

**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (this “**Lease**”) is made and entered into, effective as of the date last signed (the “**Effective Date**”), by and between **TFC MCDOWELL LLC**, a Massachusetts limited liability company (“**Landlord**”), and **CHARLOTTE RADIOLOGY, P.A.**, a North Carolina professional association (“**Tenant**”). (Landlord and Tenant may sometimes be collectively referred to as the “**Parties**,” and each one of them may be individually referred to as a “**Party**”).

**BASIC LEASE PROVISIONS**

The following is a summary of some of the Basic Provisions of this Lease. In the event of any conflict between the terms of these Basic Lease Provisions and the referenced Sections of this Lease, the referenced Sections of this Lease shall control.

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| 1. | Property (See Section 1):  | <b>301 Midtown</b><br>301 S. McDowell St.<br>Charlotte, North Carolina 28204      |
| 2. | Premises (See Section 1):<br>Floor:<br>Rentable Square Feet (“RSF”): | Suites 110 & 120<br>First<br>3,089  |
| 3. | Term (See Section 2):  | One Hundred Four (104) Months   |
| 4. | Base Rent (See Sections 2 and 3):                                    | \$92,670 per annum (with a 3% annual escalation throughout the Term of the Lease) |

Time Period (calendar months)	Base Rent (per RSF per annum)	Annual Base Rent	Monthly Installments of Base Rent
Months 1-12**	\$30.00	\$92,670.00*	\$7,722.50
Months 13-24	\$30.90	\$95,450.10	\$7,954.18
Months 25-36	\$31.83	\$98,313.60	\$8,192.80
Months 37-48	\$32.78	\$101,263.00	\$8,438.58
Months 49-60	\$33.77	\$104,300.90	\$8,691.74
Months 60-72	\$34.78	\$107,429.90	\$8,952.49

Months 73-84	\$35.82	\$110,652.80	\$9,221.07
Months 84-96	\$36.89	\$113,972.40	\$9,497.70
Months 96-104	\$38.00	\$117,391.60	\$9,782.63

\* Month 1 begins on the Commencement Date. Base Rent for any partial calendar month preceding the first full calendar month of the Term shall be prorated.

\*\* Notwithstanding anything contained herein to the contrary, the Parties agree that, so long as no default is then continuing beyond applicable notice and cure periods, Landlord has agreed to abate Tenant's Base Rent for a period of eight (8) months following the Commencement Date; provided, however, that Tenant may, upon written notice (a "**Conversion Notice**") to Landlord within the first three (3) months following the Effective Date, exercise the one-time right to convert up to five (5) months of abated Base Rent towards additional Tenant Improvement Allowance proceeds (in which case the Tenant Improvement Allowance shall be increased as provided in Exhibit B and such amount shall no longer be applicable towards Base Rent abatement).

5. Tenant's Share (See Section 13): 1.68 %
6. Security Deposit (See Section 44): None
7. Landlord's Broker (See Section 52): CBRE
- Tenant's Broker (See Section 52): Jones Lang LaSalle
8. Notice Addresses: See Section 53

## **LEASE PROVISIONS**

### **1. Premises.**

a. Landlord does hereby rent and lease to Tenant, and Tenant does hereby rent and lease from Landlord, for general office and medical office purposes of a type customary for similar office buildings (the "**Permitted Use**"), and for no other purpose, the following described space (hereinafter called the "**Premises**"): 3,089 rentable square feet of space, subject to Section 1(c) below, located in Suites 110 & 120 on the first floor of a twelve story building known as "301 S. Midtown" located at 301 S. McDowell St., Charlotte, North Carolina 28204 (the "**Building**"), located on the real property described in **Exhibit A** attached hereto (the "**Property**"), said Premises to be shown on the drawing attached hereto as **Exhibit A-1** and made a part hereof by reference. Tenant shall also have the non-exclusive right to use and enjoy the common areas in the Building and on the Premises and the land on which the Building, parking lots, the tenant parking area, driveways and other improvements are located, including, without limitation, all parking areas, driveways, sidewalks and other common facilities made available by Landlord for all tenants in the Building or otherwise serving the Building as a whole, but not those certain areas of the Building specific to other tenant's exclusive use (e.g. reserved parking spaced not associated

with Tenant); provided, however, Landlord shall have the right at any time, without notice to Tenant, to control, reconfigure, change or otherwise alter the common areas (including Building maintenance or improvements for the benefit of the Property and/or its occupants) in such manner as it deems necessary or proper, in Landlord's sole and absolute discretion, provided further that such activity does not unreasonably interfere with Tenant's use of, or access to, the Premises. Landlord represents and warrants that, as of the Effective Date, use of the Premises for the Permitted Use is in compliance with all applicable zoning requirements governing use.

b. Condition. Except for the Base Building Repairs (as defined in **Exhibit B**) and except as otherwise expressly provided herein, Tenant acknowledges that the Premises shall be leased to Tenant in its present condition "AS IS, WHERE IS, AND WITH ALL FAULTS", subject to Landlord's obligations in this Lease. Tenant has determined that the Premises are adequate for Tenant's purpose including, without limitation, availability of parking, availability of any and all building permits and use permits from all governmental authorities sufficient to permit Tenant's intended use of the Premises, adequacy of HVAC and all other existing components of the Building and is relying solely on Tenant's investigation thereof in connection with this Lease (subject to Landlord's fulfilling its obligations with respect to the Base Building Repairs as described in **Exhibit B**). By taking possession of the Premises for the commencement of the Tenant Improvements or for Tenant's occupancy, Tenant shall be held to have accepted the Building and every appurtenance thereof, and by such act waives any and all defects therein (subject to Landlord's maintenance, repair, and replacement obligations hereunder).

c. Tenant Build Out. Tenant shall perform the Tenant Improvements described in **Exhibit B**, which is attached hereto and incorporated herein, at Tenant's sole cost and expense except as expressly set forth therein, and said **Exhibit B** shall control in the event of a conflict with the provisions contained in this Lease. Landlord shall make no improvements, alterations, renovations, modifications, or additions to the Premises except for the Base Building Repairs.

d. Re-Measurement of Premises and Building. Landlord reserves the right to perform certain renovations and enhancements to portions of the Building, which may include, without limitation, the dedication of areas currently treated as leased spaces to Building common areas and tenant amenities (collectively, the "**Building Renovations**"). As a result of such Building Renovations, the measurement of the Building and the Premises under the American National Standard Method for Measuring Floor Area in Office Buildings, Publication ANSI/BOMA Z65.1-2010 Method B promulgated by the Building Owners and Managers Association ("**BOMA**") may change. Accordingly, Landlord reserves the right from time to time in connection with completion of such renovations and enhancements, or portions thereof, to have the rentable square feet of Building and the Premises re-measured in accordance with BOMA by Landlord's architect, who shall certify such re-measurement to Landlord. Landlord shall submit such determination to Tenant in writing, with appropriate backup information. If such determination of the rentable square feet of the Building and the Premises results in an increase or decrease in the rentable area of the Premises, the parties agree to enter into an amendment specifying the revised rentable square feet measurement, revised rent hereunder, and other items that are based on the rentable square feet in the Premises and the Building, including, without limitation, Tenant's Share.

a. Initial Term. Tenant shall have and hold the Premises for a term (“**Term**”) commencing on the date (the “**Commencement Date**”) that is (i) the later to occur of (A) the date that is ninety (90) days after substantial completion of the Base Building Repairs (as defined and described in Exhibit B) or (B) January 1, 2023 or, if earlier, (ii) the earlier to occur of the date of Substantial Completion of the Tenant Improvements (as such terms are defined in Exhibit B) or the date that Tenant first takes occupancy of the Premises for the conduct of its business, and terminating at midnight local time on the last day of the 104<sup>th</sup> full calendar month following the Commencement Date (the “**Expiration Date**”), unless sooner terminated or extended as hereinafter provided. Promptly following the Commencement Date, Landlord may elect to send Tenant a letter agreement in the form attached hereto as Exhibit C, specifying the Commencement Date, the Expiration Date, and the agreed amount of the initial monthly Base Rent payable hereunder, which shall be binding upon Tenant unless Tenant shall have delivered to Landlord a written notice specifying Tenant’s objections within ten (10) days of Tenant’s receipt thereof. Failure to execute such an agreement shall not affect the commencement or expiration of the term of this Lease.

b. Renewal Option. Provided no event of default then exists which has continued beyond any applicable grace period, Tenant shall have one (1) option to renew this Lease (the “**Renewal Option**”) for an additional five (5) years (the “**Renewal Term**”). In order to exercise the Renewal Option, Tenant shall provide written notice (the “**Renewal Notice**”) to Landlord not more than twelve (12) months nor less than nine (9) months prior to the Expiration Date of the Lease. Base Rent for the Renewal Term shall be the Fair Market Rent, as specified in Exhibit D, attached hereto and made a part of hereof. The Renewal Option is personal to Tenant and any assignee that succeeds to Tenant’s interest pursuant to a Permitted Transfer and shall automatically terminate and have no force or effect upon any assignment or transfer requiring Landlord’s consent hereunder (even if such consent is granted).

3. Base Rent. Tenant shall pay to Landlord, at the following address: TFC McDowell LLC, P.O. Box 845625, Boston, MA 02284-5625, or at such other place as Landlord shall designate in writing to Tenant from time to time, annual base rent (“**Base Rent**”) in the amounts set forth in the Basic Lease Provisions, together with all sales, rental, excise, use or other tax due with respect to the Base Rent or this Lease pursuant to the laws of the jurisdiction in which the Premises are located. The term “**Lease Year**”, as used in the Basic Lease Provisions and throughout this Lease, shall mean each and every consecutive twelve (12) month period during the Term of this Lease, with the first such twelve (12) month period commencing on the Commencement Date; provided, however, if the Commencement Date occurs other than on the first day of a calendar month the first Lease Year shall be that partial month plus the first full twelve (12) months thereafter.

4. Rent Payment. Base Rent for each Lease Year shall be payable in equal monthly installments made to a location designated by Landlord (which may include, without limitation by wire transfer to an account designated by Landlord from time to time), due on the first day of each calendar month, in advance, in legal tender of the United States of America, without prior notice, abatement, demand, deduction, defense, counterclaim, or offset whatsoever, except as otherwise expressly set forth in this Lease. One full monthly installment of Base Rent shall be due and payable on the date of execution of this Lease by Tenant for the first month’s installment of Base

Rent. After such payment is applied to the first month's installment of Base Rent, a like monthly installment of Base Rent shall be due and payable on the first day of each calendar month thereafter during the Term hereof; provided, that if the Commencement Date should be a date other than the first day of a calendar month, the monthly Base Rent installment paid on the date of execution of this Lease by Tenant shall be prorated to that partial calendar month, and the excess shall be applied as a credit against the next monthly Base Rent installment. Tenant shall pay, as "Additional Rent", all other sums due from Tenant under this Lease (the term "Rent", as used herein, means all Base Rent, Additional Rent and all other amounts payable hereunder from Tenant to Landlord). Without limiting the foregoing, except as expressly set forth in this Lease, Tenant's obligation so to pay Rent shall be independent of all other covenants under this Lease, and shall not be discharged or otherwise affected by any law or regulation now or hereafter applicable to the Premises, or any other restriction on Tenant's use, or any casualty or taking, or any failure by Landlord to perform any covenant contained herein, or any other occurrence; and, except as expressly set forth in this Lease, Tenant waives all rights now or hereafter existing (i) to terminate or cancel this Lease or quit or surrender the Premises or any part thereof, or (ii) to assert any defense in the nature of constructive eviction to any action seeking to recover Rent.

5. **Late Charge.** Other remedies for non-payment of Rent notwithstanding, if any monthly installment of Base Rent or Additional Rent is not received by Landlord on or before the fifth (5th) day after the date due and Tenant receives written notice of such delinquency (provided that no such notice shall be required more than two (2) times in any 24 month period), a late charge of five percent (5%) of such past due amount shall be immediately due and payable as Additional Rent and interest shall accrue from the date past due until paid at the lower of twelve percent (12%) per annum or the highest rate permitted by applicable law. In the event that one or more checks submitted by Tenant to Landlord for payment of amounts due pursuant to this Lease shall not be honored by the financial institution due to insufficient funds during the Term, Landlord may, in its sole discretion, require that all future payments by Tenant to Landlord be paid by certified funds, cashier's check or cash.

6. **Partial Payment.** No payment by Tenant or acceptance by Landlord of an amount less than the Rent herein stipulated shall be deemed a waiver of any other Rent due. No partial payment or endorsement on any check or any letter accompanying such payment of Rent shall be deemed an accord and satisfaction, but Landlord may accept such payment without prejudice to Landlord's right to collect the balance of any Rent due under the terms of this Lease or any late charge assessed against Tenant hereunder.

7. **Construction of this Agreement.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance by Tenant of his obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.

8. **Use of Premises.**

a. Tenant shall use and occupy the Premises for general office and medical office purposes of a type customary for similar office buildings, and for no other purpose. The Premises shall not be used for any illegal purpose, nor in violation of any applicable regulation of any governmental body, nor in any manner to create any nuisance or trespass, nor in any manner

to vitiate the insurance or increase the rate of insurance on the Premises or the Building (provided, however, Landlord agrees that the Permitted Use hereunder, generally (as opposed to Tenant's particular use) will not increase the rate of insurance, nor is the Permitted Use, generally (as opposed to Tenant's particular use) inconsistent with the nature or reputation of the Building).

b. Tenant shall not cause or permit the receipt, storage, use, location or handling on the Property (including the Building and Premises) of any product, material or merchandise which is explosive, highly inflammable, or a "hazardous or toxic material," as that term is hereafter defined. "Hazardous or toxic material" shall include all materials or substances which have been determined to be hazardous to health or the environment, including, without limitation hazardous waste (as defined in the Resource Conservation and Recovery Act); hazardous substances (as defined in the Comprehensive Emergency Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act); gasoline or any other petroleum product or by-product or other hydrocarbon derivative; toxic substances, (as defined by the Toxic Substances Control Act); insecticides, fungicides or rodenticide, (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act); asbestos and radon and substances determined to be hazardous under the Occupational Safety and Health Act or regulations promulgated thereunder. Notwithstanding the foregoing, Tenant shall not be in breach of this provision as a result of the presence in the Premises of de minimis amounts of hazardous or toxic materials which are in compliance with all applicable laws, ordinances and regulations and are customarily present in the ordinary course of medical office use or general office use (e.g., copying machine chemicals and kitchen cleansers). In addition, at Landlord's election, Landlord may, from time to time and upon reasonable advance written notice to Tenant, inspect the Premises and/or the Building for Hazardous Materials at Landlord's cost and expense. Tenant shall pay for all such costs and expenses incurred by Landlord in connection with such inspection if such inspection reveals that a release or threat of release of Hazardous Materials exists at the Building or Premises as a result of the acts or omission of Tenant, its subtenants, successors and assigns, or their respective officers, employees, agents or contractors, or its subtenants or any other party acting by, under or through Tenant (individually and collectively, a "**Tenant Party**").

c. The occupancy rate of the Premises shall in no event be more than 3.5 persons per one thousand (1,000) useable square feet within the Premises, or the maximum occupancy permitted pursuant to applicable laws or codes, whichever is less. In the event that Tenant exceeds this ratio, and Landlord consents to such overage, Landlord may condition its consent upon Tenant's payment of any and all costs related with such overage, including without limitation, excessive maintenance charges, increased electrical and HVAC usage, and increased parking demand.

d. Subject to the Building rules and regulations shown on **Schedule 46** and other reasonable rules and regulations as Landlord may prescribe from time to time, Tenant shall have access to the Premises via security access card twenty-four (24) hours a day, seven (7) days a week.

9. **Definitions.** "**Landlord**," as used in this Lease, shall include the party named in the first paragraph hereof, its assigns and successors in title to the Premises. "**Tenant**" shall include the party named in the first paragraph hereof, and, if this Lease shall be validly assigned or sublet, shall also include Tenant's assignees or subtenants, as to the Premises, or portion thereof,

covered by such assignment or sublease. "Landlord" and "Tenant" include male and female, singular and plural, corporation, partnership, limited liability company or individual, as may fit the particular parties.

10. **Repairs By Landlord.** Tenant, by taking possession of the Premises, shall accept and shall be held to have accepted the Premises as suitable for the use intended by this Lease, except as otherwise expressly provided in this Lease. Landlord shall not be required, after possession of the Premises has been delivered to Tenant, to make any repairs or improvements to the Premises, except as set forth in this Lease (including the Tenant Improvements). Except for damage caused by casualty and condemnation (which shall be governed by Sections 28 and 29 below), and subject to normal wear and tear, Landlord shall maintain in good condition and repair and in a manner commensurate with other comparable office buildings in the applicable market area, including making all necessary (as reasonably determined by Landlord in good faith) repairs and replacements in accordance with applicable law, to: (i) the exterior walls, roof, windows, and foundation of the Building, (ii) common areas in and serving the Building, (iii) structural portions of the Building, and (iv) the Building's mechanical, electrical, plumbing, fire and life safety, telecommunication and HVAC systems (but not any special or supplemental systems installed by or on behalf of Tenant), provided that any repairs required due to the negligence or willful misconduct of Tenant or any Tenant Parties shall be performed by Landlord at Tenant's sole cost and expense (subject to the provisions of Section 22(d)). All repairs required of Landlord hereunder shall be performed within a reasonable period of time after Landlord receives notice of the need for the relevant repair.

11. **Repairs and Cleaning By Tenant.** Except as described in Section 10 above, Tenant shall, at its own cost and expense, maintain the Premises, and all fixtures, equipment, improvements and systems therein, in good repair and in a neat and clean, first-class condition. Tenant will maintain the Premises (and any systems exclusively serving the Premises installed by or for Tenant) in a clean and healthful condition, and comply with all applicable laws, ordinances, orders, rules and regulations of any governmental entity with reference to the use, condition, configuration or occupancy of the Premises. Tenant, at its sole cost and expense, shall contract directly with the cleaning company of its choice, subject to Landlord's reasonable approval, to clean all portions of the premises related to its medical and radiological uses. Subject to Sections 22(d), 28 and 29 of this Lease, Tenant shall further, at its own cost and expense, repair or restore any damage or injury to all or any part of the Building caused by Tenant or any Tenant Party, including but not limited to any repairs or replacements necessitated by (i) the construction or installation of improvements to the Premises by or on behalf of Tenant or any Tenant Party, or (ii) the moving of any property into or out of the Premises. If Tenant fails to make such repairs or replacements within thirty (30) days following written notice from Landlord, Landlord may, at its option, make the repairs and replacements and the actual, out-of-pocket costs of such repair or replacements plus an administrative fee of five percent (5%) shall be charged to Tenant as Additional Rent and shall become due and payable by Tenant with the monthly installment of Base Rent next due hereunder.

