

INDENTURE OF LEASE

This Indenture of Lease (“**Indenture**”) is entered into as of the 1st day of August, 2024 (the “**Effective Date**”), by and between Tulare Local Healthcare District, a California Healthcare District formed under the California Health and Safety Code (“**Landlord**”) and Rodger Harris, an individual dba “Starting Lineup” (“**Tenant**”).

REFERENCE PROVISIONS AND FUNDAMENTAL TERMS

The Evolutions Plaza Lease Agreement by and between Landlord and Tenant attached hereto (the “**Lease Agreement**”) is incorporated herein. This Indenture and the Lease Agreement are collectively referred to herein and in the Lease Agreement as this “**Lease**”. In addition to other provisions that are defined elsewhere in this Lease, the following references define terms used in this Lease:

- 1.01 **Premises:** That certain real property and improvements located in the County of Tulare, State of California, comprising 944± sq. ft. of floor area, located within the enclosed portion of that certain Plaza commonly known as the “Evolutions Plaza” (located at the address below), commonly known as 1425 E. Prosperity Avenue. (Section 1.01, Exhibit “A”, Exhibit “A-1”)

- 1.02 **Real Property Name and Address:**

Evolutions Plaza
1425 E. Prosperity Avenue
Tulare, CA 93274 (the “Plaza”)

- 1.03 **Commencement Date:** The Commencement Date shall be the Effective Date, Tenant already being in possession of the Premises on a month-to-month basis under the terms of a prior lease (“Prior Lease”). The terms, conditions and obligations shall set forth in this Lease shall replace and supersede the Prior Lease in all respects. (Sections 1.02 and 3.01; Article 6)

- 1.04 **Expiration Date:** Five (5) years from the Commencement Date. (Section 1.02(a))
Options (if applicable): None. (Section 1.02(b))

- 1.05 **Minimum Annual Rent:** (Section 2.01)

<u>Months</u> <u>During Term</u>	<u>Minimum</u> <u>Annual Rent*</u>	<u>Monthly Minimum</u> <u>Rent*</u>
1 – 12	\$16,715.76	\$1,392.98
13 – 24	\$17,050.08	\$1,420.84
25 – 36	\$17,391.00	\$1,449.25
37 – 48	\$17,738.88	\$1,478.24
49 – 60	\$18,093.60	\$1,507.80

*Landlord and Tenant hereby acknowledge and agree that payment by Tenant of Minimum Annual Rent as set forth in this Section 1.05 of this Indenture, shall satisfy and discharge in full Tenant’s obligation to pay only the following items of Addition Rent as set forth in this Lease: Tenant’s Share of Exterior Common Area Expenses; Tenant’s Share Enclosed Plaza Common Area Expenses; Tenant’s Share of Taxes; Tenant’s Share Landlord’s Insurance Costs; and the Marketing Service Charge, if applicable. Tenant agrees that Landlord may allocate any portion of Minimum Annual Rent to and among the foregoing and other charges as Landlord may from time to time in its sole discretion determine to be appropriate. Tenant further agrees that, notwithstanding anything to the contrary contained in this Lease, Landlord shall not be obligated to provide Tenant with any statement or accounting relating to the actual and/or estimated amounts of any of the foregoing categories of costs and in no event shall Tenant have any right to examine or otherwise audit Landlord’s books and records pertaining to the same for any accounting period falling within the Term. In addition to Tenant’s obligation to pay Minimum Annual Rent and Percentage Rent, throughout the Term, Tenant shall remain solely responsible for and shall promptly pay, prior to delinquency, to the applicable utility provider (or to Landlord, if applicable) when due, all charges for electricity, plumbing (including sewage), trash, telephone, gas and any other utility service used in connection with the Premises as set forth in Article 9 of the Lease.

- 1.06 **Percentage Rent Rate:** Not applicable. (Section 2.02)

- 1.07 **Breakpoint:** Not applicable.

- 1.08 **Trade Name:** “Starting Lineup”. (Section 7.01)

- 1.09 **Permitted Use:** Tenant shall use the Premises for the following purpose: for barbering services and the sale of related products; provided, however, at all times such use shall be consistent with the character of a first-class retail center. Tenant agrees at all times during the Term to keep the Premises, including all appurtenant displays, in a neat and clean condition, free from any objectionable noises, odors or nuisances, and shall comply with


all governmental requirements, codes, regulations, rules and ordinances including, without limitation, all applicable health, safety and police laws, ordinances, rules and regulations of any governmental or quasi-governmental authority having jurisdiction over the Premises or the Plaza. Other than the foregoing, the Premises shall be used, and for no other purpose whatsoever and no other Trade Name whatsoever. Tenant is not permitted to sell or serve alcohol from the Premises.

- 1.10 **Exterior Common Area Expenses:** Calculated as set forth in Article 4 of this Lease. (Section 4.02)
However, as set forth in Section 1.05 of this Indenture above, Landlord and Tenant hereby agree and acknowledge that the amount of Minimum Annual Rent required to be paid by Tenant under this Lease includes an amount attributable to Tenant's Share of Exterior Common Area Expenses and consequently, Tenant shall have no obligation during the Term to pay an additional separate amount for Tenant's Share of Exterior Common Area Expenses.
- 1.11 **Enclosed Plaza Common Area Expenses:** Calculated as set forth in Article 4 of this Lease. (Section 4.03)
However, as set forth in Section 1.05 of this Indenture above, Landlord and Tenant hereby agree and acknowledge that the amount of Minimum Annual Rent required to be paid by Tenant under this Lease includes an amount attributable to Tenant's Share of Enclosed Plaza Common Area Expenses and consequently, Tenant shall have no obligation during the Term to pay an additional separate amount for Tenant's Share of Enclosed Plaza Common Area Expenses. However, Tenant shall at all times during the Term be responsible for paying directly to the operative contractor or service provider the monthly charges for electrical power to the Premises and trash removal from the Premises as set forth in Article 9 of this Lease.
- 1.12 **Taxes:** Calculated as set forth in Article 5 of this Lease. However, as set forth in Section 1.05 of this Indenture above, Landlord and Tenant hereby agree and acknowledge that the amount of Minimum Annual Rent required to be paid by Tenant under this Lease includes an amount attributable to Tenant's Share of Taxes and consequently, Tenant shall have no obligation to pay an additional separate amount for Tenant's Share of Taxes. (Section 5.02)
- 1.13 **Insurance Charge:** Calculated as set forth in Article 6. However, as set forth in Section 1.05 of this Indenture above, Landlord and Tenant hereby agree and acknowledge that the amount of Minimum Annual Rent required to be paid by Tenant under this Lease includes an amount attributable to Tenant's Share of Landlord's Insurance Costs and consequently, Tenant shall have no obligation during the Term to pay an additional separate amount for Tenant's Share of Landlord's Insurance Costs. (Section 6.08)
- 1.14 **Marketing Service Charge:** As provided in Article 11 of this Lease. However, as set forth in Section 1.05 of this Indenture above, Landlord and Tenant hereby agree and acknowledge that the amount of Minimum Annual Rent required to be paid by Tenant under this Lease includes an amount attributable to the Marketing Service Charge and consequently, Tenant shall have no obligation to pay an additional separate amount for the Marketing Service Charge. (Section 11.01)
- 1.15 **HVAC:** The Premises is served by an independent HVAC System (as defined in Section 9.04). Tenant is solely responsible for the cost of operating the HVAC System and for any and all repairs, maintenance and/or replacement associated with the HVAC System serving the Premises as further provided in Section 9.04 of this Lease. (Section 9.04)
- 1.16 **Security Deposit:** None. (Article 18)
- 1.17 **Prepaid Rent:** \$1,392.98. (Section 2.01)
- 1.18 **Address for Notices:**

To Landlord: Tulare Local Healthcare District
c/o Chief Executive Officer
Administrative Offices
1437 E. Prosperity Avenue
Tulare, CA 93274

To Tenant: To the Premises

with a copy to: 

- 1.19 **Address for Sending Billing Statements to Tenant (if applicable):** (Article 2)
To the Premises.
with a copy to: 



1.20 **Landlord's Work (if any):** Landlord shall not undertake any work upon the Premises. (Sections 3.01, Exhibit "B")
The Premises shall be delivered to Tenant in its existing "AS-IS" condition as of the Turnover Date, including any wear and tear previously caused by Tenant.

Tenant Work (if any): Tenant shall not undertake any work upon the Premises without Landlord's consent.

1.21 **Brokers:** None. (Section 20.13)

Landlord's Broker: None.

Tenant's Broker: None.

1.22 **Personal Guaranty:** Not applicable. (Exhibit "E")

1.23 **Lease Documents:** In addition to this Indenture and the Lease Agreement, the following are attached to this Lease and are hereby incorporated and made a part of this Lease:

EXHIBITS

- Exhibit "A" Site Plan of Plaza
- Exhibit "A-1" Depiction of Premises
- Exhibit "B" RESERVED
- Exhibit "C" Rules and Regulations
- Exhibit "D" Prohibited Use of the Premises
- Exhibit "E" RESERVED

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Lease as of the Effective Date.

“LANDLORD”

Tulare Local Healthcare District,
California Healthcare District

By: _____
Name: Randy Dodd
Its: CEO

“TENANT”

Name: Rodger Harris, an individual

EVOLUTIONS PLAZA LEASE AGREEMENT

[Starting Lineup]

by and between

Tulare Local Healthcare District, a Healthcare District

“Landlord”

and

Rodger Harris,

dba “Starting Lineup”

“Tenant”

LEASE AGREEMENT

ARTICLE 1 PREMISES AND TERM

Section 1.01 **Premises.** Tenant hereby leases from Landlord the Premises generally depicted on Exhibit "A-1" (the "**Premises**"), which Premises are part of the certain real property commonly known as Evolutions Plaza located and addressed at 1425 E. Prosperity Avenue, Tulare, CA 93274, as more specifically described or depicted on Exhibit "A." Said Evolutions Plaza includes all land, improvements, additions, extensions and deletions which may be made thereto from time to time (collectively, the "**Plaza**"). However, Landlord's determination of the Premises floor area will be deemed presumptively correct by Tenant, and Tenant hereby agrees to Landlord's determination, without reservation. Landlord may, from time to time during the Term, verify the floor area of the Premises and the Plaza and in the event that Landlord determines that the floor area of the Premises and/or Plaza differs from that initially or thereafter calculated or thereafter changes from time to time during the Term, the Premises and/or Plaza floor area shall be revised accordingly and such revised figures shall be deemed to be the Premises and/or Plaza floor area thereafter. In such case, the Minimum Annual Rent, Additional Rent, and any other payments due hereunder which are determined on a basis of floor area shall be increased or decreased accordingly. Landlord's determination of the Premises and/or Plaza floor area will be deemed to be presumptively correct by Tenant, and Tenant hereby agrees to Landlord's determination, without reservation. The term "floor area" means the number of square feet of floor space for the Premises, measured from the exterior faces of exterior walls, storefronts, walls fronting on the enclosed Plaza or interior Common Areas (defined in Section 4.01), corridors and service areas, and the Plaza lines of party walls or common partitions. No deduction or exclusion from floor area will be made by reason of columns other interior construction, improvements or obstructions.

Section 1.02 **Term.**

(a) **Initial Term.** The term of this Lease (the "**Term**") will commence on the Commencement Date and end on the Expiration Date unless sooner terminated or extended as expressly provided in this Lease. Tenant acknowledges being already in possession of the Premises.

(b) [RESERVED]

Section 1.03 **Plaza Planning.**

(a) Landlord shall have the right, at any time and from time to time during the Term, to remodel, renovate or expand the Plaza or any portion thereof. If such remodel, renovation or expansion of the Plaza will materially and adversely affect Tenant's permissible and lawful business operations from the Premises for the Permitted Use set forth in Section 1.09 of the Indenture above, as reasonably determined by Landlord, or if Landlord shall otherwise need to utilize the Premises in connection with the remodel, renovation or expansion of the Plaza, then Landlord shall, at Landlord's sole discretion, have the following options upon not less than ninety (90) days' prior written notice to Tenant: (a) require Tenant to vacate the Premises during the period (i) which Tenant will be unable to reasonably operate from the Premises and/or (ii) which is otherwise necessary for Landlord to effect the remodel, renovation or expansion of the Plaza, during which period(s) Tenant shall have no obligation to pay Minimum Annual Rent; or (b) terminate this Lease effective as of the date set forth in Landlord's termination notice to Tenant, in which event Landlord shall pay to Tenant, within sixty (60) days following the date Tenant vacates the Premises, the unamortized book value of all permanently affixed leasehold improvements installed in the Premises by Tenant (and paid for by Tenant without any contribution from Landlord), which amortization shall be determined on a straight line basis over the initial Term, the cost of which shall be evidenced by invoices and proofs of payment of same; upon payment by Landlord, Tenant shall provide Landlord with a bill of sale for said permanently affixed leasehold improvements in a form reasonably acceptable to Landlord. Tenant understands that if Landlord elects to remodel, expand or renovate the Plaza pursuant to this Section 1.03(a), such work may cause noise, dust, obstructions and inconvenience, including without limitation, temporarily closing portions of the Common Areas and/or creating reasonable alternate means of access within the Common Areas to the Premises. Landlord shall use commercially reasonable efforts to minimize such dust, noise, obstruction and inconvenience in performing any such work at the Plaza. However, in no event shall such work by Landlord and its consequences be deemed to be a constructive eviction or breach by Landlord of any covenants of quiet enjoyment. Tenant hereby waives any and all rent offsets (except as otherwise expressly provided in clause (a) above) or claims of constructive eviction in connection with any such work by Landlord.

(b) Landlord may, at any time during the Term and from time to time upon at least ninety (90) days' prior written notice, substitute for the Premises other comparably finished space ("**Substitute Space**") in the Plaza at Landlord's sole cost and expense (which shall include tenant improvements, packing and moving expenses, printing and mailing charges and other expenses directly related to the relocation which Tenant reasonably incurs), and the terms and conditions of this Lease shall remain in full force and effect, except that Exhibit "A-1" and Section 1.01 of the Indenture shall be revised to reflect such Substitute Space and if the Substitute Space is larger or smaller than the Premises, Minimum Annual Rent and all other sums payable hereunder that are calculated based upon the floor area of the Premises shall be proportionately adjusted (but shall not be increased by more than ten percent (10%) over the then applicable sums payable by Tenant hereunder). In no event shall the floor area of the Substitute Space be less than eighty percent (75%) of the size of the Premises then being vacated.

ARTICLE 2 RENT

Section 2.01 **Minimum Annual Rent.** Tenant shall pay the Minimum Annual Rent set forth in the Indenture in advance, in monthly installments on or before the first (1st) day of each month during the Term, without notice, demand, setoff or deduction; except that the Prepaid Rent set forth in Section 1.17 of the Indenture, if any, shall be

paid upon the execution of this Lease by Tenant and shall be applied by Landlord to the payment of Minimum Annual Rent next coming due hereunder.

Section 2.02 Percentage Rent. [RESERVED]

Section 2.03 Gross Sales Defined. [RESERVED]

Section 2.04 Additional Rent. Tenant shall pay, as additional rent, all rents, charges and other sums of money required to be paid by Tenant under this Lease (collectively “**Additional Rent**”), whether or not designated as “Additional Rent”, without notice, demand, setoff or deduction. Notwithstanding the foregoing, as set forth in Section 1.05 of the Indenture, Landlord and Tenant hereby agree and acknowledge that the amount of Minimum Annual Rent required to be paid by Tenant under this Lease will satisfy Tenant’s obligation to pay Additional Rent pursuant to this Section 2.04 (but only as to those items expressly identified in Section 1.05 of the Indenture), and that Tenant shall have no obligation during the Term to pay an additional separate amount for Tenant’s Additional Rent for said items pursuant to this Section 2.04, but all other terms and conditions relating to the Additional Rent set forth in this Lease shall continue to apply, and Tenant shall pay all other rents, charges and other sums of money required to be paid by Tenant under this Lease as Additional Rent.

Section 2.05 Late Charges. If Tenant fails to pay any sums required under this Lease within ten (10) days after the date the same becomes due, then Tenant shall pay to Landlord a late charge equal to the lesser of: (a) the maximum rate permitted by applicable law or (b) the greater of TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$250.00) or FIVE CENTS (\$0.05) per each dollar overdue. Acceptance of the late charge will not constitute a waiver of Tenant’s default relating to such nonpayment by Tenant nor will it prevent Landlord from exercising all other rights and remedies available to Landlord under this Lease or at law. In addition, all past due sums will bear interest from the date due until paid at the Default Rate. The “**Default Rate**” means the rate of 4 percentage points over the Prime Rate. “**Prime Rate**” means the “Prime Rate” of interest published in the “Money Rates” column of The Wall Street Journal on the first (1st) business day of each month, or a reasonably comparable substitute reasonably identified by Landlord. If any check tendered by Tenant to Landlord is not honored on initial presentation, Tenant shall pay Landlord the greater of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) or the amount Landlord’s bank charges Landlord for processing such returned check, and thereafter Landlord shall have the right to require Tenant to make subsequent rent payments in cash, money order or cashier’s check.

ARTICLE 3 CONDITION AND REMODELING

Section 3.01 Condition of Premises. Tenant agrees to accept the Premises in “AS IS” condition as existing on the Effective Date, being already in possession of the Premises (the “**Turnover Date**”). Tenant further hereby accepts this Lease and the Premises upon the covenants and conditions set forth herein and subject to any encumbrances and other matters of record and all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Premises and/or Plaza.

