

RETAIL LEASE AGREEMENT

between

PLAZA AT LAKESIDE, LLC

and

**Rocky Ghahary and Margarita Camargo (aka Peggy Camargo), as
individuals**

Dated September _____, 2011

EXHIBITS

The following drawings and special provisions are attached to this Lease as Exhibits and made a part of this Lease:

Exhibit "A" Site Plan of Center

Exhibit "A-1" Legal Description of Center

Exhibit "B" Premises

Exhibit "C" Rules and Regulations

Exhibit "D" Sign Criteria

PLAZA AT LAKESIDE, LLC
RETAIL LEASE AGREEMENT

THIS RETAIL LEASE AGREEMENT (“Lease”) is made as of the ____ day of September, 2011 (“**Execution Date**”), but with an agreed upon retroactive effective date of August 1, 2011 (“**Effective Date**”), by and between Plaza at Lakeside, LLC, a California limited liability company (“**Landlord**”), and Rocky Ghahary and Margarita Camargo (aka Peggy Camargo), jointly and severally as individuals (“**Tenant**”).

ARTICLE 1. LEASE SUMMARY

The following summarizes certain provisions of this Lease. Each reference in this Lease to any of the provisions contained in this Article 1 shall be deemed to incorporate all of the terms of such provision. In the event of any conflict between any provision in this Article 1 and a provision in the balance of this Lease, the latter shall control.

1.1 Tenant’s Trade Name: Jon Vaness Day Spa and Salon

1.2 Center Name: Lakeside Plaza.

1.3 Center: The Center is legally described in Exhibit “A-1” and is located in the city of Moreno Valley, County of Riverside, State of California, at the northwest corner of Iris and Lasselle.

1.4 Premises: The area cross-hatched on Exhibit “B” to this Lease is referred to in this Lease as the “**Premises**”. (See Article 3) The Premises is located in the Center and is further described as follows:

Store No.: A-10 & 11

Address: 25920 Iris Ave., Moreno Valley, California 92551.

Floor Area: approximately 2,160 square feet.

Dimensions: approximately 60’ in depth with a frontage of 36 feet.

1.5 Term: Three (3) years and Two (2) months with One (1) Three (3) year option to extend.

1.6 Commencement Date: the Effective Date.

1.7 Base Rent: Base Rent for the first eight (8) months of the Lease Term (that is, August 1, 2011 through March 31, 2012) shall be payable as follows:

1.7.1 prior to the Landlord's execution of this Lease, and for the period of August and September 2011, a total sum equal to the Outstanding Sum described in Section 2.2 of this Lease;

1.7.2 provided Tenant is not then in default of any Lease term (including, without limitation, the payment of the Outstanding Sum), for October 2011, Zero and 00/100 Dollars (\$0.00). If Tenant is in uncured default as of October 1, 2011, then the sum equal to Three Thousand Two Hundred Eighty-Three and 20/100 Dollars (\$3,283.20);

1.7.3 for the month of November 2011, a total sum equal to Three Thousand Two Hundred Eighty-Three and 20/100 Dollars (\$3,283.20), subject to the addition of all Additional Rents set out within this Lease, including, without limitation, those Additional Rents described in Section 1.8, below, payable in advance on the first day of such calendar month, subject to the addition of all Additional Rents set out within this Lease, including, ~~without limitation,~~ those Additional Rents described in Section 1.8, below;

1.7.4 provided Tenant is not then in uncured default of any Lease term (including, without limitation, the payment of the Outstanding Sum), for December 2011, Zero and 00/100 Dollars (\$0.00). If Tenant is in default and fails to cure as of December 1, 2011, then the sum equal to Three Thousand Two Hundred Eighty-Three and 20/100 Dollars (\$3,283.20);

1.7.5 for the period of January 1, 2012 through March 31, 2012, a total sum equal to Nine Thousand Eight Hundred Forty-nine and 60/100 Dollars (\$9,849.60), payable in advance on the first day of each of the three (3) calendar months within that stated period, in equal installments of Three Thousand Two Hundred Eighty-Three and 20/100 Dollars (\$3,283.20), subject to the addition of all Additional Rents set out within this Lease, including, ~~without limitation,~~ those Additional Rents described in Section 1.8, below.

Base Rent for the remainder of the Lease Term shall be as described in Section 5.3 of this Lease.

1.8 Common Area Maintenance (Triple-Net) Rent: For the first two (2) months of the Lease Term (that is, August and September 2011) Tenant's payment of the Outstanding Sum shall be deemed to include all obligations for Common Area Maintenance (Triple-Net) Rent ("CAM Obligation"). Subject to the provisions set out in Section 1.12, below, for the next three (3) months of the Lease Term (that is, October through December 2011), Tenant's CAM Obligation shall be the total sum of Four Thousand Four Hundred Six and 40/100 Dollars (\$4,406.40), payable in advance on the first day of each calendar month in equal installments of One Thousand Four Hundred Sixty-Eight and 80/100 Dollars (\$1,468.80) each, subject to the adjustments provided in this Lease. (See Article 9.5) For the remainder of the Lease Term, the sum as determined by the provisions set out in Article 9.5 of this Lease.

1.9 Intentionally Omitted.

1.10 Security Deposit: Four Thousand Seven Hundred Fifty-One and 00/100 Dollars (\$4,751.00), payable in two equal installments. The first (1st) payment of Two Thousand Three Hundred Seventy-Five and 50/100 Dollars (\$2,375.50) shall be due on October 1, 2011. The second (2nd) payment of Two Thousand Three Hundred Seventy-Five and 50/100 Dollars (\$2,375.50) shall be due on December 1, 2011. (See Section 5.10)

1.11 Percentage Rent: ~~Six percent (6%). (See Section 5.4)~~

1.12 Rent Abatement: Providing Lessee is not in uncured default in any of the terms and conditions of the Lease (including, without limitation, the timely payment of the Outstanding Sum), Base Rent and CAM Obligation shall be abated for October 2011 and December 2011. The Base Rent and CAM Obligation abatement shall only apply to the two (2) calendar months stated and shall automatically be null and void, without further notice of any kind, if Tenant should be in default and fail to cure of any term or condition of this Lease as of the first day of either calendar month in which the Base Rent and CAM Obligation abatement is otherwise to be effective.

1.13 Permitted Use of Premises; Exclusive: Tenant shall be granted the following limited and qualified exclusive for the Center. No other exclusive rights are intended, and shall not be applicable to Tenant's tenancy of the Premises. Tenant shall be entitled to operate a combination day spa and high-end hair salon bearing the trade name Jon Vaness Day Spa and Salon, and for no other use or purpose (the "Exclusive"). For purposes of absolute clarity, Tenant's exclusive right shall be (a) limited only to the operation of BOTH a day spa and high-end hair salon. If during the Term of the Lease Tenant should cease operating as either a day spa or high-end hair salon, the exclusive right relative to that the respective portion of the business shall immediately and automatically terminate; and (b) qualified in that (i) it shall not preclude Landlord from leasing space within the Center to another day spa and/or high-end hair salon if the operations of such a business is conducted in another Center space occupying less than 1,200 square feet; and (ii) if during the Term of the Lease should Tenant be in default and fail to cure of any term or condition in the Lease (including, without limitation, continuously operating as a combination day spa and high-end hair salon), then Tenant's exclusive rights shall automatically and immediately terminate. Subject to the above qualifications Landlord covenants that it will not lease ~~less than 1,200 sq. ft. of~~ space in the Center to any other operator of a combination day spa and high-end hair salon For the purposes of this Lease, a "Day Spa" is defined as a retail operation which offers massages, facial care, skin care, make-up and/or waxing, similar in style and operation to Burke Williams. For purposes of this Lease, any massages, facial care, skin care and/or waxing services which may be conducted by a nail salon within the Center shall NOT be deemed to be a Day Spa. For the purposes of this Lease, a "High End Beauty Salon" is defined as higher end hair-care salon which charges, prior to inflation, no less than \$25 for hair-cuts, excluding promotions. . Tenant acknowledges that Landlord has leased a portion of the Center to another hair-care operator, who is a franchisee of Fantastic Sams, which has been granted an exclusive right to operate as a Low-Cost Haircare Franchise within the Center. In Fantastic Sams lease, a "Low-Cost Haircare Franchise" is defined as a hair-care operator who charges on average, prior to inflation, less than \$20 for hair-cuts. Tenant

does hereby agree that the operation of the Fantastic Sams within the Center is NOT in violation of the limited and qualified exclusive right herein granted to Tenant, and that Tenant shall not price its hair salon services in such a manner and/or price as to violate the exclusive use rights granted to Fantastic Sams.

1.14 Hours of Operation: Sunday through Thursday 11:00 a.m. to 10:00 p.m.; Friday and Saturday 11:00 a.m. to 11:00 p.m. or such other reasonable business hours as set by Cold Stone Creamery for the majority of its stores in the DMA. (See Article 6)

1.15 Intentionally Omitted.

1.16 Address for Notices: (See Article 20)

To Landlord – Plaza at Lakeside, LLC
1150 S. Vineyard Avenue
Ontario, CA 91761
Attention: Legal Department

To Tenant – prior to occupancy of the Premises:

Rocky Ghahary
909 N. La Perla Street
Anaheim, CA 92801
Phone No.: 562-595-4601

Margarita Camargo (aka Peggy Camargo)
16301 Meadowhouse Unit 321
Chino, CA 91708
Phone No.: 951-255-8051

To Tenant – after occupancy of the Premises:
at the Premises address

1.17 Intentionally Omitted.

1.18 Rate of Additional Rent if Tenant Fails to Open on Time: 1/30th of Tenant's monthly Base Rent for each day Tenant does not open upon execution of the Lease. This sum is agreed to be an amount that is to be in addition to the Base Rent sum that Landlord shall assess as of that same date. (See Section 5.11)

1.19 Intentionally Omitted.

1.20 Intentionally Omitted.

ARTICLE 2. DEFINITIONS

2.1 Additional Rent means all monetary obligations of the Tenant under this Lease other than Base Rent ~~and Percentage Rent~~, including, but not limited to, the obligations to pay security deposits, CAM Obligations, Shop Buildings Expenses, taxes, utilities, insurance premiums, repair costs, late fees, interest on past due obligations, Non-Sufficient Funds charges, attorney's fees, amounts required to be paid under Section 5.8 of this Lease, and any other expenses payable by Tenant.

2.2 Outstanding Sum: Tenant hereby acknowledges and agrees that there currently exists delinquent Rent for the herein described Premises that have been occupied by Tenant, for the period of August 2011 and September 2011, totaling Six Thousand One Hundred and 00/100 Dollars (\$6,100.00; the "**Outstanding Sum**"). As an express pre-condition for Landlord's execution of this Lease, the Tenant does hereby agree to deliver, the Outstanding Sum in cash or other immediately available funds of the United States of America, to Landlord on or before the Execution Date.

2.3 Base Rent means: (a) for the first through eighth months (1 - 8) of the Lease Term, the amounts set forth in Section 1.7; and (b) for each of the subsequent months within the initial Lease Term, Base Rent as adjusted pursuant to Section 5.3.

2.4 Intentionally Omitted.

2.5 CCRs means any Conditions, Covenants and Restrictions adopted by Landlord and recorded against the Center, as the same may be amended from time to time.

2.6 Center means the property described in Section 1.3.

2.7 Common Area means all areas within the exterior boundaries of the Center which are now or hereafter made available by Landlord for the nonexclusive use, convenience and benefit of Landlord and Tenant and other persons, including, without limitation, automobile parking areas (including any parking structures), driveways, open or enclosed malls, food court, trash enclosures not for exclusive use of a tenant in the Center, canopies, building overhangs, non-exclusive exterior ramps and non-exclusive loading docks, utility rooms, areas of ingress and egress, walkways, sidewalks, stairways, elevators, restrooms, and landscaped and planted areas.

2.8 Common Area Expenses means those expenses described in Section 9.3.

2.9 Common Area Maintenance means the maintenance required to be done pursuant to Section 9.3(a).

2.10 Comparison Month means, for any Lease Year, that calendar month which is two (2) months before the beginning of such Lease Year.

2.11 Effective Date means the date that all of the rights and obligations of Landlord and Tenant under this Lease shall be deemed to have commenced, which date has been agreed to be August 1, 2011, the date on which Tenant first took occupancy of the Premises.

2.12 Floor Area means as to each building or part thereof within the Center, including each store area separately leased, including, but not limited to, Tenant's Premises, the aggregate of the number of square feet of floor space on all floor levels, including mezzanines, measured from the exterior of any wall abutting the common area or any portion thereof and from the center line of walls which are common walls for floor area in the Center which may be leased to tenants. No deduction or exclusion from floor area shall be made by reason of sprinkler risers, roof drains, vents piping, waste lines, conduit, ventilation shafts, columns, stairs, elevators and escalators, or other interior construction or equipment, but excluding non-exclusive exterior ramps and non-exclusive loading docks.

2.13 Gross Sales means Tenant's gross sales from the Premises as further defined in Section 5.5.

2.14 Intentionally Omitted.

2.15 Intentionally Omitted.

2.16 Lease Year means that period of twelve (12) consecutive months beginning on the Commencement Date or, if the Commencement Date falls on a day other than the first of any month, then beginning on the first day of the calendar month immediately following the Commencement Date and each twelve (12) calendar month period thereafter during the Term; provided that the first Lease Year shall include any partial calendar month between the Commencement Date and such first day, and the last Lease Year shall contain such period of time as there is from the beginning of the last Lease Year to the termination or expiration of this Lease.

2.17 Mortgagee means the holder of any mortgage or the beneficiary of any deed of trust or other encumbrance executed by Landlord and covering the Premises or any part thereof.

2.18 ~~Percentage Rent~~ means the share of Tenant's Gross Sales payable to Landlord pursuant to Sections 1.11 and 5.4 through 5.8.

2.19 Premises means the commercial space described in Section 1.4.

2.20 Real Property Taxes means those taxes and assessments described in Section 8.2 as they apply to the Center of any portion thereof, including the Premises.

2.21 Rent means all rent due under this Lease and consists of Base Rent, Percentage Rent and Additional Rent, including, without limitation, the Tenant's CAM Obligation.

2.22 Commencement Date means the date specified in or determined pursuant to Section 1.6.

2.23 Rules and Regulations means those rules and regulations described in Section 6.3.

2.24 Shop Buildings means the building(s) constructed in the areas designated on the Site Plan as Shops.

2.25 Shop Buildings Expenses means those expenses incurred in connection with the maintenance and operation of the Shop Buildings as such expenses are described in Section 10.1.

2.26 Site Plan means Exhibit "A".

2.27 Intentionally Omitted.

2.28 Intentionally Omitted.

2.29 Intentionally Omitted.

2.30 Term means the period of time set forth in Section 1.5 during which period Tenant has the right to occupy the Premises subject to the provision of this Lease, which right to occupy may be earlier terminated in accordance with the provisions of this Lease.

2.31 Transfer Consideration means that consideration described in Section 18.9.

ARTICLE 3. PREMISES

Landlord hereby leases to Tenant and Tenant hereby hires from Landlord, for the Term, at the Rent and upon the covenants and conditions set forth in this Lease, the Premises.

3.1 Intentionally Omitted.

3.2 Intentionally Omitted.

3.3 Layout of Center. Tenant acknowledges that any Site Plan shall not be deemed a representation by Landlord that the Center shall be constructed as indicated thereon or that any tenants designated by name or nature of business thereon shall conduct business in the Center. The Site Plan sets forth the general layout of the Center, but is for informational purposes only and does not constitute a warranty, representation, or agreement on the part of Landlord that the layout or tenant mix is or will remain as indicated on the Site Plan. Landlord reserves the right, without incurring any liability to Tenant and without altering in any way Tenant's obligations under this Lease, (i) to change the post office address of the Premises or the Center with prior written notice to Tenant and the tenant mix of the Center without prior notice, and (ii) so long as tenants use of the premises and quiet enjoyment are not adversely affected, to increase, reduce, or change the size, height, or layout of the Center or any part thereof, including without limitation the right not to construct any proposed improvements or portion of the Center

which may or may not be shown on the Site Plan and the right to change the parking plan, tenant mix and/or parking ratios or to construct new buildings and structures in the Common Area and to remove and replace existing buildings, tenants and structures in the Center.

ARTICLE 4. LEASE TERM

4.1 Term; Extension Option. The Term of this Lease shall be deemed to have begun on the Commencement Date. .

In the event that Landlord grants Tenant one or more options to extend the Term (each, individually, an "**Extension Term**", and collectively, the "**Extension Terms**"), the following terms and conditions shall apply:

Each Extension Term shall commence upon the expiration of the initial Term or the applicable Extension Term. Provided that (i) Tenant has paid Rent throughout the immediately preceding Term or Extension Term, as the case may be, and submitted reports in a timely fashion as required hereunder, (ii) Tenant is not then in uncured material default under this Lease and no event has occurred which, with notice or the passage of time or both, would constitute a material default by Tenant under this Lease, (iii) at the time of Tenant's exercise of the applicable option to extend, there has been no material adverse change in Tenant's financial condition, (iv) any prior option rights have already been exercised, and (v) Tenant exercises each option by delivering to Landlord written notice of the exercise of each such option no later than six (6) months prior to the expiration of the Term, as it may have been extended, Tenant shall have the right to extend the Term or the applicable Extension Term. If the Term is extended by reason of the foregoing, the Term and all of the terms and conditions of this Lease shall continue in full force and effect to the end of each Extension Term. This option is personal to the original Tenant signing this Lease and may not be exercised by any assignee, subtenant or transferee of Tenant.

4.2 Confirmation of Term. Tenant shall, immediately following the Execution Date, execute and deliver to Landlord a document, prepared by Landlord, confirming the Commencement Date and the expiration date of the Term. Landlord may prepare such document in recordable form and, if Landlord so elects, such document may be recorded. Tenant's failure within ten (10) days after receipt thereof either to (a) execute and deliver the document to Landlord or (b) object in writing to the document, shall constitute an acknowledgement by Tenant that all statements included in the document relating to the Commencement Date and expiration date of the Term are true and correct.

4.3 Condition of Premises. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the Center or with respect to the suitability or fitness of either for the conduct of Tenant's business or for any other purpose. Tenant (a) acknowledges that it has inspected the Premises and the Center; (b) establishes conclusively that the Premises and the Center are at such time in satisfactory condition and in conformity with this Lease and all zoning or other governmental requirements in all respects, except for those items as to which Tenant notifies Landlord in writing, in reasonable detail, within ten days after the earlier of (i) the day Tenant takes

possession or commences such use of the Premises or (ii) the Commencement Date; and (c), subject to Landlord's receipt of the notice provided for in (b) above, accepts the Premises and the Center in their condition as of the date of such possession or use "AS IS" and subject to all faults and infirmities (except latent defects which could not be discovered by reasonable inspection), whether now or hereafter existing. Nothing contained in this Section 4.3 shall affect the commencement of the Term or the obligation of Tenant to pay Rent as provided in Article 5 or elsewhere within this Lease. Nothing contained in this paragraph shall limit the liability of Landlord for any representation or warranty made in this Lease.

