

SECOND AMENDMENT TO COMMERCIAL LEASE

THIS SECOND AMENDMENT TO COMMERCIAL LEASE (this "**Amendment**") is made this ____ day of October, 2012 (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 400, Miami, Florida 33172 (Attention: Alex Diaz), 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 Wet, Florida 33041.

WITNESSETH:

WHEREAS, Hillsborough Center Associates, LLC, a New Jersey limited liability company (the "**Original Landlord**"), and Lessee entered into that certain Commercial Lease (the "**Original Lease**") on April 16, 2010, but effective as of April 1, 2010, as amended by the First Amendment to Commercial Lease dated May 31, 2011 (the "**First Amendment**", together with the Original Lease, the "**Lease Agreement**") pertaining to certain premises (the "**Leased Premises**") in the shopping center known as "Habana Plaza", located at 3100 through 3140 Flagler Avenue, Key West, Florida 33040, and more particularly described on the legal description attached hereto as **Schedule 1** (the "**Property**");

WHEREAS, Lessor is the successor in interest to certain property of Original Landlord, including the Leased Premises;

WHEREAS, the Leased Premises includes, among other premises, the premises commonly known as Suite 4 (a/k/a Unit D) ("**Suite 4**") comprising 931 rentable square feet, more particularly identified on **Exhibit A** attached hereto; and

WHEREAS, Lessor and Lessee desire to amend and modify the Lease Agreement on the terms and conditions contained in this Amendment in order to, among other things, relocate Lessee from Suite 4 to the Relocation Space (defined below) as of the Relocation Space Rental Commencement Date (defined below);

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. **Incorporation of Recitals; General Provisions.** The above recitals are true and correct and are incorporated herein as if set forth in full. Capitalized terms which are used herein which are not separately defined shall have the meanings set forth in the Lease Agreement. Except as amended and modified by this Amendment, all of the terms, covenants, conditions, and agreements of the Lease Agreement shall remain in full force and effect. In the event of any conflict between the provisions of the Lease Agreement and the provisions of this Amendment, this Amendment shall control.

2. Relocation of Premises.

a. Effective as of November 1, 2012 (the "**Relocation Space Rental Commencement Date**"), the term "Leased Premises" as used in the Lease Agreement: (a) shall be deemed to include certain portions of the Property commonly known as Suite 3110 (the "**Relocation Space**"), more particularly identified on **Exhibit B** attached hereto (said Exhibit reflecting the configuration of the Relocation Space); and (b) shall no longer be deemed to include Suite 4.

b. The parties hereto acknowledge and agree that the rentable square footage of the Relocation Space is 1,453.

c. The parties hereto further acknowledge and agree that the paragraph styled "Leased Premises" on Page 1 of the Original Lease is hereby modified to provide that the total square footage that will ultimately be occupied by Lessee as a result of the change in the configuration of the Leased Premises shall be 24,793 rentable square feet.

3. Base Rent. From and after the Relocation Space Rental Commencement Date and continuing throughout the Term of Lease, the base rent due and payable by Lessee with respect to the Relocation Space shall be as follows:

Period of Term	Annual Base Rent Per Square Foot	Annual Base Rent	Monthly Base Rent**
11/01/2012 - 02/28/2013	\$12.42	\$11,563.02	\$963.59
03/01/2013 - 12/31/2013	\$12.85	\$11,963.35	\$996.94
* 01/01/2014 - 12/31/2014	\$13.49	\$19,600.97	\$1,633.41
*01/01/2015 - 12/31/2015	\$14.17	\$20,589.01	\$1,715.75

*Optional Renewal Term

** Plus Applicable Taxes

It is acknowledged and agreed that notwithstanding that the Relocation Space consists of 1,453 square feet, the foregoing Base Rent is calculated as if the Relocation Space contains 931 square feet through December 31, 2013, and then increases to 1,453 square feet as of January 1, 2014.

4. Common Area Maintenance Charges. The parties hereto agree that commencing on the Relocation Space Rental Commencement Date, Lessee is obligated to make the annual common area maintenance charges to Lessor at the rate of \$4.75 per square foot, which charges shall be subject to annual reconciliation and adjustment pursuant to the terms of the Lease Agreement. It is acknowledged and agreed that notwithstanding that the Relocation Space consists of 1,453 square feet, the foregoing calculation of the common area maintenance charges shall be as if the Relocation Space contains 931 square feet through December 31, 2013, and then increases to 1,453 square feet as of January 1, 2014.

