



**City Council/Successor Agency/
Public Financing Authority/Housing Authority
Regular Meeting
July 19, 2016**

Attached is a document related to Agenda Item CC 10: *Lease Agreement between the City and WLM-CCC, LLC for building space for Senior Citizen Programs coordinated by the Parks & Recreation Department, which was received and distributed following the posting and distribution of the July 19, 2016, Agenda:*

- **Attachment A: Proposed Lease**

Attachment A

This Lease is by and between

City of Covina

Tenant

And

WLM-CCC, LLC,
A California Limited Liability Company

Landlord

Attachment A

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SHOPPING CENTER LEASE
(Triple Net)

Article 1
Fundamental Lease Provisions

1.1 **Parties:** This Shopping Center Lease ("**Lease**"), dated June 1, 2016, ("**Effective Date**") is made by and between WLM-CCC, LLC, a California limited liability company ("**Landlord**") and City of Covina, ("**Tenant**") (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Shopping Center:** That certain portion of the integrated commercial/retail shopping center owned by Landlord commonly known as McIntyre Square, located at 244 S. Citrus Street, in the City of West Covina, County of Los Angeles, State of California ("**Shopping Center**"), described in the Legal Description attached hereto as Exhibit "A" and as outlined on Exhibit "B" attached hereto ("**Site Plan**"). In addition to Tenant's rights to use and occupy the Premises as hereinafter specified, Tenant shall have non-exclusive rights to the Common Area (as defined in Section 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises or to any other buildings in the Shopping Center. (See Article 2)

1.2(b) **Premises:** That certain building space having approximately Sixteen Hundred and Twenty Five (1,625) square feet of floor area located in Building A ("**Building**") as crosshatched on the Site Plan ("**Premises**").

1.3 **Lease Term:** month to month months. (See Article 3).

1.4 **Options:** No options. (See Article 39).

1.5(a) **Base Rent:** \$ 0.00 per month, \$ 0.00 per annum.

1.5(b) **Rent Commencement Date:** The earlier of (a) 1st day of the month following delivery to Tenant of notice that Landlord's Work in the Premises has been substantially completed; or (ii) the date Tenant opens for business in the Premises, whichever is earliest.

1.6 **Tenant's Share of Common Area Expenses:** na percent (%) ("**Tenant's Share**").

1.7 **Base Rent and Other Monies Paid Upon Execution of this Lease:**

(a) **Base Rent:** \$ 0.00 for the period of _____. (See Article 4)

(b) **Common Area Expenses:** \$ 0.00 for the period of _____.
(See Article 4)

(c) **Security Deposit:** \$0.00 ("**Security Deposit**"). (See Article 5)

(d) **Other:** \$ 0.00

(e) **Total Due Upon Execution of this Lease:** \$ _____.

1.8 **Agreed Use:** Senior Citizens' recreation. (See Article 6)

1.9 **Broker:** **None**. (See Article 15)

1.10 **Guarantor.** Tenant's obligations under this Lease are guaranteed by n/a ("**Guarantor**"). (See Article 37)

1.11 **Percentage Rent:** **zero** percent (0) of Net Sales. (See Article 4)

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1.12 Address for Notices:

To Landlord: WLM-CCC, LLC
370 East Rowland Ave.
Covina, CA 91723

To Tenant: City of Covina
125 E. College Street
Covina, CA 91723
Attn: City Manager

1.13 Exhibits. The following drawings, documents and agreements are attached to this Lease as Exhibits and incorporated into this Lease:

Exhibit "A": Legal Description of Shopping Center.

Exhibit "B": Site plan of the Shopping Center which Landlord has constructed. Landlord may unilaterally change the shape, size, location, number and extent of the improvements to any portion of the Shopping Center.

Exhibit "C": A description of work to be performed by Landlord ("**Landlord's Work**") and by Tenant ("**Tenant's Work**") in or on the Premises. The Premises shall be constructed pursuant to and in accordance with the procedures outlined in Exhibit "C".

Exhibit "D": Guarantee of Lease.

Exhibit "E": Sign Criteria.

Exhibit "F": Rules and Regulations.

Exhibit "G": Exclusive Uses/Prohibited Uses.

Article 2 Premises

2.1 Leasing. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, for the term, at the rent, and upon all of the terms, covenants and conditions set forth in this Lease. The floor area of the Premises are measured from the outside of exterior walls and from the center of the interior demising partitions. In the event the number of square feet of floor area in the Premises is different from the number of square feet of floor area specified above, Landlord shall not be required to make any proportionate adjustment of Rent based on the square feet of floor area of the Premises.

2.2 Compliance. Tenant is solely responsible for determining whether or not the zoning and the building codes for improvements on the Shopping Center and the Premises comply with the respective codes in effect prior to the beginning of Landlord's Work or the Rent Commencement Date, whichever is earlier, ("**Applicable Requirements**"), and are appropriate for Tenant's intended use. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or Building ("**Capital Expenditure**"), Landlord and Tenant shall allocate the cost of such work as follows:

(a) Subject to Section 2.3(c) below, if such Capital Expenditures are required as a result of the specific use of the Premises by Tenant as compared with uses by tenants in general, Tenant shall be fully responsible for the cost of same.

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(b) If such Capital Expenditure is not the result of the specific use of the Premises by Tenant (such as, governmentally mandated seismic modifications), then Landlord shall be responsible for the cost of same provided that if such Capital Expenditure is required during the last 2 years of the Lease Term or if Landlord determines that it is not economically feasible to pay the cost thereof in Landlord's sole and absolute discretion, Landlord shall have the right, but not the obligation, to terminate this Lease upon 30 days prior written notice to Tenant unless Tenant notifies Landlord, in writing, within 10 days after receipt of Landlord's termination notice that Tenant will pay for such Capital Expenditure.

(c) The provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Tenant as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then Tenant shall be fully responsible for the cost thereof.