12. **Alterations and Improvements.** Except for minor, decorative and other alterations which do not affect the Building structure or systems, are not visible from outside the Premises and do not cost in excess of \$25,000.00 in the aggregate (which shall be referred to herein

as “**Cosmetic Alterations**”), Tenant shall not make or allow to be made any alterations, physical additions or improvements (“**Alterations**”) in or to the Premises without first obtaining in writing Landlord’s written consent for such Alterations, which consent shall not be unreasonably withheld, conditioned or delayed (it shall not be deemed unreasonable for Landlord to withhold its consent if the Alterations will affect the Building structure or systems, will be visible from outside the Premises, could affect the safety of the Building or its occupants; would increase Landlord's cost of repairs, insurance or furnishing services or otherwise adversely affect Landlord's ability to efficiently operate the Building or furnish services to Tenant or other tenants; involves toxic or hazardous materials (except for those toxic or hazardous materials, including but not limited to carpet adhesive and paint, which are customarily used in similar buildings for construction, maintenance and repairs, provided they are used by Tenant in compliance with all applicable laws and in reasonable amounts); could be costly or hazardous to remove or demolish; requires entry into another tenant's premises or use of public areas; or is prohibited by any mortgage on the Building). Any Alterations shall at once become the property of Landlord; provided, however, Landlord, at its option, may require Tenant to remove any Alterations (and/ or any cabling installed by or on behalf of Tenant) in order to restore the Premises to the condition existing on the Commencement Date. Notwithstanding the foregoing to the contrary, it is expressly understood between the parties that Landlord may only require Tenant to remove Tenant Improvements that are specialty alterations not customarily found in first class office premises, as reasonably determined by Landlord. All costs of any such Alterations shall be borne by Tenant. In addition, Tenant will furnish Landlord plans and specifications for any proposed Alterations and Tenant shall reimburse Landlord for Landlord’s charges (including any professional fees incurred by Landlord for expenses incurred by Landlord (or charges by Landlord’s designated property management firm for the Property)) in reviewing and approving or disapproving plans and specifications for Alterations proposed by Tenant. All Tenant Alterations must be made in a good, first-class, workmanlike manner, in compliance with all applicable laws, codes and regulations, in a manner that does not disturb other tenants (i.e., any loud work must be performed during non-business hours) and Tenant must maintain appropriate liability and builder’s risk insurance throughout the construction, as determined by Landlord. Tenant does hereby indemnify, defend, and hold Landlord harmless from and against all claims for damages or death of persons or damage or destruction of property arising out of the performance of any such Alterations made by or on behalf of Tenant, subject to Section 22(d). Under no circumstances shall Landlord be required to pay, during the Term of this Lease and any extensions or renewals thereof, any ad valorem or Property tax on such alterations, additions or improvements, Tenant hereby covenanting to pay all such taxes when they become due. In the event any Tenant Alterations or repairs are to be performed by contractors or workmen other than Landlord’s contractors or workmen, any such contractors or workmen must first be approved, in writing, by Landlord. Tenant will not permit any mechanic's liens or other liens to be placed upon the Property. If a lien is attached to the Property and Tenant fails to discharge or bond over such lien within fifteen (15) days after the earlier of Tenant becoming aware of such lien or written demand from Landlord, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same. Any amount paid by Landlord for any of the aforesaid purposes including, but not limited to, reasonable attorneys' fees, shall be paid by Tenant to Landlord within thirty (30) days after demand as Additional Rent. Tenant shall within ten (10) days of receiving such notice of lien or claim have such lien or claim released of record. Tenant's failure to comply with the provisions of the foregoing sentence shall be

deemed an event of default of Tenant entitling Landlord to exercise all of its remedies therefor without the requirement of any additional notice or cure period.

13. **Operating Expenses.**

a. Tenant agrees to reimburse Landlord throughout the Term, as Additional Rent hereunder, for Tenant's Share (as defined below) of the annual Operating Expenses (as defined below) in excess of the Operating Expenses for calendar year 2023 (hereinafter called the "**Base Year Amount**"). The term "**Tenant's Share**" shall mean a fraction, the numerator of which is the rentable square footage of the Premises, and the denominator of which is the rentable square footage of the Building. Tenant's Share is currently estimated to be 1.68%, which is the percentage determined by dividing 3,089 the rentable square footage of the Premises, by 184,373, the rentable square footage of the Building (all subject to change pursuant to Section 1(c) hereof). If Tenant does not lease the Premises during the entire full calendar year in which the Term of this Lease commences or ends, Tenant's Share of excess Operating Expenses for the applicable calendar year shall be appropriately prorated for the partial year, based on the number of days Tenant leased the Premises during that year.

b. Operating Expenses shall be all those expenses of owning, operating, servicing, managing, maintaining and repairing the Property, Building, all parking areas and related common areas. Except as otherwise provided in the Exclusions to Operating Expenses as described in **Exhibit F**, attached hereto and incorporated herein, Operating Expenses shall include, without limitation, the following:

(i) All taxes and assessments, whether general or special, applicable to the Property and the Building, which shall include real and personal property ad valorem taxes, and any and all costs and expenses incurred by Landlord in seeking a reduction of any such taxes and assessments. However, Tenant shall not be obligated for taxes on the net income from the operation of the Building, unless there is imposed in the future a tax on rental income on the Building in lieu of the real Property ad valorem taxes, in which event such tax shall be deemed an Operating Expense of the Building.

(ii) Insurance premiums and deductible amounts, including, without limitation, for commercial general liability, ISO Causes of Loss — Special Form (or equivalent) property, rent loss and other coverages carried by Landlord on the Building and Property.

(iii) All utilities, including, without limitation, water, power, heating, lighting, ventilation, sanitary sewer and air conditioning of the Building, but not including those utility charges actually paid by Tenant or other tenants of the Building.

(iv) Janitorial and maintenance expenses, including:

(1) Janitorial services and janitorial supplies and other materials used in the operation and maintenance of the Building;

(2) The cost of maintenance and service agreements on equipment, window cleaning, grounds maintenance, pest control, security, trash and snow removal, and other similar services or agreements;

(v) Management fees (or a charge equal to fair market management fees if Landlord provides its own management services) and the approximate market rental value of a management office;

(vi) The costs, including interest, amortized over its useful life, of any capital improvement made to the Building by or on behalf of Landlord which is required under any governmental law or regulation (or any judicial interpretation thereof) which was not in effect as of the date of this Lease, or to improve the operating efficiency of any system within the Building or improve the safety of the Building.

(vii) All services, supplies, repairs, replacements or other expenses directly and reasonably associated with servicing, maintaining, managing and operating the Building, including, but not limited to the lobby, vehicular and pedestrian traffic areas and other common use areas.

(viii) Wages and salaries of employees (not above the level of Building manager) engaged in the maintenance, operation, repair and services of the Building, including taxes, insurance and customary fringe benefits.

(ix) Legal and accounting costs.

(x) Costs to operate, maintain and repair the Building and the Property.

(xi) Landscaping and security costs unless Landlord hires a third party to provide such services pursuant to a service contract and the cost of that service contract is already included in Operating Expenses as described above.

(xii) If the Property is covered by a declaration and/or an owners association and costs of the type described above are allocated to the Building by way of dues or costs charged or assessed under that declaration or by that association, those charges or dues shall be included in the Operating Expenses.

c. Landlord shall endeavor to provide Tenant, on or before December 20 of each calendar year, with a statement of the estimated monthly installments of Tenant's Share of excess Operating Expenses increases which will be due for the remainder of the calendar year in which the Commencement Date occurs or for the upcoming calendar year, as the case may be. In the event Landlord has not provided Tenant with such statement prior to January 1 of any calendar year, Tenant shall continue to pay Tenant's Share of excess Operating Expenses in the same amount as the previous calendar year, unless and until Landlord provides a statement of estimated monthly installments for the current calendar year. As soon as practicable after December 31 of each calendar year during the Term of this Lease, Landlord shall furnish to Tenant an itemized statement of the Operating Expenses within the Building for the calendar year then ended. If Tenant does not notify Landlord of any objection to Landlord's itemized statement within ninety

(90) days of Landlord's delivery thereof in accordance with subparagraph (d), below, Tenant shall be deemed to have accepted such statement as true and correct and shall be deemed to have waived any right to dispute the excess Operating Expenses due pursuant to that statement.

(i) Tenant shall pay to Landlord, together with its monthly payment of Base Rent as provided in Sections 3 and 4 hereinabove, as Additional Rent hereunder, the estimated monthly installment of Tenant's Share of the excess Operating Expenses for the calendar year in question. At the end of any calendar year if Tenant has paid to Landlord an amount in excess of Tenant's Share of excess Operating Expenses for such calendar year, Landlord shall reimburse to Tenant any such excess amount (or shall apply any such excess amount to any amount then owing to Landlord hereunder, and if none, to the next due installment or installments of Additional Rent due hereunder, at the option of Landlord) within thirty (30) days after Tenant receives the annual statement. At the end of any calendar year if Tenant has paid to Landlord less than Tenant's Share of excess Operating Expenses for such calendar year, Tenant shall pay to Landlord any such deficiency within thirty (30) days after Tenant receives the annual statement.

(ii) For the calendar year in which this Lease terminates, and is not extended or renewed, the provisions of this Section shall apply, but Tenant's Share for such calendar year shall be subject to a pro rata adjustment based upon the number of days prior to the expiration of the Term of this Lease. Tenant shall make monthly estimated payments of the pro rata portion of Tenant's Share for such calendar year (in the manner provided above) and when the actual prorated Tenant's Share for such calendar year is determined Landlord shall send a statement to Tenant and if such statements reveals that Tenant's estimated payments for the prorated Tenant's Share for such calendar year exceeded the actual prorated Tenant's Share for such calendar year, Landlord shall include a check for that amount along with the statement. If the statement reveals that Tenant's estimated payments for the prorated Tenant's Share for such calendar year were less than the actual prorated Tenant's Share for such calendar year, Tenant shall pay the shortfall to Landlord within thirty (30) days of the date Tenant receives Landlord's statement.

(iii) If the Building is less than ninety-five percent (95%) occupied during any calendar year of the Term, including the Base Year, or if Landlord provided services to less than all of the occupants of the Building, or if any tenant is paying separately for electricity or other utilities or services then components of the actual Operating Expenses for the calendar year in question shall be increased to the amount of Operating Expenses which Landlord reasonably determines would have been incurred during that calendar year if the Building had been fully occupied throughout such calendar year (but only with respect to those Operating Expenses that vary based upon occupancy in the Building), as if all tenants received such services, or as if no tenants had separately paid for electricity or other utilities and services throughout such calendar year, as applicable. If the provisions of this subsection are applied in any calendar year the Base Year Amount shall likewise be adjusted for the calendar year on which it is based.

d. During the Term, Tenant shall have the right, exercisable no more than once for every two (2) calendar years, on reasonable notice to Landlord provided not later than ninety (90) days after Tenant's receipt of Landlord's itemized statement of the Operating Expenses, and at a time reasonably acceptable to Landlord, to cause an audit to be performed at Tenant's sole cost and expense (except as otherwise provided below) of Landlord's books with respect to

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Operating Expenses charged to Tenant for the preceding two (2) calendar years, to be conducted in the offices of the Landlord, its property manager, or another location reasonably designated by Landlord. Any audit performed by Tenant pursuant to this section shall be completed within one hundred twenty (120) days from the date of Tenant's receipt of Landlord's itemized statement. Notwithstanding any dispute concerning Landlord's itemized statement, payment shall be made by the parties in accordance with Landlord's statement at the time and in the manner set forth above, and if necessary there shall be a further adjustment between the parties at the time the dispute is resolved. If Tenant believes in good faith, as a result of such audit, that Tenant was overcharged with respect to Operating Expenses in excess of the actual amount owed by Tenant, then, subject to Landlord's right to dispute Tenant's audit results as set forth below, Landlord shall credit or refund to Tenant the amount of overcharge as discovered by the audit within thirty (30) days of completion of such audit. If such audit discloses an undercharge of such items billed to Tenant, Tenant shall pay the costs of such audit and pay Landlord the amount of such undercharge within thirty (30) days of completion of such audit. Notwithstanding anything herein to the contrary, Tenant shall have no right to examine Landlord's books and records and audit Landlord's Operating Expenses if Tenant shall have withheld or otherwise failed to pay any Additional Rent when due. Landlord's itemized statement of Operating Expenses shall be binding upon Tenant except as to items specifically disputed in writing by notice from Tenant to Landlord given within 90 days after Landlord delivers the statement to Tenant. Tenant shall pay all costs of the audit (including any out-of-pocket costs incurred by Landlord in connection therewith) unless Tenant is found to have overpaid Additional Rent for Operating Expenses by more than five percent (5%) for the year in question, in which case Landlord shall promptly reimburse Tenant for the reasonable, out of pocket costs expended by Tenant in performing such audit, in an amount not to exceed \$10,000 in the aggregate. In any event any audit of Landlord's Operating Expenses shall be conducted by an independent certified public accountant retained by Tenant or an auditing firm approved by Landlord for such purpose (each, an "examiner"). In no event shall Tenant propose, nor shall Landlord ever be required to approve, any examiner of Tenant who is being paid on a contingent fee basis or is representing other tenants in the Building.

If Landlord, by notice to Tenant, disputes Tenant's audit result, then Landlord and Tenant shall use reasonable efforts to resolve the dispute. If Landlord and Tenant are unable to resolve such dispute within thirty (30) days, then for such amounts which remain in dispute ("Disputed Amounts") shall be determined by an audit conducted by a certified public accountant reasonably selected by both parties ("**Op Ex Arbitration**"). If the parties are unable so to agree on an accountant within ten (10) days after delivery of Tenant's notice of its request for Op Ex Arbitration, then within twenty (20) days following delivery of Tenant's notice, Tenant may submit the dispute for determination by binding arbitration conducted by a single arbitrator in the Charlotte office of the American Arbitration Association ("**AAA**") in accordance with the AAA's Commercial Arbitration Rules. The arbitrator shall be selected by the AAA and shall be a certified public accountant with at least ten (10) years of experience in auditing similar office buildings in the Charlotte, North Carolina area. Any such arbitration shall be binding on the parties. The cost of the accountant selected by both parties, and the arbitrator, if applicable, shall be shared equally by the parties unless such arbitration reveals that the actual amount of Operating Expenses due as Additional Rent was less than ninety-five percent (95%) of the Operating Expenses comprising Additional Rent paid by Tenant on account of Landlord's calculation of Operating Expenses. In that case, Landlord shall be solely responsible for the costs of the accountant used in the arbitration.

As a condition precedent to performing any such examination of Landlord's books and records, Tenant and its examiners shall be required to execute and deliver to Landlord a commercially reasonable agreement in form acceptable to Tenant and Landlord agreeing to keep confidential any information that they discover about Landlord, the Building, or the Property in connection with such examination. Without limiting the foregoing, such examiners shall also be required to agree that they will not represent any other tenant in the Building in connection with examinations of Landlord's books and records for the Building unless said tenant(s) have retained said examiners prior to the date of the first examination of Landlord's books and records conducted by Tenant pursuant to this Section 13(d) and have been continuously represented by such examiners since that time. Notwithstanding any prior approval of any examiners by Landlord, Landlord shall have the right to rescind such approval at any time if in Landlord's judgment the examiners have breached any confidentiality undertaking to Landlord or any other landlord or cannot provide acceptable assurances and procedures to maintain confidentiality. Tenant's right hereunder shall not be exercisable by or on behalf of any subtenant.

14. **Landlord's Failure to Give Possession.** Landlord shall not be liable for damages to Tenant for failure to deliver possession of the Premises to Tenant if such failure is due to no fault of Landlord, or to the failure of any construction or remodeling of the Premises by Tenant to be completed or the failure of any previous tenant to vacate the Premises. Landlord will use commercially reasonable, diligent efforts to give possession of the Premises to Tenant by the scheduled Commencement Date of the Term.

15. **Acceptance and Waiver.** Landlord shall not be liable to Tenant, its agents, employees, guests or invitees (and, if Tenant is an entity, its officers, members, partners, managers, agents, employees, guests or invitees) for any damage caused to any of them due to the Building or any part or appurtenances thereof being improperly constructed or being or becoming out of repair, or arising from the leaking of gas, water, sewer or steam pipes, from water rising from underground pipes or the ground, or from electricity; provided, however, that this Section shall not apply to any damages or injury caused by or resulting from the negligence or willful misconduct of Landlord.

16. **Signs.** Tenant shall not paint or place signs, placards, or other advertisement of any character upon the windows or inside walls of the Premises except with the consent of Landlord which consent may be withheld by Landlord in its absolute discretion. Tenant shall place no signs upon the outside walls, common areas or the roof of the Building, nor shall Tenant place or allow any signs which are visible from the exterior of the Premises; provided, however, that, subject to applicable laws and the provisions of this Lease applicable to Alterations, Tenant is permitted to (i) place one (1) free-standing directional sign in a location reasonably approved by Landlord adjacent to the elevators on the ground floor of the Building to indicate that "Charlotte Radiology" is located on the First Floor (to include Tenant's logo) as shown on **Exhibit G-1** attached hereto, and (ii) install a small post mounted wayfinding sign identifying "Charlotte Radiology" in the parking lot in the location identified on **Exhibit G**, in each case subject to Landlord's reasonable prior approval with respect to the design, size, method of installation, and dimensions of the same. In the event of the violation of the foregoing by the Tenant, Landlord may remove same without any liability, and may charge the expense incurred for such removal to the Tenant violating this provision. Interior signs on doors and directories shall be inscribed, painted, or affixed for each

tenant by Landlord at the expense of such tenant, and shall be a size, color, and style acceptable to Landlord. Notwithstanding the foregoing, Landlord shall, at Tenant's sole cost and expense, install Tenant's standard front entry door signage for the Premises in a size, color and style acceptable to Landlord in Landlord's reasonable discretion. Upon expiration or earlier termination of this Lease, Tenant shall remove all such signs or advertising consented to by Landlord or permitted under this Section 16, at Tenant's sole cost and expense, and shall repair any damage caused by such removal.