5. Construction Reimbursement Payments. The parties hereto agree that commencing on the Relocation Space Rental Commencement Date, Lessee is obligated to continue to make Construction Reimbursement Payments to Lessor at the rate of \$0.17 per square foot per month. It is acknowledged and agreed that notwithstanding that the Relocation Space consists of 1,453 square feet, the foregoing calculation of the construction reimbursement payments shall be as if the Relocation Space containing 931 square feet through December 31, 2013, and then increases to 1,453 square feet as of January 1, 2014.

6. Security Deposit. The parties acknowledge and agree that Lessee paid a security deposit to Original Landlord for Suite 4 in the total amount of \$1,259.00 (the "**Original Security Deposit**"). 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, including but not limited to paying Lessor the Construction Reimbursement Amounts described in the Lease Agreement), Lessor shall return the Original Security Deposit to Lessee (or such portion thereof as may remain after Lessor has applied any portion of the Original Security Deposit 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. Landlord's Work for Suite 2 and Suite 5.

a. Lessee 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 2 (a/k/a Unit B) and Suite 5 (a/k/a Unit E) have been satisfied and completed and have been fully paid for by Lessor, and the condition of 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 both Suite 2 and Suite 5.

b. The parties agree that the Rental Commencement Dates for Suite 2 and Suite 5 are as follows:

- i. Suite 2 - September 1, 2011.
- ii. Suite 5 - September 1, 2011.

8. Landlord's Work for Relocation Space. Lessee acknowledges and agrees with Lessor that all build outs, improvements and any other repair, construction and/or renovation

obligations of Lessor with respect to the Relocation Space have been satisfied and completed and have been fully paid for by Lessor, and the condition of such Relocation Space 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 the Relocation Space.

9. Miscellaneous.

a. Lessee agrees that Lessor is in full compliance with all of its obligations to Lessee under and pursuant to the Lease Agreement, as modified by this Amendment (and, to the extent that Lessor is or may have been in breach of its obligations to Lessee, such breaches are hereby waived by Lessor for all periods through and including the date of this Amendment). Without limiting the foregoing, Lessee agrees that the Leased Premises are satisfactory in all respects (i.e., Lessee waives the right to object or complain or declare that Lessor is in breach of its obligations under the Lease Agreement for any matter as of the Amendment Effective Date). Lessee further acknowledges, agrees and understands (i) that Lessor is going to undertake renovations and improvements to the Relocation Space (the "**Renovations**"), and (ii) that Lessee consents to the Renovations, agrees the Renovations do not and will not affect Lessee's rights under the Lease Agreement, agrees not to take any action to postpone or delay the Renovations, and further agrees that such Renovations will not entitle Lessee to any reduction in rent or any other claim against Lessor, except as specifically set forth in the Lease Agreement.

b. Lessee and Lessor acknowledge and agree that the relocation of Lessee from Suite 4 to the Relocation Space is something desired by both Lessee and Lessor and each hereby waives any and all claims against the other arising from the condition of Suite 4 or the relocation of Lessee from Suite 4 to the Relocation Space.

c. 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 security deposits), Lessee has no claim, charge, lien, or right to setoff under this Lease Agreement or otherwise against rent or other charges due under this Lease Agreement.

d. Lessee represents and warrants it is not in default of any of the conditions or covenants of the Lease Agreement.

10. Notice. Section 21 of the First Amendment is hereby modified such that Lessor's address for notice purposes is as follows:

TO LESSOR:

c/o Rialto Capital Advisors, LLC
700 NW 107th Avenue
Suite 400
Miami, Florida 33172
Attention: Alex Diaz
Telephone No. 305-229-6588
Facsimile No. 305-485-2724

Email Address: alex.diaz@rialtocapital.com

11. Authority of Lessee. Lessee represents and warrants that it has full authority to execute this Amendment without the joinder or consent of any other party and that Lessee has not assigned any of its right, title, and interest in the Lease to any other party. Lessee agrees to indemnify and hold Lessor harmless from and against any claims, losses, demands, liabilities, damages, and expenses of any kind or nature, including, without limitation, reasonable attorneys' fees, actually incurred or arising by reason of a breach or violation of any of the representations and warranties of Lessee contained in this Section.

12. Successors and Assigns. The provisions of this Amendment shall be binding upon and inure to the benefit of Lessor, Lessee and their respective successors and assigns.

13. Counterparts. This Amendment may be executed in counterparts each of which shall be deemed an original and all of which together shall constitute one instrument. A PDF or facsimile signature shall be deemed for all purposes to be an original.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the Amendment Effective Date.

ATTEST:

By: _____
Cheryl Smith, City Clerk

THE CITY OF KEY WEST, a Municipal Corporation

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 _____, 2012, 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, a
Florida limited liability company

Signature of Witness

By: RL BB Financial, LLC, a Florida limited
liability company, its sole member

Printed Name of Witness

By: _____

Name: _____

Title: _____

Signature of Witness

Printed Name of Witness

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by
_____, as _____ of RL BB
Financial, LLC, a Florida limited liability company, as the sole member of RL BB-FL
HILLSBOROUGH, LLC, a Florida limited liability company, who is personally known to me or
has produced _____ as identification.

