced with the following:

"The Lessor herein grants to the Lessee an option to renew this Lease Agreement for two (2) one (1) year terms following the expiration of the initial term on December 31, 2013 [i.e., from January 1, 2014 to December 31, 2014 (the "**First**

Renewal Term"), and from January 1, 2015 to December 31, 2015 (the "**Second Renewal Term**"), on the same terms and conditions contained in this Agreement, subject to rent increases as provided for herein, and provided no default by Lessee has occurred and is then continuing hereunder. The Lease Agreement can only be extended in its entirety; i.e., Lessee may only extend lease as to all of the Leased Premises, and not only as to some of the suites. Lessee shall give Lessor written notice of its intention to renew at least 120 days prior to the expiration of the initial term in order to extend lease for the First Renewal Term, and At Least 120 Days Prior to the Expiration of the First Renewal Term in order to extend the lease for the Second Renewal Term. In the event Lessee fails to give Lessor written notice of its election to exercise its option to renew as set forth above, such option shall then be and become null and void and of no further force and effect. Lessee shall be deemed to have waived any option for a Second Renewal Term of this Agreement if Lessee has not exercised its option for the First Renewal Term.

For the First Renewal Term, the annual base rent shall be derived by taking the base rent charged at the expiration of the initial term of this Lease Agreement and increasing same by five percent (5.00%).

For the Second Renewal Term the annual base rent shall be derived by taking the base rent charged at the expiration of the First Renewal Term and increasing same by five percent (5.00%). ”

In the event Lessee fails to exercise its options to renew as set forth above but Lessee remains in possession of the Leased Premises, Lessee shall be a month-to-month tenant and monthly base rent shall be equal to 150% of the then-current rate for the previous month.

13. Section I, paragraph 6, styled “Cost of Living Escalation,” is deleted in its entirety and replaced with the following:

“Base annual rent shall be fixed at \$12.00 per square foot per year for the first eighteen (18) months following the Rental Commencement Date for each Suite. Commencing upon the expiration of eighteen (18) months from each Rental Commencement Date (for each Suite) and every twelve (12) months thereafter, base annual rent for each Suite shall increase annually by three and one-half percent (3.50%).”

14. The second sentence in the last paragraph on page one of the Lease Agreement is deleted in its entirety and replaced with the following:

“Lessor will provide indoor air quality testing for Suites 2 and 5 with results consistent with the air quality of the suites previously occupied by Lessee at the time those suites were initially occupied by Lessee, prior to Lessee’s acceptance of Suites 2 and 5 for occupancy, at Lessor’s sole cost and expense.”

15. The last sentence of Section I, paragraph 14 is modified to provide that any insurance coverage shall contain a waiver of the insurer's right of *subrogation* against Lessor.

16.. Section I, paragraph 15 is modified to read "Waiver of Subrogation on Casualty Insurance."

17. INTENTIONALLY OMITTED.

18. Any rights which Lessee and/or Lessor have to audit CAM charges shall be limited to time frames from and after the Transfer Date.

19. If either party shall be delayed, hindered or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor trouble, inability to procure material, failure of power, riots, insurrection, war or other reasons of like nature not the fault of the party delayed, in performing work or doing acts required under this Lease Agreement, the period for the performance of any such act shall be extended for a reasonable period. Neither Lessor nor Lessee shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease Agreement if same shall be due to any of the foregoing. Notwithstanding the foregoing, the provisions of this paragraph shall at no time operate to excuse Lessee from any obligations for payment of Rent, Additional Rent, or any other payments required by the terms of this Lease Agreement when due, and all such amounts shall be paid when due.

20. Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either against the other, upon any matters whatsoever arising out of or in any way connected with this Lease Agreement or this Amendment, Lessee's use or occupancy of the Leased Premises, and/or any claim of injury or damage.

21. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger, upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile, upon electronic or telephonic confirmation of receipt from the receiving facsimile machine; (c) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; or (d) whether actually received or not, two (2) Business Days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO LESSOR: c/o Rialto Capital Advisors, LLC
700 NW 107th Avenue
Suite 200
Miami FL 33172
Attention: Matt Papunen
Telephone No. 305-485-2717
Facsimile No. 305-485-2724
Email Address: Matt.papunen@rialtocapital.com

WITH A COPY TO: Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 22nd Floor
Miami, Florida 33131
Attention: Jon Chassen, Esq.
Telephone No. 305-350-7270
Facsimile No. 305-351-2270
Email Address: jchassen@bilzin.com

TO LESSEE: At the address set forth on the
first page of this Amendment
Attn: City Manager
Telephone No. (305) 809-3886
Facsimile No. (305) 809-3888
Email address: jscholl@keywestcity.com

22. This Amendment may be executed in counterparts. Except as expressly modified by this Amendment, all terms and conditions of the Lease Agreement remain in full force and effect, and binding upon the parties in accordance with its terms. In the event of any conflict between the terms of the Lease Agreement and the terms of this Amendment, the terms of this Amendment shall control. Lessee further represents and warrants it is not in default of any of the conditions or covenants of the Lease Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed this ____ day of _____, 2011.

ATTEST:

THE CITY OF KEY WEST, a Municipal Corporation

By: _____
Cheryl Smith, City Clerk

By: _____
Printed Name: _____
Its: _____

WITNESSES:

Signature of Witness

Printed Name of Witness

Signature of Witness

Printed Name of Witness

STATE OF FLORIDA)

COUNTY OF MONROE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____, as _____, of The City of Key West, a municipal corporation, who is personally known to me or has produced _____ as identification.

(Notary Seal)

Notary Public, State of Florida
Print Name: _____

My Commission Expires: _____

WITNESSES:

RL BB- FL HILLSBOROUGH, LLC

Signature of Witness

By: RL BB Financial, LLC, its sole member

Printed Name of Witness

By: _____

Name:

Title:

Signature of Witness

Printed Name of Witness

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ___ day of _____, 2011, by _____, as _____ of RL BB Financial, LLC, as the sole member of RL BB-FL HILLSBOROUGH, LLC, who is personally known to me or has produced _____ as identification.

(Notary Seal)

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____