2.3 **Acknowledgements.** Tenant acknowledges that: (a) it has been advised by Landlord to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Tenant's intended use, (b) Tenant has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefore as the same relate to its occupancy of the Premises, and (c) neither Landlord, Landlord's agents, have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

2.4 **Employee Parking Restrictions.** It is acknowledged and agreed that the employees of Tenant and the other tenants within the Shopping Center and employees of other occupants of the Shopping Center shall not be permitted to park their automobiles or other vehicles in the automobile parking areas which may from time to time be designated for patrons of the Shopping Center. Landlord at all times shall have the right to designate the particular parking area to be used by any or all of such employees and any such designation may be changed by Landlord from time to time at Landlord's sole and absolute discretion. Tenant and its employees shall park their cars only in those portions of the parking area, if any, designated for that purpose by Landlord, and shall attach to their cars any identification stickers or passes required by Landlord. Tenant shall furnish Landlord with its and its employees' license numbers within five (5) days after requested by Landlord, and Tenant shall thereafter notify Landlord of any change within five (5) days after such change occurs. If Tenant or its employees fail to park their vehicles in designated parking areas, Landlord may charge Tenant Fifteen and 00/100 Dollars (\$15.00) per day for each day or partial day per vehicle parked in any areas other than those designated. Tenant hereby authorizes Landlord to tow away from the Shopping Center any vehicle or vehicles belonging to Tenant or Tenant's employees which are parked in violation of the foregoing or the rules and regulations issued by Landlord from time to time and/or to attach violation stickers or notices to such vehicles cost shall be immediately payable upon demand by Landlord.

2.5 **Common Area - Definition.** The term "**Common Area**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Premises that are provided and designated by the Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the Shopping Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas. The Common Area does not include any drive up and/or drive-thru lanes or facilities, or loading docks, ramps or wells which are a contiguous part of the individual Premises which utilize these areas.

2.6 **Common Area - Tenant's Rights.** Landlord grants to Tenant, for the benefit of Tenant and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use the Common Area as they exist from time to time, subject to any rights, powers, and privileges reserved by Landlord under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right to use the Common Area be deemed to include the right to store any property temporarily or permanently, in the Common Area. Any such storage shall be permitted only by the prior written consent of Landlord or Landlord's designated agent, which consent may be revoked at any time.

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2.7 **Common Area - Rules and Regulations.** Landlord or such other person(s) as Landlord may appoint, shall have the exclusive control and management of the automobile parking areas and structures, the parking spaces therein, driveways, entrances and exits and the sidewalks and pedestrian passageways and other Common Area and shall have the right, from time to time, to establish, modify, amend and enforce the reasonable rules and regulations, attached hereto as Exhibit "G" ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Shopping Center and their invitees. Tenant agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Landlord shall not be responsible to Tenant for the non-compliance with said Rules and Regulations by other tenants of the Shopping Center. Nothing contained herein shall be deemed to create any liability upon Landlord for any damage to motor vehicles of customers or employees or for loss of property from within such motor vehicles.

2.8 **Common Area - Changes.** Landlord shall have the right, in Landlord's sole discretion, from time to time: (a) to make changes to the Common Area, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways; (b) to close temporarily any of the Common Area for maintenance purposes so long as pedestrian access to the Premises remains available; (c) to designate other land outside the boundaries of the Shopping Center to be a part of the Common Area; (d) to add additional buildings and improvements to the Common Area; (e) to use the Common Area while making additional improvements, repairs or alterations to the Shopping Center, or any portion thereof; and (f) to do and perform such other acts and make such other changes in, to or with respect to the Common Area and Shopping Center as Landlord may deem appropriate.

Article 3 Term

3.1 **Commencement of Term.** The Lease shall be effective as of the Effective Date, and shall continue thereafter for the period of the Lease Term set forth in Section 1.3, which Lease Term shall be computed from the first day of the first full calendar month immediately following the Rent Commencement Date or from the Rent Commencement Date if the Rent Commencement occurs on the first day of the month, unless sooner terminated as hereinafter provided. The term "**Lease Year**" shall mean each consecutive twelve (12) month period from and after the Rent Commencement Date until expiration of the Lease Term. The term "**Lease Term**" shall collectively mean the original Lease Term and any Options duly and timely exercised by Tenant. Tenant agrees to accept possession of the Premises upon the substantial completion of the "Landlord's Work" as described in Exhibit "C" ("**Delivery Date**"). Notice from Landlord of the substantial completion of Landlord's Work in the Premises in accordance with Exhibit "C" shall be conclusive and binding upon the parties hereto. If Landlord inadvertently fails to give Tenant such notice prior to Tenant taking possession of the Premises, such notice shall be deemed given as of the date Tenant takes possession of the Premises. In the event that Landlord has not delivered possession of the Premises within two (2) years from the Effective Date, this Lease shall automatically terminate, and Landlord and Tenant shall be relieved from any and all liability hereunder. Such automatic termination shall be Tenant's sole and exclusive remedy at law or in equity for Landlord's failure to complete Landlord's Work on a timely basis. Landlord may give Tenant thirty (30) days to terminate this Lease.

3.2 **Tenant Compliance.** Landlord shall not be required to tender possession of the Premises to Tenant until Tenant complies with its obligation to provide evidence of its insurance under Section 8.5.

3.3 **Tenant's Work.** Except as set forth in **Exhibit "C"**, Tenant shall commence Tenant's Work within thirty (30) days following the notice from Landlord described in Section 3.1 above that Landlord's Work has been substantially completed. Tenant, at its sole cost and expense, shall diligently perform all of Tenant's Work as set forth in **Exhibit "C"** and shall equip the Premises with all trade fixtures and personal property suitable or appropriate for the regular and normal operation of the type of business in which Tenant is engaged. All materials, furnishings, trade fixtures, personal property, furniture and fixtures shall be new or of like-new quality.

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Article 4 Rent

4.1 **Rent Defined.** All monetary obligations of Tenant to Landlord under the terms of this Lease including but not limited to Base Rent, Common Area Expenses, Taxes, Insurance and other charges (specifically excluding the Security Deposit) are deemed to be rent (collectively "**Rent**"), whether or not designated as such.

4.2 **Common Area Expenses.** Tenant shall pay to Landlord during the term hereof, in addition to the Base Rent, Tenant's Share (as specified in Section 1.6) of all Common Area Expenses, as hereinafter defined, during each calendar year of the term of this Lease.