Section 3.02 Tenant’s Work. To the extent Tenant is required to or does, with Landlord’s written consent, perform work on the Premises, Tenant shall fully remodel the Premises, including the storefront and interior, in accordance with the criteria, procedures and schedules set as may be set forth by Landlord (“**Landlord’s Criteria**”), which Landlord’s Criteria is incorporated herein by this reference. “**Tenant’s Work**” means all work required to be performed in the Premises under this Section 3.02 (including, as set forth in the immediately preceding sentence) and all other alterations to the Premises made by Tenant pursuant to this Lease, subject to the limitations set forth in Section 1.20 of the Indenture. Tenant’s Work will be at Tenant’s sole cost and will comply with all applicable governmental laws, ordinances, rules, regulations, codes and other governmental restrictions or requirements. Tenant’s Work will be performed in a first-class and workmanlike manner, incorporating only new materials. Tenant shall commence Tenant’s Work within ten (10) days after Landlord has approved Tenant’s Plans and made possession of the Premises available to Tenant and Tenant has received all necessary building permits (as applicable), and complete Tenant’s Work no later than the Commencement Date. Within ten (10) days after the date of this Lease, Tenant shall identify in writing to Landlord a representative of Tenant (“**Tenant Representative**”) who shall have general responsibility for the supervision, management and completion of Tenant’s Work. The Tenant Representative shall have authority to bind Tenant and Landlord may rely on any approval or instruction made by the Tenant Representative. If no Tenant Representative is identified in writing to Landlord as the “Tenant Representative”, the Tenant Representative shall be deemed to be the primary person with whom Landlord is dealing in regard to the supervision, management and completion of Tenant’s Work.

Section 3.03 Failure to Open for Business. [RESERVED]

Section 3.04 Plans and Specifications. To the extent Tenant is required to or does perform work on the Premises, as soon as a reasonably possible after the Effective Date of this Lease (no delay being caused by Tenant), Tenant shall submit to Landlord for approval one (1) reproducible set and three (3) copies of plans and specifications (“**Tenant’s Plans**”) prepared by a registered architect or engineer showing all of Tenant’s Work, which will be prepared in conformity with the requirements of this Lease and the Landlord’s Criteria. Within twenty (20) days following receipt of Tenant’s Plans, Landlord will notify Tenant of any changes reasonably required by Landlord. Promptly following receipt of Landlord’s notice, Tenant shall revise Tenant’s Plans to incorporate all of Landlord’s required changes (if any) and, if changes are required, will deliver the revised plans to Landlord within twenty (20) days following receipt of Landlord’s notice. If Landlord requires further changes to Tenant’s Plans, Tenant will similarly revise and resubmit Tenant’s Plans to Landlord within an additional period of five (5) days until approval by Landlord. If Tenant does not deliver Tenant’s Plans to Landlord within the time limits set forth above, then in addition to any other rights and remedies that Landlord may have at law and/or in equity, Landlord shall have the right, but not the obligation, to advance the Commencement Date one (1) day for each day that Tenant fails to comply with the time limits set forth above. Approval of Tenant’s Plans will not constitute an assumption of responsibility by Landlord for their accuracy, sufficiency or compliance with any

applicable governmental laws, ordinances, rules, regulations, codes or other governmental restrictions or requirements. Tenant may not begin any work in the Premises until Tenant receives Landlord's written approval of Tenant's Plans. After Landlord has approved Tenant's Plans, Tenant shall: (i) enter into written agreements (it being agreed that a copy of each such agreement shall be provided to Landlord prior to proceeding with Tenant's Work) for the performance of Tenant's Work with such contractors and subcontractors selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld or delayed; (ii) before proceeding with Tenant's Work, provide Landlord with ten (10) days' prior written notice thereof (which notice shall include a list of the names and addresses of all contractors, subcontractors and material suppliers performing Tenant's Work; and (iii) obtain all necessary governmental permits and approvals for the commencement and completion of Tenant's Work. Landlord's approval of any contractor(s) and subcontractor(s) of Tenant shall not release Tenant or any such contractor(s) and/or subcontractor(s) from any liability for any conduct or acts of such contractor(s) and/or subcontractor(s).

Section 3.05 General Requirements. In performing Tenant's Work, is any, Tenant shall comply with the following requirements:

(a) Tenant may not commence nor permit its contractors to commence any work until all insurance required by this Lease to be maintained by Tenant has been obtained and certificates of such insurance have been delivered to Landlord. Tenant shall cause its contractors to maintain during the period of construction and fixturing work within the Premises the following insurance: (i) "All Risk" Builder's Risk Insurance covering the full replacement value of all work done and fixtures and equipment installed at the Premises (which insurance may be provided by separate policy, by Tenant's "All Risk" property policy, or by endorsement to such policy); (ii) Commercial General Liability Insurance with minimum limits with respect to bodily injury or death and property damage of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) per occurrence and THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00) general aggregate; (iii) Worker's Compensation as required by the laws of the state or commonwealth in which the Plaza is located, and Employer's Liability Insurance with a limit of not less than FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00); (iv) Business Auto Liability Insurance which insures against bodily injury and property damage claims arising out of ownership, maintenance or use of any "any auto" (including coverage for hired, owned and non-owned autos), and which affords limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) each occurrence and policy limit; and (v) "All Risk" property insurance on contractor's tools and equipment, whether owned or leased, brought onto or used in connection with work on the Premises. The Commercial General Liability Insurance shall include as additional insureds and the "All Risk" Builder's Risk Insurance shall name as cash payees the persons and entities specified in Section 6.02 of this Lease. All policies of insurance required by this Section 3.05 will in all other respects be kept and maintained in accordance with the provisions of Article 6 relating to insurance maintained by Tenant under this Lease.

(b) Prior to commencing Tenant's Work, Tenant shall provide Landlord with a copy of any governmental or quasi-governmental permits required for Tenant's Work.

(c) Tenant shall perform Tenant's Work in a manner so as to avoid any labor dispute which is likely to cause stoppage or impairment of work or delivery service or any other services in the Plaza. In the event there is any such stoppage or impairment as the result of any labor dispute, Tenant shall take all actions reasonably necessary to eliminate the dispute, including without limitation removing the disputants from the job site until the dispute is over.

(d) All utility charges in connection with Tenant's Work will be at Tenant's sole expense. Tenant's Work will comply with all applicable governmental laws, ordinances, rules, regulations, codes and other governmental restrictions or requirements. Tenant shall obtain at its sole expense all necessary permits and pay all fees required by public authorities or utility companies in connection with Tenant's Work.

(e) Tenant shall maintain the Premises in a clean and orderly condition during construction and shall keep the Common Areas free of Tenant's or its contractors' trash and personal property. Tenant shall remove on a daily basis all unused construction materials, equipment shipping containers, packaging, debris and waste from the Plaza and deposit them in receptacles provided by Landlord (or, at Landlord's option, in receptacles provided by Tenant and placed in a location designated by Landlord) or otherwise remove them from the Plaza.

(f) Tenant will not be permitted to open the Premises for business until all of the following are completed: (i) the satisfactory completion by Tenant of all of Tenant's Work, in accordance with Landlord's Criteria; (ii) the issuance of a final Certificate of Occupancy (or its equivalent) by the applicable governmental agency in the municipality where the Plaza is located; and (iii) Tenant's Work is complete and the Premises are constructed in accordance with Tenant's Plans approved by Landlord.

(g) Landlord will have the right to enter the Premises during construction and take such steps Landlord reasonably deems necessary to assure the proper performance of Tenant's Work and for the protection of the Plaza and any adjacent premises. Landlord will have the right to perform any portion of Tenant's Work that Landlord reasonably determines should be performed by Landlord for the best interests of the Plaza, including without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, roofing and removing of unduly accumulated construction material and debris and/or performed by Landlord on an emergency basis for life safety reasons or for the protection of property. Tenant shall reimburse Landlord the cost of such work within thirty (30) days of billing.

(h) To the extent required by Landlord in its sole discretion, during construction of the Premises a temporary barricade will be located at the storefront leaseline. Landlord at its option may furnish and install such barricade; provided, however, if the barricade has not been installed upon delivery of the Premises to Tenant, Tenant shall furnish and install such barricade in accordance with the specifications and design of Landlord. If Landlord furnishes the barricade, then Tenant shall within ten (10) days after receipt of Landlord's invoice therefor reimburse

Landlord for the cost of the barricade and barricade graphics in an amount that is reasonably competitive within the geographic area in which the Plaza is located.

(i) Tenant's Work shall be performed in such a manner so as not to obstruct or damage any part of the Common Area. Landlord may repair any such damage for the account of Tenant and Tenant shall pay such costs as Additional Rent within ten (10) days of billing thereof by Landlord. If Tenant's Work will require penetration of the roof of the Premises, such work, at Landlord's option shall be performed by Landlord's contractor, at Tenant's sole cost and expense.

(j) Tenant shall coordinate Tenant's Work with all work being performed by Landlord or other occupants of the Plaza so that Tenant's Work will not interfere with the operation of the Plaza or interfere with or delay the completion of other work in the Plaza. Tenant shall comply with, and shall cause its contractors and subcontractors to comply with, all reasonable rules and regulations of the Plaza, including without limitation construction procedures and regulations.

(k) Except as specifically provided in this Lease, Tenant shall not be required to pay any so-called construction chargebacks or any other charges for construction work performed by Landlord to the Premises for the benefit of Tenant. However, the following, whether or not deemed construction chargebacks, will not be waived: sprinkler shut down fees; barricades and barricade graphics; any changes or modifications to Landlord's systems (e.g., HVAC, mechanical, electrical) necessary to accommodate Tenant's design, in cases where Tenant's store design standards require revisions to such systems; reimbursements to Landlord for roof penetrations performed by Landlord's roofing contractor in connection with Tenant's Work; costs incurred by Landlord for the installation and maintenance of any smoke detection or evacuation system or other life safety system in the Plaza, including air balancing in the Premises and elsewhere in the Plaza, in connection with Tenant's Work (if applicable); the construction damage deposit described above; charges for utilities consumed by Tenant during Tenant's construction; and charges for trash removal during construction of the Premises.

(l) Within ten (10) days following completion of Tenant's Work or any subsequent Tenant improvements, Tenant shall deliver to Landlord (i) all certificates and other approvals with respect to Tenant's Work that may be required from any governmental authority and any board of underwriter's or similar body for the use and occupancy of the Premises, including without limitation, a copy of the notice of completion, a copy of any Certificate of Occupancy or its equivalent and the underwriter's approval of Tenant's sprinkler installation, if necessary; (ii) an original executed final lien waiver and release of mechanics' liens for the Premises, executed by Tenant's general contractor and by every subcontractor and supplier of labor and materials engaged in Tenant's Work supplying labor or materials indicating that all amounts due to such parties have been paid in full; and (iii) one (1) reproducible set of as-built drawings. The above notwithstanding, Tenant shall only be required to obtain such waiver and releases for those parties supplying material or labor in the amount of TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$2,500.00) or more; provided, however, such amounts do not exceed TWENTY THOUSAND AND 00/100 DOLLARS (\$20,000.00) in the aggregate (otherwise Tenant must supply such waivers and releases).

(m) Tenant agrees that Tenant shall, at Tenant's sole cost and expense, install any check meters or sub-meters required by Landlord as a part of Tenant's Work if the same is not already provided for with respect to the Premises.

Section 3.06 Alterations. Tenant may make non-structural interior alterations to the Premises subject to the limitations set forth in this Lease. All alterations will be at Tenant's expense and may not reduce the value of the Premises. Tenant shall not perform any of the following alterations to the Premises without obtaining Landlord's prior written consent: (a) any alterations costing in excess of TEN AND 00/100 DOLLARS (\$10.00) multiplied times the number of square feet of floor area in the Premises; (b) any alterations involving structural alterations or additions; (c) any alterations affecting the exterior storefront, signs, graphics, mechanical or other building systems, exterior walls, floors, ceilings or the roof of the Premises; (d) any alterations that erect or increase the size of an existing mezzanine; and (e) any alterations that require or result in any penetration into or through the roof or the floor of the Premises. Tenant shall give Landlord at least fifteen (15) days' prior written notice before starting any alterations to the Premises, whether or not Landlord's consent is required by this Lease. Landlord may also require, as a condition to its consent to any alterations, that any architect retained by Tenant in connection with such alterations be certified as a Certified Access Specialist (CASp), and that following the completion of such alterations, such architect shall certify the Premises as meeting all applicable construction-related accessibility standards pursuant to California Civil Code Section 55.53.

Section 3.07 Signs; Displays. Tenant shall be entitled to place Tenant's signs in conformance with Landlord's Criteria and have received Landlord's prior written approval, and Tenant provided that Tenant obtains all applicable governmental approvals prior to installing such signs (as necessary). Tenant may not place on the exterior of the Premises, or on the glass of any window or door of the Premises which is visible from the exterior of the Premises, or within three feet (3') of any such glass (other than professionally lettered signs of reasonable size placed on the floor of the display window identifying articles offered for sale and their price) any sign, awning, canopy, decoration, lettering, advertising matter or anything else without Landlord's consent. Tenant's sign shall be maintained by Tenant in good condition and repair at its own expense. If Tenant is engaged in retail sales, Tenant shall install and maintain at all times, subject to the above sentence, merchandise displays in any show windows of the Premises. The arrangement, style, color and general appearance of any show windows, and any displays in the interior of the Premises that are visible from the exterior, such as window displays, signs, merchandise and store fixtures, will be maintained in keeping with the character and standards of a first-class Plaza in the geographical area in which the Plaza is located. Upon the expiration of the Term or earlier termination of Tenant's signage rights as set forth above, Tenant shall be responsible for the expenses and costs associated with the removal of Tenant's signage, including, but not limited to, the cost to restore the Plaza to its original condition, which obligation shall expressly survive the expiration or earlier termination of this Lease.

Section 3.08 Construction Liens.

(a) Tenant may not cause, suffer or permit, and shall have no authority to create, any liens for labor or materials on the interest of either the Landlord or of the lessor under any ground lease in the Premises or the Plaza. Notwithstanding anything to the contrary in this Lease, the interest of Landlord shall not be subject to liens for improvements made by the Tenant. All other persons contracting with Tenant for the destruction or removal of any facilities or other improvements or for the erection, installation, alteration or repair of any facilities or other improvements on or about the Premises, and all materialmen, contractors, subcontractors, mechanics and laborers are charged with notice that they must look only to the Tenant and to the Tenant's interest in the Premises to secure payment of any bill for work done or materials furnished at the request or instruction of Tenant. Nothing in this Lease shall be construed as in any way constituting a consent, request or requirement by Landlord, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration or repair of or to the Premises or to any buildings or improvements thereon, or to any part thereof. Notwithstanding anything to the contrary in this Lease, or in any other writing signed by Landlord to the contrary, neither this Lease nor any other writing by Landlord shall be construed as evidencing, indicating, or causing an appearance that any erection, construction, alteration or repair to be done, or caused to be done, by Tenant was in fact for the immediate use and benefit of Landlord. Neither the requirement in this Lease that the Tenant perform certain construction work in the Premises nor Landlord's participation in the plan review and approval process should be deemed to make the Tenant an agent of Landlord for any purpose, including without limitation, in carrying out the construction work required by this Lease. Any such construction work will be done exclusively for the benefit of the Tenant, will not be performed for or on behalf of Landlord, with Landlord receiving no benefit from such work. When a new tenant acquires possession of the Premises, such new tenant will be required to make improvements to the Premises that will suit the particular needs of the new tenant.

(b) In order to eliminate the possibility of any construction, mechanics' lien or materialmen's lien being asserted against the Premises or the Plaza, Tenant shall not permit any of Tenant's contractors, subcontractors or materialmen to start any work on the Premises or deliver any materials to the Premises until they have first executed such waivers, stipulations and other instruments as Landlord may reasonably require to assure itself that the Premises and the Plaza will not be subject to any such liens. In states or commonwealths where a waiver of or stipulation against such liens may be filed in court or of public record, Tenant shall not permit its contractors, subcontractors or materialmen to commence any work on, or deliver any materials to the Premises until written waivers of, or stipulations against, mechanics' liens that are satisfactory to Landlord have been properly executed and filed in court or of public record in accordance with the laws of the state or commonwealth where the Plaza is located. Further, Tenant agrees that it will not enter into any contract for construction work to the Premises unless the following language is included in such contract: "Notwithstanding anything herein to the contrary, the contractor acknowledges that Tenant holds only a leasehold interest in the property which is the subject matter of this contract. Tenant is not the agent of the owner of the property, and no lien resulting from work performed under this contract will attach to the interest of such owner." Landlord and its representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility or such other notices that Landlord may deem to be proper for the protection of Landlord's interest in the Premises and the Plaza.

(c) If a lien is filed, Tenant shall notify Landlord in writing within five (5) days of Tenant's receiving notice of such lien. Tenant may contest the lien in good faith, but even if Tenant contests the lien, within ten (10) days after the lien is filed, Tenant shall have the lien released of record by payment, bond, court order, or otherwise. If Tenant fails to release of record any such lien within the above period, at its option Landlord may pay the claim or post a bond. Tenant will indemnify Landlord against any loss or expenses incurred as a result of the assertion of any such lien prohibited by this Section, including the reimbursement of Landlord of its cost to pay the claim or post bond. Any payments, costs and expenses, including without limitation reasonable attorney's fees and expenses incurred by Landlord, and an administrative fee equal to TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) to reimburse Landlord for its administrative expense in connection with such lien, will be paid by Tenant as Additional Rent within thirty (30) days of billing, together with interest at the Default Rate from the dates such amounts are incurred. Tenant agrees that the above sum is a reasonable fee as liquidated damages for Tenant's failure to release of record any such lien as required by this Lease.