4.4 Intentionally Omitted.

ARTICLE 5. RENT AND DEPOSIT

5.1 Rent. Tenant covenants and shall pay to Landlord at the first address set forth in Section 1.16, or such other place as Landlord may from time to time designate in writing to Tenant in advance, without prior demand, deduction or set-off, commencing with the Commencement Date and continuing during the Term, the Rent provided in this Article 5 and elsewhere within this Lease, including, without limitation, Sections 1.7, 1.8, 1.11, 2.1, 2.2, 2.3, 2.8, 2.18, 2.20, 2.21 and 2.31. All Rent shall be paid in lawful currency of the United States of America. However, Tenant may elect to tender Tenant's personal or business account check; provided, however, that if any such check should for any reason within Tenant's control fail to clear the bank and the proceeds are not credited to Landlord's account, thereafter Tenant, at Landlord's election, shall tender the Rent by cashier's check or in cash.

5.2 Base Rent

(a) Subject to the express provisions set out in this Lease to the contrary, the Base Rent shall be paid in equal monthly installments, in advance, on the first day of each month during the Term.

(b) The Outstanding Sum shall be applied against the Base Rent owed for the first two (2) calendar months of the Lease Term (that is, August and September 2011). After application of the Outstanding Sum, any Base Rent owing for any month shall be paid by Tenant on or before the first calendar day of such month.

5.3 Adjustment of Fixed Minimum Rent.

(a) The annual Base Rent owing from Tenant, to Landlord, during the period of April 1, 2012 through March 31, 2013 of the Lease Term shall be the sum of Forty-Five Thousand Three Hundred Sixty and 00/100 Dollars (\$45,360.00), and shall be payable in advance on the first day of each calendar month within that stated timeframe in equal installments of Three Thousand Seven Hundred Eighty and 00/100 Dollars (\$3,780.00) each.

(b) The annual Base Rent owing from Tenant to Landlord, during the period of April 1, 2013 through March 31, 2014 of the Lease Term shall be the sum of Forty-Six Thousand Six Hundred Fifty-Six and 00/100 Dollars (\$46,656.00), and shall be payable in

advance on the first day of each calendar month within that stated timeframe in equal installments of Three Thousand Eight Hundred Eighty-Eight and 00/100 Dollars (\$3,888.00).

(c) The annual Base Rent owing from Tenant, to Landlord, during the Option Period, if applicable should Tenant exercise the option granted by this Lease to extend the Term of this Lease (provided all pre-conditions to the exercise of the option are fully satisfied prior to and as of the date of the exercise of such option), shall be the greater of (i) fair market value for the Premises, and (ii) the sum of Forty-Seven Thousand Nine Hundred Fifty-two and 00/100 Dollars (\$47,952.00) for the first Lease Year of the Option Period, payable in advance on the first day of each calendar month within that stated timeframe in equal installments of Three Thousand Nine Hundred Ninety-Six and 00/100 Dollars (\$3,996.00), plus annual adjustments for each subsequent Lease Year of the Option Period that will result in the Base Rent for each such Lease Year being equal to a sum that is One Hundred Three percent (103.0%) of the immediately preceding Lease Year's Base Rent .

~~**Percentage Rent.** Tenant shall also pay as Percentage Rent for each calendar year, an amount equal to the product of the Percentage Rent rate set forth in Section 1.1.1 multiplied by the Gross Sales for each calendar year during the Term, less the Base Rent actually paid during said calendar year.~~

~~5.4~~

~~5.5 Gross Sales.~~

~~Gross Sales means the selling price of all merchandise or services sold, leased, licensed, or delivered in or from the Premises, including orders and sales made using electronic media, by Tenant, its subtenants, licensees, franchisees or concessionaires, whether for cash or on credit (whether collected or not), including the amount received by reason of orders taken on the Premises although filled elsewhere, and whether made by store personnel or vending machines. All sales originating at the Premises shall be considered as made and completed therein, even though bookkeeping and collection of the account may be transferred to another place and even though orders may be filled and deliveries may be made from a place other than the Premises. All deliveries to customers made from the Premises, or prepared at the Premises, shall be considered to be made in and from the Premises even though orders may be taken elsewhere. Any transaction on an installment basis, including, without limitation, any "lay-away" sale or like transaction, or otherwise involving the extension of credit, shall be treated as a sale for the full price at the time of the transaction, irrespective of the time of payment or when title passes.~~

~~Notwithstanding the foregoing, Gross Sales shall not include, or if included there shall be deducted (but only to the extent they have been included), the following:~~

~~The selling price of all merchandise returned by customers and accepted for full credit, or the amount of discounts, refunds, and allowances made on such returned merchandise, but the use of any such credit or discounts to purchase other merchandise shall not be excluded, and this exclusion shall not include any amounts paid or payable for trading stamps;~~

~~Merchandise returned to suppliers or transferred in original packages without any processing or preparation to another store or warehouse owned by or affiliated with Tenant;~~

~~Sums and credits received in the settlement of claims for loss of or damage to merchandise;~~

~~To the extent that same are actually paid (but excluding any and all interest and penalties assessed thereon), sales and use taxes, so-called luxury taxes, consumers-excise taxes, gross receipts taxes and other similar taxes now or in the future imposed on the sale of merchandise or services, but only if such taxes are added to the selling price, separately stated, collected separately from the selling price of merchandise or services, and collected from customers; and~~

~~Sales of fixtures, equipment or personal property that are not stock in trade.~~

~~_____ (vi) Any discounts, coupons, vouchers and the like.~~

5.6 Reporting and Payment of Percentage Rent.

~~(a) Within twenty (20) days after the end of each calendar month which falls either wholly or partially within the Term, commencing with the calendar month in which the Commencement Date occurs, and continuing through the calendar month in which the Term expires, Tenant shall deliver to Landlord a written statement certifying Gross Sales during said calendar month, together with payment to Landlord of the amount, if any, by which the product of the Percentage Rent rate set forth in Section 1.11 multiplied by the Gross Sales for said calendar month exceeds the Base Rent actually paid by Tenant or by an authorized financial officer or partner of Tenant, as appropriate.~~

~~_____ (b) Within thirty (30) days after the expiration of each calendar year, commencing with the calendar year in which the Commencement Date occurs, or of the calendar month in which the Term expires, Tenant shall determine the Gross Sales for the calendar year or partial calendar year, as the case may be, and calculate the Percentage Rent in accordance with Section 5.4 for said calendar year or partial calendar year. Tenant shall notify Landlord in writing of the amount of Percentage Rent so calculated, which amount shall be certified to be correct by Tenant or by an authorized financial officer or partner of Tenant as appropriate. Concurrently with delivery of the notice, Tenant shall pay to Landlord any additional Percentage Rent due to Landlord for the preceding calendar year or for the partial calendar year, as appropriate. During the Term, any overpayment shall be credited by Landlord against the next Rent owed by Tenant as it falls due. If the Term has expired, any overpayment shall be credited against any amounts owed to Landlord by Tenant, or, if none, shall be paid by Landlord to Tenant.~~

~~_____ (c) Notwithstanding anything to the contrary contained herein, in the event of any assignment or sublease pursuant to Article 18, the following shall apply. Only for~~

~~purposes of determining Gross Sales and Percentage Rent and for no other purposes, the Term of the Lease shall be treated as having expired and the assignees or sub-lessee's Commencement Date shall be treated as having occurred as of the effective date of the assignment or sublease. Not less than ten days prior to the effective date of the assignment or sublease, Tenant shall deliver to Landlord a written statement certified by Tenant or by an authorized financial officer or partner of Tenant to have been made in good faith and based on previous sales records from the Premises, estimating Gross Sales through and including the effective date of the assignment or sublease. The statement shall also include the forwarding address of Tenant and the location after the effective date of the assignment or sublease of the books and records of sales from the Premises occurring prior to said effective date. Such location shall in all events be in Southern California. Based on the estimate of Gross Sales, Tenant shall calculate the Percentage Rent owing for the calendar year, or partial calendar year, and pay such amount to Landlord concurrently with the delivery of the statement. Thereafter, Tenant, as the transferor, shall within ten days after the effective date of the assignment or sublease comply with all of the provisions of Section 5.6(b) to determine actual Gross Sales. Any overpayment shall be credited against any amounts owed to Landlord by Tenant, or, if none, shall be paid by Landlord to Tenant. Landlord's audit rights as provided in Section 5.8 shall commence with respect to Tenant's sales for said calendar year, or portion thereof, irrespective as to whether or not a statement has been received from Tenant. The effectiveness of any assignment or sublease is specifically conditioned on Tenant's delivering to Landlord the statement of estimate Gross Sales and the concurrent payment of Percentage Rent, if any.~~

5.7 Records. ~~Tenant shall maintain and shall require its sub-lessees, licensees, and concessionaires to maintain in the Premises or at another location approved in writing by Landlord, for not less than three (3) years after the delivery to Landlord of Tenant's final certified statement for the calendar year, complete, accurate and customary records and accounts of inventory, of receipt of merchandise at the Premises and of daily Gross Sales. Tenant further agrees to keep at the above described location, for at least three (3) years following the end of each calendar year, all pertinent original sales records, which shall include: (a) all cash register tapes; (b) serially numbered sales slips; (c) the originals of all mail orders at and to the Premises; (d) the original records of all telephone or other electronically transmitted orders at and to the Premises; (e) settlement report sheets of transactions with Tenant's subtenants, licensees and concessionaires, if any; (f) the original records showing that merchandise returned by customers was purchased at the Premises; (g) other sales records, if any, which would normally be examined by an independent accountant pursuant to generally accepted auditing standards in performing an audit of Tenant sales; (h) copies of any and all sales tax returns filed by Tenant with any taxing authority; and (i) the records specified in (a) to (h) above of all of Tenant's subtenants, licensees and concessionaires, if any. In the event of any controversy regarding the Percentage Rent payable hereunder, Tenant shall maintain said records until the controversy has ended. Landlord may at any reasonable time during business hours, personally or through duly authorized agents, at its own expense inspect and make copies of such records, together with any other documents bearing on Tenant's Gross Sales.~~

Audit. ~~Landlord may cause an audit to be made of the business transacted in or from the Premises, whether or not included in Gross Sales, for a prior calendar year. Landlord's right to conduct such an audit shall expire three (3) years after delivery to Landlord of Tenant's~~

~~final certified statement for such calendar year. If the audit discloses that Gross Sales for the period audited are understated, an adjustment shall be made and Tenant shall immediately pay to Landlord any increase in the amount of Percentage Rent due. If the audit further discloses that Tenant has understated Gross Sales by three percent (3%) or more of Gross Sales as reflected on Tenant's final certified statement, Tenant shall, in addition to immediate payment to Landlord in the Percentage Rent due, immediately pay to Landlord the cost of the audit and, further, shall pay the cost of Landlord's next audit when such costs are incurred by Landlord. If Tenant furnishes any statement that understates Gross Sales by five percent (5%) or more of Gross Sales as reflected on Tenant's final certified statement, such act shall constitute an immediate and non-curable breach of this Lease, and Landlord shall have the right to terminate this Lease upon fifteen (15) days notice to Tenant. Any information gained by Landlord from such statements or audit shall be confidential and shall not be disclosed except to carry out the purposes hereof. However, Landlord may divulge such information in connection with any financing arrangements or sale or exchange of the Premises by Landlord.~~

~~5.8~~

~~5.9 Intentionally Omitted.~~

5.10 Security Deposit. Tenant shall deposit, with Landlord, as security for the full and faithful performance of every provision of this Lease to be performed by Tenant, those sums which, in total, are stated in the Basic Lease Provisions as the "**Security Deposit**". If Tenant defaults with respect to any provisions or covenants of this Lease, including, but not limited to, the provisions of this Lease relating to the payment of Rent, Landlord may use, apply or retain all or any part of the Security Deposit for the payment of any Rent in default, or for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall within ~~five-ten business~~ (510) days after written demand deposit cash with Landlord in amounts sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall be an event of default under this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant within thirty (30) days after both (i) the expiration of the Term, and (ii) Tenant's return of possession and control of the Premises to Landlord in keeping with Section 21.3 of this Lease. Tenant expressly waives the provisions of Section 1950.7 of the California Civil Code, as amended or recodified from time to time, relating to Landlord's obligations in connection with security deposits.

5.11 Additional Rent. All monetary obligations of the Tenant under this Lease, including, but not limited to, the obligations to pay security deposits, CAM Obligations, Shop Buildings Expenses, taxes, utilities, insurance premiums, repair costs, late fees, additional rent sums owing under Section 1.18 of this Lease, interest on past due obligations, Non Sufficient Funds charges, Attorney's Fees, amounts required to be paid under Section 5.8 of this Lease, and any other expenses payable by Tenant hereunder shall be deemed Rent.

ARTICLE 6. USE OF PREMISES AND OPERATION OF BUSINESS

6.1 Regulation of Use.

(a) The Premises shall be continuously occupied and used by Tenant solely under the trade name and solely for the purpose of conducting the business stated in Sections 1.1 and 1.13, respectively. Tenant shall not use or permit the Premises, or any part thereof, to be used under any other trade name or for any other purpose or purposes without Landlord's prior consent, which may be given or withheld in Landlord's sole discretion. Tenant acknowledges (a) that its use, except as otherwise expressly set forth herein, is non-exclusive with respect to other tenants of the Center to whom Landlord has granted similar uses prior to the Term, ~~or may grant similar uses during the Term,~~ and (b) ~~from time to time, Landlord may grant exclusive use rights to other tenants of the Center which may expressly prohibit Tenant from selling items for which the right to exclusively sell such items has been granted or Landlord intends to grant to another tenant of the Center, and are not expressly reserved for Tenant hereunder.~~

(b) Tenant shall at all times continuously operate its business in a first-class manner and shall employ its best judgment, effort and ability to operate said business in a manner calculated to attract the maximum volume of trade or patronage attainable. Tenant shall at all times keep and maintain within and upon the Premises an adequate stock of merchandise and trade fixtures to service and supply the usual and ordinary demands and requirements of its customers. Tenant shall use for office or non-selling purposes only such space as is reasonably required for Tenant's business.

(c) Tenant shall, at Tenant's own expense, comply with all present or future laws, regulations, and other requirements of any governmental authority affecting Tenant's use or occupancy of the Premises, and with all requirements of the insurance underwriting board or insurance inspection bureau having or asserting jurisdiction (or any other body performing like functions), and of all insurance companies writing policies covering the Premises. Tenant shall pay all costs, claims, and penalties that may in any manner arise out of or be imposed because of the failure of Tenant to comply with these covenants. The foregoing shall cover all requirements whether or not foreseeable at the present time and regardless of the expense attendant thereto. The judgment of any court of competent jurisdiction or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party hereto or not, that Tenant has violated any such order or statute in said use shall be conclusive of that fact as between Landlord and Tenant. In addition, Tenant further covenants and agrees that it will not use or suffer or permit any person or persons to use the Premises or any part thereof in violation of the laws of the United States of America or the laws, ordinances, regulations and requirements of the State, County and City where the Center is situated, or other lawful authorities having jurisdiction over the Center or any part thereof.

(d) Tenant shall, at its own expense, procure each and every permit, license, certificate, or other authorization and any renewals, extensions, or continuances of the same required in connection with the lawful and proper use of the Premises and the Building. Neither Tenant's failure to procure such permit, license, certificate, or other authorization, nor the revocation of the same, shall in any way affect Tenant's liability for the payment of Rent or the

performance or observance of any of the covenants or conditions contained herein which Tenant is required to perform and observe. Tenant shall discontinue any use of the Premises that is declared by any governmental authority having jurisdiction to be a violation of law. Such use shall be discontinued as promptly as possible, but in all events if Landlord gives Tenant notice of such violation, Tenant shall discontinue such use not later than five days after receipt of such notice.

(e) No use shall be made or permitted of the Premises, or any part thereof, nor any acts done or omissions made which shall constitute, in Landlord's judgment, waste, a nuisance or unreasonable annoyance or which may disturb the quiet enjoyment of other tenants, concessionaires, licensees or occupants of the Center, or which will create or emit unusual, offensive, hazardous or excessive quantities of dust, gas, smoke, fumes, odors or other substances that cause excessive noise or vibration. No auction, fire sale or bankruptcy sale may be conducted in the Premises without the consent of Landlord, which may be withheld at Landlord's sole discretion. Tenant agrees not to conduct and operate its business in any manner that could jeopardize or increase the rate of any fire or other insurance or that could otherwise constitute a nuisance to or interfere with any property of Landlord or its business or the property or business of other tenants of the Center. In addition to any other remedy Landlord may have at law or in equity, Landlord may require Tenant to pay all of the increases in insurance premiums caused by Tenant for the breach of the foregoing. If Tenant installs any electrical equipment that overloads any portion of the electrical service for the Premises, Tenant at its own expense, shall make whatever changes necessary to correct the overload of the electrical service for the Premises and comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction over the Premises. If this Lease so permits and Tenant engages in the preparation of food or packaged foods or engages in the use, sale or storage of flammable or combustible material, Tenant, in compliance with all applicable laws, and in compliance with the requirements of the insurance underwriters and governmental authorities having jurisdiction over the Premises, shall install such chemical extinguishing and other devices approved by the Pacific Fire Insurance Rating Organization or other recognized body and shall keep such devices under service as required by such organization.

(f) Tenant agrees that all nontoxic and nonhazardous trash and rubbish of Tenant shall be deposited only within receptacles provided by Landlord and that there shall be no other trash receptacles permitted to remain outside of the Premises. Tenant also agrees that it shall not bring any toxic or hazardous substances onto the Center or the Premises, except as such substances are used or sold in the ordinary course of Tenant's business operations from the Premises. Tenant further agrees that it shall, at its sole cost, properly and safely handle, store and dispose of all toxic, hazardous or potentially hazardous substances in accordance with all applicable laws. Tenant shall not allow any such toxic, hazardous or potentially hazardous substance to be stored on or to remain outside of, the Premises and shall indemnify, and hold Landlord harmless from any and all claims or liabilities arising from Tenant's use, handling, storing, or disposing of such substances. Tenant shall promptly notify Landlord of any toxic substances to be used on premises during the Lease term. Tenant shall, at Tenant's own expense keep the grease-trap(s) clean and fully functional through the use of a 3rd party servicer or other means that are in either case proven to Landlord to have been performed on a regular and recurring basis.

(g) Without first obtaining the written consent of Landlord, which consent may be withheld at Landlord's sole discretion, Tenant may not display or sell merchandise or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls or roof and permanent doorways of the Premises. Tenant shall not, without first obtaining the written consent of Landlord, erect any aerial, antenna or satellite dish on the roof or exterior walls of the Premises, and no roof penetrations of any type shall be made. Any such permitted aerial, antenna or satellite dish shall be adequately shielded from view. Any aerial, antenna or satellite dish so installed, without such consent, shall be subject to removal without notice at any time. In addition, Tenant shall not, and shall not cause other to, solicit in any manner in the Common Area.

(h) Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading and services to the Premises prior to 10:00 A.M. Tenant shall use its best efforts to cause delivery trucks or other vehicles servicing the Premises not to park or stand in front of, or at the rear of, the Premises from 10:00 A.M. to 9:00 PM. Landlord reserves the right further to regulate the activities of the Tenant in regard to deliveries and servicing of the Premises, and Tenant agrees to abide by the CCRs and by the Rules and Regulations of Landlord as currently set forth in **Exhibit "C"** attached hereto, and such Rules and Regulations as are promulgated by Landlord from time to time.

(i) Tenant shall not, without Landlord's prior written consent, install any security screens, bars or other similar devices, nor make any other Tenant Alterations to any area involving the storefront window or which are visible from the storefront window.