17. **Advertising.** Landlord may advertise the Premises as being "For Rent" (i) at any time following a default by Tenant which remains uncured, and during any such periods, Landlord may exhibit the Premises to Landlord's existing or prospective lenders or mortgagees, or prospective purchasers and (ii) with prior notice to Tenant, at any reasonable time within the nine (9) month period prior to the expiration, cancellation or termination of this Lease for any reason and during any such periods, Landlord may exhibit the Premises to prospective tenants.

18. **Removal of Personal Property.** Tenant may, prior to the expiration of the Term of this Lease, or any extension thereof, remove any trade fixtures, equipment and other personal property which it has placed in the Premises which can be removed without damage to the Premises, provided Tenant repairs any damages to the Premises caused by such removal.

19. **Entering Premises.** Landlord may enter the Premises at reasonable hours: (a) to make repairs, perform maintenance and provide other services described in Section 20 below (no prior notice is required to provide routine services) which Landlord is obligated to make to the Premises or the Building pursuant to the terms of this Lease or to the other premises within the Building pursuant to the leases of other tenants; (b) to inspect the Premises to see that Tenant is complying with all of the terms and conditions of this Lease and with the rules and regulations hereof; (c) to remove from the Premises any articles or signs kept or exhibited therein in violation of the terms hereof; (d) to run pipes, conduits, ducts, wiring, cabling or any other mechanical, electrical, plumbing or HVAC equipment through the areas behind the walls, below the floors or above the drop ceilings; and (e) to exercise any other right or perform any other obligation that Landlord has under this Lease. Landlord, its agents, employees and any mortgagee of the Building shall have the right to enter the Premises at reasonable times for the purposes of showing the same to prospective purchasers, mortgagees, or (in accordance with Section 17 above) tenants. Landlord shall be allowed to take all material into and upon the Premises that may be required to make any repairs, improvements and additions, or any alterations, without in any way being deemed or held guilty of trespass and without constituting a constructive eviction of Tenant. Landlord shall use reasonable efforts to minimize interference with Tenant's business operations and access to the Premises during any such entry. The Rent reserved herein shall not abate while said repairs, alterations or additions are being made and Tenant shall not be entitled to maintain a set-off or counterclaim for damages against Landlord by reason of loss from interruption to the business of Tenant because of the prosecution of any such work except as otherwise expressly set forth in this Lease. All such repairs, decorations, additions and improvements shall be done during ordinary business hours, or, if any such work is at the request of Tenant to be done during any other hours, the Tenant shall pay all overtime and other extra costs.

20. **Services.**

a. The normal business hours of the Building shall be from 8:00 A.M. to 6:00 P.M. on Monday through Friday, and 8:00 A.M. to 12:00 P.M. on Saturday, exclusive of holidays reasonably designated by Landlord ("**Building Holidays**"). Initially and until further notice by Landlord to Tenant, the Building Holidays shall be: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving (and the day after Thanksgiving) and Christmas. Landlord shall furnish the following services during the normal business hours of the Building except as noted:

(i) Elevator service for passenger and delivery needs on a 24 hour per day, 7 day per week basis, subject to maintenance as needed;

(ii) Air conditioning adequate to cool the Premises and heat adequate to warm the Premises, as determined by Landlord in its discretion and subject to governmental regulations, existing building and component capacities and outside temperatures, in a manner commensurate with other first-class buildings in Charlotte, North Carolina. If such services are requested by Tenant outside of the normal business hours of the Building ("**Overtime Service**"), Tenant shall reimburse Landlord for such Overtime Service at a rate of Thirty-Five and No/100 Dollars (\$35.00) per hour, which rate is subject to increase based on Landlord's actual costs (with it being acknowledged and agreed that Overtime Service required twenty-four (24) hours' advance notice to Landlord);

(iii) Running water for all restrooms and lavatories on a 24 hour per day, 7 day per week basis, subject to maintenance as needed;

(iv) Janitorial service to the office portion of the Premises (but not any portion of the Premises used for medical and radiological uses) Monday through Friday, and grounds maintenance, in keeping with the standards generally maintained in similar office buildings in the Charlotte area;

(v) Electric power for lighting and outlets not in excess of a total of 6 watts per useable square foot of the Premises at 100% connected load;

(vi) Replacement of Building standard lamps and ballasts as needed; and

(vii) Repairs and maintenance as described in Section 10 of this Lease.

b. Tenant shall have no right to any services in excess of those provided herein. If Tenant uses services in an amount or for a period in excess of that provided for herein, then Landlord reserves the right to: charge Tenant as Additional Rent hereunder a sum as reimbursement for the direct cost of such added services (plus an administrative charge with respect thereto); charge Tenant for the cost of any additional equipment or facilities or modifications thereto, necessary to provide the additional services; and/or to discontinue providing such excess services to Tenant. Landlord shall also have the right to charge Tenant a reasonable administrative charge if the electricity or water services for the Premises are separately metered.

c. Landlord shall not be liable for any damages directly or indirectly resulting from the interruption in any of the services described above, nor shall any such interruption entitle

Tenant to any abatement of Rent or any right to terminate this Lease, except as otherwise expressly provided herein. Notwithstanding anything to the contrary contained in this Section 20, if: (i) Landlord ceases to furnish any service in the Building due to a condition reasonably within the control of Landlord or Landlord's agents, employees or contractors, for a period in excess of seven (7) consecutive Business Days after Tenant notifies Landlord of such cessation (the "**Interruption Notice**"); (ii) such cessation does not arise as a result of an act or omission of Tenant; (iii) such cessation is not caused by a fire or other casualty (in which case Section 16 shall control); (iv) the restoration of such service is reasonably within the control of Landlord; and (v) as a result of such cessation, the Premises or a material portion thereof, is rendered untenable and Tenant in fact ceases to use the Premises, or material portion thereof, then Tenant, as its sole remedy, shall be entitled to receive an equitable abatement of Base Rent payable hereunder during the period beginning on the eighth (8th) consecutive Business Day after Landlord's receipt of the Interruption Notice and ending on the day when the service in question has been restored. In the event the entire Premises has not been rendered untenable by the cessation in service, the amount of abatement that Tenant is entitled to receive shall be prorated based upon the percentage of the Premises so rendered untenable and not used by Tenant.

d. Tenant shall be responsible for maintaining separate HVAC units for above-standard equipment (e.g., IT rooms).

## **21. Indemnities.**

Subject to the waiver of claims set forth in Section 22(d), below, except to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's agents, contractors or employees, Tenant shall defend, indemnify and hold harmless Landlord, Landlord's lenders, Landlord's managing agent, and their respective partners, members, managers, officers, directors, and employees (the "Indemnitees") from and against any and all claims, demands, liabilities, damages, judgments, orders, decrees, actions, proceedings, fines, penalties, costs and expenses, including without limitation, court costs and attorneys' fees, arising from or related to (i) any cause in, on or about the Premises, (ii) any negligent acts or omissions of Tenant or of any person claiming by, through or under Tenant, or any Tenant Party, in, on or about the Project, or (iii) any breach of the terms of this Lease by Tenant, either prior to, during, or after the expiration of the Term. The terms of this Section 21 shall survive any termination or expiration of this Lease.

## **22. Insurance; Waivers.**

a. Tenant further covenants and agrees that from and after the date of delivery of the Premises from Landlord to Tenant, Tenant will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(i) Commercial General and Umbrella Liability Insurance covering the Premises and Tenant's use thereof against claims for personal injury or death and, property damage occurring upon, in or about the Premises, such insurance to be written on an occurrence basis (not a claims made basis), with a limit for each occurrence not less than \$3,000,000 and to have general aggregate limits of not less than \$5,000,000 for each policy year. The insurance coverage required under this Section 22(a)(i) shall, in addition, extend to Tenant's contractual liability hereunder and

to any liability of Tenant arising out of the indemnities provided for in Section 21 and, if necessary, the policy shall contain a contractual endorsement to that effect. The general aggregate limits under the Commercial General Liability insurance policy or policies must apply separately to the Premises and to Tenant's use thereof (and not to any other location or use of Tenant) and, if necessary, such policy shall contain an endorsement to that effect. Commercial General Liability insurance shall be written on the current ISO occurrence form (or a substitute form providing, in Landlord's discretion, equivalent or better coverage). The certificate of insurance evidencing the Commercial General Liability form of policy shall specify all endorsements required herein, shall name all additional insureds required by Section 22(b) below and shall specify on the face thereof that the limits of such policy applies separately to the Premises.

(ii) Commercial all risk property insurance covering all of the items included in Tenant's leasehold improvements, heating, ventilating and air conditioning equipment maintained by Tenant, trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, and alterations, additions or changes made by Tenant pursuant to Section 12, in an amount not less than one hundred percent (100%) of their full replacement value from time to time during the Term, providing protection against perils included within the ISO Special Causes of Loss-Special Form insurance policy (or substitute form providing, in Landlord's discretion, equivalent or better coverage). The certificate of insurance evidencing such coverage which is delivered by Tenant pursuant to Section 22(b) below shall designate Landlord (as well as any mortgagee of Landlord and any other party reasonably designated by Landlord), as loss payee with respect to the Building all Alterations, heating, ventilating and air conditioning equipment and all fixtures (other than Tenant's trade fixtures).

(iii) Workers' Compensation and Employer's Liability insurance affording statutory coverage and containing statutory limits with the Employer's Liability portion thereof to have minimum limits of \$500,000.00, including a waiver of subrogation rights against Landlord (as well as any mortgagee of Landlord and any other party reasonably designated by Landlord).

(iv) Business Interruption Insurance in an amount sufficient to cover Tenant's cost, damages, lost income, expenses and base rent/additional rent for temporary space for a period of up to twelve (12) months should any or all of the Premises not be usable by Tenant.

b. All policies of the insurance provided for in Section 22(a) shall be issued in form acceptable to Landlord by insurance companies with a rating and financial size of not less than A-X in the most current available "Best's Insurance Reports", and licensed to do business in the state in which Landlord's Building is located. Each and every such policy:

(i) shall name Landlord as an additional insured (as well as any mortgagee of Landlord and any other party reasonably designated by Landlord) and the coverage in item (ii) shall also name Landlord as loss payee as its interest may appear with respect to all Alterations, heating, ventilating and air conditioning equipment and fixtures (other than Tenant's trade fixtures).

(ii) shall (and a certificate thereof shall be delivered to Landlord at or prior to the execution of this Lease) be delivered to each of Landlord and any such other parties in

interest within thirty (30) days after delivery of possession of the Premises to Tenant and thereafter within thirty (30) days prior to the expiration of each such policy, and, as often as any such policy shall expire or terminate. Renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent; and

(iii) shall be written as a primary policy which does not contribute to and is not in excess of coverage which Landlord may carry, and Tenant shall give to Landlord and such other parties in interest at least thirty (30) days' notice in writing in advance of any material change cancellation, termination or lapse, or the effective date of any reduction in the amounts of insurance.

c. Any insurance provided for in Section 22(a) may be maintained by means of a policy or policies of blanket insurance, covering additional items or locations or insureds, provided, however, that:

(i) Landlord and any other parties in interest from time to time designated by Landlord to Tenant shall be named as an additional insured thereunder as its interest may appear;

(ii) the coverage afforded Landlord and any such other parties in interest will not be reduced or diminished by reason of the use of such blanket policy of insurance;

(iii) any such policy or policies shall specify therein (or Tenant shall furnish Landlord with a written statement from the insurers under such policy specifying) the amount of the total insurance allocated to the Tenant's improvements and property more specifically detailed in Section 22(a); and

(iv) the requirements set forth in this Section 22 are otherwise satisfied.

d. Notwithstanding anything to the contrary set forth hereinabove, neither Landlord nor Tenant shall be liable (by way of subrogation or otherwise) to the other party (or to any insurance company insuring the other party) for any loss or damage to any of the property of Landlord or Tenant, as the case may be, with respect to their respective property, the Building, the Property or the Premises or any addition or improvements thereto, or any contents therein, to the extent covered by insurance carried or required to be carried by a party hereto even though such loss might have been occasioned by the negligence or willful acts or omissions of the Landlord or Tenant or their respective employees, agents, contractors or invitees. Landlord and Tenant shall give each insurance company that issues policies of insurance, with respect to the items covered by this waiver, written notice of the terms of this mutual waiver, and shall have such insurance policies properly endorsed, if necessary, to prevent the invalidation of any of the coverage provided by such insurance policies by reason of such mutual waiver. For the purpose of the foregoing waiver, the amount of any deductible applicable to any loss or damage shall be deemed covered by, and recoverable by the insured under the insurance policy to which such deductible relates.

e. Tenant acknowledges and agrees that any contractors (and subcontractors of any tier) hired by Tenant to do work in the Premises will be required to carry sufficient liability and worker's compensation insurance coverage insuring the contractor (or subcontractor), Tenant

and Landlord with terms equivalent to those specified in this Section 22, plus completed operations, including a waiver of subrogation rights against Landlord, Landlord's lender and any other party reasonably designated by Landlord. Tenant shall provide certificates of such insurance satisfying the foregoing to Landlord prior to commencing any work in the Premises.

f. Landlord shall maintain policies of insurance throughout the Term of this Lease consistent with what similarly situated and prudent landlords would maintain (including, without limitation, property insurance).

23. **Governmental Requirements.** Tenant shall, at its own expense, promptly comply with all requirements of any legally constituted governmental or public authority made necessary by reason of Tenant's occupancy of the Premises, including, without limitation, the Americans with Disabilities Act.

24. **Abandonment of Premises.** Tenant agrees not to abandon or vacate the Premises. If Tenant does abandon or vacate the Premises for more than sixty (60) days, Landlord may terminate this Lease, by written notice to Tenant at any time prior to Tenant reoccupying the Premises, but such termination shall not entitle Landlord to pursue any other remedies unless an uncured event of default then exists, in which case Landlord may pursue any and all remedies provided by this Lease, at law or in equity.

25. **Assignment and Subletting**

a. **Generally.** Tenant shall not assign, sublease, transfer or encumber any interest in this Lease or allow any third party to use any portion of the Premises (collectively or individually, a "**Transfer**") without the prior written consent of Landlord. In the event that Tenant is a corporation or entity other than an individual, any transfer of a majority or controlling interest in Tenant (whether by stock transfer, merger, operation of law or otherwise) shall be considered Transfer for purposes of this paragraph and shall require Landlord's prior written consent. Without limiting the generality of the foregoing, in no event shall Tenant be permitted to sublease any portion of the Premises to (i) any tenant, subtenant, or occupant of the Building, or (ii) any third-party that Landlord has been involved in negotiations for the leasing of space in the Building within the twelve (12) month period immediately preceding Tenant's request for a Transfer. Consent to a Transfer shall not destroy or waive this provision, and all later Transfers shall likewise be made only upon the prior written consent of Landlord. Tenant shall reimburse Landlord for its legal and administrative costs in reviewing any such proposed Transfer. Landlord shall not unreasonably withhold, condition or delay its consent to any assignment of this Lease or sublet of the Premises, subject to the conditions of this Section 25. Without limitation, it is agreed that Landlord's consent to an assignment or sublet shall not be considered unreasonably withheld if: (1) the proposed transferee's financial condition is not adequate for the obligations such transferee is assuming in connection with the proposed Transfer; (2) the transferee's business, reputation, or proposed use of the Premises is not suitable for the Building considering the business and reputation of the other tenants and the Building's prestige, or the proposed transfer would result in a violation of another tenant's rights under its lease at the Building (or a violation of Landlord's obligations under another lease or license agreement at the Building); (3) the transferee is a governmental agency or occupant of the Building; (4) Tenant is then in default beyond any applicable notice and cure period; (5) any portion of the Building or the Premises would become subject to additional or different laws as a

consequence of the proposed Transfer; or (6) Landlord or its leasing agent has received a proposal from or made a written proposal to the proposed transferee to lease space in the Building within six (6) months prior to Tenant's delivery of written notice of the proposed Transfer to Landlord. Any attempted Transfer in violation of this Section 25, shall, exercisable in Landlord's sole and absolute discretion, be void. If Landlord withholds its consent to any Transfer contrary to the provisions of this Section 25, Tenant's sole remedy shall be to seek an injunction in equity to compel, or otherwise seek to compel, performance by Landlord to give its consent and Tenant expressly waives any right to damages in the event of such withholding by Landlord of its consent. In no event shall any Transfer or Permitted Transfer release or relieve Tenant from any obligation under this Lease or any liability hereunder. Subtenants or assignees shall become liable to Landlord for all obligations of Tenant hereunder, and, in the event of any default by Tenant under this Lease, Landlord may, at its option, but without any obligation to do so, elect to treat any such sublease as a direct Lease with Landlord and collect rent directly from the subtenant. In addition, upon any request by Tenant for Landlord's consent to an assignment or sublease, Landlord may elect to terminate this Lease and recapture all of the Premises (in the event of an assignment request) or the applicable portion of the Premises (in the event of a subleasing request) upon thirty (30) days written notice to Tenant as set forth below; provided, however, Tenant shall have the right to rescind its request for Landlord's consent to an assignment or sublease within ten (10) business days after receipt of Landlord's termination notice, whereupon the parties agree that this Lease shall continue in full force and effect as between Landlord and Tenant. If Tenant desires to assign or sublease, Tenant must provide written notice to Landlord describing the proposed transaction in detail and providing all documentation (including detailed financial information for the proposed assignee or subtenant) reasonably necessary to let Landlord evaluate the proposed transaction. Landlord shall notify Tenant within thirty (30) days of its receipt of such notice and all required information whether Landlord elects to exercise its recapture right and, if not, whether Landlord consents to the requested assignment or sublease. If Landlord fails to respond within such thirty (30) day period, Landlord will be deemed not to have elected to recapture and not to have consented to the assignment or sublease. If Landlord does consent to any assignment or sublease request and the assignee or subtenant pays to Tenant an amount in excess of the Rent due under this Lease (after deducting Tenant's reasonable, actual brokerage expenses in obtaining such assignment or sublease, amortized in equal monthly installments over the then remainder of the Term), Tenant shall pay 50% of such excess to Landlord as and when the monthly payments are received by Tenant.

b. Permitted Transfer. Notwithstanding anything to the contrary in this Section 25 or elsewhere in this Lease, Tenant may, from time to time and at any time with thirty (30) days prior written notice to Landlord, make the following assignments and sublets without the need for the prior consent of Landlord ("**Permitted Transfer**"):

(1) Tenant may assign the Lease to any person or entity which controls Tenant, is controlled by Tenant or is under common control with Tenant, provided the financial net worth of such person or entity with respect to any assignment of this Lease is equal to or exceeds the financial net worth of Tenant on the Commencement Date of this Lease. "Control" as used in this Section 25 shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or

entity and the ability to direct the day-to-day affairs or management policies of such person or entity.

