

AIR/15-003

AMENDMENT NO. 1 TO FIXED BASE OPERATOR LEASE AGREEMENT

THIS AMENDMENT NO. 1 TO FIXED BASE OPERATOR LEASE AGREEMENT ("Amendment No. 1") is made and entered into effective March 1, 2020 (the "Effective Date") (even though it may be executed on a later date), by and between City of Ocala, a municipal corporation ("Landlord"), and Sheltair Ocala, LLC, a Florida limited liability company ("Tenant").

WHEREAS:

- A. As evidenced by a Memorandum of Lease, recorded in OR Book 6221, Page 51, Public Records of Marion County, Florida, Landlord and Tenant entered into a Fixed Based Operator Lease Agreement (the "Original Lease") on or about June 1, 2015, and dated May 19, 2015. (The Original Lease as amended by this Amendment No. 1 is referred to as the "Amended Lease").
- B. The parties acknowledge that unanticipated events at the Airport¹ delayed construction of the New Terminal and the request from the Landlord for the Advance Amount.
- C. The Landlord has constructed the New Terminal.
- D. Pursuant to the Amended Lease, Landlord advised Tenant that Landlord received a grant from the Florida Department of Transportation and therefore requested, on or about January 15, 2020, that Tenant fund the Advanced Amount as defined in the Amended Lease, of approximately Two Million Dollars (\$2,000,000.00). Tenant has agreed to do so as set forth in this Amendment No. 1.
- E. Additionally, Landlord and Tenant desire to clarify certain provisions of the Amended Lease and to amend the Original Lease as follows.

NOW, THEREFORE, in consideration of the foregoing (which are incorporated herein by reference) and of the mutual covenants herein contained, and other good and valuable consideration, the receipt of which the parties hereby expressly acknowledge, the parties hereto covenant and agree to the following terms and conditions:

- 1. **Definitions.** Paragraph 2.1 of the Original Lease is amended by amending, or adding, the following definitions:
 - 2.1.12. "Common Areas" means all portions of the New Terminal (including the exterior areas set forth below) made available by Landlord for the common use and benefit of all occupants of the New Terminal (including Landlord, Tenant and other Tenants or occupants) and their customers, employees and invitees. Common Areas shall include the following areas:
 - 1) The parking lot for the New Terminal.
 - 2) The interior and exterior of the New Terminal.
 - 3) Landscaping and irrigation for the New Terminal.

¹ Terms capitalized in this Amendment No. 1 and not otherwise defined herein have the same meaning herein as in the Original Lease.

- 4) Such other areas designated by Landlord as Common Areas in its reasonable discretion.

2.1.16. "Commencement Date-New Terminal Space" is March 1, 2020.

2.1.19. "CPI Adjustment" means the adjustment of Base Rent pursuant to paragraph 5.4.

2.1.39. "New Terminal Space" shall mean the portion of the New Terminal that will be included within the Premises (excluding Common Areas within the New Terminal).

2.1.43.3. The definition of "Premises" as set forth in the Amended Lease shall be expanded, upon the Commencement Date-New Terminal Space, to include the New Terminal Space, as depicted in the attached **Exhibit C-1**.²

2. **Term.** Paragraph 3.1.2. of the Original Lease is amended to read as follows:

3.1.2. The Term of this Lease shall expire at 5:00 pm EDT on May 31, 2050

3. **Right of First Refusal.** Paragraph 4.10.1 of the Original Lease is amended to read as follows:

4.10.1. Landlord hereby grants to Tenant the right ("Right of First Refusal") to lease the real property identified in **Exhibit B** of the Original Lease (the "RFR Parcel") during the time period (the "RFR Period") commencing upon the Commencement Date, and ending upon the earlier of the following: (a) the termination of this Lease; or (b) the date that is two (2) years after the date that the Certificate of Occupancy for the New Hangar, as described in paragraph 8.2 of the Original Lease, is issued."

4. **Base Rent (Including New Terminal Rent).** The following provisions of paragraph 5.2 of the Original Lease are amended to read as follows:

5.2.2.2. The New Terminal Space is added to the Premises, and the amount of the Base Rent Set forth in paragraph 5.2.1 of the Original Lease shall increase, on the Commencement Date-New Terminal Space, by the amount of the New Terminal Rent.