(a) "**Common Area Expenses**" are defined, for purposes of this Lease, as all costs incurred by Landlord relating to the ownership, operation, management, maintenance, repair and replacement of the Shopping Center, including, but not limited to, the following: (i) the operation, repair and maintenance, in neat, clean, good order and condition, of the Common Area and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, escalators, heating and cooling systems, roofs, and roof drainage systems; exterior signs and any tenant directories; any fire detection and/or sprinkler systems; and any mechanical equipment and security systems; (ii) the cost of water, gas, electricity and telephone to service the Common Area and any utilities not separately metered; (iii) trash disposal, trash compactors, pest control services, property management, security services, and the costs of any environmental inspections; (iv) reasonable reserves set aside for maintenance, repair and replacement of Common Area; (v) Real Property Taxes (as defined in Article 10); (vi) the cost of the premiums for the insurance maintained by Landlord pursuant to Article 8 and any deductible portion of an insured loss concerning the buildings or the Common Area; (viii) the cost of any Capital Expenditure to the Building or the Shopping Center provided that Landlord shall allocate the cost of any such Capital Expenditure over its useful life and Tenant shall not be required to pay more than Tenant's Share of the annual portion of the cost of such Capital Expenditure as a Common Area Expense each year; and (ix) any other services to be provided by Landlord that are stated elsewhere in this Lease to be a Common Area Expense. The inclusion of the improvements, facilities and services set forth in this Section 4.2(a) shall not be deemed to impose an obligation upon Landlord to either have said improvements or facilities or to provide those services unless the Shopping Center already has the same, Landlord already provides the services, or Landlord has agreed elsewhere in this Lease to provide the same or some of them.

(b) Any Common Area Expenses and Real Property Taxes that are specifically attributable to the Building or to any other building in the Shopping Center or to the operation, repair and maintenance thereof, shall be allocated entirely to such Building, or other building. However, any Common Area Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Landlord to all buildings in the Shopping Center.

(c) Tenant's Share of Common Area Expenses shall be payable by Tenant within 10 days after a reasonably detailed statement of actual expenses is presented to Tenant. At Landlord's option, an amount may be estimated by Landlord from time to time of Tenant's Share of annual Common Area Expenses and the same shall be payable monthly or quarterly, as Landlord shall designate, during each 12 month period of the Lease Term, on the same day as the Base Rent is due hereunder. Landlord shall deliver to Tenant within ninety (90) days after the expiration of each calendar year, a reasonably detailed statement showing Tenant's Share of the actual Common Area Expenses incurred during the preceding year. If Tenant's payments under this Section 4.2(c) during the preceding year exceed Tenant's Share as indicated on such statement, Landlord shall credit the amount of such over-payment against Tenant's Share of Common Area Expenses next becoming due. If Tenant's payments under this Section 4.2(c) during the preceding year were less than Tenant's Share as indicated on such statement, Tenant shall pay to Landlord the amount of the deficiency within 10 days after delivery by Landlord to Tenant of the statement.

4.3 **Payment.** Beginning on the Rent Commencement Date and throughout the Lease Term thereafter, Tenant shall cause payment of Rent to be received by Landlord in lawful money of the United States,

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without notice, offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. Payment of Rent is of the essence, notwithstanding a provision for a Late Charge and any grace period (a number of days from the due date and the accrual of a late charge). Failure to pay Rent on or before the date due will subject Tenant to immediate service of a notice of Default. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Landlord at its address stated herein or to such other persons or place as Landlord may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Landlord's rights to the balance of such Rent, regardless of Landlord's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Tenant to Landlord is dishonored for any reason, Tenant agrees to pay to Landlord the sum of \$25.00 in addition to any late charges which may be due.

4.4 **Percentage Rent:** There are no percentage rents due under this Lease.

4.5 **Statement of Net Sales.** Tenant agrees to furnish or cause to be furnished to Landlord a statement of Tenant's monthly "Net Sales" within twenty (20) days after the close of each calendar month.

4.6 **Definition of Net Sales.** As used in this Lease, the term "**Net Sales**" is defined as the gross selling price of all merchandise and/or services sold upon or from the Premises by Tenant, its subtenants, licensees and concessionaires, whether for cash or on credit

4.7 **Base Rent Adjustment.** Base Rent shall be increased (but never decreased) effective as of the first day of each Lease Year during the Lease Term ("**Adjustment Date**") in accordance with percentage increases, if any, in the Consumer Price Index-Urban Consumers (Los Angeles-Anaheim-Riverside, California area; Base 2002-04=100) ("**Index**"), as published by the United States Department of Labor, Bureau of Labor Statistics. The Index for the month which is four (4) months prior to each Adjustment Date during the Lease Term ("**Comparison Month**") will be compared with the Index for the Comparison Month for the immediately preceding year, and the Base Rent will be increased upon the Adjustment Date in accordance with the percentage increase, if any, between such Comparison Month indices. Landlord, at its discretion, may elect to defer any increase in Base Rent under this Section 4.7 until January 1 following each Adjustment Date.

By way of illustration only, if the Lease Term commences in March of 2009, then the Comparison Month Index would be that for November 2008 (assume such Index at 130) and that Index shall be compared with the Index for November 2009 (assume such Index at 136), and because the Index for November 2009 is 4.6% higher than the Index for November 2008 based on the assumptions of 136 and 130, respectively, the Base Rent commencing March 1 of 2010 would be 4.6% higher than the installment of Base Rent for the month of March 2009; likewise, the Index for November 2009 shall be compared with the Index for November 2010, and the March 1, 2011 installment of Base Rent shall be adjusted accordingly. Should the Bureau of Labor Statistics discontinue the publication of the Index, or publish the same less frequently, or alter the same in some other manner, then Landlord shall adopt a substitute Index or substitute procedure which reasonably reflects and monitors consumer prices.

