SECOND AMENDMENT TO LEASE

This **SECOND AMENDMENT TO LEASE** (the "Second Amendment") is made and entered into effective as of July 31, 2012 (the "Effective Date"), between the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation ("Landlord"), and OLETA PARTNERS LLC, a Delaware limited liability company ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease dated as of May 29, 2012 and that certain First Amendment to Lease ("First Amendment") dated as of June 21, 2012 (collectively, the "Lease") pursuant to which the Tenant is leasing the Premises (as such term is defined in the Lease) from Landlord;

WHEREAS, Section 28.4 of the Lease permits a modification of the Lease if it is in writing and signed by all of the parties to be bound thereby;

WHEREAS, Tenant has made the Real Estate Tax payments (the "Delinquent Tax Payments") provided for in paragraph 1(b) of the First Amendment;

WHEREAS, Landlord and Tenant desire to amend the Lease on the terms and conditions set forth herein; and

WHEREAS, unless otherwise defined herein, capitalized terms used in this Second Amendment shall have the meanings ascribed to them in the Lease.

NOW, THEREFORE, upon the mutual covenants and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. AMENDMENTS

(a) **Exhibit A** to the Lease is hereby deleted and replaced in its entirety by **Exhibit A** attached hereto.

(b) The following definitions are added to Section 1 of the Lease:

"Biscayne Landing Contributions" shall mean any cost or expense of any nature that is (i) incurred in connection with the performance of Tenant's Construction Obligations under the Lease (and, for the avoidance of any doubt, exclusive of the payment of the initial $17,500,000 lease payment, Fixed Rent, Participation Rent, Real Estate Taxes, Delay Fees, and the purchase price in the event of exercise of the Option, and investments, contributions and work under

Sections 35.2-35.8 of the Lease), (ii) a Hard Cost, (iii) a Soft Cost or, (iv) incurred in connection with the performance of the matters described in Sections 34 and 35.1 of the Lease.

"Hard Costs" means any and all costs incurred in connection with the development, improvement, repair, replacement, and/or remediation of the Premises (whether by Tenant or Subtenants), including, without limitation, the cost of all labor (including employees on-site), materials, equipment, contractor's fees and charges, permit fees, bonding premiums, and other items generally considered hard costs in the construction industry.

"Soft Costs" means costs incurred in connection with the development, improvement, repair, replacement, operation, and/or remediation of the Premises (whether by Tenant or Subtenants) that are not Hard Costs, including, without limitation, architect's fees, engineer's fees, management fees, surveyor's fees, marketing expenses, insurance premiums, and expediter's fees.

(c) The definition of the term "Second Stage Development" shall be amended in its entirety to read as follows:

"Second Stage Development" means (a) the Substantial Completion of at least 500,000 leasable square feet of Required Improvements, (b) the pulling of building permits for at least an additional 200,000 leasable square feet of Required Improvements above and beyond the initial 500,000 leasable square feet of Required Improvements, and (c) the making of the Biscayne Landing Contributions in an aggregate amount of approximately Ninety-Five Million Dollars ($95,000,000) (inclusive of any and all Biscayne Landing Contributions made as part of the Initial Development, including, without limitation, the Tenant's First-Year Interim Milestones and Tenant's Second-Year Contributions), all by the seventh anniversary of the Commencement Date, subject to Unavoidable Delay.

(d) The definition of "Tenant Specific Default" shall be amended in its entirety read as follows:

"Tenant-Specific Default" means any Event of Default that: (a) arises from any lien or encumbrance attaching solely to the Leasehold Estate (not the Fee Estate) but junior to the Leasehold Mortgage; (b) is a Nonmonetary Default that Leasehold Mortgagee or New Tenant cannot with diligence and commercially reasonable efforts cure, but specifically excluding any default in connection with Tenant's Construction Obligations, which shall not be deemed to be a Tenant-Specific Default; (c) arises from a Bankruptcy Action or any related action, omission, event, circumstance, matter or related Event of Default; (d) arises from a failure to perform Tenant's First-Year Interim Milestones, or any of the bullet points comprising them; (e) arises from a failure to make Tenant's Second-Year Contributions; or (f) arises from a failure to make the required Biscayne Landing Contributions included in the definition of Second Stage Development.