5.2.3. The Base Rent shall be adjusted pursuant to paragraph 5.4.

5.2.4. Base Rent shall be paid in monthly installments, each in one-twelfth (1/12) of the amount of the then applicable Base Rent. The first Base Rent payment shall be made on the Commencement Date (pro-rated for a partial month based on the total number of days in the applicable month), and subsequent payments shall be paid on the first (1st) day of each and every month thereafter without demand, deduction, holdback or setoff.

5. **CPI Adjustment.** Paragraph 5.4 of the Original Lease is amended to read as follows:

5.4 CPI Adjustment. The Base Rent shall be adjusted as set forth on the CPI Rider, a copy being attached as **Exhibit E** to this Amendment No. 1 (which **Exhibit E** replaces **Exhibit E** to the Original Amendment).

² **Exhibit C-1** and **Exhibit C-2** replace **Exhibit C** to the Original Lease.

6. **Ad Valorem Taxes and Assessments; Challenge.** A new paragraph 5.14.4. is added to the Original Lease to read as follows:

5.14.4. The Tenant shall have the right to review or protest, or cause to be reviewed or protested, by legal proceedings, any such taxes, assessments, or other charges imposed upon or against the Premises, buildings, or other structures or improvements on them, and in case any such taxes, assessments or other charges shall, as a result of such proceedings or otherwise, be reduced, canceled, set aside or to any extent discharged, the Tenant shall pay the amount that shall be finally assessed or imposed against the Premises, buildings or other structures or Improvements which are finally determined to be due and payable on any such disputed or contested items. If necessary, or legally required, Tenant may exercise such review or protest right in the name of the Landlord, and Landlord agrees to cooperate with Tenant in its exercise of such right and will execute any documents needed by Tenant in connection with such right, provided that Tenant shall pay any costs incurred by Landlord as a result of such cooperation, and such document is not adverse to the Landlord. All expenses of such litigation, including court costs, shall be paid by Tenant free of any expense to Landlord, and Tenant shall indemnify Landlord against any costs or expenses awarded against Landlord in connection with any such litigation. If, as a result of any legal proceeding pursuant to the provisions of this paragraph, there is any reduction, cancellation, setting aside or discharge of any such tax or assessment or other charges of the Landlord, the applicable refund shall be payable to the Tenant and, if such refund is made to the Landlord, then the Landlord shall hold such refund as a trust fund and shall immediately pay over the same to the Tenant. The term "legal proceeding," as used above, shall be construed as including appropriate appeals from any judgments, decrees or orders and certiorari proceedings and appeals from orders entered in them.

7. **Triple Net Lease.** Paragraph 5.16 of the Original Lease is deleted and replaced with the following:

5.16 Lease Terms.

5.16.1 With the exception of the New Terminal Space, pursuant to the terms and conditions of this Lease (e.g., in paragraphs 10.2.3 and 10.3.9 as to Landlord's responsibilities for maintenance), this is a triple net lease, and Tenant shall pay all real estate taxes, building insurance, and maintenance on the Premises, as set forth in greater detail herein.

5.16.2 For the lease of New Terminal Space, this is a gross, or full service, lease. The obligations of Landlord and Tenant are:

- 1) Landlord shall be solely responsible for all maintenance, repair and costs of building operations within the New Terminal, including without limitation insurance, taxes, gas, electric, water, sewer, storm water, fire suppression, HVAC, landscaping and janitorial services.
- 2) Tenant, as to the portion of the Premises located within the New Terminal only, shall be responsible only for communication services including phone, internet, and television.

8. **New Terminal.** The following provisions of paragraph 8.1 of the Original Lease are amended as follows.

8.1. New Terminal. Subject to the terms and conditions of this paragraph 8.1, the New Terminal shall be constructed, and the New Terminal Space leased to Tenant, as follows:

8.1.1.1.1 Tenant shall:

- a) Advance the amount (the "Advance Amount") not to exceed Two Million Dollars (\$2,000,000.00) toward the Landlord's total cost of designing, planning, permitting and constructing the New Terminal as and when set forth in paragraph 8.1.1.5.
- b) Lease from Landlord the exclusive use of the New Terminal Space of 3,085 square feet within the New Terminal, as shown on **Exhibit C-1** attached hereto and made a part hereof. Landlord shall designate a minimum of forty-nine (49) vehicle parking spaces for Tenant's exclusive use, as shown on **Exhibit C-2**. Tenant will be permitted to install and maintain signage indicating exclusive use of the parking spaces by Tenant's customers and employees.