(Notary Seal)

Notary Public, State of Florida

Print Name: _____

My Commission Expires: _____

SCHEDULE 1
LEGAL DESCRIPTION OF PROPERTY

Parcel I: Commencing at the Northwest corner of Block 2, of RIVIERA SHORES SUBDIVISION, a subdivision of a part of the City of Key West, Monroe County, Florida, according to the Plat thereof recorded in Plat Book 3, at Page 148, of the Public Records of Monroe County, Florida; thence run Southerly along the Easterly boundary line of 13th Street a distance of Two Hundred Twenty (220) feet to the intersection of 13th Street and Riviera Drive; thence run Easterly along the Northerly boundary line of Riviera Drive a distance of Four Hundred (400) feet; thence run Northerly and parallel to 13th Street a distance of Two Hundred Twenty (220) feet to the Southerly boundary line of Flagler Avenue; thence run Westerly along the Southern right of way of Flagler Avenue a distance of Four Hundred (400) feet to the intersection of 13th Street and Flagler Avenue, Point of Beginning.

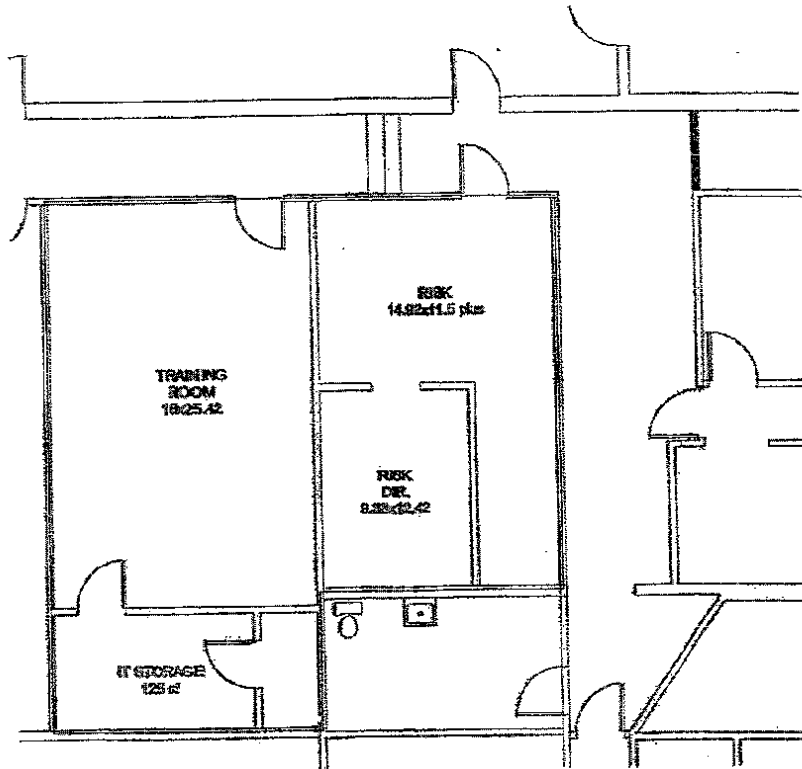
AND ALSO;

Parcel II: On the Island of Key West, described as follows: BEGIN at the Northwest corner of Block 2, RIVIERA SHORES SUBDIVISION, a subdivision of a part of the City of Key West, Florida, between Eleventh Street and Seventeenth Street and lying South of Flagler Avenue, Key West, Monroe County, Florida, as recorded in Plat Book 3, at Page 148, of the Public Records of Monroe County, Florida; run thence in an Easterly direction along the Southeast right-of-way of Flagler Avenue 400 feet to the Point of Beginning; thence run in an Easterly direction along the Southeast right-of-way line of Flagler Avenue; a distance of 71.98 feet; thence run at right angles in a Southerly direction a distance of 220 feet to Riviera Drive, run thence in a Westerly direction along the Northeast right-of-way line of Riviera Drive, a distance of 71.98 feet; run thence at right angles in a Northerly direction a distance of 220 feet to the Point of Beginning.

Parcel Identification Number: RE: 00069090-000000/Alt Key 1072982

EXHIBIT A

FLOOR PLAN OF SUITE 4



 **ALTERNATE #2**
PARTIAL FLOOR PLAN - D/E 031 sq.
SCALE = 1/8" = 1'-0" 7-30-10

EXHIBIT B

FLOOR PLAN OF RELOCATION SPACE