Article 5 Security Deposit

Upon execution hereof, Tenant shall deposit with Landlord the Security Deposit as security for Tenant's faithful performance of its obligations under this Lease. If Tenant fails to pay Rent, or otherwise Defaults under this Lease, Landlord may use all or any portion of the Security Deposit for the payment of any amount due Landlord, including but not limited to any and all past due rents, late charges, and accrued interest, or to reimburse or compensate Landlord for any liability, expense, loss or damage which Landlord may suffer or incur by reason thereof. If Landlord uses all or any portion of the Security Deposit, Tenant shall within 10 days after written request therefore, deposit monies with Landlord sufficient to restore the Security Deposit to the full amount required by this Lease. Should the Agreed Use be amended to accommodate a material change in the business of Tenant or to accommodate a subtenant or assignee, Landlord shall have the right to increase the Security Deposit to the extent necessary in Landlord's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof, or to accommodate the credit, net worth or business experience

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of the transferee and any new guarantor of the Lease. Landlord shall not be required to keep the Security Deposit separate from its general accounts. Within 14 days after the expiration or termination of this Lease, if Landlord elects to apply the Security Deposit to unpaid Rent, and otherwise within 30 days after the Premises have been vacated pursuant to Section 7.4(c) below, Landlord shall return that portion of the Security Deposit not used or applied by Landlord. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Tenant under this Lease.

Article 6 Use

6.1 Permitted Use of Premises.

(a) Tenant shall use the Premises solely for the Agreed Use specified in Section 1.8 hereof, and Tenant shall not use or permit the Premises to be used for any other purpose or purposes or under any other trade name without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed or conditioned. Tenant agrees that it will not use, nor suffer or permit any person or persons to use the Premises or any part thereof for any use or purpose that (i) violates the Exclusive Use/Prohibited Uses set forth in **Exhibit "H"** hereof, or (ii) is contrary to the Rules and Regulations set forth in **Exhibit "G"** hereof, as amended by Landlord from time to time, or in violation of the laws of the United States of America, the State of California, or the ordinances, regulations or requirements of the local, municipal or county governing bodies or any other lawful governmental or quasi-governmental authorities having jurisdiction over the Shopping Center, or in violation of any regulations of any insurance carrier providing insurance for the Premises or Shopping Center.

(b) Tenant shall not to conduct or operate its business in any manner which could jeopardize or increase the rate of any fire or other insurance on the Premises or Shopping Center or to engage in conduct which may constitute a nuisance to, or interfere with, the other property of Landlord or its business, or the property or business of other tenants of the Shopping Center. Tenant may not display or sell merchandise, or allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls or roof or permanent doorways of the Premises, or in the hallways. Any sign placed or erected by Tenant and permitted hereunder shall be kept by Tenant safe, secure and in conformance with the requirements of the local governing body having jurisdiction over the Shopping Center and each of the restrictions and requirements set forth in **Exhibit "F"** hereof. No aerial or antenna shall be erected on the roof or exterior walls of the Premises without the prior written consent of Landlord. Any aerial or antenna so installed without such written consent shall be subject to removal by Landlord, Landlord's agents, and Landlord's employees, without notice at any time. Tenant agrees that it will not solicit in any manner in any of the automobile parking and Common Area of the Shopping Center.

(c) Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading and services to the Premises prior to 10:00 A.M. of each day, and to prevent delivery trucks or other vehicles servicing the Premises from parking or standing in service areas for undue periods of time. Landlord reserves the right to further reasonably regulate the activities of Tenant in regard to deliveries and servicing of the Premises, and Tenant agrees to abide by such further reasonable rules and regulations which Landlord may impose from time to time.

(d) In the event Tenant violates Section 6.1(a) above and changes the use of the Premises from that specified in the "Agreed Use" clause in Section 1.8, then Landlord may, in addition to the remedies set forth herein, terminate this Lease upon written notice to Tenant. If this Lease shall be so terminated by Landlord, both Landlord and Tenant shall be relieved of all further liability to each other, and Tenant shall vacate the Premises upon the date specified in Landlord's notice to Tenant of Lease termination.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials on the Premises, is: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or

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(iii) a basis for potential liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Tenant shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Landlord and timely compliance (at Tenant's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Tenant may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Landlord to any liability therefore. Landlord may condition its consent to any Reportable Use upon receiving such additional assurances as Landlord reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before the Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Landlord.** If Tenant knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, Tenant shall immediately give written notice of such fact to Landlord and provide Landlord with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Tenant Remediation.** Tenant shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Tenant's expense, take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Tenant, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Tenant, or any third party.

(d) **Tenant Indemnification.** Tenant shall indemnify, defend and hold Landlord, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising from any Hazardous Substance brought onto the Premises by or for Tenant, or any third party under Tenant's direction, control or authority. Tenant's obligations shall include, without limitation, the effects of any contamination or injury to person, property or the environment created or suffered by Tenant, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Landlord and Tenant shall release Tenant from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Landlord in writing in such agreement.

(e) **Investigation and Remediation.** Landlord shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Delivery Date, unless such remediation measure is required as a result of Tenant's use of the Premises, in which event Tenant shall be responsible for such payment. Tenant shall cooperate fully in any such activities at the request of Landlord, including allowing Landlord and Landlord's agents to have reasonable access to the Premises at reasonable times in order to carry out Landlord's investigative and remedial responsibilities.

(f) **Landlord Termination Option.** If a Reportable Use of Hazardous Substance(s) occurs during the term of this Lease, unless Tenant is legally responsible therefor (in which case Tenant shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect subject to Landlord's rights under Section 6.2(d)), Landlord may, at Landlord's option, either (i)

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investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant of Landlord's desire to terminate this Lease as of the date 60 days following the date of such notice.

6.3 Tenant's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Tenant shall, at Tenant's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Landlord's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said requirements are now in effect or become effective after the Delivery Date. Tenant shall, within 10 days after receipt of Landlord's written request, provide Landlord with copies of all permits and other documents, and other information evidencing Tenant's compliance with any Applicable Requirements specified by Landlord, and shall immediately upon receipt, notify Landlord in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Tenant or the Premises to comply with any Applicable Requirements.

6.4 Inspection; Compliance. Landlord, Landlord's lender, if any, and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Lease. The cost of any such inspections shall be paid by Landlord, unless a violation of Applicable Requirements, or a contamination is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority in which case, Tenant shall upon request reimburse Landlord for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination.