(e) Section 3.1 is hereby amended in its entirety to read as follows:

3.1 *Initial Payment.* Subject to Tenant's receipt of (i) each of the fully executed documents set forth as item 2 on Schedule 3.1 to the Lease on or before August 14, 2012, and (ii) each of the fully executed documents set forth as items 1, 3, 4 and 5 on Schedule 3.1 (it being the understanding that items 1 - 5, inclusive, on Schedule 3.1 are collectively the "Required Documents"), on or before August 20, 2012, on or before August 21, 2012 (the "Commencement Date"), Tenant shall pay advanced rent by bank wire transfer in immediately available federal funds, in the sum of (a) Sixteen Million Seven Hundred Fifty Thousand and No/100 Dollars ($16,750,000.00), plus (b) the amount specified in Section 3.11 below; provided, however, that Tenant shall have the right to accelerate the Commencement Date to a date between August 14, 2012 and August 20, 2012, upon not less than three (3) Business Days prior written notice to Landlord, in which event the items in subclause (i) of this sentence shall be required to be provided to Tenant within two (2) Business Day following Landlord's receipt of written notice of the accelerated Commencement Date, and the items set forth in subclause (ii) of this sentence shall be required to be provided to Tenant at least one (1) Business Day prior to the accelerated Commencement Date. The payments required by (a) and (b) shall be made to the specified accounts of Landlord. Such sum shall be deemed fully earned as of the Commencement Date and shall not be refundable. Notwithstanding anything to the contrary contained herein, assuming the Tenant's timely receipt of the Required Documents, if Tenant shall fail to timely pay the amounts required by (a) and (b) of this Section 3.1 on the Commencement Date then, Landlord, at its sole option, shall have the right to either (i) extend the period of time for which the Tenant shall be required to pay the amounts required by (a) and (b) of this Section 3.1, or (ii) terminate this Lease by written notice to the Tenant, in which event (x) this Lease shall be null, void and of no further force or effect, and (y) Landlord shall be irrevocably authorized to retain as liquidated damages and not as a penalty (1) the Fixed Rent for the first Lease Year of the Term, (2) the Extension Fee (as such term is defined in the First Amendment), and (3) any Delinquent Tax Payments made by Tenant. Notwithstanding anything to the contrary contained in this Section 3.1, in the event the Landlord has not timely delivered the Required Documents to Tenant following two (2) Business Days' Notice from Landlord, then, Tenant, at its sole option, shall have the right to either (i) waive the delivery of any of the Required Documents that have not yet been delivered, (ii) extend the period of time for which the Landlord shall be able to deliver the Required Documents (and for which the Commencement Date shall occur), or (iii) terminate this Lease by written notice to the Landlord, in which event (x) this Lease shall be null, void and of no further force or effect, and (y) Landlord shall promptly return to Tenant (1) the Fixed Rent for the first Lease Year of the Term, (2) the Extension Fee (as such term is defined in the First Amendment) and (3) an amount equal to the Delinquent Tax Payments made by Tenant (it being the understanding of the Landlord and Tenant that the failure of the Tenant to notify the Landlord of its option in writing shall be deemed to be an election to extend the period of time for which the Landlord shall be able to

deliver the Required Documents (and for which the Commencement Date shall occur) for a period of thirty (30) days. In the event Tenant is able to obtain any reduction with respect to Real Estate Taxes paid by Tenant, Tenant shall be entitled to the refund.

(f) **Exhibit D-2** is hereby modified as follows:

(i) The work and expenditures that are to be performed in the first year following the Commencement Date (i.e., the work and expenditures described in the second, third, fourth, and fifth bullet points of **Exhibit D-2** and the work and expenditures described in the first bullet point for the first Lease Year of **Exhibit D-2**) are referred to as "Tenant's First-Year Interim Milestones". The work and expenditures that comprise Tenant's First-Year Interim Milestones may be performed at any time during the first Lease Year and need not be performed in any particular quarter of the first Lease Year or in any particular sequence.

(ii) The work (but not the expenditures) that is to be performed in the second Lease Year (i.e., the first, sixth, seventh, eighth, and ninth bullet points of **Exhibit D-2**) as in effect on the Commencement Date or thereafter (subject to **Exhibit D-2** reflecting sufficient work to achieve Hard Cost and Soft Cost expenditures in the aggregate amount of $1,000,000.00 in addition to the required expenditures in the second Lease Year for the work described in the first bullet point of **Exhibit D-2)** is referred to as "Tenant's Second-Year Work".

(iii) References to "Retail" and "Retail Center" are hereby changed to "Required Improvements" and references to "Retail Center Site Work" are hereby changed to "Required Improvements Site Work". Most work and expense with respect to Required Improvements is projected to occur in Lease Years six and seven.