Paragraph 8.1.1.2. of the Original Lease is deleted.

8.1.1.3. Landlord shall reimburse Tenant the Advance Amount as follows:

- a) Paragraph 8.1.1.3 a) of the Original Lease is deleted.
- b) The Advance Amount shall be paid by Landlord, or credited against New Terminal Rent, pursuant to paragraph 8.1.3.3. Without limiting on the foregoing, the parties acknowledge that although the Landlord does not commit to repay the Advance Amount sooner than set forth in paragraph 8.1.3.3, the Landlord has indicated it would prefer an early repayment of the balance (after applied rent credits) sooner than later, and on a timetable wholly determined by the Landlord. An annual accounting of remaining Advance Amount balance as of December 31 of each year will be submitted by Landlord to Tenant within 90 days of the end of each calendar year.
- c) Notwithstanding anything herein to the contrary, in the event the Lease terminates for any reason, including the default of Tenant, the Advance Amount shall be first used as a credit against any amounts otherwise owed by Tenant to Landlord, and otherwise the outstanding amount of the Advance Amount shall be paid in full by Landlord to Tenant within thirty (30) days of the Lease's termination.
- d) If the Advance Amount is credited against New Terminal Rent, Landlord shall nonetheless be obligated to pay to Tenant the amount of sales tax calculated based upon the amount of the credit.

8.1.1.4.1. The site of the New Terminal Space as leased to Tenant is set forth on **Exhibit C-1**.

8.1.1.5. Tenant shall pay the Advance Amount of Two Million Dollars (\$2,000,000.00) in four increments, each in the amount of Five Hundred Thousand Dollars (\$500,000.00). As of the Effective Date of Amendment No. 1, Landlord acknowledges that Tenant has paid to Landlord the first installment. The remaining installments will be due from Tenant on March 1, 2020, July 1, 2020 and September 1, 2020. These funds will be used to by Landlord only for costs associated with the New Terminal. Tenant shall have no obligation to advance any further sums beyond the Two Million Dollars (\$2,000,000.00) set forth herein.

Paragraph 8.1.1.6. of the Original Lease is deleted.

Paragraph 8.1.1.8. of the Original Lease is deleted.

The foregoing provisions concerning paragraph 8.1 are entered into pursuant to the obligations of Landlord and Tenant under paragraph 8.1.2 of the Original Lease. In the event of a conflict between the provisions of paragraph 8.1.2 of the Original Lease and this Amendment No. 1, the terms of this Amendment No. 1 shall control.

9. **New Terminal Rent.** Paragraph 8.1.3 of the Original Lease is amended to read as follows:

8.1.3 New Terminal Rent. New Terminal Rent shall be calculated and paid as follows:

8.1.3.1 The New Terminal Rent shall be based upon a gross rental rate of \$26.00 per square foot per annum, payable monthly. As the New Terminal Space constitutes 3,085 square feet, the monthly New Terminal Rent equals \$6,684.17 ((\$26.00 times 3,085 square feet) divided by 12 months).

Paragraph 8.1.3.2 of the Original Lease is deleted.

10. **CAM Fees.** Paragraph 8.1.4 of the Original Lease is deleted and a new paragraph 8.1.5 is added to read as follows:

8.1.5. Landlord shall pay all annual costs and expenses of operating and maintaining the New Terminal, including all Common Areas, and other shared costs associated with the New Terminal including, without limitation ("Landlord Responsibilities"):

- a) Costs of maintaining, repairing, and replacing the Common Areas.
- b) Charges for electricity, gas, water, sewer and all other utilities provided to the New Terminal.
- c) Costs of cleaning services for the New Terminal and the parking lot for the New Terminal.
- d) Amounts due for ad valorem taxes and assessments on the New Terminal, if any.
- e) Costs of landscaping and irrigating the New Terminal and the parking lot for the New Terminal.

- f) To the extent such insurance is included in larger insurance packages maintained by Landlord and that Landlord deems it appropriate, the costs of public liability, property damage, fire and extended coverage insurance and other insurances, for the New Terminal.