Article 7

Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations

7.1 Tenant's Obligations.

(a) **In General.** Subject to the provisions of Section 2.3 (Compliance), 6.3 (Tenant's Compliance with Applicable Requirements), 7.2 (Landlord's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Tenant shall, at Tenant's sole expense, keep the Premises, Utility Installations intended for Tenant's exclusive use, no matter where located, and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Tenant, and whether or not the need for such repairs occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Landlord pursuant to Section 7.2. Tenant, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Section 7.1(b). Tenant's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Tenant shall, at Tenant's sole expense, procure and maintain contracts, with copies to Landlord, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, (iii) clarifiers, and (iv) any other equipment, if reasonably required by Landlord. Landlord reserves the express right upon notice to Tenant, to procure and maintain any or all of such service contracts, and if Landlord so elects, Tenant shall reimburse Landlord, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Tenant fails to perform Tenant's obligations under this Section 7.1, Landlord may enter upon the Premises after 10 days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the Premises in good order, condition and repair, and Tenant shall promptly reimburse Landlord for the cost thereof.

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7.2 Landlord's Obligations. Landlord shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Area and all parts thereof, as well as providing the services for which there is a Common Area Expense pursuant to Section 4.2. Tenant expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations.

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air lines, power panels, electrical distribution, security and fire protection systems, communication systems, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "**Trade Fixtures**" shall mean Tenant's machinery and equipment that can be removed without doing damage to the Premises. Notwithstanding the foregoing, in the event the Premises is being utilized as a restaurant or fast food location, and Tenant has installed any restaurant equipment, which restaurant equipment shall include, but not be limited to, ovens, stoves or hoods (whether or not such hoods require the penetration of the roof and roof membrane for the Building) ("**Restaurant Equipment**"), Tenant hereby expressly agrees that all such Restaurant Equipment shall, upon installation, immediately become the property of Landlord, and shall not be removed by Tenant at the expiration or earlier termination of this Lease. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion.

(b) **Consent.** Tenant shall not make any Alterations or Utility Installations to the Premises without Landlord's prior written consent. Tenant may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Landlord, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 1 month's Base Rent. Tenant shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Landlord. Landlord may, as a precondition to granting such approval, require Tenant to utilize a contractor chosen and/or approved by Landlord. Any Alterations or Utility Installations that Tenant shall desire to make and which require the consent of the Landlord shall be presented to Landlord in written form with detailed plans. Consent shall be deemed conditioned upon Tenant's: (i) acquiring all applicable governmental permits, (ii) furnishing Landlord with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Tenant shall promptly upon completion furnish Landlord with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Landlord may condition its consent upon Tenant providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Tenant's posting an additional Security Deposit with Landlord.

(c) **Indemnification.** Tenant shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Tenant shall give Landlord not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Landlord shall have the right to post notices of non-responsibility. If Tenant shall contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense indemnify, defend and hold itself, Landlord and the Premises harmless against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Landlord shall require, Tenant shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Landlord against liability for the same. If Landlord elects to participate in any such action, Tenant shall pay Landlord's reasonable attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Landlord's right to require removal, all Alterations and Utility Installations made by Tenant shall be the property of Landlord and considered a part of the Premises. Unless

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otherwise instructed per Section 7.4(b) hereof, all Alterations and Utility Installations shall, at the expiration or termination of this Lease, remain in and be surrendered by Tenant with the Premises.

(b) **Removal.** By delivery to Tenant of written notice from Landlord prior to the end of the term of this Lease, Landlord may require that any or all Alterations and Utility Installations be removed by the expiration or termination of this Lease, and the Premises be restored to their "Original Condition", in either event at Tenant's sole cost and expense. Landlord may require the removal at any time of all or any part of any Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Tenant shall surrender the Premises by the expiration or earlier termination of the Lease Term, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted, and with all damage and/or injury to the Premises by Tenant or any person who may be in or upon the Premises by the consent of Tenant, repaired by Tenant at Tenant's sole cost and expense. At Landlord's election, all work of restoration shall be performed by Landlord and paid for by Tenant, with the cost of such restoration to be determined by Landlord based on the lowest of two (2) written estimates obtained by Landlord, which restoration work Landlord shall commence only after Landlord has received payment therefor from Tenant. "**Original Condition**" is defined as perimeter/demising walls only with all interior partitions and partition walls removed, all ceilings properly re-hung following demolition, and all plumbing and electrical systems redone to meet then current building codes. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Tenant shall repair any damage occasioned by the installation, maintenance or removal of Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Tenant. Any and all basins, lavatories, sinks, water closets, water heaters, lighting fixtures, receptacles, hardware, cabinets, partitions (whether permanently built-in or the type which attaches to the floor or walls directly or through a bracket-type installation), doors and floor coverings (other than carpets) are herein construed to be permanent improvements and shall not be removed from the Premises upon the expiration or early termination of this Lease, except as provided in Section 7.4(b), above. Tenant shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Tenant, or any third party even if such removal would require Tenant to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Tenant and shall be removed by Tenant. The failure by Tenant to timely vacate the Premises pursuant to this Section without the express written consent of Landlord shall constitute a holdover under the provisions of Article 26 below.

Article 8 Insurance; Indemnity

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Landlord, pursuant to Sections 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Delivery Date or expiration of this Lease.

8.2 **Liability Insurance.**

(a) **Carried by Tenant.** Tenant shall obtain and keep in force a Commercial General Liability policy of insurance protecting Tenant and Landlord as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$3,000,000, an "Additional Insured-Managers or Landlords of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "**insured contract**" for the performance of Tenant's indemnity obligations under this Lease. The limits of such insurance shall not limit the liability of Tenant nor relieve Tenant of any obligation hereunder. All insurance carried by Tenant shall be primary to and not

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contributory with any similar insurance carried by Landlord, whose insurance shall be considered excess insurance only.

(b) **Carried by Landlord.** Landlord shall maintain liability insurance as described in Section 8.2(a) on the Common Area, in addition to, and not in lieu of, the insurance required to be maintained by Tenant.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Landlord shall obtain and keep in force a policy or policies of insurance in the name of Landlord, with loss payable to Landlord, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender. Tenant Owned Alterations and Utility Installations, Trade Fixtures, and Tenant's personal property shall be insured by Tenant under Section 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located.