(2) Tenant may assign the Lease to a successor entity in connection with the merger or consolidation of Tenant and such other entity or to the purchaser or transferee of all or substantially all of the business and assets of Tenant, provided the financial net worth of such successor entity is equal to or exceeds the financial net worth of Tenant on the Commencement Date of this Lease, or, if greater, the financial net worth of Tenant on the effective date of such proposed Transfer.

(3) Tenant may sublet the Premises or any part thereof to any person or entity which controls Tenant, is controlled by Tenant or is under common control with Tenant.

Any such Permitted Transfer shall not relieve Tenant of its obligations under this Lease. Tenant covenants and agrees to forward a copy to Landlord of (i) the fully signed assignment, sublease and/or transfer document, and (ii) the assignee's financial statements, prior to said Permitted Transfer taking effect. Further, nothing in this subparagraph is intended to nor shall permit Tenant to transfer its interest under this Lease as part of a fraud or subterfuge to intentionally avoid its obligations under this Lease, and any such transfer shall constitute a default hereunder. Any change in control of Tenant resulting from a merger, consolidation, or a transfer of all or substantially all of the business and assets of Tenant that does not meet the requirements of this subparagraph shall be deemed an assignment that requires Landlord's prior written consent pursuant to Section 25(a) above.

## 26. **Default.**

a. **Tenant Default.** If Tenant shall default in the payment of Rent herein reserved when due and fails to cure such default within five (5) business days after the date Tenant receives notice of such delinquency (provided that no such notice shall be required more than two (2) times in any 24 month period); or if Tenant shall be in default in performing any of the terms or provisions of this Lease other than the provisions requiring the payment of Rent, and fails to cure such default within thirty (30) days after written notice of such default is given to Tenant by Landlord or, if such default cannot be cured within thirty (30) days, Tenant shall not be in default if Tenant promptly commences and diligently proceeds the cure to completion as soon as reasonably possible and in all events within 120 days; or if Tenant or any guarantor of this Lease is adjudicated bankrupt; or if any voluntary or involuntary proceedings are filed by or against Tenant or any guarantor of this Lease under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within sixty (60) days after filing; or if a permanent receiver is appointed for Tenant's or any guarantor's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal; or if, whether voluntarily or involuntarily, Tenant or any guarantor takes advantage of any debtor relief proceedings under any present or future law, whereby the Rent or any part thereof, is, or is proposed to be, reduced or payment thereof deferred; or if Tenant's effects should be levied upon or attached and such levy or attachment is not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof; or, if Tenant is an individual, in the event of the death of the individual and the failure of the executor, administrator

or personal representative of the estate of the deceased individual to have assigned this Lease within three (3) months after the death to an assignee approved by Landlord; or if Tenant fails to observe or perform any of the covenants with respect to (a) any Transfer as set forth in Section 25, (b) mechanic's liens as set forth in Section 12, then, and in any of said events, Landlord, at its option, may exercise any or all of the remedies set forth in Section 27 below.

b. Landlord Default. In no event shall Landlord be in default unless notice thereof has been given to Landlord (and all mortgagees of which Tenant has notice) and Landlord (or any such mortgagee at its sole discretion) fails to perform within 30 days (provided, however, that such 30 day period shall be reasonably extended if such performance begins within such period and thereafter is diligently pursued, or if such mortgagee notifies Tenant within such period that it intends to cure on behalf of Landlord and thereafter begins curing within such period, or if later within 30 days after acquiring possession of the Property if the cure requires the mortgagee to obtain possession of the Property, and diligently pursues curing with reasonable promptness). Any mortgagee notice and cure periods set forth in any subordination agreements then in effect under Section 31 shall control to the extent the same differ from the foregoing.

27. Remedies.

a. Upon the occurrence of any default set forth in Section 26(a) above which is not cured by Tenant within the applicable cure period provided therein, if any, Landlord may exercise all or any of the following remedies:

(i) terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date specified in such notice and all rights of Tenant under this Lease shall expire and terminate as of such date, Tenant shall remain liable for all obligations under this Lease up to the date of such termination and Tenant shall surrender the Premises to Landlord on the date specified in such notice, and if Tenant fails to so surrender, Landlord shall have the right, without additional notice, to enter upon and take possession of the Premises and to expel and remove Tenant and its effects without being liable for prosecution or any claim of damages therefor;

(ii) terminate this Lease as provided in the immediately preceding subsection and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including without limitation, the then present value, as computed in subsection (iii) below, of (1) the total Rent which would have been payable hereunder by Tenant for the period beginning with the day following the date of such termination and ending with the Expiration Date of the term as originally scheduled hereunder, minus (2) the aggregate reasonable rental value of the Premises for the same period (as reasonably determined by Landlord), plus (3) the costs of recovering the Premises, and all other expenses incurred by Landlord due to Tenant's default, including, without limitation, reasonable attorneys' fees, plus (4) the unpaid Rent earned as of the date of termination, plus interest, all of which sum shall be immediately due and payable by Tenant to Landlord. Tenant shall indemnify, defend and hold harmless Landlord from any losses, damages, judgments, claims, expenses, costs and liabilities imposed upon or incurred by or asserted against Landlord, including without limitation reasonable attorneys' fees and expenses, that may arise from a default of Tenant;

(iii) without terminating this Lease, and without notice to Tenant, Landlord may in its own name, but as agent for Tenant enter into and take possession of the Premises and re-let the Premises, or a portion thereof, as agent of Tenant, upon any terms and conditions as Landlord may deem necessary or desirable in Landlord's sole discretion. Upon any such re-letting, all rentals received by Landlord from such re-letting shall be applied first to the costs incurred by Landlord in accomplishing any such re-letting, and thereafter shall be applied to the Rent owed by Tenant to Landlord during the remainder of the term of this Lease and Tenant shall pay any deficiency between the remaining Rent due hereunder and the amount received by such re-letting as and when due hereunder. In addition, Landlord may, without terminating this Lease, declare all Rent which Tenant is required to pay for the duration of the then current Term to be immediately due and payable, and thereupon such Rent due hereunder through the end of the then current Term shall be accelerated and immediately payable (but discounted to present value using an annual discount rate equal to the then-current yield on a 10-year US Treasury bond (as of the date of acceleration));

(iv) allow the Premises to remain unoccupied and collect Rent from Tenant as it becomes due; or

(v) pursue such other remedies as are available at law or in equity.

b. Any action taken by Landlord under this Section shall not operate as a waiver of any right which Landlord would otherwise have against Tenant for rent hereby or otherwise, and Tenant shall remain responsible to Landlord for any loss and/or damage suffered by Landlord by reason of Tenant's default or breach. The words "re-enter" and "re-entry" as used in this Lease are not restricted to their technical legal meaning.

c. The various rights and remedies herein granted to Landlord shall be cumulative and in addition to any other Landlord may be entitled to by law or in equity, and the exercise of one or more rights or remedies shall not impair Landlord's right to exercise any other right or remedy. In all events, Landlord shall have the right upon notice to Tenant to cure any breach by Tenant at Tenant's sole cost and expense, and Tenant shall reimburse Landlord for such expense upon demand. Landlord shall not be liable to Tenant for any loss or damage caused by acts of Landlord in remedying or attempting to remedy such default. Any expenses incurred by Landlord in connection with any default by Tenant shall accrue interest from the date of payment by Landlord until repaid by Tenant at the highest rate permitted by law. Notwithstanding anything in this Lease to the contrary, if Landlord terminates this Lease due to Tenant's default beyond applicable notice and cure periods, then Landlord shall use commercially reasonable efforts to relet the Premises, subject to Landlord's customary leasing standards and practices. However, any obligation imposed upon Landlord by law or on account of the immediately preceding sentence to relet the Premises shall be subject to the right of Landlord to lease other available space prior to reletting the Premises and to lease the Building in a harmonious manner with an appropriate mix of uses, tenants, floor areas and terms of tenancies, and the like. In attempting to relet the Premises, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent reasonably deemed by Landlord necessary or desirable.

d. Bankruptcy. If Landlord shall not be permitted to terminate this Lease as hereinabove provided because of the provisions of Title 11 of the United States Code relating to  
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Bankruptcy, as amended (the "Bankruptcy Code") or such other laws or regulations as may then be applicable, then Tenant as a debtor in possession or any trustee for Tenant agrees promptly, within no more than fifteen (15) days following request by Landlord to the Bankruptcy Court, to assume or reject this Lease and Tenant on behalf of itself, and any trustee agrees not to seek or request any extension or adjournment of any application to assume or reject this Lease by Landlord with such Bankruptcy Court. In such event, Tenant or any trustee for Tenant may only assume this Lease if it (i) cures or provides adequate assurance that the Trustees will promptly cure any default hereunder; (ii) compensates or provides adequate assurance that Tenant will promptly compensate Landlord for any actual pecuniary loss to Landlord resulting from Tenant's defaults; and (iii) provides adequate assurance of performance during the fully stated term hereof of all of the terms, covenants, and provisions of this Lease to be performed by Tenant. In no event after the assumption of this Lease shall any then-existing default remain uncured for a period set forth herein. Adequate assurance of performance of this Lease as set forth hereinabove shall include, without limitation, adequate assurance (1) of the source of rent reserved hereunder; (2) that any percentage rent due hereunder will not decline from the levels anticipated; and (3) that the assumption of this Lease will not breach any provision hereunder. In the event of a filing of a petition under the Bankruptcy Code, Landlord shall have no obligation to provide Tenant with any services or utilities as herein required unless Tenant shall have paid and be current in all payments of Operating Expenses, utilities or other charges therefor.

28. **Destruction or Damage.**

a. Tenant shall promptly notify Landlord of any damage to the Premises resulting from storm, fire, earthquake, or any other casualty. If the Building or the Premises are totally destroyed by storm, fire, earthquake, or other casualty, or damaged to the extent that, (i) in Landlord's opinion the damage cannot be restored within one hundred eighty (180) days of the date Landlord provides Tenant written notice of Landlord's estimate of the time necessary to restore the damage; or (ii) if the damage is not covered by Landlord's property insurance (or if Landlord determines there are insufficient proceeds to restore the damage); or (iii) if the Landlord's lender requires that the insurance proceeds be applied to its loan; or (iv) in the event there is less than two (2) years of the Term remaining, then Landlord shall have the right to terminate this Lease effective as of the date of such destruction or damage by written notice to Tenant on or before thirty (30) days following Landlord's notice described in the next sentence and Rent shall be accounted for as between Landlord and Tenant as of that date. Landlord shall provide Tenant with notice within sixty (60) days following the date of the damage of the estimated time needed to restore, whether the loss is covered by Landlord's insurance coverage and whether or not Landlord's lender requires the insurance proceeds be applied to its loan.

b. If the Premises are damaged by any such casualty or casualties but Landlord is not entitled to or does not terminate this Lease as provided in subparagraph (a) above, this Lease shall remain in full force and effect, Landlord shall notify Tenant in writing within sixty (60) days of the date of the damage that the damage will be restored (and will include Landlord's good faith estimate of the date the restoration will be complete), in which case Rent shall abate as to any portion of the Premises which is not usable and is in fact unused by Tenant, and Landlord shall restore the Premises to substantially the same condition as before the damage occurred (except for modifications required by zoning and building codes and other

laws or any other modifications to the Common Areas deemed desirable by Landlord, which are consistent with the character of the Building, provided that access to the Premises shall not be materially impaired), whereupon full Rent shall recommence. Notwithstanding the foregoing, Landlord's obligation to restore the Building, and the improvements located within the Premises shall not require Landlord to expend for such repair and restoration work more than the insurance proceeds actually received by Landlord as a result of the casualty. Notwithstanding anything to the contrary contained herein, Landlord shall have no obligation to restore any item that is Tenant's responsibility to insure under Section 22 hereof, regardless of whether Tenant insures same, undertakes self-insurance with respect to same or fails to maintain insurance with respect to same; Tenant shall bear the responsibility for prompt restoration of all such items.

c. Further, in the event the Premises is not actually restored to the condition required herein within the longer of the period set forth in Landlord's estimate of the time necessary to restore the Premises or one hundred eighty (180) days, subject in each case to extension for Force Majeure Events, Tenant shall have the right to terminate this Lease by giving thirty (30) days prior written notice thereof to Landlord at any time following the expiration of such period (but prior to such restoration being completed), provided that if Landlord completes such restoration within such 30 day period, such notice shall be of no force and effect and the Lease shall continue.

29. **Eminent Domain.** If the whole of the Building or Premises, or such portion thereof as will make the Building or Premises unusable in the judgment of Landlord for their intended purposes, is condemned or taken by any legally constituted authority for any public use or purpose, then in either of said events, Landlord shall have the option to terminate this Lease effective as of the date possession is required to be surrendered to the authority and the Term shall cease from that time when possession thereof is taken by the condemning authorities, and Rent shall be accounted for as between Landlord and Tenant as of that date. If a portion of the Building or Premises is so taken, but not such amount as will make the Premises unusable in the judgment of Landlord for the purposes herein leased, or if Landlord elects not to terminate this Lease, this Lease shall continue in full force and effect and the Rent shall be reduced pro rata in proportion to the amount of the Premises so taken. Tenant shall have no right or claim to any part of any award made to or received by Landlord for such condemnation or taking, and all awards for such condemnation or taking shall be made solely to Landlord, except for any portions of such award or proceeds that are specifically allocated by the condemning or purchasing party for the taking of or damage to Tenant's trade fixtures, personal property, relocation and moving costs, which Tenant specifically reserves to itself, so long as the same do not reduce Landlord's award. Tenant shall not because of such taking assert any claim against Landlord for any compensation because of such taking.

30. **Service of Notice.** Except as otherwise provided by law, Tenant hereby appoints as its agent to receive the service of all dispossessory or distraint proceedings and notices thereunder, the person in charge of or occupying the Premises at the time of such proceeding or notice; and if no person be in charge or occupying the Premises, then such service may be made by attaching the same to the front entrance of the Premises.

31. **Mortgagee's Rights.**

a. Tenant agrees that this Lease shall be subject and subordinate (i) to the lien of any mortgage or deed of trust, or other security interest now or hereafter encumbering the Property and to all advances which may be hereafter made, to the full extent of all debts and charges secured thereby and to all renewals or extensions of any part thereof, and to any easements, covenants, conditions and restrictions, or other matters of record, ground lease, or other security interest now encumbering or which any owner of the Property now or hereafter, at any time, elect to place on the Property; (ii) to any assignment of Landlord's interest in the leases and rents from the Building or Property which includes this Lease which now exists or which any owner of the Property may hereafter, at any time, elect to place on the Property; and (iii) to any Uniform Commercial Code Financing Statement covering the personal property rights of Landlord or any owner of the Property which now exists or any owner of the Property may hereafter, at any time, elect to place on the foregoing personal property (all of the foregoing instruments set forth in (i), (ii) and (iii) above being hereafter collectively referred to as "**Security Documents**"). Tenant agrees upon request of the holder of any Security Documents ("**Holder**") to hereafter execute any commercially reasonable documents which the counsel for Landlord or Holder may deem necessary to evidence the subordination of this Lease to the Security Documents.

b. In the event of a foreclosure pursuant to any Security Documents, Tenant shall at the election of the Holder (but subject to the terms of any SNDA between Tenant and such Holder), thereafter remain bound pursuant to the terms of this Lease as if a new and identical Lease between the transferee at such foreclosure, as landlord, and Tenant, as tenant, had been entered into for the remainder of the Term hereof and Tenant shall attorn to the transferee upon such foreclosure sale and shall recognize such transferee as the Landlord under this Lease. Such attornment shall be effective and self-operative without the execution of any further instrument on the part of any of the parties hereto. Tenant waives the provisions of any current or future statute, rule or law which may give or purport to give Tenant any right or election to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any foreclosure proceeding or sale. Tenant agrees, however, to execute and deliver at any time and from time to time, within ten (10) days of the request of Landlord or of such transferee, any commercially reasonable instrument or certificate that may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment.

c. If the Holder of any Security Document or the transferee upon the foreclosure of any of the Security Documents shall succeed to the interest of Landlord under this Lease, such Holder or transferee shall have the same remedies, by entry, action or otherwise for the non-performance of any agreement contained in this Lease, for the recovery of Rent or for any other default or event of default hereunder that Landlord had or would have had if any such Holder or transferee had not succeeded to the interest of Landlord. Any such Holder or transferee which succeeds to the interest of Landlord hereunder, shall not be (i) liable for any act or omission of any prior landlord (including Landlord) (provided that Holder shall be responsible for curing any repair and maintenance defaults that are continuing after Holder succeeds to the interest of Landlord under the Lease of which such Holder received prior notice contemporaneously with any notice delivered to Landlord)); or (ii) subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord); or (iii) bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord) unless received by Holder or its successor or assign; or (iv) bound by any amendment or modification of this Lease

made without its consent (other than amendments memorializing rights granted to Tenant pursuant to this Lease); or (v) responsible for the payment or performance of any work to be done by Landlord under this Lease to render the Premises ready for occupancy by Tenant or for the payment of any tenant improvements allowances.

d. Tenant hereby acknowledges that if the interest of Landlord hereunder is covered by an assignment of Landlord's interest in Lease to any Holder, Tenant shall pay all Rent due and payable under this Lease directly to the Holder of the assignment of Landlord's interest in Lease upon notification of the exercise of the rights thereunder by the Holder thereof.

e. Notwithstanding anything to the contrary set forth in this Section 31, the Holder of any Security Documents shall have the right, at any time, to elect to make this Lease superior and prior to its Security Document. No documentation, other than written notice to Tenant, shall be required to evidence that this Lease has been made superior and prior to such Security Documents, but Tenant hereby agrees to execute any documents reasonably requested by Landlord or Holder to acknowledge that this Lease has been made superior and prior to the Security Documents.

f. After receiving notice from any person, firm, or other entity (or from Landlord on behalf of any such person, etc.) that it holds a mortgage which includes the Premises as part of the mortgaged premises, or that it is the ground lessor under a lease with Landlord as ground lessee which includes the Premises as a part of the premises demised thereunder, no notice from Tenant to Landlord shall be effective unless and until a copy of the same is given to such holder or ground lessor, and the curing of any of Landlord's defaults by such holder or ground lessor shall be treated as performance by Landlord. Accordingly, no act or failure to act on the part of Landlord which would entitle Tenant under the terms of this Lease, or by law, to be relieved of Tenant's obligations hereunder shall have such an effect unless and until Tenant shall have first given written notice to such holder or ground lessor, if any, specifying the act or failure to act on the part of Landlord which could or would give basis to Tenant's rights and such holder or ground lessor, after receipt of such notice, has failed or refused to correct or cure the condition complained of within a reasonable time thereafter, but nothing contained in this Section 31(f) or elsewhere in this Lease shall be deemed to impose any obligation on any such holder or ground lessor to correct or cure any such condition.

g. Landlord shall use commercially reasonable efforts to obtain in favor of Tenant from its existing mortgage lender a subordination, nondisturbance and attornment agreement ("SNDA") in the form provided by such Holder, subject to such modifications as such Holder and Tenant may agree. Notwithstanding the foregoing, failure of Landlord to obtain such SNDA is not a default by Landlord.