- 11. **New Hangar.** The following provisions of paragraph 8.2 of the Original Lease are amended as set forth below:

8.2 New Hangar.

- 8.2.1. Within twenty-four (24) months from the date of receipt of the Notice to Proceed for the construction of the New Hangar from Landlord, Tenant shall commence construction of a new hangars (the "New Hangar") with total construction costs ("New Hangar Construction Costs") of no less One Million Dollars (\$1,000,000.00). Tenant shall thereafter pursue such construction with due diligence.

Paragraph 8.2.1.1.(j) of the Original Lease is deleted.

- 12. **Tenant's Obligations.** Paragraph 10.1.1 of the Original Lease is amended to read as follows:

- 10.1.1 Except as set forth in paragraphs 5.16 and 8.1.5 as to the New Terminal Space, 10.2.3, and 10.3.9, Tenant shall be responsible for all repairs and maintenance of the Premises including keeping the buildings and other improvements, fixtures and equipment located within the Premises in good order and repair.

- 13. **Landlord's Obligations.** Paragraph 10.2.1 of the Original Lease is amended to read as follows:

- 10.2.1 Landlord shall maintain and repair all Public Airport Facilities, other than the Premises (but including the New Terminal as set forth in paragraph 5.16 and 8.1.5) in good and adequate condition for their intended uses to the extent required by law. Tenant shall not prevent Landlord from constructing, operating and/or maintaining such Public Airport Facilities and shall provide Landlord and its employees, representatives and contractors with reasonable access over and across the Premises for such purposes; provided, however, Landlord agrees to endeavor to minimize disruption to Tenant's operations to the maximum extent feasible under the circumstances. Landlord is further responsible for all costs of maintenance and repair of the New Terminal as set forth in paragraphs 5.16 and 8.1.5 and all aircraft ramps and automobile parking lots contained within the Premises.

- 14. **Utility Costs.** Paragraph 11.1 of the Original Lease is amended to read as follows:

- 11.1 Tenant shall pay for all electric, garbage, water, telephone and other utilities charges (including stormwater fees and emergency fire fees) for the Premises not including the New Terminal Space. As to the New Terminal Space, Tenant shall only be responsible for communication services, including phone, internet and television. Notwithstanding the foregoing, and in accordance with paragraph 5.16 and 8.1.5, Landlord shall provide and be solely responsible for all costs related to the lighting for and electrical service for all Airport taxiways and runways, and for all other expenses associated with the New Terminal.

15. **Insurance.** Paragraph 13 of the Original Lease is amended as follows:
- a. Paragraph 13.1 of the Original Lease shall continue to apply to the Premises, which now include the New Terminal Space.
 - b. Paragraph 13.2 of the Original Lease shall not apply to the New Terminal Space.
 - c. All other provisions of paragraph 13 are not amended.
16. **Effect on Original Lease.**
- 16.1. The deletion of any paragraphs hereby shall also delete any subparagraphs thereof.
 - 16.2. The amendment of any paragraphs, or of any provisions of a paragraph, shall not be deemed to amend any subparagraphs thereof, or other provisions thereof, unless they are expressly amended.
 - 16.3. Except as expressly set forth herein, the Original Lease is not amended or modified. All references herein or in the Original Lease to "this Lease," "the Lease," or similar terms shall be deemed to refer to the Original Lease as amended hereby.

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 effective as of the Effective Date set forth above.

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City of Ocala, a Florida municipal corporation

Roseann J. Fusco
Witness

Roseann J. Fusco
Print Witness Name

[Signature]
Witness

Patricia Omichinski
Print Witness Name

ATTEST:

Angel B. Jacobs
Angel B. Jacobs
City Clerk

Approved as to form and legality

[Signature]
Patrick G. Gilligan
City Attorney

By: Jay A. Musleh
Jay A. Musleh
President, Ocala City Council



ACCEPTED BY CITY COUNCIL
February 18, 2020
DATE
OFFICE OF THE CITY CLERK

OFFICE OF THE CITY CLERK

DATE

September 17, 2020

RECEIVED BY CITY COUNCIL



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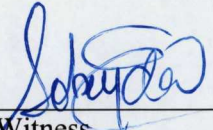
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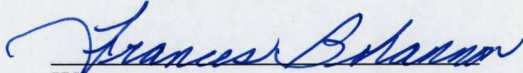
TENANT