(b) **Rental Value.** Landlord, at its sole discretion, may obtain and keep in force a policy or policies in the name of Landlord with loss payable to Landlord and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value insurance**"). In the event Landlord elects to obtain Rental Value Insurance, the cost to Landlord for such insurance shall be borne and paid by Tenant as Rent. Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the Rent otherwise payable by Tenant, for the next 12 month period.

(c) **Adjacent Premises.** Tenant shall pay for any increase in the premiums for the property insurance of the Building and for the Common Area or other buildings in the Shopping Center if said increase is caused by Tenant's acts, omissions, use or occupancy of the Premises.

8.4 Tenant's Property; Business Interruption Insurance.

(a) **Property Damage.** Tenant shall maintain insurance coverage on all of Tenant's personal property, Trade Fixtures, and Tenant Owned Alterations and Utility Installations. It is acknowledged that Tenant is self insured for personal property. Tenant will be responsible for any damage or loss of personal property. The proceeds from any such insurance shall be used by Tenant for the replacement of personal property, Trade Fixtures and Tenant Owned Alterations and Utility Installations. Tenant shall provide Landlord with written evidence that such insurance is in force.

(b) **Business Interruption.** Intentionally Deleted

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Tenant shall not do or permit to be done anything which invalidates the required insurance policies. Tenant shall, prior to the Delivery Date, deliver to Landlord certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Landlord. Tenant shall, at least 30 days prior to the expiration of such policies, furnish Landlord with evidence of renewals or "insurance binders" evidencing renewal thereof, or Landlord may order such insurance and charge

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the cost thereof to Tenant, which amount shall be payable by Tenant to Landlord upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If Tenant shall fail to procure and maintain the insurance required to be carried by it, Landlord may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Tenant and Landlord each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Landlord or Tenant, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Landlord's gross negligence or willful misconduct, Tenant shall indemnify, protect, defend and hold harmless the Premises, Landlord and its agents, Landlord's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Tenant. If any action or proceeding is brought against Landlord by reason of any of the foregoing matters, Tenant shall upon notice defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord and Landlord shall cooperate with Tenant in such defense. Landlord need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Landlord from Liability. Landlord shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Tenant, Tenant's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of Landlord nor from the failure of Landlord to enforce the provisions of any other lease in the Shopping Center. Notwithstanding Landlord's negligence or breach of this Lease, Landlord shall under no circumstances be liable for injury to Tenant's business or for any loss of income or profit therefrom.

Article 9 Damage or Destruction

9.1 Insured Casualty. In the event that the Premises are partially or totally destroyed by fire or any other peril covered by insurance maintained by Landlord, Landlord shall, within a period of one hundred eighty (180) days after the occurrence of such destruction, but only to the extent that proceeds of such insurance are available to Landlord for such purpose, commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect. In the event insurance proceeds are not sufficient to pay the cost of such reconstruction, or if the damage or destruction is due to the acts or omissions of Tenant, its agents, employees or contractors, or if Landlord is restricted by any governmental authority, Landlord may elect to either terminate this Lease or pay the cost of such reconstruction. Such reconstruction shall be only to the extent necessary to restore the "Landlord's Work" in the Premises as described in **Exhibit "C"**, and Tenant shall be obligated for the restoration of all of the items specified as "Tenant's Work" in **Exhibit "C"** in the event of such reconstruction, as well as Tenant's other leasehold improvements, Trade Fixtures, Utility Installations, Alterations, and other personal property on the Premises.

9.2 Uninsured Casualty. In the event that the Premises are partially or totally destroyed as a result of any casualty or peril not covered by Landlord's insurance, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction (a) commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or (b) notify Tenant in writing that it elects not to so reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of service of such notice, unless Tenant is unable to continue the

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operation of its business after the occurrence of such destruction, in which event this Lease shall cease and terminate as of the date of such destruction. In the event of any reconstruction of the Premises by Landlord following destruction as a result of any casualty or peril not covered by Landlord's insurance, such reconstruction shall be only to the extent necessary to restore the "Landlord's Work" in the Premises as described in **Exhibit "C"** and Tenant shall be obligated for the restoration of all of the items specified as "Tenant's Work" in **Exhibit "C"** in the event of such reconstruction, as well as Tenant's other leasehold improvements, Trade Fixtures, Utility Installations, Alterations, and other personal property on the Premises.

9.3 Damage to the Shopping Center. Notwithstanding anything to the contrary herein contained, in the event of a total destruction of the Shopping Center or a partial destruction of the Shopping Center, the cost of restoration of which would exceed one-third (1/3) of the then replacement value of the Shopping Center, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore the Shopping Center, in which event this Lease shall cease and terminate as of the date of such destruction.

9.4 Damage Near End of Term. Notwithstanding the foregoing, in the event that the Premises are partially or totally destroyed during the last two (2) years of the Lease Term, Landlord shall have the option to terminate this Lease by giving written notice to the Tenant of the exercise of such option within thirty (30) days after such destruction, in which event this Lease shall cease and terminate as of the date of service of such notice. For the purposes of this Article, partial destruction shall be deemed to be a destruction to an extent of at least one-third (1/3) of the full replacement cost of the Premises as of the date of destruction.

9.5 Release of Liability. In the event of any termination of this Lease in accordance with this Article, the parties shall be released thereby without further obligation to the other party coincidental with the surrender of possession of the Premises to Landlord except for items which have theretofore accrued and are then unpaid or unperformed.

9.6 Abatement of Rent. In the event of reconstruction and restoration as herein provided, and provided Tenant has maintained the business interruption or loss of income insurance required herein, to the extent that the proceeds of such business interruption or loss of income insurance may be exhausted during the period of reconstruction and restoration, Base Rent payable hereunder shall be thereafter abated proportionately with the degree to which Tenant's use of the Premises is impaired during the remainder of the period of reconstruction and restoration; provided, however, the amount of Base Rent abated pursuant to this Section shall in no event exceed the amount of loss of Rental Value Insurance proceeds actually received by Landlord. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay Percentage Rent and all other charges, except the entire Base Rent, shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such destruction, reconstruction or restoration. Tenant hereby waives any statutory rights of termination which 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.