Section 3.09 Landlord's Work. Landlord shall not complete the improvements to the Premises.

**ARTICLE 4
COMMON AREAS**

Section 4.01 Common Areas. As used herein, "Common Areas" means all areas, access roads, facilities, improvements, fixtures and equipment in or near the Plaza, whether enclosed or unenclosed which are now or hereafter made available by Landlord for the general use in common of tenants and their customers, including without limitation customer and employee parking areas and facilities, equipment, signs, on-grade parking areas, seating areas, plazas, driveways, sidewalks, loading docks and areas, delivery areas, parking decks (if any), enclosed spaces, enclosed corridors, enclosed plazas and amenities, restrooms, landscaped areas, fountains and water fixtures, hallways, lighting facilities, sanitary systems, utility lines and all other interior and exterior areas and improvements provided by Landlord for the common use of all tenants and their customers. Except as otherwise provided in this Lease, Tenant and its employees and invitees will have the non-exclusive right to use the Common Areas during the Term, such use to be in common with Landlord, other tenants of the Plaza and other persons permitted by Landlord or by law to use the same (in such manner as Landlord may elect or agree with such other tenants and persons). All Common Areas will be subject to the exclusive control of Landlord and will be operated and maintained in such manner as Landlord in its sole discretion shall determine, provided Landlord shall operate and maintain the Common Areas in good order and condition consistent with similar commercial properties in the geographic region in which the Plaza is located. Landlord may temporarily close any Common Areas during days the Plaza is not open for business, or on such other days to make repairs or changes, to prevent the accrual of rights to any person or the

public or for other reasonable purposes. Landlord shall have the right to permit entertainment events, the placement of kiosks, carts, advertising and other displays, seating, planters and other improvements in the Common Areas, and to convert the Common Areas to retail areas. In addition, Landlord reserves the right to construct, maintain, and operate lighting and other facilities, temporary and/or permanent improvements and buildings, equipment and signs on all parts of the Common Area; to increase, reduce or change the number, size, height, layout, or locations of buildings, walks, parking, driveways, entrances, exits, and other Common Areas now or hereafter forming a part of the Plaza; to police the Common Area; to restrict parking by tenants and other occupants of the Plaza and their employees, agents and invitees; to discourage or prohibit non-customer parking; to employ and discharge all personnel with respect to maintenance operations and policing of equipment of said Common Area. Landlord, in its sole discretion, may delegate its rights and duties herein with regard to the Common Area (or any part thereof) to an independent contractor or management company, which may or may not be an affiliate of Landlord (it being agreed that to the extent required by Landlord in its sole discretion, Tenant shall pay the costs of such service directly to the provider of such services prior to delinquency, and Tenant's failure to do so shall be an Event of Default under this Lease to the same extent as a failure to pay Additional Rent wherein due). Notwithstanding anything to the contrary in this Lease, in the event that Landlord does not maintain the entire Common Areas in the Plaza, in that the other tenants occupying outparcels located within the Plaza have the right to and may maintain all or a portion of the Common Areas, then and in that event, for the length of time such conditions may exist, Landlord's responsibility shall only be towards the maintenance of those portions of the Common Areas not maintained by other tenants occupying outparcels located within the Plaza located within the Plaza.

Section 4.02 **Exterior Common Area Expenses.** Subject to the further provisions of this Section 4.02, Tenant agrees to pay during the Term as part of Tenant's obligation to pay Minimum Annual Rent and Additional Rent (as set forth in Section 1.05 of the Indenture) "Tenant's Share of Exterior Common Area Expenses" (as defined in Section 4.04 below), after first deducting the amount of Exterior Common Area Expenses, if any, paid by any other tenants so that no additional amounts beyond Minimum Annual Rent shall be payable by Tenant for Tenant's Share of Exterior Common Areas Expenses. For purposes of this Lease, the term "**Exterior Common Area Expenses**" shall mean all costs and expenses incurred by Landlord in operating, maintaining, repairing, lighting, signing, cleaning, painting, striping, insuring, equipping, staffing, securing, and policing of the exterior Common Area of the Plaza, including, without limitation, all costs associated with the following items or services, which may be incurred by Landlord in its sole discretion: (a) alarm system, patrol services (it being agreed that Landlord shall not have any obligation to provide such services) and fire protection; (b) maintenance of irrigation systems; (c) insurance, including, without limitation, liability insurance for personal injury, death and property damage to the extent not reimbursed by Tenant as part of the Insurance Charge under Section 6.08 below; (d) surcharges levied upon or assessed against parking spaces or areas, payments toward mass transit or carpooling facilities or otherwise as required by federal, state or local governmental authorities; (e) all landscaping, including, but not limited to, lawn maintenance, new plantings and replacement of existing landscaping; (f) repairing, cleaning, sweeping, painting, striping, replacing and repaving of paving, curbs, walkways, guardrails, bumpers, fences, screens, flagpoles, bicycle racks, signs and other markers, landscaping, drainage pipes, ducts, conduits, lighting facilities, parking facilities and all other exterior Common Area site amenities; (g) maintenance, repair and replacement of utility systems serving the exterior portions of the Plaza, including, but not limited to, water, sanitary sewer and storm water lines and drainage systems, electrical, gas, telephone and lighting systems (including bulbs, poles, and fixtures) and other utility lines, pipes and conduits, and all payments of utility charges in connection with any of the foregoing systems; (h) maintenance, repair, replacement and substitution of and for all portions of the buildings and parking structures in the Plaza (but excluding the Premises and premises leased to other tenants), including, but not limited to, walls, roofs and roof flashings, canopies, skylights, signs, planters, benches, fire exits, doors and hardware, windows, glass and glazing; (i) inspection, maintenance, repair and acquisition costs (including depreciation) of any and all machinery and equipment used in the operation and maintenance of the exterior Common Areas, including personal property taxes and other charges and taxes incurred in connection with such equipment; (j) removal of ice and debris; (k) management fees charged for management of the Plaza; (l) all materials, supplies and services purchased or hired in connection with the operation of the exterior Common Area; (m) compensation and benefits paid to any and all personnel, including, without limitation, security and maintenance persons, secretaries, bookkeepers and other personnel related to the operation of the exterior Common Area; (n) seasonal decorations; (o) any necessary replacements or renovations in order to comply with any governmental statute, ordinance, regulation or code; (p) an overhead administrative cost allowance in the amount of fifteen percent (15%) of the total Exterior Common Area Expenses, less and excluding the amount of Exterior Common Area Expenses, if any, paid by any other tenants; and (q) maintenance of and compliance with federal, state or local governmental ambient air and environmental standards.

NOTWITHSTANDING THE FOREGOING, TENANT'S SHARE OF EXTERIOR COMMON AREA EXPENSES SHALL BE PAID BY TENANT AS PART OF MINIMUM ANNUAL RENT AS SET FORTH IN SECTION 1.05 OF THE INDENTURE AND TENANT AGREES THAT LANDLORD MAY ALLOCATE ANY PORTION OF MINIMUM ANNUAL RENT TO EXTERIOR COMMON AREA EXPENSES AND OTHER CHARGES AS LANDLORD MAY FROM TIME TO TIME IN ITS SOLE DISCRETION DETERMINE TO BE APPROPRIATE. IN ADDITION, TENANT AGREES THAT LANDLORD SHALL NOT BE OBLIGATED TO PROVIDE TENANT WITH ANY STATEMENT RELATING TO THE ACTUAL AND/OR ESTIMATED EXTERIOR COMMON AREA EXPENSES FOR ANY ACCOUNTING PERIOD DURING THE TERM AND/OR LANDLORD'S ALLOCATION OF THE MINIMUM ANNUAL RENT PAID BY TENANT TO SUCH CHARGES.

Section 4.03 **Enclosed Plaza Common Area Expenses.** Subject to the further provisions of this Section 4.03, Tenant agrees to pay during the Term as part of Tenant's obligation to pay Minimum Annual Rent and Additional Rent (as set forth in Section 1.05 of the Indenture) "Tenant's Share of Enclosed Plaza Common Area Expenses" (as defined in Section 4.04 below), after first deducting the amount of Enclosed Plaza Common Area Expenses, if any, paid by the other tenants so that no additional amounts beyond Minimum Annual Rent shall be payable by Tenant for Tenant's Share of Enclosed Plaza Common Area Expenses. That portion of the Plaza which is constructed so that climatic control may be provided therein is hereinafter referred to as the "**enclosed Plaza**". "**Enclosed Plaza Common Area Expenses**" means and refers to the costs incurred by Landlord in connection with the enclosed Plaza

and the interior Common Areas located therein, including, but not limited to, the following: operating, maintaining, repairing, lighting, signing, cleaning, painting, insuring, equipping, staffing, heating and cooling, securing, and policing of the enclosed Plaza and interior Common Areas of the Plaza, including, without limitation, all costs associated with the following items or services, which may be incurred by Landlord in its sole discretion: (a) alarm system, patrol services (it being agreed that Landlord shall not have any obligation to provide such services) and fire protection; (b) maintenance of irrigation systems; (c) insurance, including, without limitation, liability insurance for personal injury, death and property damage to the extent not reimbursed by Tenant as part of the Insurance Charge under Section 6.08 below; (d) surcharges or payments toward mass transit or carpooling facilities or otherwise as required by federal, state or local governmental authorities; (e) all landscaping, including, but not limited to, maintenance, new plantings and replacement of existing landscaping; (f) repairing, cleaning, sweeping, painting, replacing and refurbishment of floors and floor coverings, walkways, guardrails, signs and other markers, landscaping, drainage pipes, ducts, conduits, lighting facilities, and all other interior Common Area and enclosed Plaza amenities; (g) maintenance, repair and replacement of utility systems serving the enclosed Plaza and interior portions of the Plaza, including, but not limited to, water, sanitary sewer and water lines and drainage systems, electrical, gas, telephone and lighting systems (including bulbs, poles, and fixtures) and other utility lines, pipes and conduits, and all payments of utility charges in connection with any of the foregoing systems; (h) maintenance, repair, replacement and substitution of and for all portions of the interior of the buildings of the Plaza (but excluding the Premises and premises leased to other tenants), including, but not limited to, walls, ceilings, canopies, skylights, signs, planters, benches, fire exits, doors and hardware, windows, glass and glazing; (i) inspection, maintenance, repair and acquisition costs (including depreciation) of any and all machinery and equipment used in the operation and maintenance of the interior Common Areas and the enclosed Plaza, including personal property taxes and other charges and taxes incurred in connection with such equipment; (j) reserved; (k) management fees charged for management of the Plaza; (l) all materials, supplies and services purchased or hired in connection with the operation of the enclosed Plaza and interior Common Area; (m) compensation and benefits paid to any and all personnel, including, without limitation, security and maintenance persons, secretaries, bookkeepers and other personnel related to the operation of the enclosed Plaza and interior Common Area; (n) seasonal decorations; (o) any necessary replacements or renovations in order to comply with any governmental statute, ordinance, regulation or code; (p) an overhead administrative cost allowance in the amount of fifteen percent (15%) of the total enclosed Plaza and interior Common Area Expenses, less and excluding the amount of Enclosed Plaza Common Area Expenses, if any, paid by any of the other tenants; and (q) maintenance of and compliance with federal, state or local governmental ambient air and environmental standards.

Tenants at the Plaza whose premises have direct access to or from the enclosed Plaza or whose premises is otherwise located within the enclosed Plaza (as reasonably determined by Landlord) shall pay a share of the Enclosed Plaza Common Area Expenses as set forth in this Section 4.03.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN CONTAINED, TENANT'S SHARE OF ENCLOSED PLAZA COMMON AREA EXPENSES (AS DEFINED IN SECTION 4.04 BELOW) SHALL BE PAID BY TENANT AS PART OF MINIMUM ANNUAL RENT AS SET FORTH IN SECTION 1.05 OF THE INDENTURE ABOVE AND TENANT AGREES THAT LANDLORD MAY ALLOCATE ANY PORTION OF MINIMUM ANNUAL RENT TO ENCLOSED PLAZA COMMON AREA EXPENSES AND OTHER CHARGES AS LANDLORD MAY FROM TIME TO TIME IN ITS SOLE DISCRETION DETERMINE TO BE APPROPRIATE. IN ADDITION, TENANT AGREES THAT LANDLORD SHALL NOT BE OBLIGATED TO PROVIDE TENANT WITH ANY STATEMENT OR ACCOUNTING RELATING TO THE ACTUAL AND/OR ESTIMATED ENCLOSED PLAZA COMMON AREA EXPENSES FOR ANY ACCOUNTING PERIOD DURING THE TERM AND/OR LANDLORD'S ALLOCATION OF THE MINIMUM ANNUAL RENT PAID BY TENANT TO SUCH CHARGES.

Section 4.04 Tenant's Share of Exterior Common Area Expenses and/or Enclosed Plaza Common Area Expenses. For purposes of this Article 4, "**Tenant's Share of Exterior Common Area Expenses**" will be calculated as a fraction, the numerator of which is the square feet of floor area in the Premises and the denominator of which is the average of the total amount of square feet of leasable floor area in the Plaza which is occupied and open for business as of the last day of each month during such calendar year, excluding that of the Excluded Areas ("**Leased Floor Area**"). For purposes of this Article 4, "**Tenant's Share of Enclosed Plaza Common Area Expenses**", will be calculated as a fraction, the numerator of which is the square feet of floor area of the Premises and the denominator of which is the average of the total amount of square footage of the leasable floor area of all the premises in the Plaza having direct access to or from the enclosed Plaza or located within the enclosed Plaza (as reasonably determined by Landlord) which are open and occupied on the last day of each calendar month during such calendar year. However, for purposes of clarifying the foregoing definition and in calculating Tenant's Share of certain items of Common Area Expenses (or components thereof), the denominator of the fraction shall exclude the square footage of floor area leased to or occupied by all other tenants in the Plaza who do not include such items within the calculation of such other tenant's share of Common Area Expenses (or components thereof) because such other tenants are individually responsible for the item in question (i.e., if a tenant provides for its own trash removal and the cost of trash removal is not part of such tenant's Common Area Expense obligation, that tenant's floor area shall be excluded from the denominator in determining such tenant's share of trash removal costs). As used in this Lease, the term "**Excluded Areas**" shall mean any premises used in connection with the operation of a theater; all office space and storage areas; all mezzanines; all basement space and any non-retail portion of the Plaza, including without limitation space used as a postal service facility, recruiting Plaza, police station or any other governmental facility, community room, child care Plaza, museum or conference facility; the space occupied by any and all kiosks, carts and temporary or short term tenants of the Plaza; and any Plaza seating areas of restaurant-type occupants.

NOTWITHSTANDING THE FOREGOING, AS SET FORTH IN SECTION 1.05 OF THE INDENTURE ABOVE, LANDLORD AND TENANT HEREBY AGREE AND ACKNOWLEDGE THAT THE AMOUNT OF MINIMUM ANNUAL RENT REQUIRED BE PAID BY TENANT UNDER THIS LEASE INCLUDES AN AMOUNT ATTRIBUTABLE TO TENANT'S SHARE OF EXTERIOR COMMON AREA EXPENSES AND TENANT'S SHARE OF ENCLOSED PLAZA COMMON AREA EXPENSES AND CONSEQUENTLY, TENANT SHALL

HAVE NO OBLIGATION DURING THE TERM TO PAY AN ADDITIONAL SEPARATE AMOUNT FOR SUCH EXPENSES.

ARTICLE 5 TAXES

Section 5.01 Taxes Defined. “Taxes” means all real or personal property taxes and assessments whether general, special or extraordinary levied or assessed upon the land of, buildings on and improvements to the Plaza or the installation in the Plaza of any fixtures, machinery or equipment, and including any form of tax, assessment, license fee, tax or excise on rent, or any other levy, charge or other imposition imposed by any applicable public or governmental authority in connection with the use, occupancy or possession of, or any interest in the Plaza, reduced by amounts payable as Taxes by occupants of any Excluded Areas. Taxes will include: any assessment or reassessment related to any change of ownership of any interest in the Plaza or any portion of thereof held by Landlord or any addition or improvement to the Plaza or a portion thereof; any impositions in substitution of any impositions now or previously included within real property taxes; any impositions allocable to or measured by the area of the Premises or any rents or other charges payable under this Lease, including any gross receipt income tax or excise tax levied by any applicable governmental authority (but in calculating any such gross receipt or excise tax, the rent received will be calculated as if the rent from the Plaza is the only rent received by Landlord); any business license fees or charges (including interest thereon whether same is paid in installments) and all reasonable costs incurred by Landlord in reviewing, evaluating, contesting, appealing or negotiating with public authorities, including reasonable consulting, appraisal and attorneys’ fees and expenses. Taxes will also include any assessment, reassessment, tax, fee, levy, or charge in addition to, or in substitution, partially or totally, or any assessment, tax, fee, levy or charge previously included within the definition of real property tax, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in June, 1978, and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, refuse removal and for other governmental services formally provided without charge to property owner’s or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, reassessments, taxes, fees, levies and charges and all similar assessments, reassessments, taxes, fees, levies and charges imposed now or hereafter will be included within the definition of Taxes for purposes of this Lease. Taxes will not include: any interest or penalty on delinquent Taxes (unless such interest or penalties are caused by Tenant’s failure to pay Tenant’s Share of Taxes as it becomes due in which event Tenant shall be solely responsible for such penalties and interest); except as described above, or unless in direct substitution for the Taxes described above, any inheritance, estate, succession, documentary transfer, gift, franchise, corporation, federal or state net income, profit, business or capital levy tax or any other tax which is measured by the net income or profit of Landlord. Where any Taxes may be paid in annual installments, only the amount of the annual installment, plus statutory interest, levied in such year will be included within the computation of Taxes for such year.