Sheltair Ocala, LLC, a Florida limited liability company



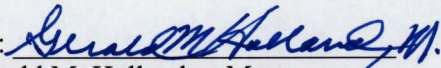
Witness

Sobyda Escam
Print Witness Name



Witness

Francis Bohannon
Print Witness Name

By: 
Gerald M. Holland as Manager

**EXHIBIT C-2
DESIGNATED PARKING AREAS**

Amendment 1
February 2020
Exhibit C-2

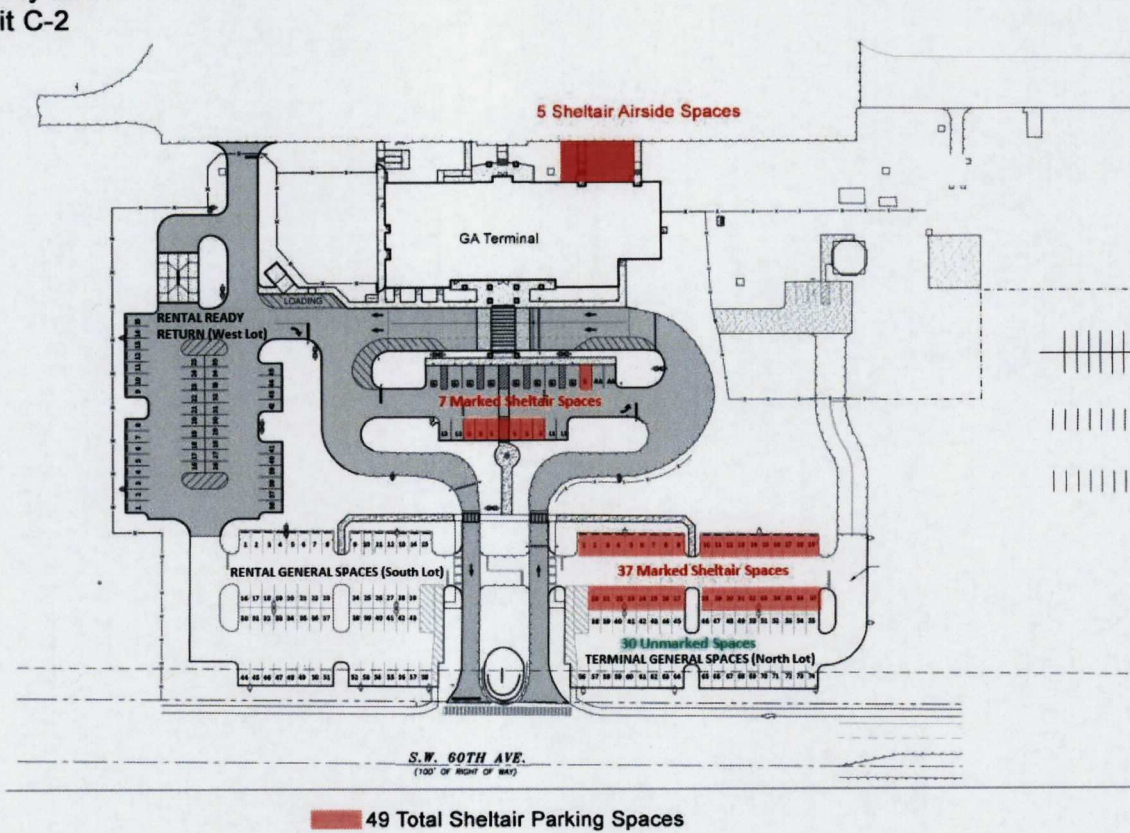


EXHIBIT E
CPI RIDER

1. As used in this Rider, the following terms have the following meanings, in addition to the definitions in the Amended Lease:
 - 1.1. *Adjusted Base Rent* – The Adjustment Amount plus the Preceding Base Rent.
 - 1.2. *Adjustment* – An adjustment to the applicable Base Rent (as set forth in paragraph 1.10 or 1.13) pursuant to this Rider.
 - 1.3. *Adjustment Amount* – The Adjustment Multiplier multiplied by the Preceding Base Rent.
 - 1.4. *Adjustment Date* – As defined in paragraph 2 of this Rider.
 - 1.5. *Adjustment Multiplier* – A number determined pursuant to the following formula: New Comparison Index less Preceding Comparison Index) divided by Preceding Comparison Index.
 - 1.6. *Base Index* – The CPI in effect upon: (a) as to the Original Premises, the Commencement Date of the Original Lease (i.e., June 1, 2015); and (b) as to the New Premises Base Rent, on the Commencement Date-New Terminal Space (i.e., March 1, 2020).
 - 1.7. *CPI* – Means the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, Not Seasonally Adjusted, 1982-84 = 100 reference base, published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI ceases to use 1982-84 = 100 as a reference base, or if the CPI is altered, modified, converted, or revised in any way, the CPI will be adjusted to the figure that would have resulted had the change not occurred. If the CPI ceases to be published, the remaining Adjustments called for in this Rider shall be made using the statistics of the Bureau of Labor Statistics of the United States Department of Labor that are most nearly comparable to the CPI. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or ceases to publish statistics concerning the purchasing power of the consumer dollar during the term of this Lease, the remaining Adjustments called for in this Rider shall be made using the most nearly comparable statistics published by a recognized financial authority selected by Landlord in its sole discretion.
 - 1.8. *New Comparison Index* – The CPI in effect on the second calendar month before the pending Adjustment Date.
 - 1.9. *New Premises* – The portion of the Premises defined as “New Terminal Space” in Amendment No. 1.
 - 1.10. *New Premises Base Rent* – The Base Rent for the New Premises as of the Commencement Date-New Terminal Space. References to “Base Rent” when referring to the Base Rent for the New Premises, shall be deemed to refer to the New Premises Base Rent.
 - 1.11. *New Premises Lease Year* – A 12-month period, with the first New Premises Lease Year commencing on the Commencement Date-New Terminal Space (i.e., March 1, 2020), and subsequent New Premises Lease Years commencing on each anniversary of the Commencement Date-New Terminal Space.