Article 10 Real Property Taxes

10.1 Definition. As used herein, the term "**Real Property Taxes**" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Landlord in the Shopping Center, Landlord's right to other income therefrom, and/or Landlord's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Shopping Center address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Shopping Center is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein, imposed by reason of events occurring during the Lease Term, including but not limited to, a change in the

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ownership of the Shopping Center or any portion thereof or a change in the improvements thereon. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Landlord shall pay the Real Property Taxes applicable to the Shopping Center, and any such amounts shall be included in the calculation of Common Area Expenses in accordance with the provisions of Section 4.2.

10.3 **Additional Improvements.** Tenant shall, at Landlord's option, pay to Landlord at the time Common Area Expenses are payable under Section 4.2, the entirety of any increase in Real Property Taxes or supplemental Real Property Taxes that may be assessed solely by reason of Tenant's installation of any Alterations, Trade Fixtures or Utility Installations upon the Premises by Tenant or at Tenant's request.

10.4 **Joint Assessment.** If the Building or Premises is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Landlord from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Landlord's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Tenant shall pay prior to delinquency all taxes assessed against and levied upon Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Tenant contained in the Premises. When possible, Tenant shall cause its Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord. If any of Tenant's said property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant's property within 10 days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

Article 11 Utilities

Tenant shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Section 4.2, if at any time in Landlord's sole judgment, Landlord determines that Tenant is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Tenant is generating such a large volume of trash as to require an increase in the size of the dumpster and/or an increase in the number of times per month that the dumpster is emptied, then Landlord may increase Tenant's Base Rent by an amount equal to such increased costs. Except for Landlord's gross negligence or willful misconduct, Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises, and no such failure or interruption shall entitle Tenant to terminate this Lease or withhold any rent or any other sums due under the terms of this Lease.

Article 12 Assignment and Subletting

12.1 Landlord's Consent Required.

(a) Tenant shall not voluntarily or by operation of law assign, transfer, license, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Tenant's interest in this Lease or in the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld.

(b) A change in the control of Tenant shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Tenant shall constitute a change in control for this purpose.

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(c) The involvement of Tenant or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Tenant's assets occurs, which results or will result in a reduction of the Net Worth of Tenant by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Landlord has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Landlord may withhold its consent. **"Net Worth of Tenant"** shall mean the net worth of Tenant (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Landlord's option, be a Default curable after notice per Section 13.1(d), or a non-curable Breach without the necessity of any notice and grace period. If Landlord elects to treat such unapproved assignment or subletting as a non-curable Breach, Landlord may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect whereupon all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Tenant's remedy for any breach of Section 12.1 by Landlord shall be limited to compensatory damages and/or injunctive relief.

(f) In the event Tenant shall request Landlord's consent to a proposed assignment or subletting, Landlord may (i) consent, (ii) refuse to consent, or (iii) terminate this Lease by written notice to Tenant.

12.2 Terms and Conditions.

(a) Regardless of Landlord's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or subtenant of the obligations of Tenant under this Lease, (ii) release Tenant of any obligations hereunder, or (iii) alter the liability of Tenant for the payment of Rent or for the performance of any other obligations to be performed by Tenant.

(b) Landlord may accept Rent or performance of Tenant's obligations from any person other than Tenant pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Landlord's right to exercise its remedies for Tenant's Default or Breach.

(c) Landlord's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event Tenant shall make a permitted assignment or sublease hereunder, then the Base Rent shall be increased, effective as of the date of such transfer, to the highest of (a) the total rent payable by the assignee or sublessee pursuant to such transfer; (b) an amount equal to the total of the Base Rent, plus Percentage Rent, required to be paid by Tenant hereunder during the twelve (12) month period immediately preceding such transfer; or (c) the Base Rent adjusted in accordance with the provisions of Section 4.7 of this Lease. In no event shall the Base Rent after the transfer be less than the Base Rent prior to the transfer.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Landlord's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or subtenant, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$1,000.00, as consideration for Landlord's considering and processing said request. Tenant agrees to provide Landlord with such other or additional information and/or documentation as may be reasonably requested, and to pay Landlord's reasonable attorney's fees incurred in preparing the documentation for the proposed assignment, sublease or other transfer. Each assignment, sublease or other transfer to which Landlord has consented shall be evidenced by a written instrument, the form and content of which is satisfactory to Landlord, executed by Tenant and transferee.

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(f) Any assignee of, or subtenant under, this Lease shall, by reason of accepting such assignment or entering into such sublease, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Tenant.

12.3 Procedure For Transfer. Should Tenant desire to make an assignment or sublease hereunder, Tenant shall, in each instance, give written notice of its intention to do so to Landlord not less than sixty (60) days prior to the effective date of such proposed transfer, specifying in such notice whether Tenant proposes to assign or sublet, or enter into a license or concession agreement, the proposed date thereof, and specifically identifying the proposed assignee, sublessee or transferee. Such notice shall be accompanied, in the case of a sublease, license or concession agreement, by a copy of the proposed sublease, license or concession agreement, or if same is not available, a letter of commitment or a letter of intent. Landlord shall, within twenty (20) days after its receipt of such notice of a proposed transfer from Tenant, by mailing written notice to Tenant of its intention to do so (a) withhold consent to the transfer; or (b) consent to such transfer; or (c) terminate this Lease, such termination to be effective thirty (30) days after receipt of such notice by Tenant. Landlord hereby reserves the right to condition Landlord's consent to any assignment, sublease or other transfer of all or any portion of Tenant's interest in this Lease or the Premises upon Landlord's receipt from Tenant of a written agreement, in form and substance acceptable to Landlord, pursuant to which Tenant shall pay over to Landlord all rent received by Tenant from any such assignee, sublessee, or transferee either initially or over the term of the assignment, sublease or transfer, in excess of the Rent called for hereunder.