Section 5.02 Tenant’s Share of Taxes. Subject to the further provisions of this Section 5.02 for each calendar year or fiscal year during the Term, Tenant shall pay Landlord as part of Minimum Annual Rent as set forth in Section 1.05 of the Indenture and as Additional Rent Tenant’s Share of all Taxes (as reasonably determined by Landlord) and Tenant agrees that Landlord may allocate any portion of Minimum Annual Rent to Tenant’s Share of Taxes and other charges as Landlord may from time to time in its sole discretion determine to be appropriate so that no further amount beyond the amount due from Tenant for Minimum Annual Rent shall be payable by Tenant for Tenant’s Share of Taxes. In addition, Tenant agrees that Landlord shall not be obligated to provide Tenant with any statement or accounting relating to the actual and/or estimated Taxes for any accounting period during the Term and/or Landlord’s allocation of the Minimum Annual Rent paid by Tenant to such charges.

NOTWITHSTANDING THE FOREGOING, BECAUSE TENANT’S SHARE OF TAXES IS INCLUDED WITHIN THE MINIMUM ANNUAL RENT, TENANT WILL NOT HAVE THE RIGHT TO CONTEST TAXES OR REQUIRE LANDLORD TO DO SO.

Section 5.03 Taxes on Tenant’s Property. In addition to paying Tenant’s Share of Taxes as part of Minimum Annual Rent, Tenant shall pay before due all taxes, assessments, license fees and public charges imposed on its interest in this Lease, business operation, trade fixtures and other personal property, and tenant improvements on the Premises. In the event any such items are levied against Landlord or Landlord’s property, then (a) such assessment will be equitably divided between Landlord and Tenant so that Tenant will pay only its equitable portion of such assessment, and (b) Tenant shall pay to Landlord within thirty (30) days of billing, as Additional Rent, that part of such taxes for which Tenant is liable under this Lease. No taxes or other charges paid by Tenant under this Section 5.03 will be included within Taxes of which Tenant is required to pay a share under the above Sections of this Article 5, and in no event are the taxes applicable to Tenant under this Section 5.03 included in the Minimum Annual Rent.

ARTICLE 6 INSURANCE, SUBROGATION AND INDEMNITY

Section 6.01 Tenant’s Insurance.

(a) Tenant shall keep in force with companies licensed to do business in the state or commonwealth where the Plaza is located, during the Term and such other times as Tenant occupies the Premises, the following insurance: (i) Commercial General Liability Insurance on the Premises and the business operated in or from the Premises, including coverage against assumed or contractual liability under this Lease, with minimum limits for bodily injury, property damage or personal and advertising injury of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) general aggregate; (ii) Business Auto Liability Insurance which insures against bodily injury and property damage claims arising out of ownership, maintenance or use of any type of automobile, and which affords limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) each coverage and policy limit; (iii) Workers Compensation Insurance in

statutory limits for all employees (which worker's compensation policy must include a Waiver of Subrogation endorsement for the benefit of Landlord) and Employers Liability Insurance which affords limits of not less than ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) each coverage and policy limit; and (iv) if applicable, Liquor Liability or Dram Shop Insurance in an amount equal to ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) each occurrence and policy limit (if Tenant is expressly permitted to sell alcoholic beverages from the Premises as part of its Permitted Use).

(b) Tenant shall deliver to Landlord, at the address of the Plaza specified in the Indenture to the attention of the Chief Executive Officer, certificates of the insurance required by this Section 6.01 during the Term, so that Landlord remains in possession of current certificates for the entirety of the Term. Tenant may maintain coverage under a policy of blanket insurance which meets the requirements of Section 6.01(a) and which provides that any general aggregate limit under Tenant's liability insurance applies separately to the Premises and other locations of Tenant, except that there will be no requirement that the aggregate limit apply separately to the Premises if the general aggregate limit is FIFTY MILLION AND 00/100 DOLLARS (\$50,000,000.00) or more. The insurance company or companies providing Tenant's insurance will have a Best Rating of A-VIII or better. If Tenant breaches its obligation to obtain and keep in effect any insurance required by this Section, Tenant shall indemnify and hold Landlord harmless against any loss that would have been covered by such insurance.

Section 6.02 Notice to Landlord. The policies of insurance and certificates required by Section 6.01 above will provide that each policy of Tenant will not be subject to cancellation, termination or change, except upon not less than thirty (30) days' prior written notice to Landlord, except that in the event of a termination for non-payment, only ten (10) days' notice will be required. The insurance policies required to be maintained by Tenant pursuant to Section 6.01, 6.01(a)(i), (ii), (iii), (iv) and (v) shall name Landlord and Landlord's management agent (and any other person or entity as may be requested by Landlord in writing) as additional insureds, as their respective interests may appear, and will be primary, non-contributory and not in excess of any other coverage maintained by Landlord or any other party. Such policies of insurance will contain a provision substantially as follows: "Except with respect to limits of insurance, or any rights or duties specifically assigned in this coverage part of insurance to the first named insured, this insurance applies as if each named or additional insured were the only named or additional insured, and separately to each insured against whom a claim is made or suit is brought." The insurance policy required to be maintained by Tenant pursuant to Section 6.01(a)(vi) and (vii) shall name Landlord and Landlord's Management Agent (and any other person or entity as may be required by Landlord in writing) as loss payees.

Section 6.03 Increased Premiums. Tenant may not do or authorize to be done anything that will violate the provisions of Landlord's insurance policies or prevent Landlord from procuring policies in amounts and companies reasonably selected by Landlord. Tenant shall not be required to pay any increase in rates of insurance carried by Landlord attributable to Tenant's operation of a business for the Permitted Use set forth in the Indenture. If anything else Tenant does, authorizes or fails to do causes an increase in Landlord's insurance premiums in violation of this provision, Tenant shall pay the amount of such increase to Landlord within thirty (30) days after billing. Tenant shall, at its expense, comply with all requirements of the insurance underwriters or any governmental authority having jurisdiction which are necessary for the maintenance by Landlord of reasonable "All Risk" property insurance.

Section 6.04 Landlord's Insurance. Landlord shall carry (through the purchase of insurance policies, blanket insurance policies or a self-insurance plan) the following: (a) Commercial General Liability Insurance on that portion of the Plaza which Landlord owns or which Landlord leases as a tenant under a ground lease or sublease, with minimum limits for bodily injury or death and property damage of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00) per occurrence and THREE MILLION AND 00/100 DOLLARS (\$3,000,000.00) general aggregate; and (b) "All Risk" property insurance, (including, at Landlord's option, rent loss, earthquake and flood) covering the improvements in and to that portion of the Plaza which Landlord owns or which Landlord leases as a tenant under a ground lease, in an amount not less than eighty percent (80%) of the replacement cost thereof (excluding the cost of excavations, foundations and footings), with such commercially reasonable deductibles as Landlord deems advisable. Additionally, Landlord may carry: (i) earthquake and/or flood damage insurance; and (ii) rental income insurance; and (iii) any other forms of insurance Landlord may deem appropriate or any lender with a security interest in the Plaza may require. At Landlord's option, all such insurance may be carried under any blanket or umbrella policies which Landlord has in force for other buildings and projects. In addition, at Landlord's option, Landlord may elect to self-insure all or any part of such required insurance coverage.

Section 6.05 Subrogation. Each party, on behalf of itself and on behalf of anyone claiming under or through it by way of subrogation or otherwise, waives all rights and causes of action against the other party and the officers, employees, agents, servants or invitees of the other party, for damage to or destruction of real or personal property to the extent caused by any peril normally covered under "causes-of-loss Special Form" policies of insurance (or its equivalent) issued in the geographic area in which the Plaza is located (whether or not such party actually carries such insurance policies), or by any peril actually covered under the property insurance maintained by such party. This waiver will be complete and total, even if such loss or damage may have been caused by the negligence of the other party, its officers, employees, agents, servants or invitees and will not be affected or limited by the amount of insurance proceeds available to the waiving party, regardless of the reason for such deficiency in proceeds. However, if one party's insurance carrier prohibits waiver of subrogation, then the other party's release and waiver will become null and void, it being understood that in this instance each waiver is given in consideration for the other. Each party covenants that its insurance policies will contain waiver of subrogation endorsements, and that if such endorsements are about to become unavailable, it will give the other party not less than thirty (30) days' prior written notice of such impending unavailability. Tenant shall cause all other occupants of the Premises claiming by, under or through Tenant to execute and deliver to Landlord a waiver of claims similar to the waiver in this Section and to obtain such waiver of subrogation endorsements.

Section 6.06 Indemnification.

(a) Except for the gross negligence or willful misconduct of Landlord, Tenant shall indemnify, save harmless and, at Landlord's option, defend Landlord, Landlord's management agent, and mortgagee, if any, and their respective principals, officers, agents, representatives, servants, employees, and contractors from and against all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and expenses incurred by them in connection with any loss of life, personal injury or damage to property or business arising out of or in any way connected with the Premises or Tenant's operations, the condition, use, maintenance, repair or occupancy of the Premises, or in any way arising out of the activities in the Premises, Common Areas, or other portions of the Plaza, of the Tenant or its sublessees or their respective agents, employees, servants, invitees or contractors.

(b) Except for the negligence or willful misconduct of Tenant, Landlord shall indemnify, save harmless and, at Tenant's option, defend Tenant from and against all claims, actions, damages, liability and expense, including without limitation reasonable attorneys' fees and expenses incurred by Tenant, in connection with any loss of life, personal injury or damage to property or business arising out of or in any way connected with Landlord's use or occupancy of the Common Areas or Landlord's operations, conduct or activities in the Plaza.

Section 6.07 Waiver and Release. Unless, and then solely to the extent that, such damage is caused by the gross negligence or willful misconduct of Landlord, Landlord's management agent or their respective agents, servants, employees or contractors, neither Landlord, Landlord's management agent nor their respective agents, servants, employees or contractors will be liable for, and Tenant hereby waives and releases all claims for loss of life, personal injury or damage to property or business sustained by Tenant or any person claiming through Tenant resulting from any accident, casualty or occurrence in or upon any part of the Plaza, including without limitation claims or damage resulting from: any equipment or appurtenances becoming out of repair; Landlord's failure to keep any part of the Plaza in repair; injury done or caused by wind, water or other natural element; any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water, steam pipes, stairs, porches, railings or walks; broken glass; the backing up of any sewer or downspout; the bursting, leaking, or running of any tank, tub, washstand, water closet, waste pipe, drain or any other pipe or tank in or about the Premises; the escape of steam or hot water; water, snow or ice being upon or coming through the roof or any other place on or near the Premises; the falling of any fixture, plaster, ceiling tile or stucco; damage to or loss by theft or otherwise of property of Tenant or others; and acts or omissions of persons in the Premises or other tenants or occupants of the Plaza.

Section 6.08 Insurance Charge. Subject to the further provisions of this Section 6.08, beginning on the Turnover Date, Tenant shall pay Landlord, as part of Minimum Annual Rent (as set forth in Section 1.05 of the Indenture) and Additional Rent Tenant's Share (as reasonably determined by Landlord) of the cost of all policies of insurance required to be maintained or maintained by Landlord pursuant to Section 6.04 of this Lease ("**Landlord's Insurance Costs**"). Tenant agrees that Landlord may allocate any portion of Minimum Annual Rent to Landlord's Insurance Costs bills and other charges as Landlord may from time to time in its sole discretion determine to be appropriate. In addition, Tenant agrees that Landlord shall not be obligated to provide Tenant with any statement or accounting relating to the actual and/or estimated Landlord's Insurance Costs for any accounting period during the Term and/or Landlord's allocation of Minimum Annual Rent paid by Tenant to such charges.

ARTICLE 7 CONDUCT OF BUSINESS BY TENANT

Section 7.01 Use of the Premises. Tenant shall use the Premises solely for the Permitted Use specified in Section 1.09 of the Indenture. Tenant shall conduct business in the Premises under the Trade Name specified in Section 1.08 of the Indenture, which Trade Name Tenant represents that it has the right to use, and no other trade name may be used without the prior written approval of Landlord. Tenant acknowledges that the Permitted Use is nonexclusive, and that other tenants may sell items identical or similar to those sold by Tenant.

Section 7.02 Continuous Operation. Tenant shall open and occupy the Premises no later than the Turnover Date and thereafter continuously operate and conduct business in all of the Premises during all hours on all days that the Plaza is open for business to the public, including, without limitation, mandatory holiday house set by Landlord. Tenant shall maintain an adequate stock of merchandise and staff to service the usual and ordinary demands of its customers, using only such minor portions of the Premises for storage and office purposes as are reasonably required. Except for temporary closures in connection with casualty and condemnation (in which event the terms of Article 12 and 13 shall apply, respectively), if Tenant fails to comply with the provisions of this Section, in addition to all other remedies available to Landlord under this Lease and at law, Tenant shall pay as liquidated damages and not as a penalty the amount of ONE HUNDRED AND 00/100 DOLLARS (\$100.00) per hour or fraction of an hour (up to a maximum of FIVE HUNDRED AND 00/100 DOLLARS (\$500.00) per day) that Tenant is not open and operating, which liquidated damages will be in addition to all other amounts due under this Lease. Landlord and Tenant agree that this amount is not a penalty and represents a reasonable estimate of the damages that Landlord would suffer if Tenant fails to comply with this provision.

Section 7.03 Radius Restriction. If during the Term and any extensions thereof Tenant and/or any affiliate of Tenant directly or indirectly operates, manages or has any interest in any other store or business operated under the same or similar trade name as Tenant within five (5) miles of any outside boundary line of the Plaza (excluding Tenant's this Lease), then in addition to Landlord's other rights and remedies pursuant to the terms of this Lease and at law and in equity, Landlord will have the right to terminate this Lease upon thirty (30) days' notice to Tenant.

Section 7.04 Use Restrictions. In addition to the restricted uses set forth on **Exhibit "D"**, attached hereto and incorporated herein, Tenant may not: use or permit any person to use the Premises for conducting a second-hand, clearance, outlet, off-price or discount store, auction, distress or fire sale, bankruptcy sale, inventory liquidation sale, or lost-our-lease, moving or other going-out-of-business sale or for any use in violation of any applicable

governmental laws, ordinances, rules, regulations, codes or other governmental restrictions or requirements; sell, distribute or permit at or within the Premises any firearms (other than those carried by licensed security officers in which event Tenant shall maintain security guard general liability insurance in an amount reasonably acceptable to Landlord), or any items that may reasonably be construed to be pornographic or intended for use in connection with narcotics or other unlawful substances; permit any merchandise or other items in any vestibule or entry of the Premises or outside the Premises; permit any sound system that is audible outside the Premises or any objectionable advertising medium that is visible outside the Premises; solicit business, distribute handbills or other advertising matter in the Common Areas; permit the loading, unloading, parking or standing of delivery or other vehicles outside any area designated for such use, nor permit any use of vehicles which interfere with the use of any Common Areas; commit or permit waste or a nuisance upon the Premises; or (if Tenant is expressly permitted to sell food in the Premises as part of its permitted use set forth in this Lease) offer samples of Tenant's merchandise from the Premises.

Section 7.05 Conditions of Use. Tenant shall, at Tenant's sole cost and expense, at all times during the Term: operate only in a manner consistent with the general high standards of merchandising in the Plaza; store and dispose of trash at Tenant's cost in odor proof, pest-proof containers within the interior of the Premises shielded from the view of the general public (or in such other area designated by Landlord for such use, including trash compactors now or hereafter serving the Plaza) and it being agreed that Tenant shall at times at its sole cost and expense contract separately for the regular removal of trash from the Premises with a trash contract reasonably approved by Landlord; keep the Premises clean, free of insects, pests, objectionable noises, odors or nuisances; keep all mechanical equipment free of vibration and noise and in good working order and condition; light the show windows of the Premises and all signs each night for not less than one hour after the Premises is permitted to be closed; store in the Premises only merchandise that Tenant intends to sell at the Premises; and comply with all applicable governmental laws, ordinances, rules, regulations, codes or other governmental restrictions or requirements, including without limitation those with authority over insurance rates, with respect to the use or occupancy of the Premises.

Section 7.06 Other Services. Landlord may make available additional services to the Premises, including without limitation pest control, trash removal, cleaning and maintenance, and in such event Tenant shall utilize such services at Tenant's expense (whether billed directly to Tenant by such provider or billed by Landlord). The charge for such services will be competitive within the geographical area in which the Plaza is located.

Section 7.07 Rules and Regulations. Landlord may at any time adopt and/or modify reasonable rules and regulations applicable to the Premises and the Plaza. Notice of such rules and regulations and of any amendments thereto will be given to Tenant by delivering a copy to Tenant or Tenant's store manager, and Tenant thereafter agrees to comply with the same. Landlord agrees that any such rules and regulations (a) shall be applied uniformly to substantially all similarly situated retail tenants of the Plaza, (b) shall neither materially increase Tenant's obligations nor materially decrease Tenant's rights as expressly provided under this Lease, and (c) shall be instituted with at least thirty (30) days' prior notice. The rules and regulations in effect as of the date of this Lease are attached hereto as **Exhibit "C"**.