- 1.12. *Original Premises* – The Premises as defined in the Original Lease.
- 1.13. *Original Premises Base Rent* – The Base Rent for the Original Premises as of the Commencement Date of the Original Lease (i.e., June 1, 2015). References to “Base Rent” when referring to the Base Rent for the Original Premises, shall be deemed to refer to the Original Premises Base Rent.
- 1.14. *Original Premises Lease Year* – A 12-month period, with the first Original Premises Lease Year commencing on the Commencement Date of the Original Lease (i.e., June 1, 2015), and, subsequent Original Premises Lease Years commencing on each anniversary of such Commencement Date.
- 1.15. *Preceding Base Rent* – (a) As to the first Adjustment, the Base Rent due prior to any Adjustment; and (b) as to each subsequent Adjustment, the Adjusted Base Rent as adjusted pursuant to the preceding Adjustment.
- 1.16. *Preceding Comparison Index* – (a) As to the first Adjustment, the Base Index; and (b) as to subsequent Adjustments, the CPI utilized for the preceding Adjustment.
2. Adjustment Dates.
 - 2.1. Commencing on the sixth anniversary of the Commencement Date of the Original Lease (i.e., on June 1, 2021), and continuing on each fifth anniversary thereafter, (each a “Old Premises Adjustment Date”), the Original Premises Base Rent will be subject to Adjustment for proportionate increases in the CPI. Each such Adjustment will be effective on the first day of the Original Premises Lease Year subject to the Adjustment. Notwithstanding the foregoing, in no event shall the Adjustment Amount exceed a fifteen (15%) percent increase over the Preceding Base Rent.
 - 2.2. Commencing on the sixth anniversary of the Commencement Date-New Terminal Space (i.e., on March 1, 2026), and continuing on each fifth anniversary thereafter, (each “New Premises Adjustment Date”), the New Premises Base Rent will be subject to Adjustment, with each Adjustment being effective on the first day of the New Premises Lease Year subject to the Adjustment for proportionate increases in the CPI. Notwithstanding the foregoing, in no event shall the Adjustment Amount exceed a fifteen (15%) percent increase over the Preceding Base Rent.
3. On each Adjustment Date, the applicable Base Rent shall be adjusted by adding the Adjustment Amount to the applicable Preceding Base Rent.
4. In no event shall the applicable Base Rent ever decrease below the applicable Preceding Base Rent.
5. This Lease shall automatically be considered as amended, without formal amendment hereto, upon written notification by Landlord to Tenant of the Adjusted Base Rent established pursuant to this Rider. Any delay or failure of Landlord in computing the adjustment, as hereinabove provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay Adjusted Base Rent from the applicable Adjustment Date.