(j) Tenant shall not, without Landlord's prior written consent, (i) conduct any auction or bankruptcy sale, (ii) conduct any fire sale except as a result of a fire on the Premises, (iii) conduct any close-out sale except in connection with the expiration of the Term or (iv) sell any so-called "**surplus**", "**Army and Navy**" or "**secondhand**" goods, as those terms are generally used at this time and from time to time hereafter, on or from the Premises.

(k) Tenant shall remain open for business continuously and uninterruptedly during such hours as are set forth in Section 1.14 or, if no hours are set forth therein, as Landlord may reasonably require, subject to temporary closing for repairs or restoration. Tenant shall continuously operate the Premises during the entire Term, unless prevented from doing so because of fire, accident, or acts of God, and shall conduct its business at all times in a high-class and reputable manner, maintaining at all times a full staff of employees and a full and complete stock of merchandise. If Tenant shall fail to operate its business in the Premises during at least seventy-five percent (75%) of the hours determined by Landlord to be operating hours for the Center, for a period of ~~five-thirty~~ (~~530~~) days or more without payment of rent then Tenant shall be in default under the terms of this Lease.

(l) Tenant shall not (i) bring or permit any bicycle or other vehicle, pet or dog (except in the company of a blind person) or other animal, fish, bird or other creature in the Premises; (ii) make or permit noise, vibration or odor to emanate from the Premises or any equipment serving the same; or (iii) do or permit anything to be done upon the Premises in any

way tending to disturb, bother, or annoy any other Tenant in the Center or the occupants of neighboring property.

(m) If applicable, and without limited Tenant's other obligations hereunder, Tenant shall be solely responsible for maintaining, repairing and cleaning any such grease interceptors (including repairing all affected drains and drainage systems located within the Premises' interior or exterior), to the extent such grease interceptors serve only the Premises.

6.2 Signs, Advertising and Competition.

(a) Tenant may, at its own expense, erect and maintain within the interior sales areas, but not upon any window, of the premises, all signs and advertising matter customary and appropriate in the conduct of Tenant's business, subject to Landlord's right to remove any signs or advertising matter which constitute a nuisance or an unreasonable annoyance to the public, to other occupants of the Center or to Landlord. Subject to the requirements of Section 6.2(b), below and in addition to the foregoing, Tenant, at its sole cost and expense, shall have the right to install its signage upon the sign monument depicted in the Site plan. Tenant shall bear its pro-rata share of any all costs and expenses associated with constructing, maintaining, operating, repairing, replacing and managing such sign monument.

(b) Tenant will not place or permit to be placed or maintained on any door, window (interior or exterior), wall, roof or other portion of the exterior of the Premises any sign, awning, canopy, decoration, advertising matter or other thing of any kind without Landlord's prior written consent and the approval of any governmental authority having jurisdiction. Tenant shall not install or maintain any device (other than a security system) that is audible from outside the Premises. All signs must conform in all respects to the sign criteria for the Center set forth in Exhibit "D", the CCRs, and to all Rules and Regulations regarding the display of signs in the Center as such are currently set forth in Exhibit "C" attached hereto, or such Rules and Regulations as are promulgated by Landlord from time to time. Tenant shall, at its own expense, maintain and keep in good repair all installations, signs, and advertising devices which it is permitted by Landlord to maintain, upon termination or expiration of this Lease Tenant shall, at its own expense, promptly remove all such installations, signs, and devices and repair any damage caused by such removal.

(c) Tenant shall not display, paint or place any advertising materials on any vehicle parked in the Common Area. In addition, Tenant shall not distribute, or cause to be distributed, in the Center, any other advertising materials with exception of Tenant promotions.

(d) All written materials advertising or promoting Tenant's business in the Premises which may, from time to time during the Term be distributed by or on behalf of Tenant, shall contain a ~~clear and conspicuous~~ reference to the Center, including its full and complete name.

6.3 CCRs and Rules and Regulations. Tenant agrees to comply with the CCRs and the Rules and Regulations attached hereto as Exhibit "C" and any nondiscriminatory amendments, modifications or additions thereto which may hereafter be adopted and published

by written notice to Center tenants by Landlord, for the safety, care, security, good order, and cleanliness of the Premises and the Center. Landlord shall not be liable to Tenant for any violation of such Rules and Regulations by any other occupant of the Center.

6.4 Right to Cure. In the event of a violation of a provision of Article 6, in addition to any other remedy available to Landlord, Landlord shall have the right to enter upon the Premises with prior notice and cure any violation of this Article 6 and repair any damage caused by such cure, all without liability to Tenant. Tenant shall pay all costs incurred by Landlord in connection with such cure.

6.5 Competition. For the Term of the Lease including the Extension Term, Tenant shall not own, operate or have or acquire an interest in a business similar to the business Tenant is operating in the Premises which is not so owned or operated on the Effective Date of this Lease, within a radius of ~~five-three~~ (53) miles in any direction from the closest boundary of the Center.

6.6 Intentionally Omitted.

6.7 Employee Parking. Landlord may, from time to time, designate that portion, if any, of the Common Area which may be used for automobile parking by Tenant and Tenant's employees, sublessees, concessionaires, and licensees. Such persons may not park on any portion of the Common Area, except that which is so designated. As of the date of this Lease, the area shown on the Site Plan as "**Employee Parking**", if any, has been designated for the parking of vehicles belonging to such persons. Tenant agrees to abide by all reasonable parking directives and/or rules Landlord may, from time-to-time establish for the Center.

ARTICLE 7. UTILITIES

7.1 Payment of Utility Charges. Commencing with the Commencement Date, Tenant shall pay before delinquency or as otherwise provided in this Lease all charges for water, gas, heat, air cooling, electricity, power, telephone, and other utility services used on or serving the Premises during the Term. Nothing contained in this Lease shall limit or restrict Landlord in any way from granting or using utility easements on, across, over and under the Center.

7.2 Landlord's Option to Provide Services. At any time during the Term, Landlord may elect, by thirty (30) days notice to Tenant, to provide any or all of the utilities serving the Premises; provided, however, that the charges for such utility services shall not exceed those that would have been charged by a serving public utility or which would have been incurred by the Tenant in operating and maintaining an independently operated system. The charges for such utility services shall be determined on an equitable basis. If Tenant fails to pay its share of any such charges to Landlord within ten (10) days after receipt by Tenant of a bill therefore, Landlord may stop and discontinue, without further notice to Tenant, all such utilities furnished to the Premises by Landlord.

7.3 Interruption of Service. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises unless due to its negligence or willful misconduct. No such failure or interruption shall entitle Tenant to terminate this Lease, unless such failure continues for a period in excess of thirty days and is not due to the fault or neglect by Tenant.

ARTICLE 8. TAXES

8.1 Personal Property Taxes. During the Term, Tenant shall pay or cause to be paid not later than ten (10) days before delinquency, all public charges, property taxes and assessments on the furniture, fixtures, equipment and other personal property of, or being used by, Tenant at any time situated on or installed in the Premises. If any such taxes on Tenant's personal property are levied against Landlord and if Landlord pays the same, which Landlord shall have the right to do regardless of the validity of such levy, but only under protest if requested by Tenant, or if the assessed value of Landlord's property is increased by the inclusion therein of a value placed upon such personal property of Tenant and if Landlord pays the taxes based upon such increased assessment, which Landlord shall have the right to do regardless of the validity thereof, but only under protest if requested by Tenant, Tenant shall repay to Landlord upon demand the taxes so levied against Landlord, or the portion of such taxes resulting from such increase in assessment, as the case may be; provided that Tenant shall have the right, in the name of Landlord and with Landlord's full cooperation, but at no cost to Landlord, to bring suit in any court of competent jurisdiction to recover the amount of any such taxes so paid under protest. Any amount so recovered shall belong to Tenant, provided any amounts advanced by Landlord have been first repaid.

8.2 Real Property Taxes.

(a) In accordance with this Section 8.2, Tenant shall pay the amount of any and all Real Property Taxes that shall during the Term be levied or assessed against all or any portion of the Premises. As used in Section 8.2 the word Premises includes the land underlying the Premises. Real Property Taxes on the Common Area are paid pursuant to Article 9.

(b) Real Property Taxes shall include any and all taxes and assessments imposed, levied or assessed against the Premises (including the underlying land), or any portion thereof, including any reassessment thereof at any subsequent time, whether such taxes are measured in whole or in part by the value of the Premises or by the amount of any Rent paid to Landlord under this Lease for the use and occupancy thereof. Real Property Taxes shall include the amount of any surtax or deferred tax which is imposed, levied or assessed either at the time of any transfer or assignment of the Premises, or any interest therein, or upon the occurrence of any other event, which surtax or deferred tax is imposed, levied or assessed for the purpose of recapturing any Real Property Taxes, (i) the imposition, levy or assessment of which had been previously deferred, and (ii) which would have, but for such deferral, been previously imposed or levied upon or assessed against the Premises or any portion thereof; provided, however, that Tenant's share of such deferred taxes shall be prorated to cover only the period of time within the tax fiscal year for such deferred taxes during which this Lease was in effect. Real Property Taxes shall be liberally construed so that Tenant shall, during the entire Term, pay not only any

and all Real Property Taxes imposed or levied upon or assessed against the Premises under the law existing as of the date of execution of this Lease, but any and all other taxes (collectively “**In Lieu Taxes**”) which may hereafter be imposed, levied or assessed, in conjunction with, in lieu of, as an alternative to, as an offset against or as the result of any deferral of any such Real Property Taxes and any other special, unforeseen or extraordinary taxation, however, described, relating to the Center. The foregoing notwithstanding, Real Property Taxes shall not include (i) personal property taxes or franchise taxes payable by Landlord, or (ii) any taxes imposed or levied upon or assessed against Tenant’s fixtures, equipment, merchandise or other personal property located in, upon or about the Premises, which property Tenant agrees to cause to be assessed separately from the Premises ~~or~~ (iii) federal or state income taxes. Or (iv) tax increases due to the sale of the property or transfer of title. Tenant shall, promptly upon written demand from Landlord and without additional consideration, execute an addendum to this Lease which specifically refers to and expressly incorporates any such in Lieu Taxes; provided, however, the failure or refusal of Tenant to execute such an addendum to this Lease will not affect any obligation of Tenant under this Article.

(c) Any Real Property Taxes for the first and last years of the Term shall be prorated between the parties. With respect to any assessment which may be levied upon the Premises and which under the laws then in force may be evidenced by bonds payable in installments, the computation of the tax payable by Tenant hereunder shall be limited to the installments payable during the Term.

(d) If the Tenant improvements in the Premises, whether installed or paid for by Landlord or Tenant and whether or not affixed to the real property so as to become a part thereof, are assessed for Real Property Tax purposes at a valuation materially higher than the valuation at which typical or standard tenant improvements in other space in the Center are assessed, then the Real Property Taxes levied against Landlord or Landlord’s property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 8.1. If the records of the Assessor of the County in which the Premises are located are available and sufficiently detailed to serve as a basis for determining whether said Tenant Improvements are assessed for Real Property Tax purposes at such higher valuation, such records shall be binding on both Landlord and Tenant for purposes of this Article 8. If such records are not available or sufficiently detailed to serve as a basis for making such determination, the total cost of construction of such Tenant improvements, as determined by the records of Landlord and Tenant, shall be used.

(e) If the Premises are separately assessed and billed pursuant to a segregated tax assessment, Tenant shall pay at least ten (10) days prior to delinquency the amount of such Real Property Taxes directly to the tax collector. Tenant shall furnish to Landlord, prior to the delinquency date, evidence of payment of such Real Property Taxes.

(f) If the Premises are not separately billed and assessed pursuant to a segregated tax assessment, then Tenant shall pay to Landlord, by the latter of ten (10) days before delinquency or ten (10) days after receipt of a statement setting forth the amount owed, Tenant’s share of Real Property Taxes. Subject to Section 8.2(d), Tenant’s share of a tax bill covering more than the Premises shall be determined by multiplying the amount payable set forth

in the tax bill by a fraction in which the numerator is the Floor Area of Tenant's Premises, and the denominator is that portion of the leasable Floor Area in the Center which is included in the tax bill, whether occupied or not (the denominator includes the Premises).

(g) Notwithstanding anything to the contrary contained in Article 8, Landlord may elect to require Tenant to pay Real Property Taxes in accordance with the provisions of this Section 8.2(g). If Landlord so elects, then beginning at the Commencement Date (or at the beginning of the calendar year following Landlord's election) and at the beginning of each calendar year thereafter, Landlord shall furnish to Tenant a detailed statement setting forth the estimated Real Property Taxes to be levied upon and assessed against the Premises for the immediately succeeding calendar year or fraction thereof. Tenant shall pay such estimated Real Property Taxes to Landlord in equal monthly installments that shall be made concurrently with the payment of each installment of Base Rent. Within sixty (60) days after the end of each calendar year or fraction thereof, or within sixty (60) days of any reassessment, Landlord shall furnish to Tenant a detailed and itemized statement in writing, certified by Landlord to be correct, showing the actual Real Property Taxes levied upon and assessed against the Premises during the immediately preceding calendar year or fraction thereof or the applicable calendar year, if there has been a reassessment. At that time an adjustment shall be made between Landlord and Tenant, so that Tenant's payments of Real Property Taxes for the preceding year or fraction thereof shall equal the actual amount of such Real Property Taxes for the same period. Any overpayment by Tenant upon such adjustment shall be credited by Landlord to the monthly installments of estimated Real Property Taxes next falling due, and any underpayment by Tenant shall be paid to Landlord with the next installment of estimated Real Property Taxes or if the Term has ended, then promptly upon Tenant's receipt of Landlord's statement.

~~Notwithstanding anything to the contrary contained in this Lease, if during any calendar year an event occurs which would permit a Real Property Tax reassessment of the Premises or the Common Area, and such reassessment is not made by the appropriate governmental authorities during the calendar year in which the event occurred, but in the normal course of events will be made and applied retroactively for all or any portion of said calendar year, then any amounts paid by Tenant pursuant to either or both of Sections 8.2(g) and 9.5 to cover such reassessment may be retained by Landlord until such reassessment is completed by the appropriate governmental authorities, if at the time the reassessment occurs, it is reasonably determined that Tenant has (i) overpaid such Real Property Taxes, Landlord may elect either to credit such overpayment to the monthly installments of estimated Real Property Taxes and/or Common Area Expenses falling due thereafter or refund such overpayment to Tenant, or, if the Lease has terminated, then any overpayment shall be credited against any amounts owed to Landlord by Tenant, or, if none, shall be paid to Tenant, or (ii) underpaid such Real Property Taxes, any underpayment by Tenant shall be paid to Landlord within thirty (30) days of notice to Tenant of such underpayment.~~

8.3 Business Taxes. Tenant shall pay, on or before their due dates, all special taxes and assessments and license fees imposed by reason of the use of the Premises for the specific purposes set forth in this Lease. Tenant shall pay to Landlord within ten (10) days after Landlord's written request or, at Landlord's election, in the manner provided in Section 8.2(g), Tenant's share of any business license, gross rents, or other tax imposed on Landlord by reason

of Landlord's ownership or operation of the Center except such tax as may be imposed on Landlord's net income from the Center.

ARTICLE 9. COMMON AREA

9.1 Original Construction. The original construction of Common Area improvements has been completed by Landlord and shall not be charged to Tenant. Areas designated as building areas on any plans need not be improved but may be kept in clean and level condition and, until they are improved, shall be included in the calculation and definition of Common Area.

9.2 Use. Landlord shall have general possession, management and control of the Common Area pursuant to the CCRs and may from time to time adopt Rules and Regulations pursuant to [Section 6.3](#), pertaining to the use thereof and may expand, contract or change the Common Area as Landlord deems desirable. During the Term, Tenant, its sublessees, concessionaires, licensees, invitees, customers, and employees, shall have the nonexclusive right to use the Common Area for the purposes intended in common with Landlord, other owners of portions of the Center, other occupants of the Center, and their respective sublessees, concessionaires, licensees, customers and employees and with the owners, tenants, subtenants, licensees, employees and customers of the adjoining parcels described in reciprocal easement agreements, if any, now or hereafter of record, subject to the provisions of this Lease and to the Rules and Regulations for the use therefor. Tenant shall abide by reasonable amendments to such Rules and Regulations and use its best efforts to cause its officers, employees, agents, customers and business invitees to conform thereto. Landlord may at any time close any portion of the Common Area to effect construction, repairs or changes thereto, or to prevent the acquisition of public rights in such area, and may do such other acts in and to the Common Area as in its judgment may be desirable to improve the convenience thereof [so long as said common area closing does not adversely affect Tenants use of the premise and its customers](#). Tenant shall not at any time interfere with the use of the Common Area by Landlord, or other tenants or any other person entitled to use the Common Area.

9.3 Maintenance; Common Area Expenses.

(a) During the Term, Landlord shall operate and maintain the Common Area and all improvements thereon in good order, condition and repair, including necessary replacements, and compliance with governmental requirements. All such work and services shall be performed and provided in such manner as Landlord shall, acting in good faith and using its business judgment, determine to be appropriate to the maintenance and operation of the Center. Common Area Expenses shall include without limitation: all costs and expenses of every kind and nature as may be paid or incurred by Landlord during the Term (including appropriate reserves) in operating, on site and administrative managing, insuring, equipping, lighting, repairing, replacing and maintaining the common areas of the Center and in providing such security protection and fire protection for the Center as Landlord deems necessary, as determined in accordance with sound accounting principles and allocated to any particular Lease Year. Such costs and expenses shall include, but shall not be limited to: general maintenance and repairs; replacement; restoration; resurfacing; striping; cleaning; painting; sweeping; snow removal;

repair of sidewalks, curbs, elevated walkways, elevators and stairways; maintenance and repair of Center signs and the directional signs and lighting systems in the common areas of the Center; management fees (not to exceed 10%); janitorial services in common areas; roofing, fire protection systems, storm drainage and sanitary sewer systems; planting and landscaping; trash disposal or other utility systems; the cost of water service and the cost of electricity for lighting in the public areas; transportation fees or similar charges payable to governmental bodies with respect to the development or operation of the Center; owners' reasonable association assessments; utilities not individually metered to the Premises or other tenants of the Center; the cost of security guards or security devices if Landlord deems it necessary or advisable; the wages and related payroll costs for personnel employed by Landlord to implement such services; premiums for Landlord's public liability, property damage, fire and extended coverage insurance and any other insurance maintained by Landlord pursuant to Article 13 for the entire Center and all buildings and improvements therein; personal property taxes; fees for required licenses and permits; the cost of supplies; reasonable depreciation on maintenance and operating machinery and equipment (if owned by Landlord) and rental paid for such machinery and equipment (if rented by Landlord); the cost of any non cosmetic capital improvements made to the Premises or the Center by Landlord (i) to maintain the Common Area, (ii) required by, or reasonably required to comply with, applicable laws, or (iii) constructed or incurred to achieve energy efficiency, such cost to be amortized over such reasonable period as Landlord shall determine its useful life in accordance with GAAP along with a return on capital at the rate of ten-eight percent (~~108%~~) per annum on the unamortized balance ~~or at such higher rate as may have been paid by Landlord on funds borrowed for the purpose of constructing such capital improvements~~; all Real Property Taxes levied or assessed against the Center; ~~and an administrative fee of fifteen percent (15%) of the foregoing Common Area Expenses, payable to Landlord or to an entity controlled or affiliated with Landlord. (landlord is already collecting a management fee as mentioned above. the admin fee is a redundant cost)~~ Landlord shall not be liable in damages or otherwise for any failure or interruption of any common area services being furnished to the Center, and no such failure or interruption shall entitle Tenant to (a) any abatement of Rent, (b) terminate this Lease or (c) any other remedy at law or in equity.