ARTICLE 8 REPAIRS AND MAINTENANCE

Section 8.01 Tenant's Obligations. Except for damage thereto caused by the gross negligence or willful misconduct of Landlord, its agents, servants, employees, or contractors, Tenant, at its cost and expense, shall keep all parts of the storefront, entrance and interior of the Premises not specifically required to be maintained by Landlord under this Article 8 in good order and repair, in a safe, clean and orderly condition, including without limitation reasonable periodic painting and making all non-structural repairs and replacement to the Premises and its component systems. Except for damage thereto caused by the gross negligence or willful misconduct of Landlord, its agents, servants, employees, or contractors, the foregoing will obligate Tenant to repair, maintain and replace, without limitation, the following: the storefront; all entrances and vestibules; partitions; the glass in all doors and windows of the Premises; all interior portions of the Premises; all fixtures and signs; all of the following or components thereof exclusively serving the Premises: plumbing, electrical, sprinkler, heating, ventilation and air conditioning systems (including the HVAC System if exclusively serving the Premises), if any, mechanical systems and sewer lines; and all other apparatus or equipment which were installed by or for Tenant outside of the Premises. Tenant shall cause the Premises to comply with all applicable governmental laws, ordinances, rules, regulations, codes or other governmental restrictions or requirements. If Tenant fails to perform Tenant's maintenance obligations hereunder within thirty (30) days following notice from Landlord, Landlord will have the right at its option to perform such work. In such event, Tenant shall reimburse the actual, reasonable costs incurred by Landlord in performing such work within thirty (30) days after billing, together with an administrative fee equal to fifteen percent (15%) of the cost of such work to reimburse Landlord for its administrative expense in connection with such work, as Additional Rent under this Lease. Tenant hereby waives the provisions of any law permitting repairs by a tenant at the expense of Landlord (including the provisions of California Civil Code Section 1942 and any successor statutes of a similar nature).

Section 8.02 Landlord's Obligations. Landlord shall as part of Exterior Common Area Expenses or Enclosed Plaza Common Area Expenses, as the case may be, keep the foundations, structural roof and structural portions of the walls of the Premises, exterior plumbing not required to be maintained by Tenant hereunder, and utility lines not exclusively servicing the Premises (except to the extent that the same are the obligations of the appropriate utility company) in good order, repair and condition, except for damage thereto caused by the negligence or willful misconduct of Tenant, its agents, servants, employees, or contractors, or caused by any use of the Premises by Tenant or by alterations, additions or improvements made by Tenant or anyone claiming through Tenant in which event, Tenant shall be solely responsible for the costs of same. Landlord shall begin the required repairs as soon as reasonably possible after receipt of written notice from Tenant or after Landlord has actual knowledge of the need for such repairs. Any difference in floor level, any shifting of the floor slab, or deviation in finished floor height will not be deemed a structural defect requiring repair by Landlord, but rather a normal construction practice which will be Tenant's responsibility to appropriately plan for in its construction of the Premises. The provisions of this

Section 8.02 will not apply in the event of casualty or condemnation, in which event the applicable provisions of Articles 12 and 13 of this Lease will control Landlord's obligations.

Section 8.03 Condition Upon Surrender. Upon any surrender of the Premises, Tenant shall deliver the Premises to Landlord in good order, condition and state of repair, ordinary wear and tear and damage by casualty excepted to the extent not required to be repaired by Tenant. Tenant shall deliver all keys to the Premises and notify the Chief Executive Officer of the Plaza in writing of all combinations on locks, safes and vaults, if any, in the Premises which Landlord does not require Tenant to remove in accordance with Article 15 of this Lease.

ARTICLE 9 UTILITY SERVICES

Section 9.01 Utilities and Payments by Tenant.

(a) Landlord agrees that it will cause to be made available to Tenant upon the Premises facilities for the delivery to and distribution within the Premises of water, power, electricity and telephone service, and for the removal of sewage from the Premises. Tenant agrees to use such utilities with respect to the Premises. Tenant agrees not to keep any trash, garbage, waste or other refuse on the Premises except in sanitary containers prepared for collection and located in an area within reasonable proximity to the Premises as designated by Landlord from time to time ("**Trash Area**"). Tenant shall keep all containers or other equipment used for storage of such materials in a clean and sanitary condition.

(b) Tenant agrees, at its own expense, to pay for all water, power (it being agreed that Tenant shall at times at its sole cost and expense contract separately for provision of electrical power to the Premises with a power company reasonably approved by Landlord), trash removal (it being agreed that Tenant shall at times at its sole cost and expense contract separately for the regular removal of trash from the Premises with a trash contract reasonably approved by Landlord), gas, electric current, telephone and all other similar utilities used by Tenant in the Premises (including, without limitation, all sales, use and other taxes imposed thereon by any governmental authority) from and after the earlier of: commencement of Tenant's Work or the Turnover Date. Tenant agrees that Tenant shall, at Tenant's sole cost and expense, install any check meters or sub-meters required by Landlord as a part of Tenant's Work if the same are not already existing as of the Turnover Date with respect to the Premises. In the event that any utilities are furnished by Landlord whether sub-metered or otherwise, then and in that event Tenant shall pay Landlord for such utilities, including an administrative charge for Landlord's supervision of such utilities and reimbursement for penalties for usage or other surcharges imposed by any utility company. At Landlord's option, Landlord may estimate Tenant's utility costs for each calendar year, in which event, Tenant shall pay to Landlord in monthly installments one-twelfth (1/12th) of the annual estimate on the first (1st) day of each calendar month. Landlord may adjust the utility estimates charged to Tenant at the end of any calendar quarter on the basis of Landlord's experience and reasonably estimated costs. Following the end of each calendar year, Landlord shall furnish Tenant with a statement covering the calendar year just expired, showing the total utility expenses for the preceding calendar year, the amount of Tenant's share of such utility expenses, and the payments made by Tenant with respect to the calendar year set forth above. If Tenant's share of the utility expenses exceeds Tenant's payments so made, Tenant shall pay Landlord the deficiency within ten (10) days after receipt of such statement. If such payments exceed Tenant's share of such utility expenses, Tenant shall be entitled to credit the excess against payments for utility expenses next thereafter to become due Landlord as set forth above. Failure of Tenant to pay any of the charges required by this Section 9.01 to be paid when due shall constitute a material default under the terms of this Lease.

Section 9.02 Other Utility Services. If Tenant requires the use of telecommunication services, including without limitation satellite service, Internet access, credit card verification or other data transmission, Tenant shall contract for such services with one of the service providers designated by Landlord for the Plaza provided that the charge for such services is competitive within the geographical area in which the Plaza is located. Neither Tenant nor its service providers shall place telecommunication or any other facilities on the roof or anywhere else outside the Premises without the prior written approval of Landlord.

Section 9.03 Failure or Interruption. Landlord will not be liable to Tenant for damages or otherwise if any utility or other service is unavailable, fails, or is interrupted, nor will any such unavailability, failure or interruption relieve Tenant from its obligations under this Lease, except as provided in this Section 9.03. Landlord shall not have any obligation except as otherwise explicitly provided herein to provide Tenant any utility service or any facilities for the delivery thereof to the Premises.

Section 9.04 HVAC System. Tenant hereby acknowledges that an independent heating, ventilation and air conditioning system ("**HVAC System**") will service the Premises, the electricity for which shall be separately sub-metered at Tenant's sole cost and expense and for which Tenant shall make payment pursuant to the same provision and in the same manner as set forth in Section 9.01(b) above. Except as otherwise expressly provided in this Section 9.04 below, Landlord shall provide the existing HVAC system serving the Premises in its "AS-IS" condition. Tenant shall be responsible for providing air conditioning and heat to the Premises and Tenant hereby acknowledges that Landlord shall have no obligation whatsoever to provide such services in the Premises. Tenant shall, at Tenant's sole cost and expense, pay all costs to operate the HVAC System, and shall repair and maintain such HVAC System in good working condition (which shall include replacements, as necessary). All replacements shall be of a quality equal to or exceeding that of the original. However, at the sole option of Landlord, (a) Tenant shall contract with a service company approved by Landlord for the regular maintenance, repair and/or replacement (when necessary) of the HVAC System serving the Premises and shall provide Landlord with a copy of any service contract within the earlier of thirty (30) days following its execution or ten (10) days following Landlord's request for such contract, or (b) Landlord may contract with a service company of its own choosing (or provide such service itself) for the maintenance, repair and/or replacement of the HVAC System serving the Premises and collect a reserve or bill Tenant for the cost of same. The sum so billed to Tenant shall become due to Landlord within thirty (30) days following the date Landlord sends such bill to Tenant. In either event, Landlord may elect to be

responsible for the replacement, as necessary, of the HVAC System or any elements, components or portions thereof, in which event Landlord shall have the right to establish and collect from Tenant a reasonable reserve to be maintained by Landlord and used for the purpose of paying the cost of such replacement. Such reserve may, at Landlord's option, either be collected as part of the Exterior Common Area Expenses or Enclosed Plaza Common Area Expenses, as the case may be, or billed to Tenant separately (in which event, such bill shall be paid by Tenant within thirty (30) days following the date Landlord forwards such bill to Tenant). Notwithstanding anything to the contrary contained in this Lease, in the event Tenant's business is an odor, fume and/or grease producing operation and/or involves food preparation, at Landlord's option, Tenant shall, at its sole cost and expense, design and install an additional independent HVAC System or supplement the existing HVAC System in accordance with Landlord's criteria and which shall be designed to mitigate the odor or fume problems caused by Tenant's operation.

ARTICLE 10 ASSIGNMENT AND SUBLETTING

Section 10.01 Transfers Requiring Landlord Consent.

(a) Except as explicitly set forth in this Article 10, Tenant may not, without Landlord's written consent, either directly or indirectly, either make or permit any of the following: an assignment of all or any portion of Tenant's interest in this Lease; a sublease of all or any portion of the Premises; a sale, assignment pledge or other transfer of shares of stock, partnership interests or other ownership interest in Tenant or any guarantor of this Lease resulting in a change in the voting control of Tenant or any guarantor (except that the sale of stock of a corporation that is the Tenant or any guarantor will not constitute an assignment under this Lease, and Landlord's consent thereto is not required, if the stock of such corporation is, both before and after the sale, traded on a national securities exchange registered with the Securities and Exchange Commission); a sale, assignment, pledge or other transfer of an aggregate of more than twenty-five percent (25%) of the business assets of Tenant or any guarantor; a management or other agreement or arrangement under which Tenant permits any person other than a bona-fide employee of Tenant either to direct, manage or control the day-to-day operations of the business operated in the Premises or to participate in the income or profits derived therefrom; a hypothecation, mortgage, pledge or other grant of a security interest in this Lease; or an attachment, execution or other lien upon Tenant's rights or interest under this Lease. Upon Tenant's submission of a request for Landlord's consent to any such transfer, Tenant shall pay to Landlord Landlord's then standard processing fee and reasonable attorneys' fees and costs incurred in connection with the proposed transfer, which the parties hereby stipulate to be ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00), unless Landlord provides to Tenant evidence that Landlord has incurred greater costs in connection with the proposed transfer. Landlord shall have no liability to Tenant or to any proposed transferee for damages if it is adjudicated that Landlord's consent has been unreasonably withheld and such unreasonable withholding of consent constitutes a breach of this Lease or other duty to Tenant, the proposed transferee or any other person on the part of Landlord. In such event, Tenant's sole remedy shall be to have the proposed transfer declared valid as if Landlord's consent had been duly and timely given (although Tenant shall be entitled to reasonable attorneys' fees if it is determined to be the prevailing party in such litigation). Tenant hereby specifically waives its rights under California Civil Code Section 1995.310 (and any successor provision) and agrees that the rights of Tenant for failure of Landlord to consent to a transfer shall be governed by this Section 10.01.

(b) Landlord may accept rent from any occupant of the Premises and apply such sums to the rent payable by Tenant under this Lease, but no such acceptance of rent will constitute a waiver of any restriction contained in this Article or release Tenant from its obligations under this Lease. Notwithstanding any assignment or subletting of this Lease, Tenant shall remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant, and shall not be released in any manner.

(c) In the event of any assignment or subletting of this Lease, Tenant shall pay Landlord monthly, as Additional Rent, the greater of (i) the excess, if any, of the consideration (whether or not denoted as rent) payable by the assignee or sublessee over the Minimum Annual Rent and other charges payable to Landlord pursuant to this Lease as reasonably determined by Landlord, or (ii) the highest Percentage Rent payable under this Lease by Tenant during the three (3) years immediately preceding such assignment or subletting. Tenant shall pay such sums to Landlord concurrently with the payments of Minimum Annual Rent required under this Lease.

(d) In addition to Landlord's right to approve or disapprove of any proposed assignment or subletting, Landlord shall have the right (except for an assignment or subletting explicitly permitted under this Lease), to be exercised by giving notice to Tenant within forty-five (45) days after receipt of Tenant's request to assign or sublet, to recapture the Premises, or the portion thereof described in the sublease. If notice of such recapture is given and Tenant does not withdraw such request to assign or sublet within twenty (20) days following Tenant's receipt of Landlord's notice to recapture, then such notice shall serve to terminate this Lease with respect to the space involved or, if the proposed assignment or sublease covers the entire Premises and the Term, it shall serve to terminate this Lease, in either case as of the thirtieth (30th) day after the date of Landlord's notice.

(e) The provision against subletting in this Section will apply so as to prohibit Tenant from granting concessions without Landlord's consent for the operation of one or more departments of the business of Tenant. Without limitation, any grant of concessions consented to by Landlord will be subject to the conditions that: (i) each such concession which may be granted by Tenant will be subject to all of the terms and provisions of this Lease; (ii) the Gross Sales from the operation of each such concession will be deemed to be a part of the Gross Sales of Tenant for the purpose of determining Percentage Rent payable to Landlord; (iii) unless otherwise approved in writing by Landlord, such department or departments will be operated only as part of the business operation generally conducted by Tenant on the Premises and under the advertised trade name of Tenant; and (iv) at least seventy-five percent (75%) of the sales floor area of the Premises will at all times be operated directly by Tenant.

Section 10.02 Other Transactions.

(a) Landlord's consent will not be required, nor will Tenant be required to comply with the above conditions in connection with any of the following: (i) the making of a public offering of Tenant's stock registered with the Securities and Exchange Commission; or (ii) any of the following transfer of shares of Tenant's corporate stock or other ownership interests: (A) any transfer made by will or intestacy; (B) any transfers to or among persons who are shareholders or owners of Tenant as of the date of this Lease or members of their families; or (C) any transfer in trust for estate planning purposes.

(b) Tenant may not accomplish through a series of related transactions what is not permitted expressly by the provisions of this Article 10. For example, Tenant may not assign this Lease to a corporation under common control and then transfer the interest in the affiliate/assignee to a non-affiliate by means of a merger, consolidation or sale of stock or assets.

ARTICLE 11 MARKETING SERVICE

Section 11.01 Advertising and Promotion Fund. Landlord may, from time to time (without any obligation to do so), establish an advertising and promotion service designed to furnish and maintain professional advertising and sales promotions for the benefit of all tenants in the Plaza, at such times and in such manner as shall be determined by Landlord. In conjunction therewith, Landlord will establish a separate fund to be known as the "**Promotion Fund**", the proceeds of which are to be expended solely for advertising, promotion, public relations designed to promote the Plaza and administrative expenses related to the same. Tenant hereby agrees to pay monthly as part of Minimum Annual Rent as set forth in Section 1.05 of the Indenture, and as Additional Rent into the Promotion Fund for said advertising and promotion service an amount determined by Landlord as the "**Marketing Service Charge**" so that Tenant will have no additional charge as a result of the same. Tenant shall pay the Marketing Service Charge as part of Minimum Annual Rent as set forth in Section 1.05 of the Indenture above and Tenant agrees that Landlord may allocate any portion of Minimum Annual Rent to the Marketing Service Charge and other charges as Landlord may from time to time in its sole discretion determine to be appropriate. In addition, Tenant agrees that Landlord shall not be obligated to provide Tenant with any statement or accounting relating to the actual and/or estimated Marketing Service Charge for any accounting period during the Term and/or Landlord's allocation of Minimum Annual Rent paid by Tenant to such charges. In addition to payment of the Marketing Service Charge, Tenant shall participate and cooperate in all joint advertising, special sales and promotions sponsored by Landlord.

ARTICLE 12 DAMAGE AND DESTRUCTION

Section 12.01 Damage or Destruction to the Premises.

(a) If the Premises is damaged or destroyed by fire or other casualty insured under the coverage Landlord is required to carry under Article 6 of this Lease, subject to the limitations set forth below, Landlord shall repair such damage. If Landlord fails to complete such repairs within twelve (12) months following the casualty (or such longer period if the work is not capable of being performed by such date (including, without limitation, as a result of Landlord's inability to obtain permits) provided Landlord is diligently working to complete the same), Tenant will have the right to terminate this Lease by written notice to Landlord within thirty (30) days following the end of such construction period. In the event of such termination, the parties will be released from all further obligations under this Lease except for accrued obligations then unpaid or unperformed.