(g) Section 7.1 is amended in its entirety to read as follows:

7.1. *Development.* Subject to compliance with any applicable provisions of this Lease, Tenant and those claiming under it may perform any lawful Construction on the Premises without the consent of Landlord. Without limiting the foregoing, the parties acknowledge that the Concept Plan is a conceptual plan for the Premises and includes presently proposed phases, presently anticipated time frames for development, and the presently proposed uses of the Project. Tenant and Landlord recognize and agree that except for the Park Property, the location and boundaries of which shall not be changed without the prior written consent of Landlord, the Development plan for the Premises will change over time based on market conditions and needs, and that Tenant requires the flexibility to react to those changing conditions in a prompt and timely fashion. Thus, this Concept Plan should be considered a general guideline for the Development of the Premises, which Tenant may modify from time to time in its sole discretion, except as provided above as to the Park Property. Likewise, the

projected time frames and sequence of Development is totally market driven and, therefore, such time frames and sequencing are merely Tenant's presently projected goals and may be changed from time to time by Tenant in its sole discretion. However, notwithstanding anything to the contrary in this Lease: (1) Tenant shall cause the timely completion of (a) the Initial Development, (b) the Second Stage Development, and (c) the Third Stage Development, in each case subject to extension by reason of Unavoidable Delay (collectively, "Tenant's Construction Obligations"); (2) Tenant shall cause the timely achievement of Tenant's First-Year Interim Milestones, in each case subject to extension by reason of Unavoidable Delay; and (3) Tenant shall achieve Hard Cost and Soft Cost expenditures in the aggregate amount of $1,000,000.00 during Lease Year 1 and/or Lease Year 2 with respect to Tenant's Second-Year Work in addition to the required expenditures in the second Lease Year for the work described in the first bullet point of **Exhibit D-2**, subject to Unavoidable Delay ("Tenant's Second-Year Contributions"), provided, however, that Soft Costs in excess of thirty percent (30%) of Hard Costs shall not be considered in determining Tenant's Second-Year Contributions". Upon Landlord's written request, Tenant will provide Landlord with documentation as is reasonably necessary to support Tenant's Second-Year Contributions. No change in the Concept Plan or **Exhibit D-1** or **Exhibit D-2** shall be deemed to change the requirements included in Tenant's Construction Obligations or Tenant's First-Year Interim Milestones or Tenant's Second-Year Contributions. Further, no change to **Exhibit D-1** or **Exhibit D-2** shall be deemed to alter Tenant's obligations under Section 34 of the Lease (Park) or Section 35 of the Lease (Community Benefits). In the event there is no construction on an undeveloped portion of the Premises for a period of five (5) consecutive Lease Years, the Tenant agrees to close and secure that portion of the Premises on which no construction activity is taking place until such time as construction commences thereon. Notwithstanding anything to the contrary in this Lease, any breach of Tenant's Construction Obligations as set forth in the immediately preceding subsections (a), (b) and (c) shall become an Event of Default if not cured within ninety (90) days of Notice from Landlord of same, subject to Unavoidable Delay. A projected schedule of values and projected timeline for the Initial Development and a portion of the Second Stage Development is set forth on **Exhibit D-l** and is more specifically described on **Exhibit D-2** attached hereto; provided, however, that with the exception of Tenant's First-Year Interim Milestones and Tenant's Second-Year Contributions, such projected schedule of values and projected timeline are totally market driven and, therefore, are merely Tenant's presently projected goals and may be modified from time to time by Tenant in its sole discretion and are not binding on Tenant. For the avoidance of any doubt, the parties acknowledge that Tenant's failure to satisfy any specific obligation set forth on **Exhibit D-1** or **Exhibit D-2**, other than Tenant's First-Year Interim Milestones or Tenant's Second-Year Contributions, by the expenditure of any specific sum of money, the completion of any specific construction obligation, or the performance of any other obligation, in the detailed time frames set forth therein, shall not, in and of itself, constitute a Default; provided, however, that in all events Tenant must timely complete Tenant's