(b) Landlord may appoint a substitute operator, including but not limited to, any tenant in the Center, to carry out any or all of Landlord's rights and duties with respect to the Common Area as provided in this Lease; and Landlord may contract with such operator on such provisions and conditions and for such period as Landlord deems appropriate; and if Landlord does so, either, but not both, the substitute operator or Landlord shall be entitled to receive management fees ~~and/or the administrative fees~~ provided in Section 9.3(a).

9.4 Records. Landlord shall keep accurate records showing in reasonable detail all expenses incurred for such Common Area Expenses. Provided that Tenant is not in uncured default under this Lease, these records shall, upon reasonable request, but not more often than once each calendar year, be made available during business hours at the offices of Landlord for inspection by Tenant. Any review to be conducted under this Section 9.4 shall be at the sole expense of Tenant and shall be conducted by an independent firm of certified public accountants of national standing (who are being compensated on an hourly basis). Tenant acknowledges and agrees that any records reviewed under this Section 9.4 constitute confidential information of Landlord, which shall not be disclosed to anyone other than the accountants

performing the review and the principals of Tenant who receive the results of the review. The disclosure of such information to any other person, whether or not caused by the conduct of Tenant, except for third party professionals hired by Tenant, shall constitute a material breach of this Lease. Any errors disclosed by the review of records under this Section 9.4 shall be promptly corrected, provided that Landlord shall have the right to cause another review of the records to be made by an independent firm of certified public accountants of national standing. In the event of a disagreement between the two accounting firms, the review that discloses the least amount of deviation from Landlord's Statement shall be deemed to be correct. In the event that the results of the review of records (taking into account, if applicable, the results of any additional review caused by Landlord pursuant to this Section 9.4) reveal that Tenant has overpaid obligations for a preceding period, the amount of such overpayment shall be credited against Tenant's subsequent installment obligations to pay its share of estimated common area expenses, or, if at the end of the Term, refunded to Tenant. In the event that such results show that Tenant has underpaid its obligations for a preceding period, the amount of such underpayment shall be paid by Tenant to Landlord with the next succeeding installment obligation of estimated common area expenses, or, if at the end of the Term, immediately paid in full to Landlord. In the event that Tenant becomes in default and fails to cure ~~of~~ its obligations under this Lease at any time during the pendency of a review of records under this Section 9.4, said right to review shall immediately cease and the matters originally set forth in Landlord's statement shall be deemed to be correct.

9.5 Tenant's Share and Payment. Tenant shall pay to Landlord its pro rata share of Common Area Expenses. Tenant's pro rata share shall be (a) a fraction, the numerator of which is the Floor Area of the Premises, as set forth in Section 1.4, or as increased during the Term, and the denominator of which is the aggregate leasable Floor Area in the Center. As of the Effective Date of this Lease, Landlord estimates Tenant's share of the Common Area Expenses to be equal to the sum of Sixty-Eight Cents (\$0.68) per square foot per month (that is, the monthly sum of One Thousand Four Hundred Sixty-Eight and 80/100 Dollars (\$1,468.80), subject to the adjustments provided for in this Section 9.5). Tenant shall pay its pro rata share of such estimated expenses in equal monthly installments concurrently with each installment of Base Rent. Within one hundred twenty (120) days after the end of each calendar year or, if the Term terminates on other than the last day of a calendar year, then ninety (90) days after the termination date, Landlord shall furnish to Tenant a detailed and itemized statement in writing showing the actual common Area Expenses incurred for the preceding calendar year or partial calendar year, as the case may be, and Tenant's pro rata share thereof. Subject to Section 8.2(h), at such time an adjustment shall be made between Landlord and Tenant, so that Tenant's payments of estimated CAM Obligations for the preceding year or partial year is equal to Tenant's pro rata share of actual CAM Obligations for the same period. Any overpayment by Tenant shall be, at Landlord's election, credited by Landlord to the monthly installments of estimated CAM Obligations falling due thereafter or refunded to Tenant, or, if the Lease has terminated, then any overpayment shall be credited against any amounts owed to Landlord by Tenant, or, if none, shall be paid to Tenant, and any underpayment by Tenant shall be paid to Landlord within thirty (30) days of notice to Tenant of such underpayment.

ARTICLE 10. MAINTENANCE AND REPAIRS

10.1 Landlord's Repairs and Maintenance.

(a) Landlord shall, at its expense subject to reimbursement, keep in good condition and repair the foundations, bearing walls and the roof of the Premises and shall make all repairs of only those elements of the Premises required under Article 14 hereof, unless such maintenance and repairs are caused in part or in whole by any act, neglect, fault or omission by Tenant, its agents, servants, employees, invitees, or caused by breaking and entering, in which case Tenant shall pay Landlord the actual cost of such maintenance and repairs concurrently with the next payment of Base Rent.

(b) Landlord shall maintain the exterior walls and roof of the Shop Buildings. Such maintenance shall be performed when deemed necessary by Landlord so as to keep the Shop Buildings in good and sanitary order, condition, and repair, and shall include replacements where necessary and compliance with all governmental requirements. Shop Buildings Expenses shall include without limitation: (i) costs of painting and cleaning; (ii) costs of labor, payroll taxes, materials, and supplies; (iii) all premiums on property damage and liability insurance covering the Shop Buildings; (iv) costs of roof repairs and replacements; (v) all costs, including rental costs for tools, machinery, and equipment used in connection with the above; (vi) any cost incurred as a result of governmental requirements; (vii) any cost of repair or replacements of utilities servicing the Shop Buildings; (viii) property management costs, including a fee to Landlord or to an entity controlled or affiliated with Landlord of ~~fifteen-ten~~ percent (~~+510~~%) of Shop Buildings Expenses; and (ix) such other costs and expenses incurred in maintaining all or any portion of the Shop Buildings which costs or expenses are not included as part of Common Area Expenses or specifically the responsibility of Landlord pursuant to Section 10.1(a). The manner in which the Shop Buildings shall be operated and maintained, and the expenditures heretofore identified shall be expended, shall be in Landlord's sole discretion. The costs and expenses of such maintenance shall be paid by Tenant in accordance with the provisions of Section 10.4.

(c) All such work and services shall be performed and provided in such manner as Landlord shall, acting in good faith and using its business judgment, determine to be appropriate to the maintenance and operation of the Center. The Landlord shall also have the same rights with respect to the Shop Buildings as Landlord has with respect to the Common Area, as such rights are set forth in Section 9.3.

10.2 Tenant's Repairs and Maintenance.

(a) Tenant shall, at all times, at its sole cost and expense, maintain the Premises in a clean, neat, sanitary and orderly condition. Except as provided in Section 10.1, Tenant's maintenance of the Premises shall include, without limitation, the maintenance, replacement and repair of any storefront, doors, interior and exterior windows, including casements, glass, including plate glass and glass fixtures, floors, closing devices, interior walls, lighting, plumbing, sanitary facilities and patio areas. Tenant shall be responsible for the cost of maintaining and repairing the heating, ventilation and air conditioning ("HVAC") facilities serving its Premises on and after Landlord "tenders possession" of the Premises to Tenant. The facilities and fixtures shall be kept (repaired, maintained, replaced, or added to) at all times by

Tenant in accordance with all governmental requirements and insurance requirements. Tenant hereby waives any rights it may have to make repairs or perform maintenance as provided in Sections 1941 and 1942 of the Civil Code of California or any law, ordinance or regulation which may now exist or hereafter be enacted or enforced which confers upon Tenant the right to make any repairs to the Premises, whether or not for the account of Landlord. Except as expressly provided in Section 10.1, Landlord shall not be obligated to make repairs, replacements or additions of any kind whatsoever upon the exterior or interior of the Premises or upon any equipment contained in or serving the Premises.

Notwithstanding the foregoing, and anything to the contrary contained herein, in the event that Landlord determines, in its sole and reasonable discretion, that Tenant has failed to maintain such event that Landlord determines, in its sole and reasonable discretion, that Tenant has failed to maintain such Patio Area consistent with the foregoing standards, in addition to its other rights and remedies hereunder, upon written notice to Tenant, Landlord may assume such cleaning and maintenance and repair and replacement Tenant shall pay Landlord as additional rent hereunder for any and all costs and expenses associated therewith, including, but not limited to, its usual management fee.

(b) If Tenant refuses or neglects to perform its obligations under Section 10.2(a) to Landlord's reasonable satisfaction as soon as reasonably possible after demand, Landlord may make such repairs without any liability to Tenant for loss or damage to Tenant's merchandise, fixtures or other property, or to Tenant's business and upon completion thereof Tenant shall pay to Landlord the cost of such repairs plus ~~twenty-ten~~ percent (~~2010~~%) for overhead upon presentation of the bill therefor.

(c) Without limiting Tenant's obligations hereunder, Landlord agrees, for the benefit of Tenant, to procure and maintain in full force and effect throughout the Term a contract or contracts for the maintenance of the HVAC equipment serving the Premises. Any and all costs accruing to Landlord under any such contract or contracts shall either be billed to the Tenant monthly as Additional Rent or included in Shop Buildings Expenses, except that instead of paying its pro rata share, Tenant shall pay all costs as they separately relate to its Premises.

10.3 Landlord's Records. Landlord shall keep accurate records showing in reasonable detail all expenses incurred for Shop Buildings Expenses. Provided that Tenant is not in uncured default under this Lease, these records shall, upon reasonable request, but not more than once each calendar year, be made available during business hours at the offices of Landlord for inspection by Tenant, in accordance with the provisions of Section 9.4 .

10.4 Tenant's Share and Payment. Tenant shall pay to Landlord its pro rata share of Shop Buildings Expenses. Tenant's pro rata share shall be (a) a fraction, the numerator of which is the Floor Area of the Premises, as set forth in Section 1.4, ~~or as increased during the Term,~~ and the denominator of which is the aggregate leasable Floor Area in the Center, ~~or (b) according to any other formula that Landlord may deem fair and equitable.~~ On or before the Commencement Date and each calendar year thereafter, Landlord shall furnish to Tenant an itemized statement setting forth Landlord's estimate of the total and Tenant's pro rata share of projected Shop Buildings Expenses for the immediately succeeding calendar year or partial calendar year. Tenant agrees to pay its pro rata share of such estimated expenses in equal

monthly installments concurrently with each installment of Base Rent. Within one hundred twenty (120) days after the end of each calendar year or, if the Lease terminates on other than the last day of a calendar year, then ninety (90) days after the termination date, Landlord shall furnish to Tenant a statement in writing showing the actual Shop Buildings Expenses incurred for the preceding calendar year or partial calendar year, as the case may be, and Tenant's pro rata share thereof. At such time an adjustment shall be made between Landlord and Tenant, so that Tenant's payments of estimated Shop Buildings Expenses for the preceding year or partial year are equal to Tenant's pro rata share of actual Shop Buildings Expenses for the same period. Any overpayment by Tenant shall be, at Landlord's option, credited by Landlord to the monthly installments of projected Shop Buildings Expenses falling due thereafter or refunded to Tenant, or, if the Lease has terminated, then any overpayment shall be credited against any amounts owed to Landlord by Tenant, or, if none, shall be paid to Tenant and any underpayment by Tenant shall be paid to Landlord within thirty (30) days of notice of such underpayment to Tenant.

ARTICLE 11. ALTERATIONS, FIXTURES AND EQUIPMENT

11.1 Alterations.

(a) Tenant shall not, without the prior consent of Landlord, [which shall not be unreasonably withheld or delayed](#), make any alterations, improvements or additions to either the interior or exterior of the Premises, to the operating systems serving the Premises, or to fixtures installed in the Premises not in accordance with approved fixture plans, or make, paint, drill or in any way deface any portion of the Premises ("**Alterations**"). Any work by Tenant in the Premises shall be in conformity with plans and specifications approved by Landlord, pursuant to this [Section 11.1](#), prior to Tenant's commencement of any such work. Tenant shall have in force, prior to the commencement of such work, comprehensive general liability, workers' compensation, builder's all-risk, and course of construction insurance in such amounts as Landlord reasonably determines or in such amounts as Landlord's lender requests. Any such work shall be done in a good and workmanlike manner, and if requested, under the supervision of a licensed architect or engineer, and by licensed contractors approved in writing by Landlord (work done by Landlord's employees or contractors engaged through Landlord shall be acceptable). In any event, Landlord may require Tenant to use a contractor specified by Landlord for any work involving the roof, the fire and life safety systems, the HVAC systems, the plumbing and sewage systems, the electrical systems or the structure of the building of which the Premises are a part (the "Building"). Tenant shall cause to be used only new materials suitable for the purposes intended. Any such work shall be performed in a manner so as not to disturb the quiet enjoyment of other occupants of the Center and such improvements, Alterations, additions, or changes, Tenant agrees to cause a Notice of Completion to be recorded in the office of the Recorder of the County in which the Premises is located, in accordance with the California Civil Code or any successor statute. In addition, Landlord, in its sole discretion, may require Tenant either to (i) deposit with Landlord the estimated cost of such construction or (ii) obtain a lien and completion bond or some alternate form of security satisfactory to Landlord in an amount sufficient to ensure the lien-free completion of such work.

(b) Except as otherwise provided for herein, any Alterations that Tenant shall desire to make, shall be presented to Landlord in written form, with detailed proposed plans and specifications, including, but not limited to proposed décor and furnishings package. Landlord's consent, if given, shall be deemed conditioned upon Tenant acquiring a permit, if required by applicable law, to perform such work from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work, and the compliance by Tenant of all conditions of said permit in a prompt and expeditious manner. Furthermore, Landlord's consent, if given, shall not be construed to imply that Landlord makes any warranties or representations of any kind or nature with respect to such proposed Alterations.

(c) Tenant shall give Landlord at least twenty (20) days prior notice of the commencement of any Alterations, in order to permit Landlord adequate time to post a notice of non-responsibility as are provided for in the mechanics' lien laws of California in, on or upon the Premises. Tenant shall prevent the filing of any mechanics' or other liens against the Center or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant, or anyone holding the Premises, or any part thereof, through or under Tenant. Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises. If any such lien shall at any time be filed against the Center, Tenant shall either (a) cause the same to be discharged of record within twenty (20) days after the date of filing of the same or, (b) if Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Premises, upon the condition that if Landlord shall so require (even if not previously required by Landlord pursuant to Section 11.1 (a)), Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to one hundred fifty percent (150%) of such contested lien claim or demand indemnifying Landlord against liability for the same and holding the Premises free from the effect of such lien or claim or such greater amount as may be necessary or required to (i) prevent any foreclosure proceedings against the Center during the pendency of such contest, and (ii) cause any title insurance company designated by Landlord, in its sole discretion, to remove such lien as a matter affecting title to the Center. If Tenant shall fail to discharge such lien within such period or fail to furnish such security, then, in addition to any other right or remedy of Landlord resulting from Tenant's said default, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by giving security or in such other manner as is, or may be, prescribed by law. Tenant shall pay to Landlord, as Additional Rent, on demand, all sums disbursed or deposited by Landlord pursuant to the foregoing provisions of this Section 11.1(c), including Landlord's costs, expenses and attorney's fees incurred by Landlord in connection therewith, with interest thereon at the rate provided in Section 25.5. Nothing contained herein shall imply any consent or agreement on the part of Landlord to subject Landlord's estate to liability under any mechanics or other lien law. Tenant agrees to indemnify and hold Landlord harmless against liability, loss, damage, costs, attorney's fees, and all other expenses on account of claims of contractors, subcontractors, laborers, or material men or others for work performed or materials or supplies furnished for Tenant or persons claiming under it.

11.2 Part of Realty; Removal. With exception of Tenant's trade fixtures All Tenant Alterations shall become part of realty upon installation thereof without obligation on the part of Landlord to compensate Tenant for same. If Landlord requires the removal of any Tenant Alterations, Tenant shall repair all damage resulting from such removal. Landlord's requirement for removal shall be stated in writing at the time of consent for said installations.

11.3 Required Alterations. If any alteration, addition or change shall be required by law, the requirements of any insurance company (as a condition to the issuance or continuation of insurance coverage) or the insurance underwriting board or insurance inspection bureau having or asserting jurisdiction or any similar body, to be made to the Premises by reason of either (a) Tenant's failure to maintain the Premises in the manner required hereby or (b) Tenant's use of the Premises, a change in the manner or mode of Tenant's use of the Premises, or the location of partitions, trade fixtures or other contents of the Premises, then such alterations, additions or changes, subject to the provisions of Section 11.2 hereof, shall be made promptly and paid for by Tenant. Tenant shall be responsible and shall pay for the cost of any penalties imposed by the above authorities if any such penalty is the result of any act or omission of Tenant.

ARTICLE 12. INDEMNITY AND WAIVER

12.1 Indemnity. Tenant shall indemnify and save Landlord, Landlord's affiliates, employees, agents, lenders, contractors, attorneys, invitees, licensees and any similar person and the landlord or landlords under any ground or underlying leases, harmless from and against any and all liens, claims, demands, actions, causes of action, obligations, penalties, charges, liabilities, damages, losses, costs or expenses, including reasonable attorneys fees and costs and expenses of litigation and appeal, arising from or connected with (i) Tenant's use of the Premises, including, without limitation, any acts, omissions, or negligence of Tenant or any person claiming by, through, or under Tenant, or of Tenant's affiliates, employees, agents, contractors, attorneys, invitees, or licensees or any similar person, in, on, or about the Premises, either prior to or during the Term (including, without limitation, any holdovers in connection therewith), and further including, without limitation, any acts, omissions, or negligence in the making or performance of any Improvements; (ii) the condition of the Premises or the conduct of Tenant's business, or from any activity, work, occurrence, happening or thing done on the Premises by Tenant or by Tenant's affiliates, employees, agents, contractors, attorneys, invitees, or licensees or any similar person, in, on, or about the Premises or from any cause whatsoever in or about the Premises or elsewhere; (iii) the use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or presence of: any hydrocarbon-based products, including, but not limited to, gasoline, diesel fuel and oil; flammable explosives; asbestos; urea formaldehyde insulation; radioactive materials; hazardous wastes; toxic or contaminated substances or similar materials including, without limitation, any substances which are "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances," "wastes," "regulated substances," "industrial solid wastes," or "pollutants" under the Hazardous Materials Laws, as described below, and/or other applicable environmental laws, ordinances and regulations (collectively, the "Hazardous Materials"); (iv) from violations of or noncompliance with any governmental requirements, the Rules and Regulations, the CCRs, or insurance requirements; (v) any breach or default in the performance of any obligation on

Tenant's part to be performed under the terms of this Lease, or arising from any negligence or intentional act of Tenant, or of Tenant's affiliates, employees, agents, contractors, attorneys, invitees, or licensees or any similar person; and (vi) all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Furthermore, if any action or proceeding is brought against Landlord by reason of any such claim, demand or liability, then Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises or the Center arising from any cause [with exception of Landlord's negligence or willful misconduct](#), and Tenant hereby waives all claims in respect thereof against Landlord [except as herein provided for in this paragraph](#). "**Hazardous Materials Laws**" shall mean all laws, ordinances and regulations relating to Hazardous Materials including, without limitation: the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq. the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq. the Comprehensive Environment Response, Compensation and Liability Act of 1980, as amended (including the Superfund Amendments and Reauthorization Act of 1986, "CERCLA"), 42 U.S.C. Section 9601 et seq.; the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq. the Occupational Safety and Health Act, as amended, 29 U.S.C. Section 651, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Section 11001 et seq.; the Mine Safety and Health Act of 1977, as amended, 30 U.S.C. Section 801 et seq.; the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300 et seq.; and all comparable state and local laws, laws of other jurisdictions or orders and regulations. "**Hazardous Materials**" shall not include commercially reasonable amounts of such materials used in the ordinary course of operation of the Property which are used and stored in accordance with all applicable environmental laws, ordinances and regulations.