(b) If the Premises is damaged or destroyed by a fire or other casualty (i) which is not insured under the coverage Landlord is required to carry under Article 6 of this Lease, and Landlord at its option elects not to repair the Premises, or (ii) to the extent of more than fifty percent (50%) of the cost to replace the Premises during the Term of this Lease, then either party will have the right to terminate this Lease effective as of the date of such casualty by written notice to the other within sixty (60) days after the damage or destruction. In exercising its termination rights under this Section, Landlord will not unreasonably discriminate between Tenant and other tenants of the Plaza whose premises are similarly affected by the casualty. In the event this Lease is so terminated, the parties will be released from all further obligations under this Lease except for accrued obligations then unpaid or unperformed.

(c) If Landlord is required to repair or reconstruct the Premises pursuant to the provisions of this Lease, its obligation will be limited to the construction of the structural demising walls (without drywall) and roof of the Premises. Tenant shall submit to Landlord for its approval detailed plans and specifications for all other work not required to be performed by Landlord. Upon approval of such plans and specifications and within fifteen (15) days following notice that Landlord's repairs are complete, Tenant shall promptly commence and diligently pursue to completion all work to restore the Premises to the condition immediately prior to the casualty, except for the work required by Landlord above. If Tenant has closed for business, Tenant shall promptly reopen for business upon completion of Tenant's repairs but in any event within seventy-five (75) days after Landlord substantially completes any work required by Landlord. If this Lease is terminated as described above, the parties will be released from all further obligations under this Lease except for accrued obligations then unpaid or unperformed.

(d) Tenant shall notify Landlord of any accident or damage occurring in, on or about the Premises as soon as possible but in no event later than seventy-two (72) hours after Tenant has knowledge of such accident or damage, except that notice is not required if Landlord has actual knowledge of such accident or damage. If Tenant fails to so notify Landlord, and Landlord's insurance is detrimentally affected thereby, then in addition to all other rights and remedies available to Landlord under this Lease or at law or in equity, Landlord shall, at its option, be relieved of any of the obligations set forth in this Section 12.01.

(e) Notwithstanding anything contained herein to the contrary, Tenant shall be responsible for all repairs and replacements of damage and/or destruction of the Premises necessitated by burglary or attempted burglary, or any other illegal or forcible entry into the Premises.

Section 12.02 Damage or Destruction to the Plaza. In the event fifty percent (50%) or more of the leasable floor area of the Plaza is damaged or destroyed, Landlord will have the right to terminate this Lease effective upon thirty (30) days' prior written notice to Tenant. If Landlord does not terminate this Lease under such circumstances, and if Landlord has not substantially completed the Plaza base building construction within twelve (12) months following the casualty (or such longer period if the work is not capable of being performed by such date (including, without limitation, as a result of Landlord's inability to obtain permits) provided Landlord is diligently working to complete the same), Tenant will have the right to terminate this Lease by written notice to Landlord within thirty (30) days following the end of the twelve (12) month period. In the event of such termination, the parties will be released from all further obligations under this Lease except for accrued obligations then unpaid or unperformed.

Section 12.03 Lease Provisions Govern. Except as herein provided, there shall be no obligation to repair or rebuild in the case of fire or other casualty. Tenant hereby waives any statutory rights of termination that may arise by reason of any partial or total destruction of the Premises which Landlord is obligated to restore or may restore under any of the provisions of this Lease, including, but not limited to, any and all rights conferred by Sections 1932 and 1933 of the California Civil Code. Tenant hereby waives any rights it may have to construe any damage to the Premises as a constructive eviction.

ARTICLE 13 CONDEMNATION

Section 13.01 Condemnation of the Premises. If any portion of the Premises is acquired or condemned by right of eminent domain or conveyed in lieu of condemnation, then either Landlord or Tenant will have the right to terminate this Lease by written notice to the other within thirty (30) days following Landlord's notice to Tenant of such taking or conveyance. If this Lease is terminated under this Section, such termination will be effective as of the date Tenant is required to deliver possession of the Premises or the applicable portion thereof. If this Lease is not terminated, within a reasonable time after possession is physically taken the Premises will be restored by Landlord and Tenant in accordance with their respective obligations to perform work as set forth in Section 12.01(c) of this Lease. If this Lease is not terminated as provided above, and if Landlord fails to restore the Premises as provided above within twelve (12) months following the taking or conveyance (or such longer period if the work is not capable of being performed by such date provided Landlord is diligently working to complete the same), Tenant will have the right to terminate this Lease by written notice to Landlord within thirty (30) days following the end of the above twelve (12) month period, and in such event this Lease will terminate thirty (30) days following Landlord's receipt of such notice.

Section 13.02 Condemnation of the Plaza.

(a) If more than one-third (1/3) of the floor area of the buildings of which the Premises are a part, more than one-third (1/3) of the leasable floor area of the Plaza, or more than one-third (1/3) of the Common Areas are taken or conveyed, or if so much of the Plaza is taken or conveyed that, in Landlord's reasonable judgment, the remainder cannot be restored to a functional or economically viable whole, Landlord will have the right to terminate this Lease by written notice to Tenant. If this Lease is terminated as provided in this Section, this Lease will terminate as of the effective date of the taking or conveyance.

(b) If (i) parking at the Plaza is taken to the extent that following such taking or conveyance parking cannot be restored to the minimum amount required by code, with variance, or (ii) the Common Areas adjoining and providing access to the Premises are taken or conveyed, then either Landlord or Tenant will have the right to terminate this Lease by written notice to the other within thirty (30) days following Landlord's notice to Tenant of such taking or conveyance. If this Lease is not so terminated, and if Landlord has not substantially completed the Plaza base building construction within eighteen (18) months following the taking or conveyance (or such longer period if the work is not capable of being performed by such date provided Landlord is diligently working to complete the same), Tenant will have the right to terminate this Lease by written notice to Landlord within thirty (30) days following the end of the eighteen (18) month period, and in such event this Lease will terminate thirty (30) days following Landlord's receipt of such notice.

Section 13.03 Termination. If this Lease is terminated as provided in this Article, the parties will be released from all further obligations under this Lease except for accrued obligations then unpaid or unperformed. In exercising its termination rights under this Article 13, Landlord will not unreasonably discriminate between Tenant and other tenants of the Plaza whose premises are similarly affected by a taking or conveyance. Neither party shall have the right to terminate this Lease in the event of a partial taking of the Premises, other than as is specifically provided for in this Article 13. Both parties agree that the provisions of this Article 13 shall govern the rights and obligations of the parties in the event of any condemnation of the Premises or the Common Areas. Each party specifically waives the provisions of California Code of Civil Procedure Sections 1265.120 and 1265.130 (and any successor provision) allowing either party to petition the superior court to terminate this Lease in the event of a partial taking of the Premises or the Plaza.

Section 13.04 Condemnation Awards. In the event of any taking or conveyance, except as set forth below, Landlord will be entitled to the entire award or compensation in such proceedings, and Tenant hereby assigns to Landlord all rights to damages on account of any such taking or conveyance. The above notwithstanding, to the extent the same does not diminish Landlord's or its mortgagee's award, Tenant may keep any award made directly to Tenant by the condemning authority as compensation for loss of Tenant's business, equipment, merchandise, personal property, relocation expenses, and the unamortized amount of leasehold improvements made to the Premises paid for by Tenant and not reimbursed or paid by Landlord.

ARTICLE 14
SUBORDINATION, ATTORNMENT AND ESTOPPEL

Section 14.01 Subordination and Attornment. This Lease is automatically subordinate to the lien of any presently existing or future mortgage or other method of financing, ground lease of the Plaza, and any operating or reciprocal easement or similar agreements entered into between Landlord and other owners or lessees of real estate within or near the Plaza. If the Premises or Plaza comes into the hands of a mortgagee, ground lessor or any other person as a result of a foreclosure, exercise of power of sale, termination of ground lease, or otherwise, Tenant shall attorn to the purchaser, mortgagee or other such person and recognize the same as Landlord under this Lease, subject to all the terms and conditions of this Lease. Upon written request from Landlord, Tenant shall execute all documents to evidence such subordination and attornment within ten (10) days of request therefor. If any mortgagee, ground lessor or underlying lessor elects to have this Lease deemed to be prior to the lien of its mortgage, ground lease or underlying lease, and shall give written notice thereof to Tenant, then this Lease shall be deemed to be prior to such instrument, regardless of whether this Lease is dated prior or subsequent to the execution or recording date of such mortgage, ground lease or underlying lease.

Section 14.02 Estoppel Certificate. Within ten (10) days following written notice, but not more than three (3) times per twelve (12) month period unless in connection with the sale or refinancing of the Plaza or any portion thereof, Tenant shall execute and deliver to Landlord an estoppel certificate (a) ratifying this Lease; (b) confirming the Commencement Date and Expiration Date; and (c) certifying (i) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended except as stated; (ii) that all conditions and agreements under this Lease to be performed by Landlord have been satisfied except as stated; (iii) that to the best of Tenant's knowledge, Landlord is not in default under this Lease except as stated; (iv) that to the best of Tenant's knowledge, it has no defenses or offsets against the enforcement of this Lease except as stated; (v) reciting the advance rent, if any, paid by Tenant and the date to which such rent has been paid; (vi) reciting the amount of security deposited with Landlord, if any; and (vii) any other factual information relating to this Lease reasonably requested by Landlord. Any such estoppel certificate may be relied upon by Landlord, a lender or prospective lender or purchaser of Landlord.

Section 14.03 Additional Financial Information. Within ten (10) days after receipt of written request from Landlord, Tenant shall forward to Landlord a financial statement of Tenant and/or, if applicable, Tenant's guarantor or surety, in a form reasonably satisfactory to Landlord, certified by an independent public accountant. If the financial or credit rating of Tenant and/or, if applicable, Tenant's guarantor or surety, is not acceptable to Landlord, Landlord shall have the right to terminate this Lease if Tenant refuses to execute or supply such additional assurances and/or guarantors or sureties as Landlord shall state as necessary for such acceptance within thirty (30) days after Landlord's request therefor; provided such request may not be made after delivery of possession except in the event of death of Tenant or Tenant's guarantor, if an individual. If any such right to cancel is exercised, this Lease shall thereupon be null and void, each of the parties shall be released from any further liability under this Lease, Landlord shall refund to Tenant any security deposit made hereunder without interest and neither party shall have any liability to the other as a result of such cancellation.

ARTICLE 15
FIXTURES AND PERSONAL PROPERTY

Section 15.01 Tenant's Property. Any trade fixtures, signs and other personal property installed or attached to the Premises by Tenant must be new when installed or attached. All such trade fixtures, signs and other personal property of Tenant installed by and at the expense of Tenant but not permanently affixed to the Premises will remain the property of Tenant. Upon the last day of the Term or the date of earlier termination of this Lease, Tenant at its expense shall remove all of its trade fixtures, signs and other personal property from the Premises (including without limitation any vaults and safes, regardless of whether permanently affixed), and repair any damage to the Premises caused by or otherwise caused by Tenant vacating the Premises. At Landlord's option, any such trade fixtures, signs and other personal property not removed by Tenant at or prior to any termination of this Lease will become the property of Landlord without compensation therefor. Notwithstanding the foregoing, if Landlord gives Tenant notice to remove such items following the expiration or earlier termination of this Lease, then Tenant shall promptly remove such items and repair any damage caused by such removal. If Tenant fails to remove such items, Landlord will have the right to remove the same and repair any damage caused by such removal. In such event, Tenant shall reimburse the actual out-of-pocket costs incurred by Landlord in performing such work within thirty (30) days after billing, together with an administrative fee equal to fifteen percent (15%) of the cost of such work to reimburse Landlord for its administrative expense in connection with such work, as Additional Rent under this Lease.

Section 15.02 Improvements. All improvements to the Premises by Tenant, including without limitation all air conditioning, heating, lighting, electrical and plumbing equipment and fixtures, all wiring and other apparatus related thereto installed for or by Tenant, will immediately upon installation attach to the fee and become Landlord's property and will remain upon the Premises upon the expiration of this Lease except to the extent Landlord gives notice to Tenant to remove such items in which event Tenant shall promptly remove such items and repair any damage caused by such removal.

Section 15.03 Subordination of Landlord's Lien. Landlord hereby subordinates any statutory landlord's lien Landlord may have in any trade fixtures, equipment, machinery and inventory of Tenant in favor of any bona fide third-party lender having a security interest in such property, except that the above subordination shall not apply to (a) any equipment, fixtures or leasehold improvements which belong to or will belong to Landlord after the expiration or earlier termination of this Lease (including without limitation plumbing and electrical fixtures and equipment, heating, ventilation and air-conditioning equipment, wall and floor coverings, walls or ceilings or other fixtures or machinery attached to the Premises and not constituting trade fixtures, all of which will be deemed to constitute a part of the leasehold interest of Landlord); or (b) any cash on hand or on deposit in Tenant's accounts which Landlord may claim through legal collection procedures. Tenant acknowledges that, notwithstanding

Landlord's agreement to subordinate any statutory lien as provided above, Tenant shall not have the right to hypothecate or collaterally assign its interest on this Lease.

ARTICLE 16 DEFAULT BY TENANT

Section 16.01 **Event of Default.** **"Event of Default"** means the occurrence of any one or more of the following events:

(a) the vacation or abandonment of the Premises by Tenant. **"Abandonment"** is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) business days or longer;

(b) the failure by Tenant to make any payment when due of monthly installments of Minimum Annual Rent and regular monthly installments of Additional Rent;

(c) the failure by Tenant to make any payment when due of other Additional Rent or any other payment required to be made by Tenant hereunder, within three (3) days after written notice that the same is due;

(d) the failure by Tenant to observe, perform, act or refrain from acting with respect to any of the express or implied covenants or provisions of this Lease to be observed, performed, or acted or not acted upon by Tenant, other than as specified in Sections 16.01(a) or (b) above, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant; provided, however, 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, which completion shall occur not later than thirty (30) days from the date of such notice from Landlord;

(e) (i) the making by Tenant or any guarantor hereof of any general assignment for the benefit of creditors, (ii) the filing by or against Tenant or any guarantor hereof of a petition to have Tenant or any guarantor hereof 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 or any guarantor hereof, the same is dismissed within sixty (60) days), (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease or of substantially all of the guarantor's assets, where possession is not restored to Tenant or the guarantor within sixty (60) 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 or of substantially all of the guarantor's assets where such seizure is not discharged within sixty (60) days; or

(f) if the permitted use involves the sale and/or preparation of food, Tenant's failure to maintain a health department rating of "A" (or such other highest health department or similar rating as is available), which failure continues for more than thirty (30) days.

Any notice required under this Section 16.01 shall be in lieu of, and not in addition to, any notice required under California Code of Civil Procedure, Section 1161. Notwithstanding anything to the contrary contained in this Lease (including, without limitation, Section 16.01 of this Lease) an Event of Default by Tenant or an affiliate under any other lease or agreement with Landlord relating to the Plaza and/or any other premises or project owned or controlled by Landlord or any of its affiliates, which is not cured within the time permitted for cure thereunder shall be deemed a default under this Lease without the need or requirement for any additional notice and/or cure period.

Section 16.02 **Remedies of Landlord.**

(a) Upon an Event of Default, Landlord may, at its option, terminate this Lease by written notice to Tenant and recover possession of the Premises. Following such termination, Landlord may recover from Tenant damages arising from the Event of Default and the termination of this Lease, including without limitation the following:

(i) The Worth at the Time of Award of the unpaid Minimum Annual Rent and Additional Rent which had been earned at the time of termination; plus

(ii) The Worth at the Time of Award of the amount by which the unpaid Minimum Annual Rent and Additional Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iii) The Worth at the Time of Award of the amount by which the unpaid Minimum Annual Rent and Additional Rent for the balance of the Term after the time of award exceeds the amount of such rental 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

(v) 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 the laws of the State in which the Plaza is located.

As used in subsections (a)(i) and (ii) above, the "Worth at the Time of Award" shall be computed by allowing interest at the Default Rate. As used in subsection (a)(iii) above, the "Worth at the Time of Award" shall be

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 (1%).

(b) Upon an Event of Default, Landlord may, at its option, enter the Premises without terminating this Lease and re-lease the Premises for the account of Tenant, either in the name of Landlord or otherwise, on such terms and conditions as Landlord may reasonably determine to be appropriate. Following such entry, Landlord may recover from Tenant damages incurred by Landlord, including without limitation the excess, if any, of the rents and charges under this Lease for the balance of the stated Term over the net proceeds actually received by Landlord from re-leasing, discounted to present value using the then current Prime Rate. Landlord shall have the remedy, described in California Civil Code Section 1951.4 (Landlord may continue the lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations).

(c) Upon an Event of Default, Landlord may recover possession of the Premises or enter the Premises as authorized by this Section 16.02 without notice other than as may be expressly provided in Section 16.01, by summary proceeding or other action or otherwise in accordance with applicable law. Upon such recovery or entry, Landlord may, at Tenant's expense, remove all persons and property from the Premises, store such property and sell the same and retain the proceeds in partial satisfaction of Tenant's obligations to Landlord under this Lease.

(d) The remedies specifically provided in this Lease are in addition to other remedies available to Landlord under applicable law. Landlord may, notwithstanding an Event of Default, keep this Lease in effect, with Tenant retaining the right to use and occupy the Premises and Landlord having the right to recover from Tenant the rents and charges under this Lease and damages caused to Landlord from any Event of Default. The election of Landlord to enter and re-lease the Premises for the account of Tenant or to exercise any other remedy will be without prejudice to the right of Landlord thereafter to terminate this Lease or to exercise any other remedy or remedies provided in this Lease or available under law.