Construction Obligations, Tenant's First-Year Interim Milestones, and Tenant's Second Year Contributions, in each case, subject to Unavoidable Delay. All Construction at the Premises shall be performed in a good and workmanlike manner. Tenant shall Notify Landlord of all material changes to the Concept Plan or to **Exhibit D-1** or **Exhibit D-2**. Tenant shall not be in default of the requirements regarding good and workmanlike construction or required notification of changes in the Concept Plan or **Exhibit D-1** or **Exhibit D-2** until it has received a Notice of Default and the opportunity to cure that is afforded Tenant in the definition of Delay Fee under this Lease, and thereafter Landlord's sole remedies for breach of this obligation shall, subject to Section 23.1.8, be limited to specific performance and/or payment of the Delay Fee, and Tenant waives all defenses, except the defenses of performance and Unavoidable Delay, in any action for specific performance brought by Landlord to enforce its rights under this Section 7.1. The foregoing shall not be deemed to limit in any way the regulatory requirements, Approvals or processes required by Law for Construction. Tenant agrees to seek any necessary Approvals from Landlord, acting in its governmental capacity, and agrees that such Applications shall be consistent with the Concept Plan and **Exhibit D-1** and **Exhibit D-2**, as amended. All books, records, agreements and other documents used by Tenant to calculate or substantiate the Biscayne Landings Contributions and Tenant's Second-Year Contributions (the "Contributions Records") will be maintained in a safe location in Miami-Dade County and/or electronically. Tenant shall maintain all Contributions Records for a period of fifteen (15) years from the Commencement Date. The Contributions Records shall be open to inspection, examination, copying, and audit by Landlord or Landlord's designated representative not more than one time per Lease Year, in comfortable office surroundings, upon giving Tenant five (5) days' prior notice of Landlord's intention to exercise its rights under this Section 7.1.

(h) There is added to the Lease a new Section 19.16, as follows:

19.16 *Tenant's Specific Milestones.* Notwithstanding anything to the contrary contained in this Lease, no Leasehold Mortgagee, transferees through Foreclosure Events, or New Tenant (or any of their successors and assigns) shall have any obligation (i) to comply with or perform Tenant's First-Year Interim Milestones, or any of the bullet points compromising them, (ii) to pay any portion of Tenant's Second-Year Contributions, or (iii) make the required Biscayne Landing Contributions included in the definition of Second Stage Development; provided however, nothing herein is intended to relieve such Person of complying with or performing Tenant's Construction Obligations except to the extent expressly limited by subclause (iii) of this Section 19.16 and Section 19.4.

(i) There are added to the Lease new Sections 23.1.9 and 23.1.10 as follows:

23.1.9. *Failure to Achieve Tenant's First-Year Interim Milestones.* If any of Tenant's First-Year Interim Milestones are not timely achieved and Tenant does not remedy such failure within 180 days after Notice from Landlord.

23.1.10 *Failure to Achieve Tenant's Second-Year Contributions.* If Tenant's Second-Year Contributions are not achieved and Tenant does not remedy such failure or deliver the shortfall to Landlord within thirty (30) days after Notice from Landlord.

(j) Section 23.2.11 is amended as it relates solely to Section 7.1 in its entirety to read as follows:

Section 7.1-Tenant's failure to timely provide Notices of changes to the Concept Plan or **Exhibit D-1** or **Exhibit D-2**.

2. MISCELLANEOUS

(a) *Time of the Essence.* Time is of the essence as to the performance of the provisions of this Second Amendment by Landlord and Tenant.

(b) *Recitals.* The Recitals hereinabove are incorporated herein by this reference and constitute a part of this Second Amendment.

(c) *Entire Agreement.* The provisions of this Second Amendment and the Lease shall be read together and viewed as a single document. In the event of a conflict or an ambiguity between this Second Amendment and the Lease, the provisions of this Second Amendment shall prevail. The Lease as amended by this Second Amendment contains the complete expression of the agreement by the parties regarding the subject matter thereof. Except as specifically amended and modified hereby, the Lease remains in full force and effect.

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

(e) *Successors and Assigns.* This Second Amendment shall bind and benefit Landlord and Tenant and their successors and assigns.

(f) *Counterparts.* This Second Amendment may be executed in counterparts.

[Signatures on Next Page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment to Lease as of the Effective Date of this Second Amendment.

WITNESSES (as to City Manager and City Clerk):

Print Name: ANDREA McDONALD
Title: EXEC. SECRETARY

Print Name: Modesto Echezarreta
Title: Network Administrator

THE CITY OF NORTH MIAMI, a municipal corporation of the State of Florida

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM AND CORRECTNESS:

By: _____
City Attorney

APPROVED AS TO INSURANCE REQUIREMENTS:

By: _____ for Karen Muir
Risk Management Administrator

[Signatures Continue on Next Page]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Second Amendment to Second as of the Effective Date of this Second Amendment.