12.2 Waiver. All property kept, stored or maintained on the Premises shall be so kept, stored or maintained at the sole risk of Tenant; and except in the case of Landlord's gross negligence or willful misconduct, Landlord shall not be liable, and Tenant waives all claims against Landlord for damages to persons (including personal injury or death) or property sustained by Tenant or by any other person or firm resulting from the condition of the building in which the Premises are located, or by reason of the Premises or any equipment located therein becoming out of repair, or through use of the Premises or the sidewalks adjacent thereto, or through the acts or omissions of any persons present in the Center or renting or occupying any part of the Center, or for loss or damage resulting to Tenant or any other person or their property from fire or any other casualty, whether or not insured against, including without limitation, burst, stopped or leaking sewers, pipes, conduits, or plumbing fixtures, or for interruption of any utility services, or from any failure of or defect in the heating ventilation and air conditioning system or any electric line, circuit, or facility, or any other type of improvement or service on or furnished to the Premises, or from theft, explosion, failing plaster, steam, water or rain or from any other patent or latent cause whatsoever or resulting from any accident in, on or about the Premises or the building in which the Premises are located.

12.3 Exemption of Landlord. [With exception of Landlord's negligence or willful misconduct](#), Landlord shall not be liable for injury or damage, including, but not limited

to, consequential damages, to the person or goods, wares, merchandise or other property of Tenant, Tenant's affiliates, employees, agents, contractors, attorneys, invitees, or licensees, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain, or otherwise, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC, lighting fixtures, or otherwise, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Center, or from other sources or places. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord.

ARTICLE 13. INSURANCE

13.1 Use; Rate. Tenant shall not carry any stock of goods or conduct any activities in or about the Premises which will in any way increase insurance rates or invalidate or cause the cancellation of any insurance coverage, including, but not limited to, liability insurance in the Center or property insurance on any building or buildings in the Center. Tenant shall pay on demand any increase in premiums that may result from Tenant's vacating or otherwise failing to occupy the Premises or because of any other act or omission by Tenant.

13.2 Policy Form. All policies of insurance provided for in this Section 13, (a) shall be issued by insurance companies which have a general policy-holder's rating of not less than A/XII in the most currently available Best's insurance Reports and which are qualified to do business in the State of California, (b) shall be issued in the names of Tenant and Landlord, as their interests may appear, and, at the option of Landlord, in the name of the Mortgagee, and (c) shall be for the mutual and joint benefit and protection of Tenant and Landlord and, at the option of Landlord, the Mortgagee, and, when required by such agency, any public agency. Copies of all such policies of insurance or original certificates or endorsements thereof shall be delivered to Landlord concurrently with the date Tenant takes possession of the Premises for any purpose and thereafter not less than thirty (30) days prior to the expiration of each such policy. Tenant shall keep the Premises insured as required in this Section continuously throughout the Term. All policies of insurance shall provide that Landlord, although named as an insured, shall nevertheless be entitled to recover under said policies for any loss, injury or damage to Landlord, its servants, agents and employees by reason of the act or negligence of Tenant. All policies of insurance to be obtained by Tenant shall provide that the same shall not be cancelled or the coverage thereunder reduced, except upon thirty (30) days notice to Landlord and any Mortgagee. Landlord may carry the insurance provided for herein under a blanket policy or policies of insurance carried by Landlord.

13.3 Tenant's Liability Insurance. Tenant shall at all times after being given occupancy of the Premises for any purpose, maintain in full force and effect a policy or policies of comprehensive liability insurance insuring against liability for injury to or death of persons or loss of or damage to property occurring in, on or about the Premises and any portion of the Common Area which is subject to Tenant's exclusive control. Such insurance shall include, but not be limited to, personal injury, products/completed operation, liability, blanket contractual

owner's and contractor's protective (with respect to Tenant's Work and Tenant Alterations made by Tenant during the period of Tenant's occupancy of the Premises), broad form property damage liability coverage, and owned, non-owned and hired automobile liability in an amount of not less than ~~Two-one~~ Million and 00/100 Dollars (\$ ~~21~~,000,000.00) combined single limit, and coverage for liability arising out of the consumption of food and/or alcoholic beverages on or obtained at the Premises, in an amount of not less than ~~Two-one~~ Million and 00/100 Dollars (\$~~21~~,000,000.00) per occurrence for personal injury and death and property damage. Said insurance policy or policies shall contain the following provisions:

- (a) Severability of interest;
- (b) Cross-liability;
- (c) An endorsement which states: "***Such insurance as is afforded by this policy for the benefit of Landlord and/or Mortgagee or required by any public agency shall be primary with respect to any liability or claim arising out of occupancy of the Premises by Tenant or Tenant's business, and any insurance carried by Landlord shall be noncontributory***"; and
- (d) An endorsement which states: "***it is agreed that such insurance as is afforded by this policy shall apply to Landlord, its partners, officers, agents, employees and representatives as additional insureds, but only with respect to legal liability or claims caused by, arising out of, or resulting directly or indirectly, from the occupancy of the Premises and operations of the named insured***" The amount of Tenant's liability insurance coverage may be increased from time to time by Landlord to a level that is deemed reasonably ~~necessary~~ required by ~~Landlord or~~ any Mortgagee to prudently protect their interests.

13.4 Worker's Compensation Insurance. Tenant shall at all times maintain worker's compensation insurance in compliance with California law.

13.5 Personal Property Insurance. Tenant shall, at all times after being given possession of the Premises for any purpose and continuing throughout the Term hereof, at its sole cost and expense, maintain in full force and effect insurance against fire, vandalism, malicious mischief, business interruption, and such additional and other perils as now are or hereafter may be included in an "**All Risks**" insurance coverage, which shall insure Tenant's interest in trade fixtures, furnishings, equipment, stock, improvements, betterments, and other items of personal property and loss of income or extra expense, in an amount not less than one hundred percent (100%) of their replacement value. Said insurance policy shall provide for the following:

- (a) No coinsurance or contribution;
- (b) Replacement cost endorsement; and
- (c) Any deductible amount shall not exceed Ten Thousand Dollars (\$10,000.00) without the prior written consent of Landlord, which consent shall be granted or withheld at the sole discretion of Landlord. As long as this Lease is in effect, the proceeds from

any such policy shall be used for the repair and replacement of Tenant's fixtures, equipment and merchandise.

13.6 Landlord's Liability Insurance. Landlord shall during the Term maintain in effect a policy or policies of comprehensive liability insurance insuring against loss, damage or liability for injury to or death of any person or loss or damage to property occurring in the Common Area, with not less than Two Million Dollars (\$2,000,000.00) combined single limit. Landlord or any Mortgagee may from time to time require that such insurance limits be increased to a level which Landlord or any Mortgagee reasonably deems necessary for full and adequate protection. The cost of said insurance shall be a Common Area Expense and borne in accordance with Article 9.

13.7 Landlord's Property Insurance. Landlord shall during the Term maintain in effect fire insurance, with extended coverage endorsement, and Landlord may maintain such other coverage and endorsements, including but not limited to, "All Risks" vandalism, malicious mischief and earthquake insurance, as Landlord deems necessary and desirable, in an amount equal to not less than ninety percent (90%) of the replacement cost the Premises and the building in which the Premises are located, all improvements constructed thereon and any additions thereto or replacements thereof, covering the Premises, exclusive of foundation and excavation costs, together with loss of rents insurance on the Premises against loss by perils covered by such insurance in amounts not less than one year's full Rent, the proceeds of which shall be payable to Landlord and any Mortgagee, as their interests may appear. Said insurance shall not contain a coinsurance or contribution provision, but will contain replacement cost endorsement and deductibles. The cost of said insurance shall be a Shop Buildings Expense and borne in accordance with Article 10.

13.8 Waiver of Subrogation. Landlord and Tenant hereby grant to each other on behalf of the insurer providing liability or other insurance to either of them with respect to the Premises or as otherwise required by this Lease, a waiver of any right of subrogation that either party or any such insurer of any one party may acquire against the other party by virtue of payment of any such loss under such coverage. Each party shall cause each insurance policy obtained by it to provide that the insurance company waives all right of recovery by Waiver of Subrogation against either party in connection with any damage covered by any policy.

13.9 Landlord's Right to Provide Insurance. If Tenant refuses or fails to provide the insurance required to be carried by Tenant pursuant to this Article 13, Landlord shall have the right, but not the obligation, to obtain such insurance and, within ten (10) days after receipt by Tenant of Landlord's request for reimbursement, Tenant shall reimburse Landlord for the cost of such insurance.

13.10 Self-Insurance. Landlord may comply with any of its insurance obligations hereunder in whole or in part by means of self-insurance, insurance deductibles, or without insurance, in which event, Landlord will make available for the purposes described herein an amount equal to the proceeds which would have been paid if Landlord had obtained the insurance described in Sections 13.6 and 13.7 hereof. If Landlord elects so to comply with its insurance obligations and if Tenant, pursuant to the provisions of this Lease, is to reimburse

Landlord for all or any portion of the cost of such insurance, Landlord may charge Tenant and Tenant shall pay to Landlord an amount equal to the cost of such insurance if it had been obtained by Landlord.

ARTICLE 14. DAMAGE AND RESTORATION

14.1 Duty to Restore. Subject to the provisions of Section 14.2, if at any time during the Term the Premises, the building in which the Premises is located, the Common Area and/or the Center are destroyed or damaged and either (a) such damage is not “**substantial**” as that term is hereinafter defined, or (b) such damage is an “**insured loss**” as that term is hereinafter defined, then Landlord shall commence the repair of any such damage to the Premises within ninety (90) days following the date of such damage and this Lease shall continue in full force and effect; it being agreed that Landlord shall have no obligation to Tenant with respect to any repair of the building in which the Premises is located or the Center, except for the Premises. In such event, Landlord shall only be required to repair so much of the Premises as Landlord was required initially to construct under Article 3, and Tenant shall be required to repair so much of the Premises as Tenant initially was required to construct under Article 3. Subject to any then applicable legal requirements or the requirement of any governmental authority having jurisdiction over such repairs, any portion of the Premises as so repaired by Landlord shall be substantially similar to such portion of the Premises as such portion existed just prior to such damage. Notwithstanding the foregoing, if (i) there are insufficient insurance proceeds to pay the cost of such repair, (ii) such proceeds are not made available to Landlord, (iii) Landlord is restricted by any governmental authority, in performing such repair, or (iv) such casualty is due to the acts or omissions of Tenant, Tenant’s affiliates, employees, agents, contractors, attorneys, invitees, or licensees or any similar person, then, in addition to its other rights and remedies, Landlord may elect, without limitation, to terminate this Lease. Landlord shall not be obligated to repair or restore Tenant’s Work or Tenant’s stock in trade, trade fixtures and personal property unless damage was due to Landlord’s negligence or willful misconduct. In the event of any repair under this Article 14 by Tenant, said repair shall be in strict conformity with Landlord’s reasonable specifications. All such repair work shall be performed by ~~Landlord’s-Tenant’s~~ contractor ~~unless Landlord shall otherwise agree in writing.~~ Tenant, at its sole cost and expense, shall be responsible for the repair and restoration of all of its improvements within the Premises, including without limitation those improvements that were the initial responsibility of Tenant under the Work Letter, and the replacement and installation of its stock in trade, trade fixtures, furniture, furnishings and equipment. Subject to Article 11, Tenant shall commence the repair of those improvements that were the initial responsibility of Tenant and the installation and replacement of its stock in trade, trade fixtures, furniture, furnishings and equipment promptly upon Landlord’s substantial completion of any repair work to be performed by Landlord and shall diligently prosecute such installation and replacement to completion. For the purpose of this Article 14, “substantial” damage shall be deemed to be damage, the estimated cost of repair of which exceeds twenty-five percent (25%) of the then estimated replacement cost of, as applicable, the Premises, the building in which the Premises is located or the Center. “**Insured Loss**” shall herein mean damage or destruction which was caused by an event required to be covered whether partially or fully by the insurance described in Article 13. In the event of any repair under this Article 14 by Tenant, said repair shall be in strict conformity with Landlord’s specifications.

14.2 Landlord's Election to Restore or Terminate. If the Premises or any portion of the Center, whether or not the Premises are a part thereof, are subject to "**substantial**" damage by an Insured Loss during the Term other than during the last three (3) years of the Term, or to the extent of at least ten percent (10%) thereof during the last three (3) years of the Term, or to any extent by an uninsured cause at any time during the Term, Landlord shall, within not more than ninety (90) days after such damage, notify Tenant of Landlord's election to terminate this Lease or to restore the Premises and such portion of the balance of the Center as in Landlord's sole discretion is necessary to create an economically feasible commercial unit. If Landlord elects to repair or restore the damage, then with respect to the Premises, Landlord and Tenant each shall restore them in the same manner and to the same extent as work was done by each of them in the original construction and fixturing of the Premises and the damage in the balance of the Center shall likewise be restored to the extent required in the preceding sentence. If Landlord elects not to restore, this Lease shall terminate effective as of the date of such damage upon the giving of notice of election by Landlord to Tenant.

14.3 Compensation. Landlord shall use good faith efforts to effect any repair or restoration promptly and in such manner as to not unreasonably interfere with Tenant's use and occupancy of the Premises; however, no damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or other portion of the Center.

14.4 Tenant's Property. Landlord is not required to carry insurance of any kind on Tenant's personal property or Tenant Alterations and shall not be obligated to repair any damage thereto or replace same. If this Lease is not terminated, Tenant shall, at its cost and expense, repair or replace Tenant's personal property or Tenant Alterations.

14.5 Waiver. As a material inducement to Landlord entering into this Lease, with respect to any destruction (including any destruction necessary in order to make repairs required by any declaration of any authorized public authority) which Landlord is obligated to repair or may elect to repair under the terms of this Article 14, the provisions of Section 1932, Subdivision (2) and Section 1933, Subdivision (4) of the Civil Code of the State of California are irrevocably waived by Tenant.

14.6 Tenant's Election to Terminate. In case of any damage or destruction which Landlord is required or elects to repair as provided in Sections 14.1 and 14.2 above, Tenant may terminate this Lease by notice to Landlord any time prior to the completion of the required repairs if Landlord has not restored and rebuilt the Premises (exclusive of any property of Tenant or Tenant Alterations) to substantially the same condition as existed immediately prior to such damage or destruction within one (1) year of destruction, or within such additional period thereafter (not exceeding six (6) months) as shall equal the aggregate period Landlord may have been delayed in doing so by adjustment of insurance or force majeure.

14.7 Rent Adjustment. ~~Provided that Landlord is compensated by the loss of rents insurance required by this Lease, then~~ Commencing with the date of said damage or destruction and continuing during the period of repair and restoration, the Base Rent and CAM

charges shall be reduced in proportion to the ratio of Floor Area of the Premises rendered unusable as a result of such damage to the total Floor Area of the Premises immediately before such damage. Notwithstanding anything to the contrary, In the event that Tenant is unable to conduct business in the premises, then rent and CAM charges shall be abated in its entirety

14.8 Total Destruction. A total destruction of the Center shall automatically terminate this Lease upon the date of destruction. Notwithstanding the foregoing, if Landlord terminates Tenant's lease pursuant to article 14 & 15, then its security deposit shall be returned within 30 days.

ARTICLE 15. EMINENT DOMAIN

15.1 Definition. If there is any taking of or damage to all or any part of the Center or any interest therein because of the exercise of the power of eminent domain or inverse condemnation, whether by condemnation proceedings or otherwise, or any transfer of any part of the Center or any interest therein made in avoidance thereof (all of the foregoing are hereinafter referred to as a "**taking**") before or during the Term, the rights and obligations of the parties with respect to such taking shall be as provided in this Article 15. A sale by Landlord to any authority having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed a taking under the power of eminent domain for all purposes under this Article 15. For purposes of this Article the "**date of taking**" means the date of entry into possession by, or the vesting of title in, the condemning authority, whichever is earlier.

15.2 Total Condemnation. If there is a taking of all of the Premises, this Lease shall terminate automatically.

15.3 Partial Condemnation of Floor Area. If twenty-five percent (25%) or more, but less than one hundred percent (100%), of the Floor Area of Tenant's Premises shall be taken, either party may terminate this Lease; or if twenty-five percent (25%) or more of the aggregate Floor Area of all buildings in the Center shall be taken, whether or not a portion of Tenant's Premises are taken, Landlord may terminate this Lease. The terminating party shall give the other party notice of such election not later than thirty (30) days after the date of taking. If either party gives such notice or less than twenty-five percent (25%) of the Floor Area of either Tenant's Premises or buildings in the Center shall be taken, this Lease shall remain in full force and effect and Rent shall be adjusted as provided in Section 15.7.

15.4 Condemnation of Common Area. If twenty-five percent (25%) or more of the Common Area shall be taken, Landlord may terminate this Lease. Landlord shall give written notice to Tenant of such election not later than thirty (30) days after the date of taking. If Landlord does not give such notice or more than seventy-five percent (75%) of the Common Area will be available after such taking, this Lease shall remain in full force and effect. Notwithstanding anything to the contrary contained herein, if a taking of a portion of the Common Area results in a violation of or noncompliance with governmental requirements, then Landlord may elect to terminate this Lease by giving the notice described herein.

15.5 Termination Date. If this Lease is terminated as to a portion or all of the Premises pursuant to this Article 15, such termination shall be effective as of the date of taking.

15.6 Repair and Restoration. If this Lease is not terminated pursuant to this Article 15, Landlord shall restore, with reasonable diligence, the remainder of the Premises and the Common Area so far as practicable to a complete unit of similar quality, character, and condition as that which existed immediately prior to the taking, provided that the scope of work shall not exceed the original scope of work done by Landlord in constructing the Premises and the Common Area, and further provided that Landlord shall not be obligated to expend more than the amount which was awarded to and received by Landlord for such purpose in connection with the taking.

15.7 Rent Adjustment. If this Lease is not terminated as provided in this Article 15, the Base Rent shall be reduced in proportion to the ratio of the Floor Area taken from the Premises to the total Floor Area of the Premises immediately before the taking.

15.8 Award. The entire award or compensation in such proceedings, whether for a total or partial taking or for diminution in the value of the leasehold or for the fee shall belong to and be the property of Landlord. Tenant hereby assigns its right to any such award to Landlord; provided that Tenant shall be entitled to recover from the condemnor such compensation as may be separately awarded by the condemnor to Tenant or recoverable from the condemnor by Tenant in its own right for the taking of trade fixtures and equipment owned by Tenant (meaning personal property, whether or not attached to real property, which may be removed without injury to the Premises) and for the expense of removing and relocating such personal property.

ARTICLE 16. LIENS

16.1 Mechanic's Liens. Tenant shall keep the Premises and the Center free of any liens or claims of lien arising from any work performed, material furnished, or obligations incurred by Tenant in connection with the Premises or the Center, and Tenant agrees to defend, indemnify and hold harmless Landlord from and against any such lien or claim or action thereon, together with related costs of suit and attorneys' fees incurred by Landlord. If Tenant fails to pay or disputes the correctness or validity of any claim of lien, Tenant shall within ten (10) days after written request by Landlord record such bond as will release the Center or the Premises from the lien or claim of lien.