### 32. **Tenant's Estoppel; Financial Statements.**

a. Tenant's Estoppel. Tenant shall, from time to time, upon not less than fifteen (15) days prior written request by Landlord, execute, acknowledge and deliver to Landlord a written statement certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Rent has been paid, that Tenant is not in default hereunder

and has no offsets or defenses against Landlord under this Lease, whether or not to the best of Tenant's knowledge Landlord is in default hereunder (and if so, specifying the nature of the default), and other factual matters requested by Landlord, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by Landlord, a prospective purchaser of Landlord's interest, or by a mortgagee of Landlord's interest or assignee of any security deed upon Landlord's interest in the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that the matters set forth in such statement requested by Landlord are true, correct and complete.

b. **Financial Statements.** Tenant shall deliver to Landlord upon Landlord's request (not to be made more than once per year other than in connection with a sale, refinancing, or recapitalization, following an event of default, or where required to confirm compliance with terms of this Lease), a copy of Tenant's financial statements (including at least a year end balance sheet and a statement of profit and loss) for each of the two (2) most recently completed years, prepared in accordance with generally accepted accounting principles.

33. **Attorney's Fees.** If either party exercises any of the remedies provided to such party under this Lease as a result of the other party's failure to comply with its obligations, or if such party brings any action to enforce its rights under this Lease, the non-prevailing party shall be obligated to reimburse the prevailing party, on demand, for all costs and expenses, including reasonable attorneys' fees and court costs, incurred in connection therewith.

34. **Parking.** Tenant shall be entitled to use four (4) reserved parking spaces for its employees, guests, and business invitees to be designated by Landlord in the lower parking area and three (3) free and unassigned on-site parking spaces per 1,000 rentable square feet of the Premises. Costs incurred by Landlord in connection with procuring and installing reserved signs for each space will be at Tenant's cost and be applied from the Tenant Improvement Allowance. Landlord reserves the right to build improvements upon, reduce the size of, relocate, reconfigure, eliminate, and/or make alterations or additions to such parking facilities at any time. The use of the reserved parking spaces is provided by Landlord to Tenant for the initial sum of Fifty Dollars (\$50.00) per parking space per month, which sum may be increased from time to time to the amount then charged by Landlord for reserved parking at the Building and shall be paid to Landlord as Additional Rent in advance on the 1<sup>st</sup> of each month during the Term. All unassigned parking spaces provided to Tenant shall be unreserved and are to be used by Tenant, its employees, and invitees in common with the other tenants of the Building and their employees and invitees on a first-come, first-served basis. Tenant's use of the parking spaces shall be subject to property management and enforcement, and use of said parking spaces for any other use shall be considered a violation of Tenant's obligations hereunder. Access to the parking lot is subject to Landlord's rules and regulations. Tenant's continued right to use the parking spaces is conditioned upon Tenant abiding by all such rules and regulations (including any sticker or other identification system established by Landlord and the prohibition of vehicle repair and maintenance activities in the parking facilities), and Tenant shall cooperate in seeing that any Tenant Party also comply with such rules and regulations. Landlord shall have the right to assign its obligations under this Section 34 to an affiliate of Landlord or a third-party parking manager or operator.

35. **Storage.** If Landlord makes available to Tenant any storage space outside the Premises, anything stored therein shall be wholly at the risk of Tenant, and Landlord shall have no responsibility or liability for the items stored therein.

36. **Waste Disposal.**

a. All normal office trash and waste (i.e., waste that does not require special handling pursuant to subparagraph (b) below) shall be disposed of through the janitorial service provided by Landlord.

b. Tenant shall be responsible for the removal and disposal of any waste deemed by any governmental authority having jurisdiction over the matter to be hazardous or infectious waste or waste requiring special handling, such removal and disposal to be in accordance with any and all applicable governmental rules, regulations, codes, orders or requirements. Tenant agrees to separate and mark appropriately all waste to be removed and disposed of through the janitorial service pursuant to (a) above and hazardous, infectious or special waste to be removed and disposed of by Tenant pursuant to this subparagraph (b). Tenant hereby indemnifies and holds harmless Landlord from and against any loss, claims, demands, damage or injury Landlord may suffer or sustain as a result of Tenant's failure to comply with the provisions of this subparagraph (b).

37. **Surrender of Premises.** Upon expiration or earlier termination of this Lease, Tenant shall surrender the Premises and the keys thereto, to Landlord broom clean and in substantially the same condition as on the Commencement Date hereof, reasonable wear and tear, casualty, condemnation and the obligations of Landlord under this Lease (including, without limitation, Landlord's repair and maintenance obligations) excepted, and Tenant shall remove all of its personalty therefrom in accordance with the terms of this Lease, including without limitation any trade fixtures that are particular to Tenant's Permitted Use as determined by Landlord in its reasonable discretion, and shall, if directed to do so by Landlord in accordance with Section 12 above, remove all Alterations (and any cabling installed by or on behalf of Tenant) and repair any damage caused by such removal. If Tenant fails to remove any of Tenant's personal property on or before the expiration or earlier termination of this Lease, or Tenant's right to possession hereunder, Landlord, at Tenant's sole cost and expense, shall be entitled to re-enter the Premises and remove and/or store such personal property, using such force as may be necessary without being guilty of forcible entry, detainer, trespass or other tort, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all actual expenses caused by such removal and all storage charges against such property so long as the same shall be in possession of Landlord or under the control of Landlord. In addition, if Tenant fails to remove any such personal property from the Premises or storage, as the case may be, within ten (10) days after written notice from Landlord, Landlord at its option, may deem all or any part of such personal property to have been abandoned by Tenant and title thereof shall immediately pass to Landlord under this Lease as by a bill of sale Tenant's obligation to observe or perform these covenants shall survive the expiration or other termination of the Term of this Lease. Notwithstanding anything contained herein to the contrary, the Parties agree that Tenant will have no obligation to remove its Tenant Improvements the end of the Lease Term; provided that such Tenant Improvements are standard "office equipment" (i.e. not specialty

alterations that are not customarily found in similar office buildings) but any trade fixtures exclusive to Tenant's use, as well as cabling, shall be removed at the end of the Term.

38. **Intentionally Omitted.**

39. **No Estate In Land.** This contract shall create the relationship of landlord and tenant between Landlord and Tenant; no estate shall pass out of Landlord; Tenant has only a usufruct, not subject to levy or sale, and not assignable by Tenant except with Landlord's consent or as otherwise provided in Section 25 of this Lease.

40. **Cumulative Rights.** All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative but not restrictive to those given by law.

41. **Paragraph Titles; Severability.** The paragraph titles used herein are not to be considered a substantive part of this Lease, but merely descriptive aids to identify the paragraph to which they refer. Use of the masculine gender includes the feminine and neuter, and vice versa, where necessary to impart contextual continuity. If any paragraph or provision herein is held invalid by a court of competent jurisdiction, all other paragraphs or severable provisions of this Lease shall not be affected thereby, but shall remain in full force and effect.

42. **Damage or Theft of Personal Property.** All personal property brought into the Premises shall be at the risk of the Tenant only and Landlord shall not be liable for theft thereof or any damage thereto occasioned by any acts of co-tenants, or other occupants of the Building, or any other person, except, with respect to damage to the Premises, as may be occasioned by the gross negligence or willful act of the Landlord, its employees and agents.

43. **Holding Over.** In the event Tenant remains in possession of the Premises after the expiration of the Term hereof, or of any renewal term, Tenant shall be a tenant-at-sufferance and such tenancy shall be subject to all the provisions hereof, except that the Base Rent shall be one hundred twenty-five percent (125%) of the monthly Base Rent payable hereunder upon such expiration of the Term hereof for the first three (3) months following the expiration of the Term. In the event that Tenant remains in possession of the Premises beyond three (3) months following the expiration of the Term, the monthly Base Rent shall increase to one hundred fifty percent (150%) of the monthly Base Rent payable hereunder upon such expiration of the Term. Nothing in the prior sentence shall limit or reduce the rights or remedies of Landlord at law or under this Lease. Tenant shall also be liable for any claim, loss, cost or expense (including attorneys' fees) and all other damages Landlord suffers as a result of such holdover including, without limitation, any consequential damages (such as the loss of a prospective tenant for such space). There shall be no renewal of this Lease by operation of law or otherwise, except as otherwise expressly set forth in this Lease. Nothing in this Section shall be construed as a consent by Landlord for any holding over by Tenant after the expiration of the Term hereof, or any renewal term.

44. **Right of First Offer.** Provided that (i) Tenant is not then in default under this Lease and (ii) Tenant has not assigned this Lease or sublet all or any portion of the Premises in violation of this Lease, Tenant shall have a one-time right of first offer to lease available space on the first (1<sup>st</sup>) floor of the Building which is contiguous to the original Premises (i.e., which shares a common demising wall with the original Premises) more particularly described as Suites 125 and 100

(the “**First Offer Space**”). Tenant’s first offer rights relative to the First Offer Space are further subject to the following terms and conditions:

a. Offer by Landlord. If Landlord receives notice that part or all of the First Offer Space will be coming available for lease during the Term, Landlord shall notify Tenant of the availability of such space and such notification from Landlord to Tenant also shall identify all of the economic terms upon which Landlord intends to market the space for lease, including the Base Rent rate. Tenant shall have five (5) business days after such notification is delivered to Tenant by Landlord to elect (by so notifying Landlord in writing) to lease all (but not less than all) of the portion of the First Offer Space which is to become available on all of the same terms and conditions (including, without limitation, Base Rent rate) as set forth in Landlord’s notice to Tenant.

b. Tenant’s Election of Rights. If Tenant elects to lease from Landlord all of the portion(s) of the First Offer Space which are to become available in accordance with this Section 44, Tenant and Landlord shall proceed diligently and in good faith to finalize and execute a lease amendment for such purpose within twenty (20) days after the expiration of the foregoing five (5) business day period (provided, however, in any event, Tenant’s exercise of its rights relative to the First Offer Space shall be irrevocable, and the terms set forth in the offer to Tenant shall be binding on Tenant).

c. Tenant’s Failure to Exercise Rights. If Tenant elects not to lease from Landlord the available portion(s) of the First Offer Space (as evidenced either by Tenant’s written notice to Landlord to that effect or by Tenant’s failure to respond to Landlord within the five (5) business day period referenced in Section 44(a) above), then, in such event, Landlord shall be entitled, at any time after the expiration of such five (5) business day period (without triggering any further rights of Tenant under this Section 44), to enter into a lease agreement with the prospective tenant or any other party relative to all or any portion of the space encompassed by the prospective tenant’s offer or proposal, in which case all of Tenant’s rights under this Section 44 shall immediately and automatically terminate relative to such portion or all (as the case may be) of the First Offer Space that Landlord so leases.

d. Certain Leases Excluded. Notwithstanding any term or provision in this Section 44 to the contrary, Landlord shall be entitled to enter into any extension or renewal of the lease of any tenant in the Building relative to the First Offer Space without triggering any rights of Tenant under this Section 44. Further, all rights of Tenant under this Section 44 are subject and subordinate to all prior rights in and to the First Offer Space which may have been previously granted by Landlord to other tenants in the Building.

e. Term. Notwithstanding anything set forth herein to the contrary, as a condition precedent to Tenant’s exercise of its rights as to the First Offer Space, the Term relative to the existing Premises shall be extended as needed (but in no event shortened) to make same co-terminus with the lease term for the First Offer Space. If the Term is extended relative to the existing Premises in accordance with this Section 44(e), the Base Rent rate for the existing Premises for such additional portion of the Term shall be increased, at Landlord’s election, either

(i) annually by three percent (3%) per annum or (ii) as necessary to equal the Base Rent rate for the First Offer Space as set forth above during such period.

45. **Rules and Regulations.** The rules and regulations in regard to the Building, annexed hereto at **Schedule 45**, and all reasonable rules and regulations which Landlord may hereafter, from time to time, adopt and promulgate for the government and management of said Building, are hereby made a part of this Lease and shall, during the said term, be observed and performed by Tenant, its agents, employees, and invitees; provided, however (i) any such future rules and regulations shall not materially and adversely affect Tenant's rights and obligations under this Lease, (ii) Tenant shall be provided written notice of any such rules and regulations and any amendments thereto, together with a copy of same, prior to the effective enforcement date, and (iii) any such rules and regulations shall be enforced in a non-discriminatory manner (collectively, the "**Limitations on Rules and Regulations**"). In the event of any direct and irreconcilable conflict between the body of this Lease and Landlord's rule and regulations, the terms of the body of this Lease shall govern and control.

46. **Quiet Enjoyment.** Tenant, upon payment in full of the required Rent and full performance of the terms, conditions, covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the term hereof. Landlord shall not be responsible for the acts or omissions of any other tenant, Tenant or third party that may interfere with Tenant's use and enjoyment of the Premises.

47. **Entire Agreement.** This Lease contains the entire agreement of the parties and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

48. **Limitation of Liability.** Landlord's obligations and liability with respect to this Lease shall be limited solely to Landlord's interest in the Building (including any proceeds therefrom to the extent in Landlord's possession and insurance proceeds received with respect to the Building or Project), as such interest is constituted from time to time, and neither Landlord nor any partner, officer, director, shareholder or member of Landlord, or any officer, director, shareholder, member or partner of any partner, shareholder or member of Landlord, shall have any personal liability whatsoever with respect to this Lease. No personal judgment shall lie against Landlord upon extinguishment of its rights in the Building and any judgment so rendered shall not give rise to any right of execution or levy against any other assets of Landlord. For the purposes of this paragraph, the term "Landlord" shall mean and include all partners of Landlord (if Landlord is a partnership) and all members and managers of Landlord (if Landlord is a limited liability company). The provisions hereof shall inure to Landlord's successors and assigns, including any Mortgagee. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in case of recovery of a judgment against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under this Lease. Notwithstanding anything contained herein to the contrary, no owner of the Property, whether or not named herein, shall have liability hereunder after it ceases to hold title to the Property, and such successor-in-interest shall be deemed to remain bound to terms and conditions of this Lease.

49. **Submission of Agreement.** Submission of this Lease to Tenant for signature does not constitute a reservation of space or an option to acquire a right of entry. This Lease is not binding or effective until execution by and delivery to both Landlord and Tenant.

50. **Authority.** If Tenant executes this Lease as a corporation, limited partnership, limited liability company or any other type of entity, each of the persons executing this Lease on behalf of Tenant does hereby personally represent and warrant that Tenant is a duly organized and validly existing corporation, limited partnership, limited liability company or other type of entity, that Tenant is qualified to do business in the State of North Carolina, that Tenant has full right, power and authority to enter into this Lease, and that each person signing on behalf of Tenant is authorized to do so. Upon Landlord's request, Tenant shall provide Landlord with evidence reasonably satisfactory to Landlord confirming the foregoing representations and warranties.

51. **Relocation.** Landlord shall have no right to relocate Tenant from the Premises to any other space in the Building at any point during the Term including any extensions thereof.

52. **Broker Disclosure.** CBRE ("**Landlord's Broker**"), have acted as agents for Landlord in this transaction and are to be paid a commission by Landlord pursuant to a separate agreement. Jones Lang LaSalle ("**Tenant's Broker**"), a real estate broker licensed in the State of North Carolina, has acted as agent for Tenant in this transaction and is to be paid a commission by Landlord's Broker pursuant to a separate agreement. Tenant represents that it has dealt with no broker other than the broker(s) identified herein. Tenant and Landlord agree that if any other broker makes a claim for a commission, based upon the actions of either party or its broker, such party shall indemnify, defend and hold the other party and its broker harmless from any such claim. This indemnity shall survive any termination or expiration of this Lease.