OLETA PARTNERS LLC

By:_____
Michael J. Swerdlow
Authorized Signatory

Print Name: Rhonda S. Alston

Print Name: Veronica Marrero

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

TRACT "A" of BISCAYNE LANDING, according to the Plat thereof, as recorded in Plat Book 161, at Page 72, of the Public Records of Miami-Dade County, Florida, lying in Section 21, Township 52 North, Range 42 East, less (LESS OUT PARCEL "A"), and less (LESS OUT PARCEL "B"), also known as that piece of land depicted on "THE OAKS I CONDOMINUMS" recorded in Official Records Book 25427 at Page 4674 of the Public Records of Miami-Dade County, Florida, said LESS OUT parcels being more particularly described as follows:

LESS OUT PARCEL "A": Commence at the Northeast corner of the West 1/2 of the Northeast 1/4 of Section 21, Township 52 South, Range 42 East, the same being the Northeast Corner of said Tract "A" of BISCAYNE LANDING; thence South 87°02'55" West along the North boundary line of said Tract "A" of BISCAYNE LANDING, and along the North line of the Northeast 1/4 of said Section 21, and along the South Right of Way Line of N.E. 151st Street for a di stance of 396.01 feet to the POINT OF BEGINNING of the hereinafter described parcel of land; thence along the boundary of The Oaks Condominium as described in Official Record Book 25427 at page 4613 of the Public Records of Miami-Dade County, Florida, for the following (4) courses; (1) thence South 03°17'25" East for a distance of 522.10 feet; (2) thence North 86°42'35" East for a distance of 159.56 feet; (3) thence South 27°35'03" East for a distance of 138.47 feet; (4) thence South 83°13'18" East for a distance of 177.81 feet to a point on the West line of the NE 1/4 of the NE 1/4 of said Section 21, also being the East line of said Tract "A"; thence South 02°55'05" East along said line for a distance of 252.90 feet; thence South 87°09'14" West for a distance of 501.91 feet to a point on a circular curve concave to the west whose radius point bears North 82°36'35" West from said point; thence Northwesterly to the left along the arc of said curve having a radius of 352.64 feet, through a central angle of 23°27'40" for an arc distance of 144.40 feet; thence North 78°35'03" East for 122.19 feet to a point on a circular curve concave to the Southeast whose radius point bears North 85°51'34" East from said point; thence Northeasterly to the right along the arc of said curve having a radius of 100.00 feet, through a central angle of 38°22'29" for an arc distance of 66.98 feet to a point of tangency; thence North 34°14'03" East for 70.48 feet; thence North 51°25'22" West for 70.73 feet; thence North 43°42'31" West for 108.81 feet to a point of curvature with a circular curve concave to the east; thence Northeasterly to the right along the arc of said curve having a radius of 60.00 feet, through a central angle of 72°52'56" for an arc distance of 76.32 feet to a point of reverse curvature with a circular curve concave to the northwest; thence Northeasterly to the left along the arc of said curve having a radius of 25.00 feet, through a central angle of 31°32'21" for an arc distance of 13.76 feet to a point of tangency; thence North 02°21'55" West for a distance of 173.92 feet to a point of curvature with a circular curve concave to the southwest; thence Northwesterly to the left along the arc of said curve having a radius of 125.00 feet, through a central angle of 78°55'58" for an arc distance of 172.20 feet; thence North 02°57'01" West for a distance of 138.00 feet to a point on the North boundary line of said Tract "A" of BISCAYNE LANDING, and also being to the North line of the Northeast 1/4 of said Section 21, and also being to the South Right of Way Line of said N.E. 151st Street; thence North 87°02'55" East along said North boundary line of said Tract "A" of BISCAYNE LANDING, and along said

North line of the Northeast 1/4 of said Section 21, and along said South Right of Way Line of N.E. 151st Street for a di stance of 149.64 feet to the POINT OF BEGINNING; Said parcel contains 4.33 acres, more or less.

AND

LESS OUT PARCEL "B": Beginning at the most Northeasterly Corner of said Tract "A" of "BISCAYNE LANDING," said point being further described as being the Northeast Corner of the West ½ the Northeast ¼ of Section 21, Township 52 South, Range 42 East; thence South 02°55'05" East, along the East Line of said Tract "A", a distance of 677.06 feet; thence North 83°13'18" West, a distance of 177.81 feet; thence North 27°35'03" West, a distance of 138.47 feet; thence South 86°42'35" West, a distance of 159.56 feet; thence North 03°17'25" West, a distance of 522.10 feet to a point on the North Line of said Tract "A"; thence North 87°02'55" East, along said North Line, a distance of 396.01 feet to the POINT OF BEGINNING. Said parcel contains 5.37 acres, more or less.