16.2 Notice. Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord (expressed or implied) to any contractor, subcontractor, laborer, or materialmen for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair to the Premises, any buildings or improvements thereon, or any part thereof. Landlord shall have the right at all reasonable times to post and keep posted on the Premises such notices of non-responsibility as Landlord may deem necessary for the protection of Landlord and the fee of the Premises from mechanics' and materialmen's liens. Tenant shall give Landlord written notice of intended construction,

alteration or repair work at least twenty (20) days before the commencement thereof to afford Landlord an opportunity to post notices of non-responsibility.

ARTICLE 17. RIGHT OF ACCESS

17.1 Entry by Landlord. Landlord and its authorized agents and representatives shall be entitled at all reasonable times during normal business hours, and after business hours upon twenty-four (24) hours prior notice, and at any time in case of an emergency (a) to enter the Premises to inspect the same, or to cure a default of Tenant or to protect the interests of Landlord, or to post notices of non-responsibility and (b) to take required materials and equipment into the Premises and perform required work therein, including the erection of scaffolding, props, or other devices for the purpose of making alterations, repairs or additions to the Premises or to any other portion of the building in which the Premises or the Center are situated as may be provided in this Lease or as may be agreed upon by the parties or as Landlord may be required by law to make or for maintaining any service provided by Landlord to Tenant hereunder, without any rebate of Rent to Tenant for any loss of occupancy or quiet enjoyment of the Premises, or damage, injury or inconvenience thereby occasioned. Such entry shall be in such a manner as to cause as little disturbance to Tenant as is reasonably practical, however, Landlord shall not be required to perform any such work after regular working hours or on weekends or holidays. Tenant shall permit Landlord or its agents, upon request, to enter the Premises or any part thereof, at reasonable times during normal business hours to show the Premises to the fee owners, landlords of superior leases, holders of encumbrances on the interest of Landlord under this Lease, or prospective purchasers or Mortgagees of the Center, and during the period of six months prior to the expiration date of this Lease, to prospective tenants. Landlord shall also have the right to enter the Premises at such times as such entry shall be required by an emergency affecting the Premises or any other portion of the building in which the Premises are located or any other portion of the Center. If during the last month of the Term Tenant shall have removed substantially all of Tenant's property and personnel from the Premises, Landlord may enter the Premises and repair, alter and redecorate the same, without abatement of Rent and without liability to Tenant, and such acts shall have no effect on this Lease.

17.2 Reserved to Landlord. All except the inside surfaces of all walls, windows and doors bounding the Premises (including exterior building walls, core corridor walls and doors and any core corridor entrance), and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduit, fan rooms, ducts, electric or other utilities, sinks or other building facilities, and the use thereof, as well as access thereto through the Premises for the purposes of operation, maintenance, decoration and repair, are reserved to Landlord. Tenant shall permit Landlord to install, use and maintain pipes, ducts and conduits within the demising walls, bearing columns and ceilings of the Premises.

ARTICLE 18. ASSIGNMENT AND SUBLETTING

18.1 Consent Required. Tenant shall not directly or indirectly, whether voluntarily or by operation of law, assign, transfer, mortgage or otherwise encumber all or any part of Tenant's interest in this Lease or in the Premises, and shall not directly or indirectly sublet, license or permit another to occupy or use all or any part of the Premises, without the prior consent of Landlord in each instance. Landlord shall not unreasonably withhold [or delay](#) |

its consent to any proposed assignment of Tenant's interest in this Lease or sublease of the Premises by Tenant, but shall have the right to withhold its consent should Landlord deem any of the conditions set out in Sections 18.3 and 18.4 to have not been satisfied or to not be satisfactory to Landlord. ~~In the event of any other proposed transfer, mortgage, encumbrance, license or occupancy of all or any part of Tenant's interest in this Lease or in the Premises, Landlord may withhold its consent in its sole discretion.~~ Any attempted assignment, transfer, mortgage, encumbrance, subletting, licensing or other occupancy of the Premises without Landlord's consent shall, at the option of Landlord, constitute grounds for termination of this Lease. The sale, assignment, transfer or disposition, whether for value, by operation of law, gift, will, or intestacy, of (a) ~~twenty-five~~⁵¹ percent (25~~51~~⁵¹%) or more of the issued outstanding stock of Tenant if Tenant is a corporation, or (b) the 51% interest of any general partner, member, joint-venturer, or co-tenant, if Tenant is a partnership, limited liability company, joint venture, or cotenancy, shall be deemed an assignment of this Lease under this Section 18.1. Landlord's consent to any one assignment or sublease shall not be deemed to be a consent to any other assignment or sublease. Any attempt by Tenant to assign or sublease the Premises in violation of this Article 18 shall be void and of no force or effect and may, at the option of Landlord, be deemed a default under this Lease.

18.2 Notice of Intent. Except in the event of a sublease as described in Section 18.1(a) above, Tenant shall submit to Landlord a notice requesting such assignment or sublease, specifying the proposed date of such assignment or sublease and identifying the proposed assignee or sublessee. Such notice shall be accompanied by (i) financial statements of such proposed assignee or sublessee; (ii) a history of the business experience of such proposed assignee or sublessee; (iii) a copy of the proposed assignment or sublease, pursuant to which such assignee or sublessee shall assume all obligations on Tenant's part to be performed hereunder and an agreement to observe all of the terms, provisions, covenants, conditions, and agreements hereunder; and (iv) any other documentation which Landlord may reasonably request including but not limited to all documentation necessary for Landlord to inquire with Credit Agency as to the proposed assignees credit history. Landlord shall have ~~thirty-five~~³⁰ (30~~15~~¹⁵) days from receipt of all such documentation to (x) consent to such transfer or (y) withhold its consent to such transfer.

18.3 Conditions. Landlord and Tenant hereby agree that it shall be reasonable for Landlord to withhold its consent to any proposed assignment of Tenant's interest in this Lease or sublease of the Premises by Tenant if, in the reasonable business judgment of Landlord, any of the following criteria are not satisfied:

- (a) The intended use of the Premises by such proposed assignee or sublessee:
 - 1) shall not conflict with any lease then in effect with respect or with any other use, exclusive or otherwise, of any other premises of any other occupant of the Center or any adjacent property;
 - 2) shall conform with Landlord's desired "tenant mix" of the Center;
 - 3) shall be in keeping with the first-class quality or character of the

Center and shall not constitute a nuisance or violate any applicable laws or regulations; and

4) shall conform with the uses set forth in the Use of the Premises provision contained in Section 1.14.

(b) Such proposed assignee or sublessee shall be of ~~comparable or higher~~ financial net worth ~~than the greater of (a) the financial net worth of Tenant as of the Lease Commencement Date or (b) the financial net worth of Tenant as of the date of the proposed assignment or sublease;~~ to satisfactorily and reasonably fulfill the obligations of this lease.

(c) Such proposed assignee or sublessee shall satisfy Landlord that it has had no less than ~~five-two (52)~~ years of prior experience operating a successful business of the type to be operated in the Premises;

(d) ~~The proposed use would not cause a diminution of any Percentage Rent which may be payable to Landlord hereunder;~~

(e) The impact of such proposed assignee or sublessee would not have a detrimental impact on the common area or on the other occupants of the Center;

(f) ~~Such proposed assignee or sublessee is not at such time negotiating, or within the previous three (3) month period has not negotiated, with Landlord for the lease of space within the Center;~~

(g) Each Guarantor of the Lease, if requested, reaffirms its guaranty;

(h) Any other condition not contemplated herein which may be reasonable at the time of such proposed assignment or sublease;

(i) There shall not be more than one subtenant on the Premises;

(j) The Rent ~~and other terms and conditions of the assignment or sublease~~ are the same as ~~those~~ contained in the proposed assignment or sublease furnished to Landlord pursuant to Section 18.2;

(k) Tenant shall reimburse Landlord on demand for any costs and overhead that may be incurred and substantiated by Landlord in connection with said assignment or sublease (but in no event less than \$500 and not more than \$1,000), and all costs and expenses incurred in making investigations as to the acceptability of the proposed transferee, and all legal costs incurred in making investigations as to the acceptability of the proposed transferee, and all legal costs incurred in connection with the granting or withholding of any requested consent;

(l) The sublease or assignment shall not provide for an option on behalf of the transferee thereunder to extend or renew the term of such agreement beyond the then current Term unless Landlord approves of said option at the time of request;

(m) ~~Tenant has delivered to Landlord the certified statement, including the estimate of Gross Sales, and made the payment required by Section 5.6(c); and/or~~

(n) The provisions of Article 18 have been or will be complied with, whereby the transferee shall agree that the provisions contained in Article 18, shall notwithstanding such assignment or transfer, continue to be binding upon it in respect as to all future assignments and transfers.

18.4 Conditions Upon a Transfer of Interest. With respect to each and every sublease or assignment whether made with Landlord's consent pursuant to Section 18.3 or without Landlord's consent pursuant to Section 18.7, it is further agreed that the following conditions shall be complied with:

(a) No sublease shall be for a term ending later than one day prior to the expiration date of this Lease.

(b) No sublease or assignment shall be valid, and no subtenant or assignee shall take possession of the Premises or any part thereof, until an executed counterpart of such agreement has been delivered to Landlord.

(c) Each sublease or assignment shall provide that it is subject and subordinate to this Lease and the matters to which this Lease is or shall be subordinate.

(d) The transferee has executed, acknowledged and delivered to Landlord an agreement, in form and substance satisfactory to Landlord, whereby the transferee shall assume for the express benefit of Landlord all of the obligations of this Lease on the part of Tenant to be performed or observed and whereby the transferee shall agree that the provisions contained in Article 18, shall notwithstanding such assignment or transfer, continue to be binding upon it in respect as to all future assignments and transfers.

(e) Tenant shall remain primarily liable for the performance of all covenants, conditions and provisions of the Lease.

~~Any Transfer Consideration is paid to Landlord.~~

18.5 Failure to Deliver. In the event that Landlord consents to a proposed assignment or sublease and Tenant fails to execute and deliver to Landlord the assignment or sublease to which Landlord consented within ninety (90) days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of this Article 18 before assigning this Lease or subletting all or part of the Premises.

Rent Adjustment. If Landlord shall give its consent to any assignment of this Lease or to any sublease, in consideration therefore Base Rent shall be increased ~~to the greater of (a) Base Rent plus the percentage change that has occurred between the last adjustment to Base Rent under in accordance with Section 5.3 and the date of any assignment or sublease, multiplied~~

by Base Rent, or (b) an amount equal to the total Base Rent and Percentage Rent paid for the twelve (12) month period preceding the transfer date.

18.6

18.7 Successor Corporations. If Tenant is a corporation, the provisions of this Article requiring Landlord's consent shall apply to a transfer of ~~twenty-five~~ fifty one percent (~~25~~51%) or more of the stock of Tenant, as if such transfer of the stock were an assignment of this Lease; but said provisions shall not apply to transactions with a corporation (a) into which, or with which, Tenant is merged or consolidated; (b) to which substantially all of Tenant's assets are transferred; or (c) that controls, is controlled by, or is under common control with Tenant, provided that: in the event of (a), (b) or (c), the successor to Tenant has a tangible net worth, computed in accordance with generally accepted accounting principles, ~~at least equal to the greater of (1) the tangible net worth of Tenant immediately prior to such merger, consolidation, or transfer or (2) the tangible net worth of Tenant herein named on the date of this Lease~~ to reasonable fulfill the obligations under the lease and proof satisfactory to Landlord of such tangible net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction.

18.8 Modifications of Lease After Transfer. The joint and several liability of Tenant and any immediate or remote successor in interest to Tenant, and the due performance or observance of the obligations of this Lease on Tenant's part, shall not be discharged, released, or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

Transfer Consideration. "Transfer Consideration" means fifty percent (50%) of the following: (a) in the case of a subletting, any net consideration (less all associated costs) paid or given, directly or indirectly, by the subtenant to Tenant pursuant to the sublease for the use of the Premises, or any portion thereof, over and above the Rent, including any Additional Rent, however denominated in this Lease, payable by Tenant to Landlord for the use of the Premises, or portion thereof (in determining the amount of such consideration, it shall be appropriate to prorate the amount payable by Tenant to Landlord under this Lease if less than all of the Premises is sublet.); ~~(b) in the case of an assignment or a sublease, any consideration paid or given, directly or indirectly, by the subtenant or assignee to Tenant in exchange for entering into the sublease or assignment, but shall not include reimbursement for any security deposit, reimbursement of the cost of any improvements, fixtures or furnishings installed in the Premises by Tenant or any payment for merchandise of Tenant not in excess of Tenant's cost thereof. As used herein, consideration shall include consideration in any form, including but not limited to money, property, assumption of liabilities other than those arising under this Lease, discounts, services, credits or any other item or thing of value. Irrespective of the form of such consideration, Landlord shall be entitled to be paid in cash in an amount equivalent to the aggregate of the cash portion of the Transfer Consideration and the value of any non-cash Transfer Consideration received by Tenant. In the event that any Transfer Consideration is paid or given in installments, Landlord shall receive each such installment at the time paid or given.~~

18.9

ARTICLE 19. TRANSFER OF LANDLORD'S INTEREST

In the event of any transfer or transfers of Landlord's interest in this Lease, the Premises or the Center, other than a transfer for security purposes only, the transferor shall be automatically relieved and discharged of any and all covenants, obligations and liabilities contained in or derived from this Lease accruing from and after the effective date of such transfer. The transferee shall be deemed, without any further agreement between the parties or their successors-in-interest or between the parties and any such transferee, to have assumed and agreed to carry out any and all of the covenants and obligations of Landlord under this Lease, including without limitation the obligation of Landlord under Section 5.10 to return the security deposit as provided therein, ~~provided such obligations and liabilities are assumed in writing by the transferee,~~ and that Landlord advises Tenant in writing of the transfer or transfers of Landlord's interest in the Lease, the Premises or the Center. It is intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject to the foregoing, be binding on Landlord, its successors and assigns, only during and with respect to their respective periods of ownership.

ARTICLE 20. NOTICES

All notices, requests, demands, consents or approvals herein provided to be given or made, or which may be given or made by either party to the other, shall be given or made only in writing and shall be deemed to have been duly given: (i) when delivered personally or to any registered agent of the party to whom notice is being given; or (ii) on the date delivered when sent via Overnight Mail or reputable overnight delivery service (such as, without limitation, Federal Express), properly addressed and postage prepaid with proof of delivery; or (iii) on the date sent via facsimile transmission with a concurrent copy being sent by another approved means hereunder; or (iv) seventy-two (72) hours after the time the same is deposited in the United States mail, properly addressed and first class postage prepaid, return receipt requested. The proper address to which notices, requests, or demands may be given to or made by either party shall be the address stated in Section 1.16 or to such other address or to such other person as any party shall designate such address may be changed by notice given to the other party in accordance with this Article 20.

ARTICLE 21. SURRENDER OF POSSESSION AND REMOVAL OF PROPERTY

21.1 Holding Over.

(a) If Tenant holds the Premises after the expiration of the Term with the written consent of Landlord, such holding over shall, in the absence of a written agreement on the subject, be deemed to have created a tenancy from month-to-month, terminable on thirty (30) days written notice by either party to the other, at a ~~minimum~~ monthly rent equal to ~~one-twelfth (1/12) of the greater of~~ one hundred ~~fifty twenty five~~ percent (~~150~~125%) of the annual Base Rent applicable at the date of expiration or earlier termination of this Lease. Such holding over shall be subject otherwise to all terms of this Lease, including the payment of Additional Rent and increases to Base Rent under Section 5.3. Nothing contained in this Article shall be construed as consent to such holding over.

(b) If Tenant fails to surrender the Premises upon the expiration or termination of this Lease, Tenant shall indemnify and hold harmless Landlord from loss or

liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure.

21.2 Merger. The voluntary or other surrender of this Lease by Tenant to Landlord, or a mutual termination thereof, shall not work as a merger, and shall at the option of Landlord, operate as an assignment to it if any or all subleases or subtenancies affecting the Premises.

21.3 Surrender of Possession. Upon the expiration or earlier termination of this Lease, Tenant shall surrender possession of the Premises to Landlord in as good order and condition as it was at the Commencement Date, reasonable wear and tear and repairs which are Landlord's obligation excepted; and, subject to Article 11 and Section 21.5, Tenant shall, without expense to Landlord, remove or cause to be removed from the Premises all debris and rubbish, all furniture, equipment, business and trade fixtures, free-standing cabinet work, movable partitioning and other articles of personal property owned by Tenant or installed or placed by Tenant at its expense in the Premises, and all similar articles of any other persons claiming under Tenant unless Landlord exercises its option to have any subleases or subtenancies assigned to it. Tenant shall repair all damage to the Premises resulting from such removal.

21.4 Landlord's Rights. To Remove Tenant's Property. Whenever Landlord shall reenter the Premises as provided in this Lease, any property of Tenant or any person claiming through or under Tenant not removed by Tenant or such other person claiming through or under Tenant upon expiration of the Term (or within forty-eight (48) hours after a termination by reason of Tenant's default) shall be considered abandoned and Landlord may remove any or all of such items and dispose of same in any legal manner or store the same in a public warehouse or elsewhere for the account and at the expense and risk of Tenant. If Tenant shall fail to pay the cost of storing any such property after it has been stored for a period of ninety (90) days or more, Landlord may sell any or all of such property at public or private sale, in such manner and at such times and places as Landlord, in its sole discretion, may deem proper, without notice to or demand upon Tenant, for the payment of all or any part of such charges or the removal of any such property, and shall apply the proceeds of such sale: first, to the costs and expenses of such sale, including attorneys' fees actually incurred; second, to the payment of the cost of or charges for storing any such property; third, to the payment of any other sums of money which may then or thereafter be due to Landlord from Tenant under any of the terms hereof; and fourth, the balance, if any, to Tenant.

21.5 Tenant's Removal of Property. All ~~fixtures, equipment~~, alterations, additions, improvements and appurtenances built into or made an integral part of the Premises prior to or during the Term, whether by Landlord at its expense or at the expense of Tenant or both, shall be and remain part of the Premises and shall not be removed by Tenant at the end of the Term unless Landlord requires or consents to such removal. If Landlord requires or consents to such removal, Tenant shall repair all damage resulting from such removal, which repairs shall include the patching and filling of holes and repair of structural and nonstructural damage. Such fixtures, equipment, alterations, additions, improvements and/or appurtenances shall include but not be limited to all floor coverings, ceiling installations, drapes, paneling, molding, doors, vaults (exclusive of vault doors), plumbing systems, electrical systems, lighting systems, HVAC,

silencing equipment, communication systems, fixtures and outlets for the systems mentioned above and for telephone, radio, telegraph and television purposes. All other trade fixtures and equipment installed in the Premises by Tenant shall be removed by Tenant at the expiration of the Term in accordance with Section 21.3.

ARTICLE 22. QUIET ENJOYMENT

Subject to the provisions of this Lease and conditioned upon the timely performance of all of the provisions to be performed by Tenant hereunder, Landlord shall secure to Tenant during the Term the quiet and peaceful possession of the Premises free from hindrance by anyone claiming by, through or under Landlord.