(e) The damages which Landlord may recover from Tenant include without limitation the following: reasonable costs of recovering and entering the Premises, including reasonable attorneys' fees and expenses; reasonable costs of placing the Premises in leasable condition and re-leasing the same, including reasonable brokerage and attorneys' fees; unpaid rents and charges under this Lease for the period prior to any termination or re-leasing and, if this Lease is terminated, for the period needed to re-lease the Premises; and the remaining unamortized cost to Landlord, determined on a straight line basis over the original Term, of any construction or tenant improvement allowance paid to Tenant, any rent concessions or offsets allowed to Tenant, any work performed by Landlord in the Premises to prepare the same for Tenant and reasonable brokerage and attorneys' fees and expenses for this Lease. All damages will be payable by Tenant to Landlord within thirty (30) days of billing as Additional Rent under this Lease.

(f) Except as specifically provided otherwise in this Lease, all covenants and agreements by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement or offset of rent. If Tenant shall fail to pay any sum of money (other than rent) or perform any other act on its part to be paid or performed hereunder and such failure shall continue for three (3) days with respect to monetary obligations (or ten (10) days with respect to non-monetary obligations) after Tenant's receipt of written notice thereof from Landlord (except that no notice will be required in the event of an emergency), Landlord may, without waiving or releasing Tenant from any of Tenant's obligations, make such payment or perform such other act on behalf of Tenant. All sums so paid by Landlord and all necessary incidental costs incurred by Landlord in performing such other acts shall be payable by Tenant to Landlord within five (5) days after demand therefor as Additional Rent.

Section 16.03 Counterclaims. Tenant waives the right to assert any non-compulsory counterclaim in connection with any action by Landlord for possession of the Premises or collection of rents under this Lease.

Section 16.04 Redemption. To the extent permitted by law, Tenant waives any and all rights of redemption granted under any present or future laws if Tenant is evicted or dispossessed for any cause, including, but not limited to, any and all rights conferred by Section 3275 of the California Civil Code and by Sections 1174(c) and 1179 of the California Code of Civil Procedure, or if Landlord obtains possession of the Premises due to Tenant's default under this Lease or otherwise.

Section 16.05 Accord and Satisfaction. Landlord may accept any payment made by or for Tenant and apply the same to such obligations of Tenant as Landlord may determine to be appropriate, without waiver of or prejudice to any rights of Landlord. Landlord may deposit checks, whether sent to a lock box or otherwise, without reference to any statement or endorsement made thereon or in connection therewith, and Tenant agrees not to make any such statement or endorsement that purports to affect the rights or remedies of Landlord. Neither any statement or endorsement made on or with any check or other payment, nor Landlord's acceptance of such payment, shall constitute an accord or satisfaction or otherwise waive, release or affect the rights of Landlord to recover from Tenant all amounts owing under this Lease and to pursue any and all of its rights and remedies for a default of Tenant.

Section 16.06 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO EACH WAIVE TRIAL BY JURY IN CONNECTION WITH ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT CREATED BY THIS LEASE, TENANT'S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM FOR INJURY OR DAMAGE.

Section 16.07 Venue and Jurisdiction. Tenant consents and agrees that this Lease shall be construed, interpreted, and the rights of the parties hereto shall be determined in accordance with the laws of the State of

California. The venue for any judicial proceeding brought by either party hereto with regard to any provision of or obligation arising under this Lease shall be in Fresno, California.

Section 16.08 Bankruptcy.

(a) If a petition in bankruptcy or for the appointment for a receiver or trustee of all or any portion of Tenant's or guarantor's property is filed against Tenant or any guarantor of this Lease in accordance with the United States Bankruptcy Code (the "**Bankruptcy Code**") or any other statute either of the United States or of any state, and if Tenant or such guarantor fails to secure a discharge of the same within thirty (30) days thereafter, or if Tenant or such guarantor voluntarily files any such petition or makes an assignment for the benefit of creditors, then to the extent permitted by applicable laws, Landlord will have the right at its option to terminate this Lease. In such event, neither Tenant nor any person claiming through or under Tenant by virtue of any statute or order of any court will have the right to acquire or remain in possession of the Premises, and Landlord will have no further liability under this Lease to Tenant or any such person, and Tenant or any such person will immediately surrender possession of the Premises to Landlord. If this Lease is so terminated, in addition to all other rights available to Landlord under this Lease, or by virtue of any applicable law, Landlord will have the right to retain as liquidated damages any rent, security deposit and any other money received by Landlord from Tenant or others on behalf of Tenant.

(b) If a petition in bankruptcy is filed by or against Tenant, Tenant agrees that it will not seek or move to extend its time to assume or reject this Lease by more than sixty (60) additional days beyond the sixty (60) day period provided in Section 365 of the Bankruptcy Code, and Tenant acknowledges that there is no cause for any such further extension within the meaning of Section 365(d)(4) of the Bankruptcy Code. If at any time Tenant seeks and is granted an extension of time to assume or reject this Lease, and as a result the time to assume or reject this Lease as so extended expires between September 1 and December 31 of any year, then Landlord shall have the right to require that Tenant shall nevertheless continue to operate in the Premises in accordance with the provisions of this Lease through a period ending not later than through December 31 of such year, and shall continue to pay all rent and other charges under this Lease at least through January 31 of the following calendar year, thereby avoiding undue and inequitable loss and prejudice to Landlord in the operation of the Plaza during the holiday season. If at any time Tenant ceases to operate in the Premises between September 1 and December 31 of any year, Tenant shall immediately give Landlord access to and possession of the Premises for the purpose of dressing the windows or arranging for temporary use of the Premises during the holiday season.

(c) If Tenant elects to assume this Lease in accordance with Section 365 of the Bankruptcy Code, as a condition to any such assumption, Tenant shall pay to Landlord on or prior to the effective date of the assumption all accrued and unpaid rent and other charges then due and payable under this Lease, together with all attorneys' fees and expenses incurred by Landlord in connection with Tenant's bankruptcy case.

(d) As a condition to any assignment in accordance with the Bankruptcy Code, any person or entity to which this Lease is assigned (i) shall assume, and shall be deemed without further act to have assumed, all of the obligations of Tenant under this Lease from and after the date of the assignment, including without limitation payment of all rent and other charges to be paid under this Lease from and after the date of such assignment, regardless of whether such rent and extra charges relates to a period before or after the date of the assignment; and (ii) shall, upon Landlord's request, promptly execute and deliver to Landlord an instrument confirming such assignment, in form and substance reasonably acceptable to Landlord. As a further condition to any such assignment, Tenant shall furnish Landlord with adequate assurance of future performance of all the obligations of Tenant under this Lease as provided in Sections 365(b)(1)(C) and 365(b)(3) of the Bankruptcy Code. Since the provisions of this Lease regarding continuous operation of Tenant's business in the Premises and the type of retail business to be conducted in the Premises are essential to the viability of the Plaza and constitute material terms and conditions of this Lease, such adequate assurance will include without limitation assurance that (A) the proposed assignee has substantial experience and expertise in operating, in a first class regional Plaza comparable to the Plaza, a retail business of the type described in the Indenture, selling merchandise similar in kind and quality to that sold by the Tenant as described in the Indenture; and (B) the proposed assignee (itself and without further assignment or subletting) has the ability and resources required to commence or resume the continuous and uninterrupted operation of such retail business in the Premises within sixty (60) days following such assignment.

(e) If notwithstanding the provisions of this Lease to the contrary a bankruptcy court authorizes a liquidation, store closing, "going out of business" or similar sale in the Premises, then at a minimum the following limitations, terms and conditions will apply: (i) no signs larger than 3 feet (3') by 5 feet (5') and no banners of any kind will be permitted; (ii) no paper signs will be permitted, and no signs of any kind will be affixed to the windows of the Premises; (iii) all signs will be professionally printed, in black and white and up to one additional color (but no "neon" colors); (iv) the sale may be advertised as a "store closing sale" but not as a "going out of business sale" or a "bankruptcy sale"; (v) only merchandise previously offered for sale by the Tenant in the Premises may be sold; and (vi) Tenant shall either assume or reject this Lease within thirty (30) days following the conclusion of any such sale.

(f) The parties acknowledge that this Section 16.08 has been specifically negotiated and included in this Lease for the purpose of supplementing and explaining the manner in which the parties intend their respective rights and interests under the Bankruptcy Code to be interpreted in the event of a bankruptcy filing affecting Tenant and are not intended to limit the terms, conditions, rights and remedies available to Landlord under the Bankruptcy Code. These provisions have been specifically bargained for by the parties and are material consideration to Landlord for entering into this Lease.

**ARTICLE 17
DEFAULT BY LANDLORD**

Section 17.01 Default by Landlord. Landlord shall not be in default in the performance of any obligation required to be performed by Landlord under this Lease unless Landlord has failed to perform such obligation within

sixty (60) days after the receipt of written notice from Tenant specifying in detail Landlord's failure to perform; provided however, that if the nature of Landlord's obligation is such that more than sixty (60) days are required for its performance, then Landlord shall not be deemed in default if it commences such performance within such sixty (60) day period and thereafter diligently pursues the same to completion. Upon any such uncured default by Landlord, Tenant may exercise any of its rights provided in law or at equity; provided, however: (a) Tenant shall have no right to offset or abate rent in the event of any default by Landlord under this Lease, except to the extent offset rights are specifically provided to Tenant in this Lease; (b) Tenant shall have no right to terminate this Lease; (c) Tenant's rights and remedies hereunder shall be limited to the extent (i) Tenant has expressly waived in this Lease any of such rights or remedies and/or (ii) this Lease otherwise expressly limits Tenant's rights or remedies, including the limitation on Landlord's liability contained in Section 17.02 hereof and (d) in no event shall Landlord be liable for consequential damages.

Section 17.02 Landlord's Liability. Tenant agrees that any money judgment resulting from any Landlord default or other claim against Landlord arising under this Lease will be satisfied only out of the net rents and profits received by Landlord from the operation of the Plaza and from Landlord's right, title and interest in the Plaza, that no other real, personal or mixed property of Landlord or any of its principals, shareholders, owners, trustees, beneficiaries, members, officers, directors or agents, wherever situated, will be subject to levy on any such judgment, and that Landlord will not have any personal liability whatsoever under this Lease. Tenant agrees that if the net rents and profits from and Landlord's interest in the Plaza are insufficient for the payment of any such judgment, Tenant will not institute any further action, suit, claim, or demand, in law or in equity, for or on account of such deficiency, and Tenant hereby waives any right to a money judgment against Landlord except to the extent the same can be satisfied from such net rents, profits and interest.

ARTICLE 18 SECURITY DEPOSIT

Section 18.01 Security Deposit. Upon the earlier of (i) execution by Tenant of this Lease, or (ii) before occupying the Premises, Tenant shall deposit with Landlord the sum set forth in the Indenture (the "**Security Deposit**") as security for Tenant's faithful performance of all the terms, covenants and conditions of this Lease. Landlord will hold the Security Deposit, and at Landlord's option may commingle the Security Deposit with other funds. Tenant shall not be entitled to any interest on the Security Deposit. Landlord may apply the Security Deposit or any part thereof to compensate Landlord for any damage, loss, cost or expense incurred due to such default and, within ten (10) days of demand by Landlord, Tenant shall restore the Security Deposit to the original sum deposited. In addition to any other rights available to Landlord hereunder, the Security Deposit shall be forfeited if Tenant fails to occupy the Premises and conduct business therein for the full Term of this Lease, or if this Lease should for any reason whatsoever be terminated prior to the Expiration Date of the Term or any renewal thereof. The Security Deposit, or the remaining balance thereof, will be refunded to Tenant upon termination of this Lease, provided that Tenant has made all payments and performed all terms required by this Lease. Landlord may deliver the Security Deposit to any purchaser or successor of Landlord's interest in this Lease or to the Premises, and thereafter Landlord will be discharged from any further liability with respect to the Security Deposit. Landlord shall not be required to pay Tenant interest on the Security Deposit. Tenant and Landlord acknowledge and agree that their rights and remedies with respect to the Security Deposit shall be as provided in this Lease, and each of Landlord and Tenant hereby waive Section 1950.7 of the California Civil Code and any and all other similar statutes now existing or hereafter enacted.

ARTICLE 19 HAZARDOUS MATERIAL

Section 19.01 Hazardous Material.

(a) Except for general office and cleaning supplies typically used in the ordinary course of business (e.g., copier toner, liquid paper, glue, ink, and cleaning solvents) in commercially reasonable amounts, Tenant may not cause or permit any Hazardous Material to be brought on, kept, used, discharged, leaked or emitted in, about or treated at the Premises. If the Premises contain any Hazardous Material brought onto the Premises by Tenant, an affiliate of Tenant, or their respective agents, employees, contractors or invitees, Tenant shall remove such material at Tenant's cost and expense. Such removal work will be performed on behalf of Tenant by a contractor approved by Landlord and will be done in compliance with all applicable governmental laws, ordinances, rules, regulations, codes and other governmental restrictions or requirements. Tenant shall promptly remedy any damage to the Premises arising from Tenant's removal, disturbance or release of any Hazardous Material and pay to Landlord the amount of any and all costs, expenses or damages incurred by Landlord arising from such removal, disturbance or release. Without limiting the generality of the foregoing, if the presence of any Hazardous Material on or about the Premises or the Plaza caused or permitted by Tenant results in the contamination of the Premises or the Plaza, Tenant, at its cost and expense, shall promptly take all action and expense necessary to return the Premises and the Plaza to the condition existing prior to the introduction of any such Hazardous Material to the Premises or Plaza after first obtaining Landlord's written approval of such actions. Notwithstanding the foregoing, Tenant shall not be in breach of this provision as a result of the presence in the Premises of minor amounts of hazardous or toxic materials which are in compliance with all applicable laws, ordinances and regulations and are customarily present in a general retail use, such as computer chemicals and janitorial supplies.

(b) "**Hazardous Material**" means any hazardous, radioactive or toxic substance, material or waste, including without limitation, those substances, materials and wastes (whether or not mixed, commingled or otherwise combined with other substances, materials or wastes) listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including without limitation any material, waste or substance which is (i) a petroleum product, crude oil or any fraction thereof, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C.

Section 1251, et seq. (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (v) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. (42 U.S.C. Section 6903) or (vi) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601).

ARTICLE 20 MISCELLANEOUS

Section 20.01 Access by Landlord. Landlord and its designated agents, employees or contractors will have the right to enter the Premises upon at least twenty-four (24) hours prior written notice to Tenant (except in the case of emergency no such notice will be required) to examine the Premises, show it to prospective purchasers and others, and for the purpose of making tests, inspections, repairs, alterations, improvements or additions as Landlord deems desirable. The above will not obligate Landlord to make any repairs except as otherwise expressly provided in this Lease.

Section 20.02 Additional Construction. The exterior walls and roof of, the floor above, and the area beneath the Premises are not demised under this Lease, and Landlord reserves the right to use the same. Landlord may install, maintain and use pipes, utility lines, ducts, conduits, flues, lines, wires, drains sprinkler main and valves, access panels and structural elements serving the Premises or other parts of the Plaza within or through the Premises. Landlord shall use reasonable efforts to locate new facilities and elements above the finished ceiling, within walls, below the floor, in Tenant’s storage area and in other locations that will minimize to the extent practicable the disruption of Tenant’s business.

Section 20.03 Holding Over.

(a) If Tenant, without Landlord’s written consent, fails to surrender possession of the Premises on the Expiration Date, Tenant shall, at Landlord’s option, become either a tenant at sufferance with no right whatsoever to continue to use or occupy the Premises or a month-to-month tenant upon each and all the terms herein provided as may be applicable to such a tenancy and any such holding over shall not constitute an extension of this Lease.

(b) During such holding over, Tenant shall pay in advance, monthly, in addition to and not in lieu of Tenant’s continuing obligation to pay Minimum Annual Rent, a minimum rent equal to FOUR THOUSAND AND 00/100 DOLLARS (\$4,000.00) per month and will otherwise be on the terms and conditions specified in this Lease so far as is applicable, including the payment of Minimum Annual Rent and other charges provided in this Lease. Nothing contained in this Section 20.03 shall be construed as consent by Landlord to any holding over of the Premises by Tenant, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord as provided in this Lease upon the expiration or earlier termination of the Term. If Tenant fails to surrender the Premises upon the expiration or earlier termination of this Lease, Tenant agrees to indemnify, defend and hold Landlord harmless from all costs, loss, expense or liability, including without limitation, claims made by any succeeding tenant and real estate broker’s claims and attorney’s fees and costs.

Section 20.04 Successors and Assigns. Tenant shall not assign, delegate, or otherwise transfer its rights or responsibilities under this Lease without the first obtaining the written consent of Landlord. Any attempt by Tenant to assign, delegate or transfer this Lease or the Premises without Landlord’s prior written consent shall be null and void and without effect. Notwithstanding the forgoing, all of the provisions of this Lease will bind and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors and assigns, provided that no rights will inure to the benefit of any successor, assignee or other transferee of Tenant except as expressly permitted by the terms of this Lease. Landlord shall, without prior written notice to Tenant, have the right to assign or otherwise transfer its interest in the Premises and this Lease, and Landlord will be released from all liability accruing thereafter if the transferee assumes in writing all of the obligations of Landlord accruing after the date of the conveyance.