53. **Notices.** Any notice which is required or permitted to be given by either party under this Lease shall be in writing and must be given only by certified mail, return receipt requested, by hand delivery or by nationally recognized overnight courier service at the addresses set forth below. If there is more than one Tenant, or if Tenant as such is comprised of more than one person or entity, the obligations hereunder imposed upon Tenant shall be joint and several obligations of all such parties. All notices, payments, and agreements given or made by, with or to any one of such persons or entities shall be deemed to have been given or made by, with or to all of them. Any such notice shall be deemed given or received, as applicable, on the date sent or deposited for delivery in accordance with one of the permitted methods described above. Either party may change its notice address by notice to the other party in accordance with the terms of this Section 53. Notices from either party may be given by such party or by its attorney or agent acting on behalf of such party. The following are the initial notice addresses for each party:

<u>If to Landlord:</u>	TFC McDowell LLC c/o The Fallon Company One Marina Park Drive Boston, MA 02110 Attn: Brian Awe Email: bawe@falloncompany.com
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With a Copy to: DLA Piper LLP (US)  
33 Arch Street, 26<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attn: Geoff Howell, Esq.  
Email: [geoff.howell@us.dlapiper.com](mailto:geoff.howell@us.dlapiper.com)

If to Tenant: Charlotte Radiology, P.A.  
700 E. Morehead St. Suite 400  
Charlotte, NC 28202  
Attention: Cheryl Marks, Vice President of Operations  
Telephone: (704) 334-7804

With a Copy to: Charlotte Radiology, P.A.  
700 E. Morehead St. Suite 400  
Charlotte, NC 28202  
Attention: General Counsel

54. **Force Majeure.** In the event of a strike, lockout, labor trouble, civil commotion, an act of God, terrorism, shortage of materials, pandemic or public health-related events, or any other event beyond Landlord's or Tenant's control (a "**Force Majeure Event**") which results in the applicable party being unable to timely perform its obligations hereunder, neither party shall be in breach hereunder, this Lease shall not terminate, and Tenant's obligation to pay any Base Rent, Additional Rent, or any other charges and sums due and payable shall not be excused or otherwise delayed as a result of a Force Majeure Event. Nothing in this Section 54 shall be deemed to excuse Tenant from paying rent when due or from performing any of its obligations on account of a lack of sufficient funds.

55. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located. Tenant irrevocably consents and submits to the nonexclusive jurisdiction of the courts of the state and federal district in which the Property is located and waives any objection based on venue of *forum non conveniens* with respect to any action instituted in those courts arising under this Lease or in any way connected or related or incidental to the dealings of the Tenant and the Landlord in respect of this Lease or any related transactions, in each case whether now existing or later arising, and whether in contract, tort, equity or otherwise, and agrees that any dispute with respect to any of those matters will be heard only in the courts describe above.

56. **Recording.** Tenant shall not record this Lease; however, at the request of Tenant, Landlord and Tenant shall execute, and Tenant may record, a memorandum of this Lease in the form attached as **Exhibit H** in the Mecklenburg County Public Registry, at Tenant's sole cost and expense, within fifteen (15) days following the occurrence of the Commencement Date. Tenant shall execute such instruments as are required to discharge any such memorandum upon the expiration or earlier termination of this Lease, and the provisions of this sentence shall survive the expiration of the term.

57. **Anti-Terrorism Representation.**

a. Tenant is not, and shall not during the Term of this Lease become, a person or entity with whom Landlord is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H. r. 3162, Public Law 107-56 (commonly known as the “**USA Patriot Act**”) and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, “**Anti-Terrorism Laws**”), including without limitation persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, “**Prohibited Persons**”).

b. Tenant is not currently engaged in any transactions or dealings, or otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises, the Building or the Property. Tenant will not in the future during the Term of this Lease engage in any transactions or dealings, or be otherwise associated with, any Prohibited Persons in connection with the use or occupancy of the Premises, the Building or the Property.

c. Tenant’s breach of any representation or covenant set forth in this Section 58 shall constitute a breach of this Lease on behalf of Tenant, entitling Landlord to any and all remedies hereunder, or at law or in equity.

58. **Miscellaneous.**

a. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, LANDLORD AND TENANT WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING UNDER THIS LEASE, (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE TENANT AND LANDLORD IN RESPECT OF THIS LEASE OR RELATED TRANSACTIONS, IN EACH CASE WHETHER NOW EXISTING OR LATER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. LANDLORD AND TENANT AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY MAY FILE A COPY OF THIS LEASE WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE OTHER PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

b. **Successors Bound.** This Lease shall be binding upon and inure to the benefit of Tenant and Landlord and their respective successors and permitted assigns.

c. **No Public Disclosure: Confidentiality.** All press releases or other dissemination of information to the media or responses to requests from the media for information relating to the transaction contemplated herein shall be subject to the prior written consent of Landlord. Furthermore, Tenant acknowledges and agrees that the terms of this Lease shall be confidential and no information concerning this Lease or any of the discussions or negotiations preceding this Lease may be disclosed to anyone outside of Tenant’s firm unless and except to the extent required by a subpoena issued to Tenant or by other governmental process, and (i) except such confidential advisors (such as brokers, attorneys, accountants and insurance consultants) who need to know for purposes of providing services to Tenant or (ii) to the extent required by applicable law. Tenant acknowledges and agrees to direct all of its directors, officers, employees,

outside attorneys and any other agents or representatives (collectively, “**Representatives**”) to keep the terms of this Lease in the strictest confidence. Any disclosure by a Representative shall be deemed made by, and be the responsibility of, Tenant. Landlord shall be entitled to equitable relief, including injunction, in the event of any breach of this Section, in addition to all other remedies available at law or in equity. The consent by Landlord to any disclosures shall not be deemed to be a waiver, or a waiver of any prohibitions against any future disclosure.

d. No Partnership. Nothing contained in this Lease shall be construed to create a partnership or joint venture between the parties or their successors in interest or permitted assigns.

e. Time of Essence. TIME IS OF THE ESSENCE WITH RESPECT TO THE PERFORMANCE OF THE OBLIGATIONS OF TENANT UNDER THIS LEASE.

f. Counterparts. This Lease may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument. Furthermore, the parties agree that (i) this Lease may be transmitted between them by electronic mail and (ii) electronic signatures (including electronic copies of manual signatures) shall have the effect of original signatures relative to this Lease.

g. Waiver; Severability. No waiver of any breach of any agreement or provision contained herein shall be deemed a waiver of any preceding or succeeding breach of any other agreement or provision herein contained. No extension of time for the performance of any obligation or act shall be deemed an extension of time for the performance of any other obligation or act. If any such provision is held or rendered illegal or unenforceable it shall be considered separate and severable from this Lease, and the remaining provisions of this Lease shall remain in force and bind the parties as though the illegal or unenforceable provision had never been included in this Lease.

h. Copies of Notices. Tenant shall promptly notify Landlord in writing of any notices it receives from any local, state or federal agency relating to the Premises or the Building and shall include a copy of such notice therewith.

i. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the charges herein stipulated shall be deemed to be other than on account of the earliest stipulated charges, nor shall any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover subsequently the balance of any amounts due hereunder or to pursue any other remedy provided herein.

j. Representations. Tenant acknowledges that neither Landlord nor Landlord’s agents, employees or contractors have made any representations or promises with respect to the Premises, the Building or this Lease except as expressly set forth herein.

k. No Discrimination. It is intended that the Building shall be developed so that all prospective tenants thereof, and all customers, employees, licensees and invitees of all

tenants shall have the opportunity to obtain all the goods, services, accommodations, advantages, facilities and privileges of the Building without discrimination because of race, creed, color, sex, age, national origin or ancestry. To that end, Tenant shall not discriminate in the conduct and operation of its business in the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

l. Supplemental HVAC Units. Subject to the provisions of Article 12 (including the review of the plans therefor, to the extent not expressly identified on **Exhibit B-1**), Tenant shall have the right to install and maintain two (2) supplemental HVAC units (the “**Supplemental HVAC Units**”) with the specifications and in the location shown on **Exhibit B-1** attached hereto and incorporated herein. Tenant shall operate and maintain the Supplemental HVAC Units in compliance with all applicable laws, rules, regulations and ordinances.

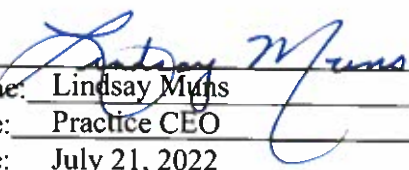
m. HIPAA. Landlord acknowledges and understands that it may have incidental contact and access to protected health information (“**PHI**”) of Tenant’s patients during the term of this Lease as such term is defined in the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”); provided, however, avoid such contact and access to PHI. Landlord agrees that it will not use or disclose PHI in any manner, except as may be required by applicable laws. Notwithstanding any of Landlord’s rights to enter the Premises pursuant to the terms of this Lease, Landlord acknowledges that Tenant shall be able to secure in locked storage units or remove from the Premises patient records and other information that is necessary to protect the rights and privacy of Tenant’s patients in accordance with applicable laws. Notwithstanding anything contained herein to the contrary, to ensure the privacy of Tenant’s patients, Tenant shall have the right to accompany Landlord or any Landlord parties when entering the Premises during Tenant’s business hours, with the exception of bona fide emergencies or the performance of regularly scheduled services in the Premises.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, Tenant has executed and sealed this Lease on the date set forth below.

**TENANT:**

**CHARLOTTE RADIOLOGY, P.A.,**  
a North Carolina professional association


By:   
Name: Lindsay Muns  
Title: Practice CEO  
Date: July 21, 2022

**IN WITNESS WHEREOF**, Landlord has executed and sealed this Lease on the date set forth below.

**LANDLORD:**

**TFC MCDOWELL LLC,**  
a Massachusetts limited liability company

By: Fallon Management Company LLC,  
its manager

By:   
Name: Brian Awe  
Title: Manager  
Date: July 21, 2022

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

That certain tract or parcel of land situate, lying and being in the City of Charlotte, County of Mecklenburg, State of North Carolina and being more particularly described as follows:

Beginning at an existing concrete monument at the southwestern intersection of South McDowell Street (80 foot Public Right of Way) and East 3rd Street (80 foot Right of Way) said point being South 52 degrees 32 minutes 18 seconds West 80.59 feet from an existing concrete monument at the southeastern intersection of the aforesaid streets; thence from the said point of beginning and with the southern right of way line of East 3rd Street South 41 degrees 55 minutes 57 seconds East 321.43 feet to a railroad spike, said point being the northern corner of the Seven Seventeen HB Charlotte Corporation Property as recorded in Deed Book 6703, Page 852 at the Mecklenburg County Register of Deeds; thence with the aforesaid property the following two (2) courses: 1) South 50 degrees 27 minutes West 340.05 feet to an existing nail; 2) North 41 degrees 55 minutes 37 seconds West 349.80 feet to a new iron rod on the southern right of way line of South McDowell Street; thence with the right of way line of the aforesaid street the following two (2) courses: 1) North 50 degrees 22 minutes 24 seconds East 311.18 feet to a new iron rod; 2) with the arc of a circular curve to the right having a radius of 30.00 feet an arc length of 45.92 feet (chord: South 85 degrees 46 minutes 34 seconds east 41.57 feet) to the point or place of Beginning; containing 118,742 square feet or 2.7259 acres of land as shown on a survey prepared by R.B. Pharr & Associates, P.A. dated May 20, 2005 and updated on April 11, 2006. (Map File W-3178).

**EXHIBIT A-1**

**PREMISES**

[See Attached]

## **EXHIBIT B**

### **WORK LETTER**

#### **A. Base Building Repairs.**

Landlord shall (i) perform water testing along the perimeter curtainwall at and above the Premises to identify areas of water intrusion in order to effectively replace any caulking, gasketing or otherwise damaged or deteriorated components of the curtainwall system that have allowed water to enter into the Premises, and (ii) remove and replace in kind any interior drywall within the Premises that shows water damage (including completing any necessary mold remediation), leaving the new dry wall areas in a paint-ready condition (the “**Base Building Repairs**”). Landlord hereby agrees that it shall use commercially reasonable, diligent efforts to complete the Base Building Repairs and deliver the Premises to Tenant by August 1, 2022 (the “**Target Delivery Date**”) subject to extension for Force Majeure Events and delays caused by Tenant’s interference with the Base Building Repairs.

For purposes of determining the Commencement Date, the Base Building Repairs shall be deemed to be substantially completed on the date that Base Building Repairs have been completed, other than any details of construction, mechanical adjustment or any other matter, the noncompletion of which does not materially interfere with Tenant's construction of the Tenant Improvements. The determination of Landlord’s architect or engineer with respect to the substantial completion of the Base Building Repairs shall be deemed conclusive. Except as expressly provided in the immediately following paragraph, the adjustment of the Commencement Date (to the extent determined by the substantial completion of the Base Building Repairs) and, accordingly, the postponement of Tenant's obligation to pay Base Rent and other sums due under the Lease shall be Tenant's sole remedy that Tenant might otherwise have against Landlord by reason of the Premises not being ready for delivery to Tenant with the Base Building Repairs substantially complete on the Target Delivery Date. Within five (5) business days of substantial completion, Landlord and Tenant shall inspect the Premises to identify any items of the Base Building Repairs that are incomplete and Landlord shall prepare, or cause its architect to prepare, a list of such items (the “**Punchlist Items**”). Landlord shall complete any Punchlist Items within 30 days after the substantial completion of the Base Building Repairs (or such longer period as is reasonably required).

Notwithstanding the foregoing to the contrary, if the Base Building Repairs have not been substantially completed by September 1, 2022, subject to extension for Force Majeure Events and delays caused by Tenant, Tenant shall be entitled to an abatement of Base Rent for each day from September 1, 2022, until the Base Building Repairs are substantially completed. In the event the Base Building Repairs are not substantially completed by January 1, 2023, subject to extension for Force Majeure Events and delays caused by Tenant, Tenant shall have a right to terminate the Lease by providing 10 days’ prior written notice of such termination to Landlord given no later than February 1, 2023, provided that if the Base Building Repairs are substantially completed within such 10 day period then such termination notice shall be null and void and of no force and effect.

## B. Tenant Improvements.

1. Preparation and Approval of Tenant Improvements Plans and Specifications. Within ten (10) days following the Effective Date, Tenant shall proceed, at Tenant's cost and expense, to deliver a complete copy of the draft plans and specifications for Tenant's proposed buildout of the Premises to Landlord for Landlord's review and approval (such approval not to be unreasonably withheld, conditioned or delayed, subject to the provisions of Section 12 of the Lease). Landlord shall review the draft plans and specifications and shall notify Tenant in writing within ten (10) business days after Landlord's receipt of same as to whether Landlord approves the draft plans and specifications. If Landlord does not approve the draft plans and specifications, such written notice from Landlord to Tenant shall provide Landlord's specific and detailed comments and suggestions which, if incorporated in the draft plans and specifications, would render the draft plans and specifications acceptable to Landlord. Tenant shall cause Tenant's architect to make the applicable revisions to the draft plans and specifications and Tenant shall deliver such revised draft plans and specifications to Landlord within five (5) business days following receipt of Landlord's comments, and Landlord shall provide any remaining comments, if any, within five (5) business days following receipt of Tenant's revised plans. This process will continue until Landlord approves of the draft plans and specifications. Landlord and Tenant in any event shall cooperate with one another in good faith to reach agreement regarding the draft plans and specifications as soon as practicable. The work which is described on the final, mutually approved plans and specifications is referred to herein as the "**Tenant Improvements**". Tenant shall not modify or amend the approved plans and specifications except with Landlord's prior consent, not to be unreasonably withheld, conditioned, or delayed in accordance with the Lease.

As used in this Lease (including this Exhibit B), "**Tenant Delay Factor**" shall collectively mean delays caused by Tenant or Tenant's agents, employees, contractors, subcontractors or licensees, including, without limitation, (i) change orders to the final, mutually approved plans and specifications, (ii) any request by Tenant for non-Building standard materials, or (iii) any request by Tenant for long lead-time items or other items which are not readily available.

2. Construction of Tenant Improvements. Following the date on which the plans and specifications have been mutually approved, Tenant shall select and contract with a North Carolina licensed general contractor reasonably approved by Landlord ("**Tenant's General Contractor**") to construct the Tenant Improvements in accordance with the mutually approved plans and specifications. Landlord shall deduct from the Tenant Improvement Allowance (as defined below) a construction management fee payable to Landlord in an amount equal to Two Thousand Five Hundred Dollars (\$2,500.00). Tenant shall design, construct, and pursue diligently and in good faith the completion of the Tenant Improvements in a good and workmanlike manner and in accordance with all applicable laws, statutes and regulations and the provisions of the Lease governing Alterations. As used in this Lease, the term "**Substantial Completion**" or "**Substantially Completed**" shall mean when the Tenant Improvements have been substantially completed, subject to the completion of minor, customary punch list items that do not interfere with Tenant's ability to occupy the Premises for the conduct of its business. In no event shall Tenant commence the Tenant Improvements until the Premises have been delivered to Tenant with the Base Building Repairs substantially complete.