ARTICLE 23. SUBORDINATION AND ATTORNMENT

23.1 Subordination.

(a) Subject to the provisions of this Article 23, this Lease and the leasehold estate created hereby shall be, at the option and upon written declaration of Landlord, subject, subordinate, and inferior to the lien and estate of any liens, trust deeds, and encumbrances (“**Mortgages**”), and all renewals, extensions, or replacements thereof, now or hereafter imposed by Landlord upon the Premises; provided, however, that this Lease shall not be subordinate to any Mortgage arising after the date of this Lease, or any renewal, extension, or replacement thereof, unless and until Landlord provides Tenant with an agreement (“**Non-Disturbance Agreement**”), signed and acknowledged by each holder of any such interest, setting forth that, so long as Tenant is not in uncured default hereunder, Tenant's right to possession shall be undisturbed.

(b) If any mortgagee, trustee or ground lessor shall elect to subordinate the lien of its mortgage, deed of trust or ground lease to this Lease, and shall give notice thereof to Tenant, then this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof. The Non-Disturbance Agreement may contain such additional provisions regarding non-disturbance, subordination and attornment as are customarily requested by secured or securitized lenders with liens encumbering real property security similar to the Premises.

(c) Tenant shall, within ten (10) days following a request by Landlord, execute, acknowledge and deliver the Non-Disturbance Agreement, and any other subordination agreement or other documents required to establish of record the priority of any such encumbrance over this Lease. Tenant's failure to execute such documents within ten (10) days after written demand shall constitute an event of default by Tenant hereunder and, at Landlord's option, Landlord may execute such documents on behalf of Tenant as Tenant's attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to execute such documents in accordance with this Article 23. In no event by way of limitation as to Landlord's other rights and remedies at law or in equity, Tenant shall be liable to Landlord for any and all damages suffered by Landlord as a

result of Tenant's failure to execute, acknowledge and deliver the Non-Disturbance Agreement, including, but not limited to, consequential damages.

(d) Provided a contemplated modification to this Lease does not ~~materially~~ increase Tenant's monetary obligations or materially diminish Tenant's rights hereunder, Tenant agrees to make such modifications to this Lease as may be required by a lender in connection with the obtaining of financing or refinancing of the Center and/or the Premises. Further, if any such modification ~~materially increases Tenant's monetary obligations or materially~~ diminishes Tenant's rights hereunder, Tenant nonetheless shall agree to make such a modification if (i) it is a reasonable modification for such lender to require under the circumstances and does not materially diminish Tenant's rights under the lease, and (ii) ~~Landlord, in its sole discretion, elects, as between Landlord and Tenant, to bear any material increases in Tenant's monetary obligations resulting from such modification that otherwise would be borne by Tenant.~~

23.2 Attornment. In the event of foreclosure of any Mortgage, whether superior or subordinate to this Lease, then, at the option of the mortgagee or purchaser at foreclosure sale ("Successor Landlord"), (i) this Lease shall continue in force; (ii) Tenant's possession shall not be disturbed unless this Lease is otherwise terminated pursuant to its terms; (iii) Tenant shall attorn to and recognize the Successor Landlord as Tenant's landlord for the remaining Term; and (iv) the Successor Landlord shall not be bound by: (a) any Security Deposit or payment of Rent for more than one month in advance; (b) any amendment, modification, or ending of this Lease without the Successor Landlord's consent after the Successor Landlord's name is given to Tenant pursuant to the notice requirements set forth in Article 20, unless the amendment, modification, or ending is specifically authorized by the original Lease and does not require Landlord's prior agreement or consent; and (c) any liability for any act or omission of a prior Landlord.

ARTICLE 24. ESTOPPEL CERTIFICATE AND FINANCIAL STATEMENTS

24.1 Estoppel Certificate.

(a) Tenant shall execute and deliver to Landlord, from time to time and within ten (10) days after receipt of Landlord's request, any estoppel certificate or other statement to be furnished to any prospective purchaser of or any lender against the Premises ("**Estoppel Certificate**"). Such Estoppel Certificate shall acknowledge and certify, without limitation, each of the following matters, to the extent each may be true: that this Lease is in effect and not subject to any rental offsets, claims, or defenses to its enforcement; the commencement and termination dates of the Term; that Tenant is paying Rent on a current basis; that any improvements required to be furnished under the Lease have been completed in all respects; that the Lease constitutes the entire agreement between Tenant and Landlord relating to the Premises; that Tenant has accepted the Premises and is in possession thereof; that the Lease has not been modified, altered, or amended except in specified respects by specified instruments; and that Tenant has no notice of any prior assignment, hypothecation, or pledge of Rents or the Lease. Tenant shall also, upon request of Landlord, certify and agree for the benefit of any lender against the Premises or potential lender against the Premises or potential purchaser of the Center or any portion thereof, that Tenant will not look to such lender or purchaser: (i) as being liable

for any act or omission of Landlord; (ii) as being obligated to cure any defaults of Landlord under the Lease which occurred prior to the time such lender, its successors or assigns, acquired Landlord's interest in the Premises by foreclosure or otherwise; (iii) as being bound by any payment of Rent by Tenant to Landlord for more than one (1) month in advance; (iv) as being bound by Landlord to any amendment or modification of the Lease without such lender's consent; or (v) as being obligated to return any Security Deposit. Tenant shall also certify and agree for the benefit of any lender against the Premises or potential lender against the Premises or potential purchaser of the Center or any portion thereof as to other matters as requested by any such lender or potential purchaser.

(b) If Tenant does not deliver such Estoppel Certificate to Landlord within such fifteen (15) day period, in addition to the remedies of Landlord under Article 25, Landlord, and any prospective purchaser or encumbrancer, may conclusively presume and rely upon the following facts: (i) that the terms and conditions of this Lease have not been changed except as otherwise represented by Landlord; (ii) that this Lease has not been cancelled or terminated except as otherwise represented by Landlord; (iii) that not more than one month's Minimum Monthly Rent or other charges have been paid in advance; (iv) that Landlord is not in default under this Lease and (v) the Security Deposit has not been increased from the amount stated in Basic Lease Provisions. In no event by way of limitation as to Landlord's other rights and remedies at law or in equity, Tenant shall be liable to Landlord for any and all damages suffered by Landlord as a result of Tenant's failure to deliver such Estoppel Certificate to Landlord as set forth herein.

24.2 Tenant's Financial Statements. In the event that Landlord is seeking to finance or to sell the Center, and within then ~~(40)~~15 days of any request by Landlord, Tenant shall provide Landlord with Tenant's current and past ~~three-two~~ (32) years profit and loss statements, balance sheet, statement of changes in financial position, and notes to the financial statements both for Tenant's operations as a whole and for the operations of the Premises (and each component thereof) separately, in each case, either audited by an independent certified public accountant or accounting firm or certified by Tenant's Chief Financial Officer.

ARTICLE 25. TENANT'S DEFAULT

25.1 Defaults. The occurrence of any of the following shall constitute a default under this Lease:

(a) The abandonment of the Premises by Tenant. "Abandonment" is herein defined to include, but is not limited to, any (i) absence by Tenant from the Premises without payment of rent, or (ii) failure on the part of Tenant to operate its business consistent with the Use of Premises provision of the Basic Lease Provisions during its usual business hours, each for a period of ~~five-thirty~~ (530) business days or longer.

(b) The failure by Tenant to make any payment of Rent required to be made by Tenant hereunder, ~~as and when due~~ within five business days after its due date.

(c) The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 25.1 (a) or (b), where such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant; provided that if the nature of Tenant's default is such that more than ten (10) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant shall commence such cure within said ten (10) day period and thereafter diligently prosecute such cure to completion; provided further that if required by Landlord's lender, from time to time, then not more than an additional eighty (80) days shall elapse before a cure is completed; provided further, however, Landlord, in its sole discretion, may require Tenant to deliver a bond, deposit funds or such other form of security device which may be necessary to protect the Premises, Landlord and the Center in the event such default cannot be cured within said ten (10) day period.

(d) (i) The making by Tenant of any general assignment for the benefit of creditors; (ii) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

(e) A ~~twenty-five~~ thirty percent (~~25~~30%) reduction in the net worth of any guarantor computed in accordance with sound accounting principles or the failure by Tenant to provide a reasonably acceptable substitute guarantor to Landlord within thirty (30) days after the death or insolvency of a Guarantor of this Lease.

(f) Failure by Tenant to timely deliver any Non-Disturbance Agreement pursuant to Section 23.1.

(g) Failure by Tenant to timely deliver any Estoppel Certificate pursuant to Section 24.1.

(h) The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any sublessee of Tenant, any successor in interest of Tenant or any guarantor was materially false.

(i) The breach by any guarantor of any of its obligations under a guaranty given to Landlord for the purpose of guarantying the performance of Tenant under this Lease.

25.2 Remedies. In the event of any default and failure to cure by Tenant hereunder as provided in Section 25.1, then, in addition to any other remedies available to Landlord at law or in equity, all of which rights and remedies shall be cumulative, with the exercise of one or more rights or remedies not to impair Landlord's rights to exercise any other right or remedy, and all of which may be exercised with or without legal process as then may be

provided or permitted by the laws of the State of California, Landlord shall have the following remedies:

(a) Landlord may terminate this Lease and all rights of Tenant by giving notice to Tenant of such election. If Landlord elects so to terminate this Lease, Landlord may recover from Tenant:

(i) the worth at the time of award of any unpaid Rent which has been earned at the time of such termination; plus

(ii) the worth at the time of award of the amount by which unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss Tenant proves could have been reasonably avoided; plus

(iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; plus

(iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; plus

(b) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law. As used in the clauses (i) and (ii) above, the "worth at the time of award" is computed by allowing interest at the highest rate allowed to be charged by nonexempt lenders on other than consumer loans under California usury laws. As used in clause (iii) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

(c) If Landlord elects to terminate the Lease, Landlord shall also have the right to reenter the Premises and remove all persons, and to take possession of and remove all equipment and fixtures of Tenant in the Premises.

(d) If Landlord does not elect to terminate this Lease as provided in Section 25.2(a) above, Landlord may from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent as it becomes due in such event, Landlord shall have the right to reenter and take possession of the Premises, to remove all persons and property therefrom, which property may be stored by Landlord at a warehouse or elsewhere at the risk, expense and for the account of Tenant, and to relet the Premises, or any part thereof, for the account of Tenant, for such term, upon such conditions and at such rent as Landlord in its sole discretion may deem proper. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay to Landlord all costs and expenses of such reletting (including without limitation, costs and expenses of retaking or repossessing the Premises, removing persons and property therefrom, securing new tenants, legal consulting fees, and if Landlord shall maintain and operate the Premises, the costs thereof);

second, to pay any indebtedness of Tenant to Landlord other than Rent; third, to the Rent due and unpaid hereunder; and , fourth, the residue, if any, shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. The purpose of this Section 25.2(c) is to give Landlord the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has right to sublet or assign, subject only to reasonable limitations); it being agreed that the restrictions imposed by this Lease on Tenant's right to sublet or assign are reasonable.

(e) Nothing in this Article shall be deemed to affect Landlord's right to indemnification for liability or liabilities arising prior to termination of this Lease for personal injury or property damage under the indemnification clause or clauses in this Lease.

25.3 Notice of Termination. No reentry or re-letting of the Premises shall be construed as an election by Landlord to terminate either Tenant's right to possession of this Lease unless a written notice of such intention is given by Landlord to Tenant; and notwithstanding any such re-letting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease.

25.4 Waiver of Notice; Performance by Landlord. Notwithstanding any provision of this Article 25, (a) if Tenant is required to comply with any governmental requirement, Tenant shall not be entitled to notice of default from Landlord and right to cure beyond the period within which such compliance may be required; or (b) if this Lease expressly provides for termination effective on service of notice, Tenant shall be entitled to cure its default only if the right to cure is required by law; or (c) if in Landlord's judgment the continuance of any default by Tenant for the full period of notice provided for herein will jeopardize the Premises or the rights of Landlord, Landlord may, with or without notice, elect to perform those acts with respect to which Tenant is in uncured default for the account and at the expense of Tenant. If by reason of such uncured default by Tenant, Landlord is compelled to pay or elects to pay any sum of money, including, but without limitation, reasonable attorneys fees, such sum or sums so paid by Landlord, with interest thereon from the date of such payment at the rate provided in Section 25.5 of this Lease, shall be due from Tenant to Landlord on the first day of the month next following such payment by Landlord.

25.5 Interest and Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or other sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) business days of such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to six percent (6%) of such overdue amount. ~~In addition, Tenant shall pay to Landlord a service charge in an amount which is the highest amount allowed by law and following each second consecutive late payment of Rent, Landlord may elect to require~~

~~Tenant to pay Rent three months in advance.~~ The parties hereby agree that such late charges represent a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charges by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

25.6 Other Remedies; Impounds.

(a) Nothing contained in this Lease shall limit Landlord to the remedies set forth in this Article 25, and particularly those which are set forth in Section 25.2. Upon Tenant's default Landlord shall be entitled to exercise any right or remedy then provided by law or in equity, including, but without limitation, the right to obtain injunctive relief, specific performance and the right to recover all damages caused by Tenant's default in the performance of any of its obligations under this Lease.

(b) All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue beyond any applicable grace period set forth in Section 25.1, Landlord may, but shall not be obligated so to do, and without waiving or releasing Tenant from any obligations of Tenant, make on Tenant's behalf any such payment or perform any such other act to be made or performed by Tenant as provided in this Lease. All sums so paid by Landlord and all necessary incidental costs, together with interest thereon at the higher of five percent (5%) per annum plus the rate charged by the Federal Reserve Bank of San Francisco on loans made to member banks under Sections 13 and 13(a) of the Federal Reserve Act on the highest lawful rate allowed to be charged by nonexempt lenders on other than consumer loans under the California usury laws, from the date of such payment by Landlord, shall be payable to Landlord on demand and Tenant covenants to pay any such sums, and Landlord shall have, in addition to any other right or remedy of Landlord, the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

(c) If a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Rent or for three (3) consecutive installments of other monetary obligations of Tenant under the terms of this Lease, then Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, a monthly advance installment (as estimated by Landlord) payable at the same time as the monthly Rent for Real Property Taxes and insurance expenses for the Premises which are payable by Tenant under the terms of this Lease. Such fund shall be established to insure payment when due, before delinquency, of any or all such Real Property Taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this Section 25.6(c) are insufficient to discharge the obligations of Tenant to pay such Real Property Taxes and insurance premiums as the same become due, then Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this Section 25.6(c) may be intermingled with other moneys of Landlord and shall not bear interest for the benefit of Tenant. If Tenant defaults in the performance of Tenant's obligations under

this Lease, then any balance remaining from funds paid to Landlord under the provisions of this Section 25.6(c) may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of Real Property Taxes and insurance premiums.

ARTICLE 26. WAIVER OF DAMAGES FOR REENTRY

Tenant hereby waives all claims for damages that may be caused by Landlord's reentering and taking possession of the Premises or removing and storing the property of Tenant as herein provided, and Tenant shall save Landlord harmless therefrom, and no such reentry shall be considered to be a forcible entry.

ARTICLE 27. LANDLORD'S DEFAULT; TENANT REMEDIES

27.1 Landlord's Default. In the case of Landlord's default, Landlord shall commence to cure such default immediately after receipt of written notice from Tenant specifying the nature of such default and shall complete such cure within thirty (30) days thereafter, provided that if the nature of a nonmonetary default is such that it cannot be cured within said thirty (30) day period, Landlord shall have such additional time as may be reasonably necessary to complete its performance so long as Landlord has proceeded with diligence after receipt of Tenant's notice and is then proceeding with diligence to cure such default. Landlord shall not be deemed to be in default based upon any violation by any other tenant of its lease including violation or expansion or conflicting interpretation of that tenant's use clause.

27.2 Tenant Remedies.

(a) Except as otherwise set forth herein, in the event of any default by Landlord as defined herein, Landlord shall be responsible to Tenant for any and all damages, other than consequential and/or punitive damages, sustained by Tenant as a result proximately caused by reason of Landlord's breach. With respect to defaults by Landlord which do not involve structural repairs to the building of which the Premises are a part, or any other portion of the Center, if Landlord does not cure such default within the time specified in Section 27.1, then Tenant shall have the right to cure any such default, with no right of offset, and Landlord shall reimburse Tenant for the reasonable costs and expenditures incurred by Tenant in connection therewith, including but not limited to attorneys' fees incurred to cure such default or breach of Lease. Tenant shall have no right to terminate this Lease and Tenant's remedies shall be limited to monetary damages, except as otherwise specifically provided herein. Nothing herein contained shall be interpreted to mean that Tenant is excused from paying Rent due hereunder as a result of any default by Landlord.

(b) Notwithstanding anything in this Lease to the contrary, Tenant hereby agrees that the obligations of Landlord under this Lease or any matters arising hereunder do not constitute personal obligations on the part of Landlord's members, partners or beneficiaries or any successors in interest. Tenant shall look solely to the equity ~~(which for the purposes of this Section 27.2(b), shall not exceed, in any event, twenty percent (20%) of the then fair market value of the Center)~~ of Landlord in the Center and to no other assets of such Landlord for the

satisfaction of any remedies which Tenant may have against such Landlord or its successors under this Lease.

(c) The term “**Landlord**” as used in this Lease shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and if any transfer of such title or interest occurs, then Landlord herein named (and, in case of any subsequent transfers, then each grantor thereof) shall be relieved from and after the date of such transfer of all liability relating to Landlord's obligations thereafter to be performed. The obligations contained in this Lease to be performed by Landlord shall be binding on Landlord's successors and assigns only during their respective periods of ownership.

(d) Tenant hereby waives, and in no event shall Landlord be liable for, consequential damages, including, without limitation, lost profits.

ARTICLE 28. WAIVER OF DEFAULT

The waiver by either party of any default in the performance by the other of any provision, covenant or condition contained herein shall not be construed to be a waiver of any preceding or subsequent default of the same or any other provision, covenant or condition contained herein. The subsequent acceptance of Rent or other sums hereunder by Landlord shall not be deemed a waiver of any preceding default other than the failure of Tenant to pay the particular Rent or other sum or portion thereof so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such Rent or other sum.

ARTICLE 29. ATTORNEYS' FEES

If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as such party is determined by a court, an arbitrator or by settlement. Such attorneys' fees shall be deemed to have accrued on the commencement of such action or proceeding and shall be paid whether or not such action is prosecuted to judgments.

If either party (“**secondary party**”) without its fault is made a party to litigation instituted by or against the other party or by or against any person holding under or through the other party (“**primary party**”), the primary party shall save and hold the secondary party harmless from any liability or judgment rendered against the secondary party, or the Premises or any part thereof, and shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.

ARTICLE 30. NO PARTNERSHIP

Landlord shall not in any way for any purpose be deemed a partner, joint-venturer, or member of any joint enterprise with Tenant.

ARTICLE 31. SUCCESSORS

Subject to Article 18 hereof relating to assignment, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors. The term “successors” is used herein in its broadest possible meaning and includes, but is not limited to, heirs, executors, administrators, assignees, sublessees, and every person succeeding to any interest in this Lease or the Premises of Landlord or Tenant herein, whether such succession results from the act or omission of such party.

ARTICLE 32. LIMITATION OF LIABILITY

Subject to the terms of Section 27.2(b), Tenant agrees that it shall look solely to the estate of Landlord in the Center, subject to the prior rights of any Mortgagee, and subject to Landlord’s rights under a leasehold interest in the Center or part thereof, if any, for the collection of any judgment, or other judicial process, requiring the payment of money by Landlord in the event of any default, breach or liability of Landlord, and no other assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant’s remedies.