Section 20.05 Quiet Enjoyment. Provided Tenant pays all rents and other sums due hereunder and otherwise performs all covenants and conditions of this Lease, Tenant will have quiet possession of the Premises during the Term, subject to the terms of this Lease. Landlord shall not be responsible for any acts or omissions of any other tenant or third party that may interfere with Tenant’s use and enjoyment of the Premises.

Section 20.06 Waiver. If either party fails to require the other to perform any term of this Lease, that failure will not prevent the party from later enforcing that term. If either party waives the other’s breach of a term, that waiver will not be treated as waiving a later breach of the term. No term of this Lease will be deemed waived unless waived in writing by the waiving party. If Landlord accepts a payment of Minimum Annual Rent or any other monetary obligation of Tenant under this Lease, such acceptance will not be deemed a waiver of any preceding breach by Tenant of any term of this Lease, other than the failure of Tenant to make the particular payment accepted, regardless of Landlord’s knowledge of such preceding breach at the time of acceptance of such sums.

Section 20.07 Unavoidable Delays. If either Landlord or Tenant is prevented or delayed from performing any act required under this Lease because of strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, regulations or controls, judicial orders, enemy or hostile governmental action, civil commotion, failure of power, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform (“**Unavoidable Delays**”), the period for performing such act will be extended for a period equal to any such Unavoidable Delay provided the party seeking the delay has provided notice of the same to the other party within fifteen (15) days of the onset of the reason for the delay, setting forth in detail the basis for the delay, its onset and the anticipated duration of such delay, if known. However, Unavoidable Delays will not excuse the obligation for payment of Minimum Annual Rent or any other charges required by the terms of this Lease. In the event any work performed by Tenant or Tenant’s contractor results in a

strike, lockout or labor dispute, such strike, lockout, or labor dispute will not excuse the performance by Tenant as provided in this Section.

Section 20.08 Entire Agreement. This Lease, including any exhibits, attachments or addenda, constitutes the entire understanding and agreement of the Landlord and Tenant with respect to its subject matter, including, without limitation, the Premises and its condition, and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between said parties. There are no verbal agreements, representations or understandings affecting this Lease or any supplements thereto of the subject matter hereof, and all negotiations, representations and understandings are merged herein. This Lease supersedes, cancels and annuls all contracts, understandings and agreements of prior date between the Landlord and Tenant and shall continue in force and govern all transactions between said parties until the expiration or termination hereof. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. The waiver by a party hereto of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party hereto to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions. None of the provisions contained in this Lease are intended by the Landlord and Tenant, nor shall they be deemed, to confer any benefit on any person not a party to this Lease. Tenant acknowledges that it has not entered into this Lease in reliance upon any representation, warranty or agreement except as expressly set forth in this Lease. Landlord and Tenant are entering into this Lease in reliance solely upon Tenant's expertise and ability to evaluate the suitability of the Premises and the Plaza to the conduct of Tenant's Permitted Use. Landlord does not represent, and Tenant does not rely upon, the fact that any specific tenant or number of tenants or anchor tenants will occupy any space in the Plaza during the Term.

Section 20.09 Authorizations; Relationship of Parties. Landlord and Tenant each represent and warrant that the execution of this Lease has been duly and validly authorized on its behalf. Nothing in this Lease will be deemed to create a partnership or joint venture between Landlord and Tenant, or cause either party to be responsible in any way for the debts of the other party, or confer enforceable rights upon any person not a party to this Lease except as may be expressly provided in this Lease.

Section 20.10 Captions and Terms. The captions of Articles and Sections contained herein are for convenience only and do not limit or amplify the terms and conditions of this Lease. Except as expressly provided in this Lease, the word "Term" will include the original Term and any extension, renewal or holdover of this Lease. If more than one (1) person or entity is named as Landlord or Tenant under this Lease and executes as such, then the words "Landlord" and "Tenant" are intended to refer to all such persons or entities, and the liability of such persons or entities will be joint and several. The use in this Lease of a singular term includes the plural and use of the masculine, feminine or neuter genders includes all others.

Section 20.11 Partial Invalidity. It is the express intent of the Landlord and Tenant that this Lease shall in all instances comply with the requirements set forth in any and all statutes, laws, regulation, rules, orders, or advisory letters, whether federal, state or municipal, controlling the subject matter hereof, as amended from time to time, and any regulations promulgated thereunder. The parties hereto warrant and agree that this Lease shall, in all instances, be interpreted so as to ensure compliance with such laws. If any term, covenant or condition of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable under said law or any other, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 20.12 Rules of Construction. The terms of this Lease have been negotiated by the Landlord and Tenant and the language used in this Lease shall be deemed to be the language chosen by said parties to express their mutual intent. This Lease shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Lease. No rule of strict construction will be applied against any person.

Section 20.13 Time of the Essence. Landlord and Tenant agree that TIME IS OF THE ESSENCE with respect to the performance of the respective obligations under this Lease.

Section 20.14 Recording. The Landlord, in its sole and absolute discretion, may, but is not required to, record this Lease or a memorandum of this Lease fairly setting forth the terms herein contained.

Section 20.15 Brokers. To the extent Landlord has entered into an agreement with Landlord's Broker identified in the Indenture, and Landlord shall pay any commissions or fees that are payable to Landlord's Broker with respect to this Lease in accordance with the provisions of a separate commission contract. Landlord shall have no further or separate obligation for payment of commissions or fees to any other real estate broker, finder or intermediary. Tenant represents that it has not had any dealings with any real estate broker, finder or intermediary with respect to this Lease, other than Landlord's Broker and Tenant's Broker identified in the Indenture, if any. Any commissions or fees payable to Tenant's Broker, if any, with respect to this Lease shall be paid exclusively by Landlord's Broker (pursuant to the terms of a separate agreement) or Tenant. Subject to the foregoing, each party hereto shall indemnify and hold harmless the other party hereto from and against any and all losses, damages, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorneys' fees and related costs) resulting from any claims that may be asserted against such other party by any real estate broker, finder or any intermediary arising from any acts of the indemnifying party in connection with this Lease.

Section 20.16 Consents and Approvals. Wherever in this Lease either Landlord or Tenant is required to give its consent or approval to any action on the part of the other, such consent or approval will not be unreasonably withheld, delayed or conditioned.

Section 20.17 Disputed Charges. Tenant shall notify Landlord in writing within sixty (60) days after receipt of any notice of payments due under this Lease if Tenant disputes the amount of such payment or the fact that such payment is due from Tenant. Failure to deliver this notice will constitute a waiver of Tenant's right to dispute such billing or the amount thereof. Delivery of notice hereunder will not release Tenant of its responsibility to make such payment in a timely fashion, nor mitigate Landlord's rights under this Lease in connection with Tenant's failure to do so. Upon receipt of notice of a disputed charge and the payment of such charge, Landlord agrees to cooperate as reasonably necessary to demonstrate to Tenant the propriety of the billing.

Section 20.18 Notices. All payments of Minimum Annual Rent and other monetary obligations of Tenant will be sent to the address set forth in the Indenture, or to such other address as notified by Landlord to Tenant in writing. All notices to be given under this Lease by either party will be written and sent by certified mail, return receipt requested, postage pre-paid, or by express mail or other overnight delivery service, addressed to the party at the address set forth in the Indenture, or to such other address as notified in writing by the parties. Notice will be deemed given as of the date of receipt or rejection or inability to deliver shown on the return receipt or other similar advice of delivery or attempted delivery.

Section 20.19 Submission of Lease. Submission of this Lease to Tenant will not constitute an offer to lease the Premises, and this Lease will become effective only upon execution and delivery of this Lease by both Landlord and Tenant.

Section 20.20 Termination of Existing Lease. If Tenant is occupying the Premises under an existing lease agreement with Landlord, the term of the existing lease will terminate as of 11:59 p.m. on the date immediately preceding the Commencement Date, without the necessity of any other notice from or to either party. Any continuing default under the existing lease will be deemed a default under this Lease.

Section 20.21 Documentation Fee. If Tenant requests that Landlord prepare, review, or execute an amendment to or assignment of this Lease, a waiver or subordination, or any other document relating to this Lease or the Premises (except for estoppel certificates), Tenant shall pay Landlord, or Landlord's managing agent, as directed, a reasonable fee, not exceeding ONE THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$1,500.00), as reimbursement for the administrative and legal expense in connection with such document. Tenant shall pay the above fee within thirty (30) days of billing as Additional Rent under this Lease.

Section 20.22 Attorneys' Fees. In the event legal action by Landlord is required to enforce performance by Tenant of any condition, obligation or requirement of this Lease, Tenant agrees to pay all reasonable attorneys' fees and costs actually incurred by Landlord in connection with such action. In the event that at any time after the date hereof either Landlord or Tenant shall institute any action or proceeding against the other to enforce or interpret the provisions of this Lease (including without limitation unlawful detainer of the Premises or for the recovery of any rent due hereunder), then and in that event, the prevailing party in such action or proceeding shall be entitled to recover from the other party hereto the reasonable attorneys' fees and all costs and disbursements incurred therein.

Section 20.23 Security Measures. Tenant hereby acknowledges that Landlord shall have no obligation to provide a guard service or other security measures whatsoever with respect to the Premises or the common area. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents, employees, contractors, customers and invitees and their property from the acts of third parties.

Section 20.24 Certified Access Specialist. Pursuant to California Civil Code §1938, Landlord hereby states that the Premises have not undergone inspection by a Certified Access Specialist (CASp) (defined in California Civil Code §55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, (i) Tenant shall, at its cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties, (ii) Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "**CASp Report**"), and (iii) Tenant shall, at its cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed as part of the Improvements or as an Alteration, as applicable, notwithstanding anything to the contrary in this Lease. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

Section 20.25 Confidentiality. Tenant, Tenant's agents and Tenant's representatives, hereby agree to hold in strictest confidence and not to use or disclose to any person, firm, corporation or other entity (other than to Landlord's agents, including its accountants and attorneys), without written authorization from Landlord in each instance, which authorization may be granted or denied by Landlord in its sole and absolute discretion, any Confidential Information (defined below) that Tenant may obtain or access during the Term, until such Confidential Information becomes publicly and widely known and made generally available through no wrongful act of Tenant or of others who were under confidentiality obligations in accordance with this Section 20.23, or such Confidential Information is required to be released in accordance with the terms of an order issued by a court of competent jurisdiction. "**Confidential Information**" means information, in electronic or physical form, however stored, accessed, transmitted or communicated, not generally known or available to the public, including, without limitation: Landlord's financial data, technical data, trade secrets, research, product or service ideas or plans, software codes and designs, development, inventions, processes, formulas, techniques, hardware configurations

information, lists of or information relating to suppliers and vendors, cost data, market share data, marketing plans, licenses, contract information, business plans, legal information, financial forecasts, historical financial data, budgets or other business information disclosed to Tenant by Landlord either directly or indirectly, or acquired or learned by Tenant as a result of Landlord's or Tenant's performance under this Lease, or as such information is related to this Lease and the performance of any obligation hereunder, or as such information is related to any aspect or condition of the Plaza or Premises.

NOTWITHSTANDING ANYTHING IN THIS ARTICLE 20 TO THE CONTRARY, TENANT ACKNOWLEDGES THAT LANDLORD IS A PUBLIC AGENCY AND, AS SUCH, MAY BE REQUIRED UNDER CALIFORNIA LAW TO DISCLOSE THE TERMS OF THIS LEASE TO THE PUBLIC, INCLUDING TO TENANT'S COMPETITORS.

ARTICLE 21 LEASE EXECUTION

Section 21.01 Tenant's Authority. If Tenant executes this Lease as a limited liability company, partnership or corporation, then Tenant and the persons and/or entities executing this Lease on behalf of Tenant represent and warrant that: (a) Tenant is a duly organized and validly existing limited liability company, partnership or corporation, as the case may be, and is qualified to do business in the state in which the Plaza is located; (b) such persons and/or entities executing this Lease are duly authorized to execute and deliver this Lease on Tenant's behalf in accordance with the Tenant's partnership or operating agreement (if Tenant is a partnership or limited liability company, respectively), or a duly adopted resolution of Tenant's board of directors and the Tenant's by-laws (if Tenant is a corporation); and (c) this Lease is binding upon Tenant in accordance with its terms. Concurrently with Tenant's execution and delivery of this Lease to Landlord and/or at any time during the Term within ten (10) days of Landlord's request, Tenant shall provide to Landlord a copy of any documents reasonably requested by Landlord evidencing such qualification, organization, existence and authorization.

Section 21.02 Joint and Several Liability. If more than one person or entity executes this Lease as Tenant: (a) each of them is and shall be jointly and severally liable for the covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant; and (b) the act or signature of, or notice from or to, any one or more of them with respect to this Lease shall be binding upon each and all of the persons and entities executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or signed, or given or received such notice.

Section 21.03 No Option. The submission of this Lease for examination or execution by Tenant does not constitute a reservation of or option for the Premises and this Lease shall not become effective as a Lease until it has been executed by Landlord and delivered to Tenant.

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EXHIBIT "A"

SITE PLAN OF PLAZA

This **Exhibit "A"** is provided for informational purposes only and is intended to be only an approximation of the layout for the Plaza and shall not be deemed to constitute any representation by Landlord as to the identity of any tenant or occupant within the Plaza or the exact layout or configuration of the Plaza.

EXHIBIT "A-1"

DEPICTION OF PREMISES

This **Exhibit "A-1"** is provided for informational purposes only and is intended to be only an approximation of the layout for the Premises and shall not be deemed to constitute any representation by Landlord as to the exact layout or configuration of the Premises.

EXHIBIT "A-1"

-1-

EXHIBIT "B"

[INSERT ANY WORK TO BE DONE BY LANDLORD OR "N/A"]

Not Applicable.

EXHIBIT "C"

RULES AND REGULATIONS

1. Tenant is responsible for storage and removal of its trash in the manner prescribed from time to time by Landlord. Tenant shall not use the plumbing for a purpose other than that for which they are constructed. All store floor area of Tenant, including vestibules, entrances and returns, doors, fixtures, windows and plate glass, shall be maintained in a safe, neat and clean condition.
2. Tenant shall not permit or suffer the use of any advertising medium which can be heard or experienced outside of the Premises, or which may cause shared walls to vibrate or otherwise disturb adjacent tenants, including without limitation flashing lights, searchlights, loud speakers, phonographs, radios or television. No radio, television, or other communication antenna equipment or device shall be mounted, attached, or secured to any part of the roof, exterior surface, or anywhere outside the Premises, without the prior written consent of Landlord.
3. Tenant shall not permit or suffer merchandise of any kind at any time to be placed, exhibited or displayed outside the Premises, nor shall Tenant use the exterior sidewalks or exterior walkways of the Premise to display, store or place any merchandise. No sale of merchandise by tent sale, truckload sale or the like, shall be permitted on the parking lot or other portions of the Common Areas. No auction, fire, bankruptcy, going-out-of-business or liquidation sales shall be conducted on or at the Premises.
4. Tenant shall not permit or suffer any portion of the Premises to be used for living, sleeping, residential or lodging purposes.
5. Nothing shall be erected or placed on the roof or exterior walls of the Premises without the prior written consent of Landlord, including without limitation any radio and television aerals and equipment. If Landlord's consent is not received, anything erected or placed on the roof may be removed, without notice, and any damage to the walls or roof shall be the responsibility of Tenant. Tenant's access to the roof is limited to the maintenance of equipment installed with Landlord's approval and inspections for damage. Neither Tenant nor its contractors shall go on the roof or make any roof penetrations without the written approval of Landlord, which approval may include without limitation evidence of appropriate insurance coverage.
6. Upon written request by Landlord, Tenant shall use the pest extermination contractor that Landlord may choose, which extermination contractor's prices shall be competitive in the trade area in which the Plaza is located. Such extermination services shall be performed at such intervals as reasonably required by Landlord. Tenant shall not keep or permit any animals in the Premises, unless expressly allowed by in this Lease, or unless used by disabled persons.
7. Tenant shall have the responsibility for protecting the Premises from theft, robbery and pilferage, and shall keep non-customer doors locked.
8. Landlord may from time to time establish designated employee parking areas. Tenant shall require its employees to park only in these areas. Any violators may be fined a reasonable amount for each violation, and Landlord shall have the right to tow cars at the violator's expense. Within ten (10) days of Landlord's request, Tenant shall provide Landlord a list of license numbers for all vehicles operated by Tenant and its employees.
9. Tenant shall not, in or on any part of the Common Area:
 - (a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.
 - (b) Exhibit any sign, placard, banner, notice or other written material, except for activities as approved by Landlord.
 - (c) Distribute any circular, booklet, handbill, placard or other material, except for activities as approved by Landlord.
 - (d) Solicit membership in any organization, group or association or contribution for any purpose.
 - (e) Create a nuisance.
 - (f) Use any Common Area for any purpose when none of the other retail establishments within the Plaza is open for business or employment, except for activities as approved by Landlord.
 - (g) Throw, discard or deposit any paper, glass or extraneous matter of any kind except in designated receptacles, or create litter or hazards of any kind.
 - (h) Deface, damage or demolish any sign, light standard or fixture, landscaping materials or other improvement within the Plaza, or the property of customers, business invitees or employees situated within the Plaza.

EXHIBIT "D"

PROHIBITED USE OF THE PREMISES

Unless specifically allowed in the body of the Lease, the Premises shall not be used by Tenant for the following purposes or for the sale of the following products:

Prohibited Uses – Any operation of a:

N/A

EXHIBIT "E"

PERSONAL GUARANTY

[RESERVED]