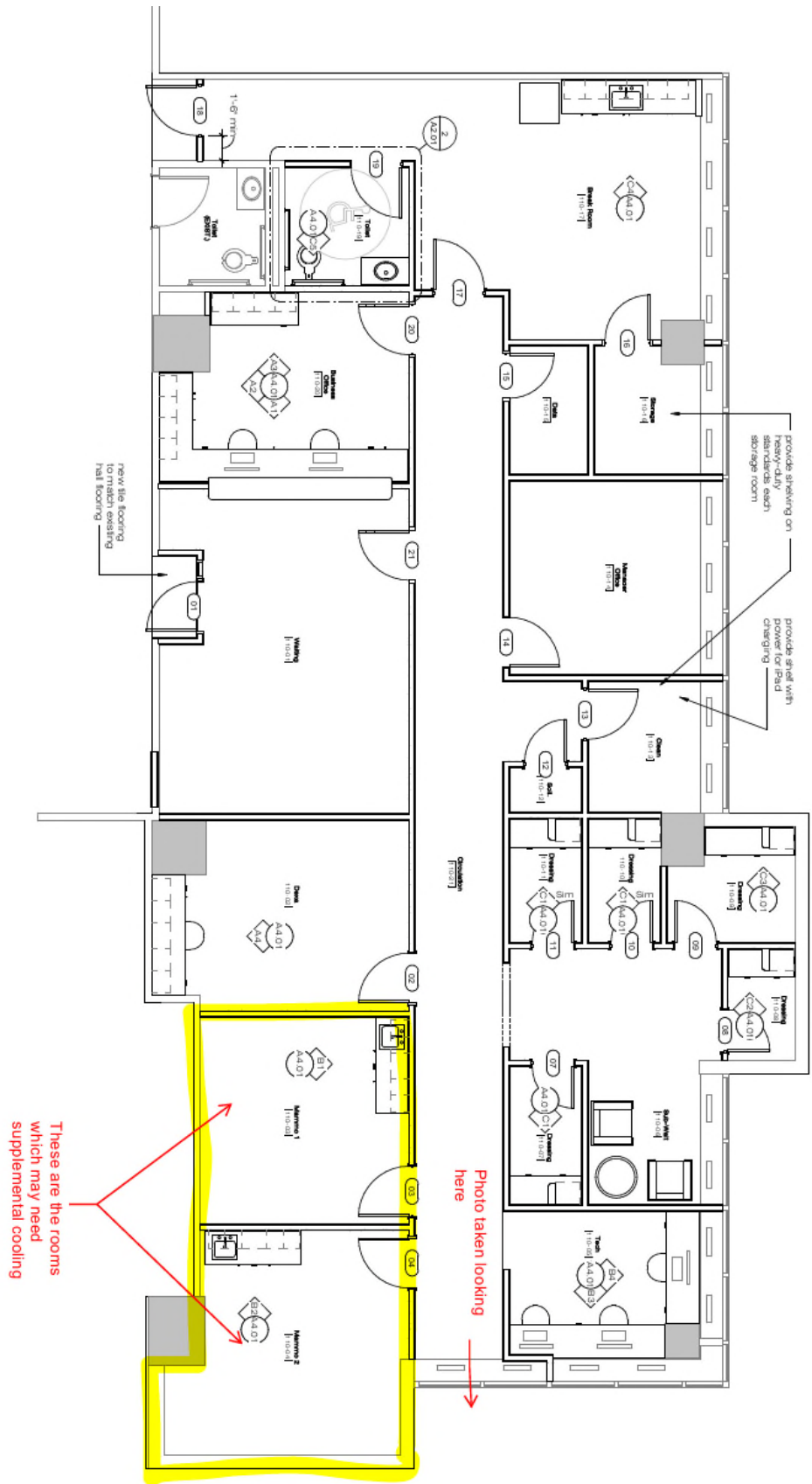
3. Tenant Improvement Allowance. Landlord shall provide Tenant with an amount not to exceed Two Hundred Ten Thousand Fifty-Two (\$210,052.00) Dollars (the “**Tenant Improvement Allowance**”) for application by Tenant towards the actual out of pocket costs incurred by Tenant for the design and construction of the Tenant Improvements. The Tenant Improvement Allowance shall be increased by the amount, if any, of any Base Rent subject to abatement pursuant to Section 4 of the Basic Lease Provisions that is converted to Tenant Improvement Allowance pursuant to a timely Conversion Notice. Landlord shall pay to Tenant the Tenant Improvement Allowance (after deducting Landlord’s construction management fee) to Tenant in reimbursement of Tenant’s permitted hard and soft costs in one lump sum within forty-five (45) days after: (a) Landlord receives written request of such reimbursement from Tenant, (b) Tenant is open and operating from the Premises, (c) Landlord receives from Tenant copies of paid invoices evidencing the actual Tenant Work Costs, together with final lien waivers from any third parties entitled to claim liens upon out such work, (d) a certificate of Substantially Completion from Tenant’s architect confirming that the Tenant Improvements are Substantially Complete, (e) a set of as-built plans in CAD format or such other format as Landlord requires, and (f) such other materials as Landlord reasonably requests. In no event shall Tenant be entitled to the Tenant Improvement Allowance if (i) Tenant is then in default under the terms of the Lease beyond any applicable grace or cure period, or (ii) Tenant has not requested such funds within nine (9) months following the Commencement Date. In the event the amount of the Tenant Improvement Allowance exceeds the final cost of the Tenant Improvements, Tenant shall not be entitled to any such excess.

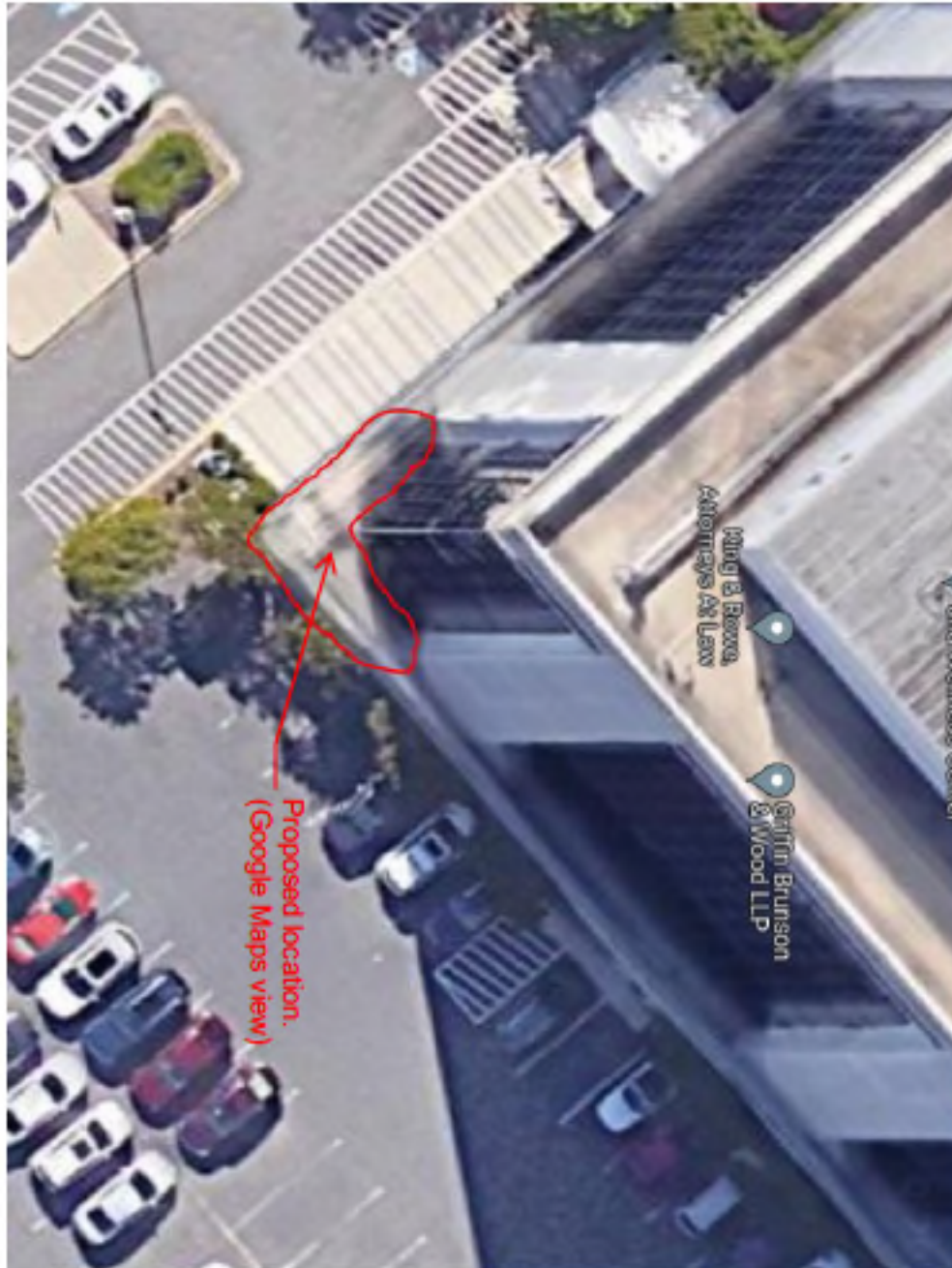
4. Excess Costs. In the event the costs incurred in connection with the Tenant Improvements (including, without limitation, Landlord’s construction management fee) exceed the Tenant Improvement Allowance, Tenant shall be responsible for bearing and paying such excess costs (the “**Excess Costs**”) prior to the disbursement of any portion of the Tenant Improvement Allowance. The Excess Costs (if any) payable by Tenant under this Section 4 shall constitute Additional Rent due under the Lease, and failure to make, after any applicable cure periods, any such payment when due shall constitute an event of default by Tenant under the Lease.

**EXHIBIT B-1**

CHILLER UNIT SPECIFICATIONS AND LOCATION

[See Attached]







View from inside the suite

Job Name:	
Tag#	



<b>Submittal Data Sheet</b>	<b>FTK12AXVJU / RK12AXVJU</b>
1-Ton Wall Mounted Cooling Only System	



Complete warranty details are available from your local dealer or at [www.daikin.com/fort.com](http://www.daikin.com/fort.com). To receive the 12-Year Parts Limited Warranty, online registration must be completed within 60 days of installation. Online registration is not required in California or Quebec. If product is installed in a commercial application, limited warranty period is 5 years.

Efficiency	
Cooling	
SEER	19
EER	12.5

Performance	
Cooling (Btu/hr)	
Rated (Min/Max)	10,900 (4,400 / 13,300)
Sensible @ AHR	9,090
Moisture Removal gal/h	.19
Standard Operating Range	50°F – 115°F
Extended Operating Range*	-4°F – 115°F
Rated Cooling Conditions: Indoor: 80°F DB/67°F WB Outdoor: 95°F DB/75°F WB	
*With field settings and wind baffle	

Indoor Specifications		
Airflow Rate (cfm)	Cooling	
	H	M
	436	316
	L	SL
	247	132
Sound (dBA) H / M / L / SL	45 / 37 / 31 / 19	
Dimensions (H x W x D) (in)	11-1/3 x 30-29/32 x 9-27/32	
Weight (Lbs)	22	

Electrical		
	208/60/1	230/60/1
System MCA	7.8	7.8
System MFA	15.0	15.0
Compressor RLA	7.5	7.5
Outdoor fan motor FLA	.47	.47
Outdoor fan motor W	41	41
Indoor fan motor FLA	.36	.36
Indoor fan motor W	38	38
MFA: Max. fuse amps MCA: Min. circuit amps (A) FLA: Full load amps (A) RLA: Rated load amps (A) W: Fan motor rated output (W)		

Outdoor Specifications		
Compressor	Hermetically Sealed Swing Type	
Refrigerant	R-410A	
Factory Charge (Lbs)	2.09	
Refrigerant Oil	PVE (FVCS OK)	
Airflow Rate (cfm)	Cooling	
	H	1,051
Sound Pressure Level (dBA)	49	
Dimensions (H x W x D) (in)	21-11/16 x 26-1/2 x 11-3/16	
Weight (Lbs)	62	

Piping	
Liquid (in)	1/4
Gas (in)	3/8
Drain (in)	3/4
Max. Interunit Piping Length (ft)	65.625
Max. Interunit Height Difference (ft)	49.25
Chargeless (ft)	32.8
Additional Charge of Refrigerant (oz/ft)	.21

**EXHIBIT C**

**ACKNOWLEDGMENT**

Tenant hereby acknowledges that Tenant has inspected the Premises, and further acknowledges that the Premises demised pursuant to the Lease to which this **Exhibit C** is attached (the “**Lease**”), and all tenant finish items to be completed by the Landlord, or Landlord’s contractors, have been satisfactorily completed in every respect, and Tenant hereby accepts said Premises in its current condition.

Tenant and Landlord hereby further acknowledge and agree as follows:

1. The Lease Commencement Date (as defined in the Lease) is \_\_\_\_\_, and the Lease Expiration Date (as defined in the Lease) is midnight local time on \_\_\_\_\_.
2. The initial monthly Base Rent payable under the Lease is \$\_\_\_\_\_, which payment will commence on \_\_\_\_\_.
3. Keys to the Premises have been delivered to Tenant or Tenant’s representative.

IN WITNESS WHEREOF, Landlord and Tenant have hereunto set their hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**TENANT:**

[\_\_\_\_\_] ,  
a [\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**LANDLORD:**

**TFC MCDOWELL LLC,**  
a Massachusetts limited liability company

By: Fallon Management Company LLC,  
its manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## **EXHIBIT D**

### **COMPUTATION OF "FAIR MARKET RENT" DURING THE RENEWAL TERM**

Base Rent payable by Tenant during the Renewal Term (the "**Fair Market Rent**") shall be the fair market value of the Premises, taking into account all relevant factors as set forth below, as reasonably determined by Landlord at the commencement date of the Renewal Term.

In determining the Fair Market Rent for the Renewal Term, Landlord will consider the then prevailing rent for premises comparable in size and use to the Premises, located in the Building, and if none, in buildings comparable in size and use to, and in the general vicinity of, the Building, leased on terms comparable to the terms contained in this Lease.

Within thirty (30) days after receipt of Tenant's notice to renew, Landlord shall deliver to Tenant written notice of the Fair Market Rent. Tenant shall, within ten (10) business days after receipt of Landlord's notice, notify Landlord in writing (the "**Renewal Response Notice**") whether Tenant (i) accepts Landlord's determination of the Fair Market Rent or (ii) rejects Landlord's determination of the Fair Market Rent and rescinds its election to extend the Term, or (iii) disagrees with Landlord's determination of the Fair Market Rental Rate, in which case Tenant shall concurrently notify Landlord of Tenant's determination of the Fair Market Rental Rate, and if the parties are unable to agree upon a Fair Market Rental Rate within thirty (30) days after such response by Tenant (the "**Negotiation Period**"), then such dispute shall be settled by binding arbitration as hereinafter described. If Tenant fails to deliver either the Renewal Notice or Renewal Response Notice within the time periods specified above, the Renewal Option shall be deemed waived, time being of the essence. If Tenant timely notifies Landlord that Tenant accepts Landlord's determination of the Fair Market Rent, then, on or before the commencement date of the Renewal Term, Landlord and Tenant shall execute a confirmatory amendment to this Lease extending the Term on the same terms provided in this Lease, except the Base Rent shall be adjusted to the Fair Market Rent determined by Landlord. If the parties are unable to agree upon a Fair Market Rental Rate within the Negotiation Period, each party shall appoint an appraiser who is knowledgeable and experienced in valuing commercial real estate with an MAI designation, within fifteen (15) days after the Negotiation Period to determine the Fair Market Rent. If the fair market rents determined by the two appraisers are within five percent (5%) of each other, the two amounts shall be averaged and the average shall be the Fair Market Rent. If the two amounts are more than five percent (5%) apart, then, within ten (10) days after the two amounts have been determined, the two appraisers shall select a third appraiser who (a) is knowledgeable and experienced in valuing commercial real estate in Charlotte, North Carolina with an MAI designation, and (b) has not represented either party, or an affiliate thereof, in the immediately preceding five (5) year period to determine such Fair Market Rent, who, within thirty (30) days after selection, shall determine such fair market rent. The third appraiser shall make its determination of which of the two amounts more closely reflects the Fair Market Rate for the Premises and such appraiser shall not select anything other than one of the two amounts from Landlord's and Tenant's appraiser and the estimate so selected by the third appraiser shall be binding on both Landlord and Tenant as the Fair Market Rent for the Premises for the Renewal Term. The party whose amount is not selected as the Fair Market Rent shall pay the costs of the third appraiser and of any experts retained by the third appraiser. Any fees of any appraiser, counsel

or experts engaged directly by Landlord or Tenant, however, shall be borne by the party retaining such appraiser, counsel or expert. Following the determination of Fair Market Rent, then, on or before the commencement date of the Renewal Term, Landlord and Tenant shall execute a confirmatory amendment to this Lease extending the Term on the same terms provided in this Lease, except the Base Rent shall be adjusted to the so-determined Fair Market Rent.

## **EXHIBIT F**

### **EXCLUSIONS TO OPERATING EXPENSES**

The “**Exclusions to Operating Expenses**” as used in this Lease shall mean that the following items shall not be included in the Operating Expenses:

- (A) Any tenant work performed or alteration of space leased to Tenant or other tenants or occupants of the Building or Property (specifically excluding base building systems and structures and the common areas of the Building), unless such items are similarly provided to, or benefit generally, other tenants in the Building;
- (B) Costs (including, without limitation, rental costs, taxes, depreciation, amortization and financing costs) incurred by Landlord for capital improvements, except to the extent such costs are otherwise permitted in Section 13(b)(vi) above;
- (C) Payments of principal, interest, or other finance charges made on any debt, or the amortization of funds borrowed by Landlord, except as provided above;
- (D) Ground rent or other rental payments made under any ground lease or underlying lease;
- (E) Costs of leasing commissions, legal, construction, and other expenses, abatement and concessions incurred in procuring tenants for the Building or with respect to individual tenants or occupants of the Building;
- (F) Salaries, wages, or other compensation paid to officers or executives of Landlord;
- (G) Salaries, wages, or other compensation or benefits paid to off-site employees or other employees of Landlord who are not assigned full-time to the operation, management, maintenance, or repair of the Building; provided however, Operating Expenses shall include Landlord’s reasonable allocation of compensation paid for the wages, salary, or other compensation or benefits paid to employees who are assigned part-time to the operation, management, maintenance, or repair of the Building;
- (H) Costs of advertising and public relations and promotional costs associated with the promotion or leasing of the Building;
- (I) Any costs, fines or penalties incurred due to the violation by Landlord of any governmental rule or authority;
- (J) Any other expenses that are paid directly by Tenant or other tenants or for which Landlord actually receives payment or reimbursement from insurance, or condemnation awards;
- (K) Costs of repairs, restoration, replacements or other work occasioned by (1) fire, windstorm or other casualty (whether such destruction be total or partial) other than reasonable deductibles and (2) the exercise by governmental authorities of the right of eminent domain (whether such taking be total or partial);

- (L) Costs incurred in connection with disputes with tenants, other occupants, or prospective tenants, or costs and expenses incurred in connection with negotiations or disputes with employees, consultants, management agents, leasing agents, purchasers or mortgagees of the Building;
- (M) Estate taxes, inheritance taxes, transfer, excess profits, gift, corporation, profit, gross receipts, net income (except as expressly provided in Section 13(b)(i) of the Lease), capital levy, or recordation taxes, or franchise taxes of Landlord;
- (N) Costs incurred in connection with the sale, financing, refinancing, mortgaging, selling or change of ownership of the Building;
- (O) All amounts which would otherwise be included in Operating Expenses which are paid to any affiliate or subsidiary of Landlord, or any representative, employee or agent of same, to the extent of the costs of such services exceed the competitive rates for similar services of comparable quality rendered by persons or entities of similar skill, competence and experience, (a management fee of 5% being deemed reasonable);
- (P) Costs incurred for any items to the extent covered by a manufacturer's materialman's, vendor's or contractor's warranty;
- (R) Services provided and costs incurred in connection with the operation of retail or other ancillary operations owned, operated or subsidized by Landlord;
- (S) Costs to acquire sculpture, paintings or other objects or fine art; and
- (T) Management fees in excess of competitive rates for similar buildings (a management fee of 5% of the rentals collected from the Building being deemed reasonable).