ARTICLE 33. FORCE MAJEURE

In the event that either party hereto is delayed, hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws, regulations or orders, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the provisions of this Lease, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article 33 shall not operate to excuse Tenant from prompt payment of Rent or any other payments required under the provisions of this Lease.

ARTICLE 34. INTERPRETATION; JOINT AND SEVERAL LIABILITY

The captions by which the Articles of this Lease are identified are for convenience only and shall not affect the interpretation of this Lease. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular, and the neuter gender shall include the masculine and feminine genders. As used in this Lease, the word “person” means any natural person or persons in individual or representative capacities and any entity or entities of any kind whatsoever, including, without limitation, corporations, partnerships and associations, or any combination of persons and entities. If there is more than one signatory hereto as Tenant, the liability of such signatories shall be joint and several and the act of or notice from, or notice or refund to, or the signature of, any one or more of them with respect to the tenancy of this Lease shall be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

ARTICLE 35. SEVERABILITY; SURVIVAL

If any provision of this Lease, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held invalid or unenforceable to any extent, the remainder of this Lease shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. All obligations of Tenant which either (a) by their nature arise on or after the expiration or earlier termination of this Lease, or (b) have not been satisfied on or before the expiration or earlier termination of this Lease shall survive any expiration or earlier termination of this Lease.

ARTICLE 36. NOTICE REGARDING MORTGAGEE

If Landlord encumbers or has encumbered the Center with the lien of a first deed of trust or mortgage, Tenant agrees, provided Tenant has received a written request from Landlord and prior written notice of the name and address of the Mortgagee, to send to the Mortgagee a copy of each notice of Landlord's default under this Lease which Tenant sends to Landlord and to accept performance by the Mortgagee of Landlord's obligation under this Lease.

ARTICLE 37. RECORDING

This Lease shall not be recorded, but if Landlord so requests, Tenant and Landlord agree to execute a memorandum of this Lease, in recordable form, which may thereafter be recorded by Landlord.

ARTICLE 38. CORPORATE AUTHORITY

If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such corporation in accordance with a duly adopted resolution of the Board of Directors of such corporation or in accordance with the Bylaws of such corporation, and that this Lease is binding upon such corporation in accordance with its terms.

ARTICLE 39. ENTIRE INSTRUMENT

This Lease and the exhibits and addendum attached, if any, set forth the entire agreement between the parties. Tenant covenants that it has examined the Premises and knows the condition thereof and is familiar with the Center and the surrounding geographical area. Tenant enters into this Lease on the basis of its own independent investigation only and not based on any statement or representation of anyone else, including, but not limited to, Landlord's intent or ability to lease or not to lease space in the Center to any other Tenant engaging in the same or a competing or a wholly unrelated business to the business to be conducted by Tenant in the Premises. Except as specifically set forth herein, there are no agreements, representations, or warranties whatsoever as to any matter. Any prior conversations or writings are merged herein, superseded hereby and extinguished. No person has the power or authority to bind the parties to any agreement not set forth herein. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by Landlord and Tenant. Submission of

this Lease for examination does not constitute an option for the Premises and becomes effective as a Lease only on the Effective Date. If any provision contained in an exhibit or an addendum is inconsistent with the body of this Lease, the provision contained in said exhibit or addendum shall supersede the provision in the body of the Lease.

ARTICLE 40. Intentionally Omitted.

ARTICLE 41. TIME TO COMMENCE AN ACTION

Except as otherwise set forth herein, any claim, demand, right or, defense by Tenant that arises out of this Lease or the negotiations that preceded this Lease shall be barred unless Tenant commences an action thereon, or interposes a defense by reason thereof within six (6) months after the date of the inaction, omission, event, or action that gave rise to such claim, demand, right, or defense. Tenant acknowledges and understands that the purpose of this Section is to shorten the period within which Tenant would otherwise have to raise such claims, demands, rights, or defenses under applicable laws.

ARTICLE 42. WAIVER OF JURY TRIAL

Landlord and Tenant waive any right to a trial by jury in any action, claim, counterclaim or cross-complaint in any action, hearing, or proceeding brought by either party hereto against the other, which is based upon, or related to, the subject matter of this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, any claim for injury or damage, or the enforcement of any remedy under any law, statute or regulation, now or hereafter in effect. This waiver is knowingly, intentionally, and voluntarily made by Tenant, and Tenant acknowledges that neither Landlord nor any person acting on behalf of Landlord has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Tenant further acknowledges that it has been represented by independent legal counsel selected of its own free will, (or has had the opportunity to be represented by independent legal counsel) in the signing of this Lease and in the making of this waiver, and that it has had the opportunity to discuss this waiver with counsel. Tenant further acknowledges that it has read and understands the meaning and ramifications of this waiver provision.

ARTICLE 43. TIME OF ESSENCE

Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. In addition, should Tenant fail to execute this Lease on or before October 6, 2011, then if Tenant should thereafter sign this Lease Tenant's signature shall not have the effect of binding Landlord to any of the terms set out within this Lease, unless Landlord shall elect (in their sole and absolute discretion) to execute this Lease, or any subsequent variation of this Lease after such date.

ARTICLE 44. HEADINGS

The article and section captions contained in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

ARTICLE 45. PAYMENTS

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check, any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

ARTICLE 46. CONSENTS

~~Except as otherwise set forth in Section 18.3(k) above, in the event that Tenant requests any consent of Landlord under this Lease, Tenant shall reimburse Landlord on demand: (i) the sum of Five Hundred and 00/100 Dollars (\$500.00) as reimbursement for Landlord's overhead; and (ii) an amount equal to all third-party costs and expenses incurred by Landlord (including the costs of making investigations and legal fees) in connection with the granting or withholding of any requested consent. With respect to any provision of this Lease which either provides or is held to provide that Landlord shall not unreasonably withhold or unreasonably delay any consent or approval, Tenant shall not be entitled to make any claim for, and Tenant hereby expressly waives, any claim for damages, it being understood and agreed that Tenant's sole remedy therefor shall be an action for specific performance.~~

ARTICLE 47. NONDISCLOSURE OF LEASE TERMS

Tenant acknowledges and agrees that the terms of this Lease are confidential and constitute proprietary information of Landlord. Disclosure of the terms hereof could adversely affect the ability of Landlord to negotiate other leases with respect to the Building and impair Landlord's relationship with other tenants of the Building. Tenant agrees that it, and its partners, officers, directors, employees and attorneys shall not disclose the terms and conditions of this Lease to any other person without the prior written consent of Landlord; provided, however, that Tenant may disclose the terms hereof to the independent accountants who audit its financial statements, or to prospective subtenants or assignees under this Lease. Damages would be an inadequate remedy for the breach of this provision by Tenant, and Landlord shall have the right to specific performance of this provision and to injunctive relief to prevent its breach or continued breach.

ARTICLE 48. ARTWORK

To ensure compliance with California laws regarding rights of artists, Tenant will not install any artwork of any nature in the Premises that cannot be removed without damage or destruction to the artwork.

ARTICLE 49. SECURITY MEASURES

Tenant hereby acknowledges that the rent payable to Landlord hereunder does not include the cost of guard services or other security measures, and that Landlord shall have no

obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of Tenant's property and property under Tenant's control, and for the protection of Tenant and its principals, employees, agents, licensees, invitees and subtenants (and their respective principals, employees, agents, licensees and invitees) from any acts of third parties.

ARTICLE 50. LANDLORD'S RIGHT TO RELOCATE PREMISES

~~Landlord shall have the right, at its sole discretion, to relocate the Premises within Shop Buildings B and C (as shown on the Site Plan) in accordance with the following:~~

~~Decor. The new Premises shall be substantially similar to the floor area of the Premises (plus or minus 15%), the street visibility shall be substantially similar, and the decor shall be substantially similar to the Premises described in this Lease or, if updated, the then current prototype store, and shall be placed in that condition by Landlord at its sole cost.~~

~~Relocation. The physical relocation of the Premises shall be accomplished by Landlord at its cost.~~

~~Notice. Landlord shall give Tenant at least thirty (30) days' notice of Landlord's intention to relocate the Premises.~~

~~Time. Landlord shall diligently pursue the relocation of the Premises, and Minimum Annual Base Rent and all other sums and charges payable under this Lease shall abate during the period of such relocation from the time that Landlord receives notice from Tenant that it has closed for business and until such time as the replacement space is available for Tenant to open for business.~~

~~Variance in the Size of the Premises; Adjustments. If the relocated Premises is of a different floor area than the Premises as it existed before the relocation, Base Rent hereunder shall be reduced or increased, as appropriate, to a sum computed by multiplying the Minimum Annual Rent by a fraction, the numerator of which shall be the total floor area in the relocated Premises and the denominator of which shall be the total floor area in the Premises before relocation, as set forth in the Basic Lease Provisions. In addition thereto, Tenant's Proportionate Share as set forth in the Basic Lease Provisions, shall be adjusted on the same proportionate basis.~~

~~Amendment. The parties shall immediately execute an amendment to this Lease stating the relocation of the Premises and the adjustment, if any, of Base Rent and Tenant's Proportionate Share.~~

ARTICLE 51. NO OPTION

The submission of this Lease by Landlord, its agent or representative for examination or execution by Tenant does not constitute an option or offer to lease the Premises upon the terms and conditions contained herein or a reservation of the Premises in favor of Tenant, it being

intended hereby that this lease shall only become effective upon the execution hereof by Landlord and delivery of a fully executed counterpart hereof to Tenant.

ARTICLE 52. LANDLORD LIEN WAIVER

Landlord hereby acknowledges that Tenant may enter into a personal property lease agreement or financing for its business or equipment to be physically located at the leased premises. In the event that a lender or equipment lessor requires a commercially reasonable Landlord Waiver or Subordination Agreement to be signed by Landlord as acknowledgment of such, Landlord hereby agrees to furnish said Landlord Waiver or Subordination Agreement

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CONSULT YOUR ATTORNEY. NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE LANDLORD AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT OR TAX CONSEQUENCES OF THIS DOCUMENT.

TENANT:

Rocky Ghahary

Margarita Camargo (aka Peggy Camargo)

LANDLORD:

PLAZA AT LAKESIDE, LLC,
a California limited liability company

By: Guardian Commercial Real Estate, L.P.,
a California limited partnership, its Sole Member

By: Guardian Realty GP, LLC,
a Delaware limited liability company, its Co-General Partner

By: _____
Name: _____
Title: _____

EXHIBIT "A"

SITE PLAN

EXHIBIT "A-1"

LEGAL DESCRIPTION OF CENTER

LAKESIDE PLAZA SHOPPING CENTER

CITY OF MORENO VALLEY, COUNTY OF RIVERSIDE,

STATE OF CALIFORNIA

Being a portion of Parcels 1 and 2 of Parcel Map 24193, in the City of Moreno Valley, County of Riverside, State of California, as shown on Parcel Map recorded in Book 164, Pages 57 through 58, in the Office of the County Recorder of said County, being more particularly described as follows:

BEGINNING at a point at the most westerly corner of said Parcel 2, thence northwesterly along the westerly line of said Parcel 1, North 23°16'47" West a distance of 154.33, to an angle point;

Thence northeasterly leaving said westerly line of said Parcel 2, North 66°42'31" East a distance of 635.10, to a point lying on the westerly right-of-way of Lasselle Street, being 111.50 feet in width as shown on said Parcel Map 24193;

Thence southeasterly along said westerly right-of-way of Lasselle Street, South 23°17'13" East a distance of 620.81 feet, to an angle point in said right-of-way of Lasselle Street;

Thence, South 20°35'24" West a distance of 31.92 feet, to a point lying on the northerly right-of-way of Iris Avenue, being 134.00 feet in width as shown on said Parcel Map 24193;

Thence southwesterly along said northerly right-of-way of Iris Street, South 64°31'37" West a distance of 605.50 feet, to a point on a line parallel with, and distant 8.00 feet northeasterly, measure at right angles from the westerly line of said Parcel 2;

Thence along said parallel line, North 23°16'47" West a distance of 512.54 feet, to an angle point;

Thence, South 66°41'34" West a distance of 8.00 feet, to the POINT OF BEGINNING.

Subject to: covenants, conditions, restrictions, reservations, easements and right-of-way of record, if any.

EXHIBIT “B”

PREMISES

EXHIBIT "C"

RULES AND REGULATIONS

1. Except as otherwise provided in Tenant's lease or as otherwise permitted by Landlord, the Common Area sidewalks, entrances, passages, courts, elevators, vestibules, stairways, corridors or halls shall not be obstructed or used for any purpose other than ingress and egress.

2. No awning or other projection shall be attached to the outside walls of the building in which the Premises are located (the "**Building**") without the prior written consent of Landlord. No curtain, blind, shade or screen shall be attached to or hung in, or used in connection with, any window or door of the Premises, without the prior written consent of Landlord. Such awning, projection, curtain, blind, shade, screen or other fixture must be of a quality, type, design and color, and attached in the manner approved by Landlord. No interior or exterior window shall be coated without the prior written consent of Landlord.

3. No sign, advertisement or notice shall be exhibited, painted or affixed by any tenant on any part of, or so as to be seen from the outside of, the Premises or the Building without the prior written consent of Landlord. In the event of the violation of the foregoing by any tenant, Landlord may remove same without any liability, and may charge the expense incurred in such removal to the tenant violating the rule.

4. The sashes, sash doors, skylights, windows, and doors that reflect or admit light and air into the halls, passageways or other public places in the Building shall not be covered or obstructed by any tenant, nor shall any bottles, parcels or other articles be placed on the windowsills.

5. The water and wash closets and other plumbing fixtures shall not be used for any purpose other than those for which they were constructed, and no sweepings, rubbish, rags or other substances shall be thrown therein. All damages resulting from any misuse of the fixtures shall be borne by the tenant who, or whose employees, agents, contractors, visitors or licensees, shall have caused the same.

6. No tenant shall mark, paint, drill into, or in any way deface any part of the Premises or the Building. No boring, cutting or stringing of wires shall be permitted, except with the prior written consent of Landlord and as Landlord may direct.

7. No bicycles or animals of any kind shall be brought into or kept in or about the Premises. No tenant shall cause or permit any unusual or objectionable odors to be produced upon or permeate or escape from the Premises.

8. The Premises shall not be used for manufacturing or the storage of merchandise except as such storage may be incidental to the use of the Premises. Tenant shall not occupy nor permit any portion of the Premises to be occupied for the manufacture or sale of narcotics. The Premises shall not be used for lodging or sleeping or for any immoral or illegal purposes.

9. Tenant shall not make, or permit to be made, any unseemly or disturbing noises or disturb or interfere with occupants of this or neighboring premises or those having business with them whether by the use of any musical instrument, radio, phonograph, unusual noise, or in any other way. No loudspeakers, televisions, phonographs, radios or other devices shall be used in such a manner as to be heard or seen outside of the Premises. Tenant shall not throw anything out of the Premises' doors, windows or skylights or down the passageways.

10. Tenant shall not install or use any peripheral or secondary heating or air conditioning unit or other similar apparatus without the prior written consent of Landlord.

11. Tenant shall not conduct any auction, fire, bankruptcy, going out of business, liquidation or similar sales.

12. Landlord shall have the right at any time to expel peddlers, beggars, solicitors and loiterers from the Center.

13. Canvassing, soliciting and peddling in the Center are prohibited and each Center tenant shall cooperate to prevent the same.

14. No electronic or video games of any description shall be installed, maintained or operated upon the Premises without the prior written consent of Landlord.

15. The Premises shall not be used for the sale of lottery tickets without the prior written consent of Landlord.

16. No electronic devices for the transfer of funds, including, but not limited to, automatic teller machines, shall be installed in or about the Premises without the prior written consent of Landlord.

17. Landlord will direct electricians as to where and how telephone and telegraph wires are to be introduced. No boring or cutting for wires will be allowed without the prior consent of Landlord. The locations of telephones, call boxes and other like equipment affixed to the Premises shall be subject to the approval of Landlord.

18. Landlord reserves the right to exclude or expel from the Center any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the rules and regulations of the Center.

19. Landlord shall have the right, exercisable without notice and without liability to Tenant, to change the name and street address of the Center of which the Premises are a part.

20. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances designated for such purposes by Landlord.

21. The delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be subject to such other rules and regulations as in the judgment of Landlord are necessary for the proper operation of the Premises or the Center generally.

22. All of Tenant's refuse and rubbish shall be removed to central trash bins located generally in the Center, at Tenant's sole cost and expense. Tenant shall not burn any trash or garbage of any kind in or about the Premises, the Center generally, or within one mile of the outside property lines of the Center.

23. No radio or television or other similar device shall be installed without first obtaining in each instance the prior written consent of Landlord. No aerial shall be erected on the roof or exterior walls of the Premises, or on the grounds of the Center generally, without first obtaining in each instance, the prior written consent of Landlord. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

24. If the Premises are equipped with heating facilities separate from those in the remainder of the Center, Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

25. The outside sidewalks and loading areas immediately adjoining the Premises shall be kept clean and free from snow, ice, stains, dirt and rubbish by Tenant to the satisfaction of Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.

26. Neither Tenant nor Tenant's employees shall ascend onto the roof of the Building without the prior written consent of Landlord, except to service the HVAC units.

27. Tenant shall not at any time bring or keep upon the Premises any inflammable, combustible or explosive fluid, chemical or substance. Tenant shall not do or permit anything therein which shall in any way increase the rate of fire insurance on the Building, or on the property kept therein, or obstruct or interfere with the rights of other tenants or in any way injure or annoy them, or conflict with the regulations of the county or city Fire Department having jurisdiction or the fire laws or with any insurance policy upon the Building, or any part thereof, or with any rules and ordinances established by the Board of Health or other governmental authority.

28. Tenant shall be responsible for all existing locks and mechanisms on the Premises, including both front and rear door entrances, and for all costs associated with furnishing new or replacement keys, and in the event locks fail to operate properly or keys become lost, for repairing or replacing locks and keys. Tenant further agrees to hold Landlord harmless from all liability resulting from faulty locks, misplaced keys, and Tenant assumes complete responsibility for proper maintenance of all locks. Tenant further understands that Landlord maintains no keys to the Premises.

29. All parking ramps and areas, pedestrian walkway, plaza and other public areas forming a part of the Center shall be under the sole and absolute control of Landlord with the

exclusive right to regulate and control these areas. Tenant agrees to conform to the rules and regulations that may be established by Landlord for these areas from time to time.

30. Landlord is not responsible to any Center tenant for the non-observance or violation of the rules and regulations by any other Center tenant.

31. The Premises shall not be used for cooking if not part of the permitted use, except that microwave ovens and coffee making equipment may be used for the convenience of employees in the Premises. No food or beverage vending machines may be installed in the Premises without the prior consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that such vending machines are located within the employee lounge areas of the Premises and are not used for the retail sale of the merchandise within such vending machines.

32. Because of the limited amount of parking spaces available at the Center, Tenant shall assist Landlord in restricting the employee use of Center parking spaces to areas designated by Landlord. Landlord reserves the right to restrict the use of Center parking spaces to only customers of the Center if Landlord determines that such a policy will be beneficial to the tenants of the Center. Tenant shall be responsible for informing its employees of this restriction and for monitoring the parking practices of its employees to ensure compliance.

EXHIBIT “D”
SIGN CRITERIA