**EXHIBIT G**

**PARKING LOT SIGNAGE LOCATION**

[See Attached]

301 S. MCDOWELL  
CHARLOTTE, NORTH CAROLINA

**EXHIBIT G-1**

**TENANT'S FREE STANDING DIRECTIONAL SIGN**

[See Attached]

301 S. MCDOWELL  
CHARLOTTE, NORTH CAROLINA

**EXHIBIT H**  
**FORM OF MEMORANDUM OF LEASE**

Drawn by and mail to:

Lee Cory  
Troutman Pepper Hamilton Sanders LLP  
301 South College Street  
Suite 3400  
Charlotte, NC 28202

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** (this “**Memorandum**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between **TFC MCDOWELL LLC**, a Massachusetts limited liability company (“**Landlord**”) and **CHARLOTTE RADIOLOGY, P.A.**, a North Carolina professional association (“**Tenant**”)

**WHEREAS**, Landlord and Tenant entered into that certain Lease Agreement dated \_\_\_\_\_, 2022 (the “**Lease**”).

**WHEREAS**, pursuant to the Lease, Landlord leased to Tenant, and Tenant leased from Landlord, certain premises containing approximately 3,089 rentable square feet of space in the building located at 301 S. McDowell Street, Charlotte, North Carolina 28204 (the “**Building**”), and located on a portion of the land described on attached Exhibit A (the “**Premises**”).

**NOW, THEREFORE**, the parties enter into this Memorandum for the purpose of recording the same in the Mecklenburg County, North Carolina Public Registry in order to reflect the following:

1. Lease Term. The Lease Term shall be for approximately one hundred four (104) months commencing on the Commencement Date (as defined in the Lease) and ending at midnight local time on the last day of the 104<sup>th</sup> full calendar month following the Commencement Date, subject to Tenant's options to extend as provided in the Lease. Subject to the applicable terms of the Lease, Tenant may renew and extend the Lease with respect to all of the Premises for one (1) additional period of five (5) years commencing upon the expiration of the initial Lease Term.

2. Right of First Offer. Tenant has a right of first offer to lease available space on the first (1<sup>st</sup>) floor of the Building which is contiguous to the original Premises and particularly described as Suites 125 and 100 of the Building, subject to the applicable conditions to the exercise of such right as are described in the Lease.

3. Incorporation by Reference. The provisions set forth in the Lease are hereby incorporated into this Memorandum as if fully set forth herein. If a conflict between the terms of this Memorandum and the Lease occurs, the terms of the Lease shall prevail. All defined terms used in this Memorandum, as indicated by the initial capitalization thereof, shall have the same meanings ascribed to such terms in the Lease, unless otherwise defined herein. Upon the expiration or earlier termination of the Lease, this Memorandum will automatically terminate.

*[SIGNATURES BEGIN ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the duly authorized representatives of Landlord and Tenant have executed this Memorandum as of the day and year first written above.

LANDLORD:

**TFC MCDOWELL LLC,**  
a Massachusetts limited liability company

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

Name: \_\_\_\_\_

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

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_.

Date: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

\_\_\_\_\_

[Affix Notary Stamp or Seal]

*[SIGNATURES CONTINUE ON FOLLOWING PAGE]*

301 S. MCDOWELL  
CHARLOTTE, NORTH CAROLINA

TENANT:

**CHARLOTTE RADIOLOGY, P.A.**, a North  
Carolina professional association

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I certify that the following person personally appeared before me this day and  
acknowledged to me that he or she voluntarily signed the foregoing document for the purpose  
stated therein and in the capacity indicated: \_\_\_\_\_.

Date: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

Print Name: \_\_\_\_\_

[Affix Notary Stamp or Seal]

301 S. MCDOWELL  
CHARLOTTE, NORTH CAROLINA

## **EXHIBIT "A"**

That certain tract or parcel of land situate, lying and being in the City of Charlotte, County of Mecklenburg, State of North Carolina and being more particularly described as follows:

Beginning at an existing concrete monument at the southwestern intersection of South McDowell Street (80 foot Public Right of Way) and East 3rd Street (80 foot Right of Way) said point being South 52 degrees 32 minutes 18 seconds West 80.59 feet from an existing concrete monument at the southeastern intersection of the aforesaid streets; thence from the said point of beginning and with the southern right of way line of East 3rd Street South 41 degrees 55 minutes 57 seconds East 321.43 feet to a railroad spike, said point being the northern corner of the Seven Seventeen HB Charlotte Corporation Property as recorded in Deed Book 6703, Page 852 at the Mecklenburg County Register of Deeds; thence with the aforesaid property the following two (2) courses: 1) South 50 degrees 27 minutes West 340.05 feet to an existing nail; 2) North 41 degrees 55 minutes 37 seconds West 349.80 feet to a new iron rod on the southern right of way line of South McDowell Street; thence with the right of way line of the aforesaid street the following two (2) courses: 1) North 50 degrees 22 minutes 24 seconds East 311.18 feet to a new iron rod; 2) with the arc of a circular curve to the right having a radius of 30.00 feet an arc length of 45.92 feet (chord: South 85 degrees 46 minutes 34 seconds east 41.57 feet) to the point or place of Beginning; containing 118,742 square feet or 2.7259 acres of land as shown on a survey prepared by R.B. Pharr & Associates, P.A. dated May 20, 2005 and updated on April 11, 2006. (Map File W-3178).

301 S. MCDOWELL  
CHARLOTTE, NORTH CAROLINA

## **SCHEDULE 45**

### **RULES AND REGULATIONS**

1. Hallway doors to the Premises opening into common areas or public corridors shall have no signs, door hardware, kickplates or other fixtures attached thereto unless approved in writing by Landlord and shall be kept closed at all times except for those limited periods when actually used for entry to and exit from the Premises. No awnings, curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with any window or door of the Premises without the prior consent of the Landlord, including approval by the Landlord of the quality, type, design, color and manner of attachment. In the event of any breach of the foregoing, Landlord may remove the applicable item, and Tenant agrees to pay the cost and expense of such removal.
2. Tenant agrees that its use of electrical current shall never exceed Tenant's share of the capacity of existing feeders, risers or wiring installation. Any wires and wiring installed by or on behalf of Tenant within any riser of the Building shall be subject to compliance with the terms of this Lease and shall be bundled together within such riser and a tag shall be placed on such bundle at each floor of the Building identifying the floor(s) served by each bundle and the name and telephone number of a representative of Tenant to contact in the case of an emergency. Furthermore, all wiring and cabling work shall be done only by contractors approved in advance by Landlord and Landlord shall have the right to have all such work supervised by Building engineering/maintenance personnel. The electric current shall not be used for power in excess of general office requirements or for heating, unless written permission to do so shall first have been obtained from Landlord or its representatives in writing and at an agreed cost to Tenant. The use of space heaters is prohibited.
3. Tenant shall not do or permit to be done in or about the Premises or Building anything which shall increase the rate of insurance on said Building or obstruct or interfere with the rights of other lessees of Landlord or annoy them in any way, including, but not limited to, using any musical instrument, making loud or unseemly noises, or singing, etc. Tenant shall not do or permit to be done in the Premises anything, or bring or keep anything therein, which would conflict with the laws relating to fires, or with the regulations of the applicable Fire Department, or conflict with any of the rules and ordinances of the applicable Board of Health.
4. The Premises shall not be used for storage of merchandise held for sale to the general public. The Premises shall not be used for sleeping or lodging. No such activities shall be done or permitted by Tenant in the Premises (other than with respect to consumption on-site by Tenant's employees and visitors), except with permission of Landlord. Tenant will be permitted to use for its own employees within the Premises a small microwave oven and Underwriters' Laboratory approved equipment for brewing coffee, tea, hot chocolate and similar beverages, provided that such use is in accordance with all applicable federal, state, county and city laws, codes, ordinances, rules and regulations, and provided that such use shall not result in the emission of odors from the Premises. No vending machines of any kind will be installed, permitted or used on any part of the Premises without the prior

consent of Landlord. No part of said Building or Premises shall be used for gambling, immoral or other unlawful purposes. No intoxicating beverage shall be sold in said Building or Premises. No area outside of the Premises shall be used for storage purposes at any time.

5. No painting shall be done, nor shall any alterations be made to any part of the Building or the Premises by putting up or changing any partitions, doors or windows, nor shall there be any nailing, boring or screwing into the woodwork or plastering, nor shall any connection be made in the electric wires or gas or electric fixtures, without the consent in writing on each occasion of Landlord and subject to compliance with the provisions of the Lease. All glass, locks and trimmings in or upon the doors and windows of the Building shall be kept whole and, when any part thereof shall be broken by Tenant or Tenant's agent, invitees, employees, affiliates, visitors or contractors, the same shall be immediately replaced or repaired by Tenant, subject to compliance with the provisions of the Lease, and put in order under the direction and to the satisfaction of Landlord, or its agents, and shall be kept whole and in good repair. Tenants shall not injure, overload, or deface the Building, the woodwork or the walls of the Premises, nor carry on or upon the Premises any noxious, noisy or offensive business.
6. No birds or animals of any kind shall be brought into the Building (other than trained assist dogs required to be used by the visually impaired). No bicycles, motorcycles or other motorized vehicles shall be brought into the Building other than motorized wheelchairs.
7. The parking garage (or parking lots), elevators, lobbies, restrooms, courts, vestibules, paths, walkways, sidewalks, entrances, stairways, landings, corridors, and halls of the Premises, the Building and the Property shall not be obstructed or used for any purpose other than ingress and egress and Landlord shall in all cases retain the right to control and prevent access to the Premises, the Building and the Property by all persons whose presence, in the reasonable judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building; provided, however, that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the conduct of its business within the Premises (such as clients, customers, office suppliers and equipment vendors, and the like) unless such persons are engaged in illegal activities. Neither Tenant nor any employee of Tenant shall go upon the roof of the Building without the prior written consent of Landlord.
8. Toilets, wash basins and sinks shall not be used for any purpose other than those for which they were constructed, and no sweeping, rubbish, or other obstructing or improper substances shall be thrown therein. Any damage resulting to them, or to heating apparatus, from misuse by Tenant or its employees, shall be borne by Tenant.
9. Upon occupancy, Tenant will be furnished keys to its Premises. Landlord may make a reasonable charge for any additional keys. No additional lock, latch or bolt of any kind shall be placed upon any door nor shall any changes be made in existing locks without written consent of Landlord and Tenant shall in each such case furnish Landlord with a key for any such lock. At the expiration or earlier termination of the Lease, Tenant shall return to Landlord all keys furnished to Tenant by Landlord, or otherwise procured by Tenant,

and in the event of loss of any keys so furnished, Tenant shall pay to Landlord the cost thereof.

10. Landlord shall have the right to prescribe the weight, position and manner of installation of heavy articles such as safes, machines and other equipment brought into the Building. Tenant shall not allow the building structure within the Premises, nor shall Tenant cause the elevators of the Building, to be loaded beyond rated capacities. No safes, furniture, boxes, large parcels or other kind of freight shall be taken to or from the Premises or allowed in any elevator, hall or corridor except at times allowed by Landlord, acting reasonably. Tenant shall make prior arrangements with Landlord for use of freight elevator for the purpose of transporting such articles and such articles may be taken in or out of said Building only between or during such hours as may be arranged with and designated by Landlord and the persons employed to move the same must be approved by Landlord. Landlord reserves the right to inspect and, where deemed appropriate by Landlord, acting reasonably, to open all freight coming into the Building and to exclude from entering the Building all freight which is in violation of any of these Rules and Regulations and all freight as to which inspection is not permitted. No hand trucks, mail carts, floats or dollies shall be used in passenger elevators. All hand trucks, mail carts, floats or dollies used by Tenant or its service providers for the delivery or receipt of any freight shall be equipped with rubber tires. Supplies, goods and packages of any kind shall be delivered only through designated service areas or through the loading dock areas of the Building.
11. All deliveries (including the moving of Tenant's personal property in and out of the Building and the Premises) shall be made through freight elevators designated by Landlord and only during such hours as designated from time to time by Landlord, acting reasonably. No deliveries shall be made through the main lobbies of the Building or which impede or interfere with the use of the Building by other tenants, the operation of the Building or which may in any way damage any of the common areas.
12. Tenant shall not cause or permit any gases, liquids or odors to be produced upon or permeate from the Premises, and no flammable, combustible or explosive fluid, chemical or substance shall be brought into the Building. Tenant shall prevent inadequate ventilation from and will assure proper operation of any HVAC systems and/or office equipment under Tenant's control, and Tenant will not allow any unsafe levels of chemical or biological contaminants in the Premises and will take all steps necessary to prevent the release of such contaminants from adhesives, machinery, and cleaning agents. Tenant shall cooperate in all respects with Landlord regarding the management of the indoor air quality in the Building and in connection with the development and implementation of an indoor air quality management plan for the Building. Smoking shall not be permitted in any common areas of the Building or in any indoor space within the Building.
13. Every person, including Tenant, its employees and visitors, entering and leaving the Building may be questioned by security personnel as to that person's business therein and may be required to produce valid picture identification and to sign such person's name on a form provided by Landlord for registering such person. Landlord may also implement a card access security system to control access to the Building during such other times. Landlord shall not be liable for excluding any person from the Building during such other

times, or for admission of any person to the Building at any time, or for damages or loss for theft resulting therefrom to any person, including Tenant. Landlord may take all reasonable measures it deems necessary for the safety and security of the Building or Property, including, without limitation, evacuation for cause, suspected cause, or temporary denial of Building access. There shall be no abatement of Rent and Landlord shall not be responsible for any damages resulting to Tenant from such action. Landlord reserves the right to exclude or expel from the Building any person who, in Landlord's judgment, is intoxicated, under the influence of alcohol or drugs, commits any act in violation of these Rules and Regulations or constitutes a security risk to the Premises, the Building or the Property. Landlord shall have no liability with respect to breaches of the Building's security, if any.

14. Unless agreed to in writing by Landlord or otherwise provided in the Lease, Tenant shall not employ any person other than Landlord's contractors for the purpose of cleaning and taking care of the Premises. Landlord shall not be responsible for any loss, theft, mysterious disappearance of or damage to, any property, however occurring. Only persons authorized by the Landlord may furnish ice, drinking, water, towels, and other similar services within the Building and only at hours and under regulations fixed by Landlord.
15. Tenant, its employees and invitees shall observe and obey all parking and traffic regulations as imposed by Landlord. All vehicles shall be parked only in areas designated by Landlord. No RV's, motor homes, boats, delivery trucks, movable or non-movable trailers, buses or other commercial vehicles are allowed to be parked in the parking area overnight or for an extended period of time; to include business and or personnel vehicles. No vehicle (including bicycles and motorcycles) belonging to Tenant or to Tenant's agents, employees, or invitees shall be parked so as to impede or prevent ready access to any loading dock or any entrance to or exit from the Building, the Property or the parking garage (or parking lots) for the Building. Except as otherwise specifically provided in the Lease, all parking for the Building is provided on a nonexclusive basis. All vehicles of any nature shall be parked only in areas within the parking garage (or parking lots) designated by Landlord. No vehicles of any nature shall be parked or left unattended for more than seven (7) consecutive days, unless in the ordinary course of Tenant's business and approved in writing by Landlord. No bicycles or motorcycles shall be permitted inside the Building or the Premises nor shall bicycles or motorcycles be parked in a manner which would interfere with access to the Building or obstruct sidewalks or walkways on the Property.
16. Canvassing, peddling, soliciting and distribution of handbills or any other written materials in the Building are prohibited, and Tenant shall cooperate to prevent the same.
17. Tenant agrees to participate in the waste recycling programs implemented by Landlord for the Building, including any programs and procedures for recycling writing paper, computer paper, shipping paper, boxes, newspapers and magazines and aluminum cans.
18. Any special work or services requested by Tenant to be provided by Landlord shall be provided by Landlord only upon request received at the Building management office. Building personnel shall not perform any work or provide any services outside of their

regular duties unless special instructions have been issued from Landlord or its managing agent.

19. Tenant shall not install or attach any radio or television antenna, loudspeaker, or other devices or projections on or to any part of the Premises which would, in Landlord's opinion, interfere with the communication facilities utilized by other tenants of the Building or be unsightly, or on the roof or exterior walls of the Building.
20. Landlord shall have the right to change the name of the Building and to change the street address of the Building, provided that in the case of a change in the street address, Landlord shall give Tenant not less than 90 days prior notice of the change, unless the change is required by governmental authority.
21. Landlord shall have the right to prohibit advertising by Tenant which, in Landlord's discretion, tends to impair the reputation of the Building or its desirability as an office location, other than any marketing materials which do not include the name or location of the Premises, Building or Property.
22. The directory of the Building will be provided for the display of the name and location of the tenants. Any additional name, or replacements after the initial entry of tenant's name and location, which Tenant shall desire to place upon said directory must first be approved by Landlord, and if so approved, a reasonable charge will be made therefor.
23. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular lessee, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other lessee, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all of the other lessees of the Building.