12.4 Additional Terms Applicable to Subletting. The following terms and conditions shall apply to any subletting by Tenant of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Tenant hereby assigns and transfers to Landlord all of Tenant's interest in all Rent payable on any sublease, and Landlord may collect such Rent and apply same toward Tenant's obligations under this Lease; provided that until a Breach shall occur in the performance of Tenant's obligations, Tenant may collect said Rent. Landlord shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the subtenant for any failure of Tenant to perform and comply with any of Tenant's obligations to such subtenant. Tenant hereby irrevocably authorizes and directs any such subtenant, upon receipt of a written notice from Landlord stating that a Breach exists in the performance of Tenant's obligations under this Lease, to pay to Landlord all Rent due and to become due under the sublease. Subtenant shall rely upon any such notice from Landlord and shall pay all Rents to Landlord without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Tenant to the contrary.

(b) In the event of a Breach by Tenant, Landlord may, at its option, require subtenant to attorn to Landlord, in which event Landlord shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided Landlord shall not be liable for any prepaid rents or security deposit paid by such subtenant to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the prior written consent of Landlord.

(d) No subtenant shall further assign or sublet all or any part of the Premises without Landlord's prior written consent.

(e) Landlord shall deliver a copy of any notice of Default or Breach by Tenant to the subtenant, who shall have the right to cure the Default of Tenant within the grace period, if any, specified in such notice. The subtenant shall have a right of reimbursement and offset from and against Tenant for any such Default cured by the subtenant.

Article 13 Default; Breach; Remedies

13.1 Default; Breach. A "**Default**" is defined as a failure by the Tenant to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "**Breach**" is defined as the

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occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Section 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Tenant to make any payment of Rent or any Security Deposit required to be made by Tenant hereunder, whether reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of five (5) days following written notice to Tenant.

(c) The failure by Tenant to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, or (vii) any other documentation or information which Landlord may reasonably require of Tenant under the terms of this Lease, where any such failure continues for a period of ten (10) days following written notice to Tenant.

(d) A Default by Tenant as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Section 2.9 hereof, other than those described in Sections 13.1(a), (b) or (c), above, where such Default continues for a period of thirty (30) days after written notice; provided that if the nature of Tenant's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 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, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days; provided in the event that any provision of this subsection (e) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(f) The discovery that any financial statement of Tenant or of any Guarantor given to Landlord was materially false.

(g) If the performance of Tenant's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Tenant's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security acceptable to Landlord, which, when coupled with the then existing resources of Tenant, equals or exceeds the combined financial resources of Tenant and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Tenant fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Landlord may, at its option, perform such duty or obligation on Tenant's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. The costs and expenses of any such performance by Landlord shall be due and payable by Tenant upon receipt of invoice therefor. If any check given to Landlord by Tenant shall not be honored by the bank upon which it is drawn, Landlord, at its option, may require all future payments to be made by Tenant to be by cashier's check. In the event of a Breach, Landlord may, with or without

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further notice or demand, and without limiting Landlord in the exercise of any right or remedy which Landlord may have by reason of such Breach:

(a) Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession to Landlord. In such event Landlord shall be entitled to recover from Tenant: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by the Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Landlord in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Landlord to mitigate damages caused by Tenant's Breach of this Lease shall not waive Landlord's right to recover damages under Article 12.

(b) Continue the Lease and Tenant's right to possession and recover the Rent as it becomes due, in which event Tenant may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Landlord's interests, shall not constitute a termination of the Tenant's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Tenant's right to possession shall not relieve Tenant from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Tenant's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement in this Lease for free or abated rent or other charges, or for the giving or paying by Landlord to or for Tenant of any cash or other bonus, inducement or consideration for Tenant's entering into this Lease, all of which concessions are hereinafter referred to as "**Inducement Provisions**", shall be deemed conditioned upon Tenant's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Tenant, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Landlord under such an Inducement Provision shall be immediately due and payable by Tenant to Landlord, notwithstanding any subsequent cure of said Breach by Tenant. The acceptance by Landlord of rent or the cure of the Breach which initiated the operation of this Section shall not be deemed a waiver by Landlord of the provisions of this Section unless specifically so stated in writing by Landlord at the time of such acceptance.

13.4 Late Charges. Tenant hereby acknowledges that late payment by Tenant of Rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by any Lender. Accordingly, if any Rent shall not be received by Landlord within 5 days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a one-time late charge equal to 10% of each such overdue amount or \$400.00, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of such late payment. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Landlord's option, become due and payable quarterly in advance.

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13.5 **Interest.** Any monetary payment due Landlord hereunder, other than late charges, not received by Landlord, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be equal to at least twelve percent (12%), but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the late charge provided for in Section 13.4.

13.6 **Breach by Landlord.**

(a) **Notice of Breach.** Landlord shall not be deemed in breach of this Lease unless Landlord fails within a reasonable time to perform an obligation required to be performed by Landlord. For purposes of this Section, a reasonable time shall in no event be less than 30 days after receipt by Landlord, and any Lender whose name and address shall have been furnished Tenant in writing for such purpose, of written notice specifying wherein such obligation of Landlord has not been performed; provided that if the nature of Landlord's obligation is such that more than 30 days are reasonably required for its performance, then Landlord shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Tenant on Behalf of Landlord.** In the event that neither Landlord nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Tenant may elect to cure said breach at Tenant's expense and Landlord shall reimburse Tenant for Tenant's actual, reasonable, third party costs in curing said breach within thirty (30) days following Landlord's receipt of Tenant's itemized invoice for same. Should Landlord fail to timely reimburse Tenant, upon an additional 30 days prior notice to Landlord, Tenant may offset from Rent an amount not to exceed one month's Base Rent, and to pay an excess of such expense under protest, reserving Tenant's right to reimbursement from Landlord. Upon request, Tenant shall document the cost of said cure by providing copies of paid, third party invoices, and supply copies of said documentation to Landlord.

Article 14 Condemnation

14.1 **Taking Resulting in Termination.** In the event that all or substantially all of the Premises shall be taken under the power of eminent domain, or that any portion of the Shopping Center shall be so taken so as to render the Shopping Center not reasonably suitable for continuation of business in Landlord's or Landlord's lender's absolute discretion, this Lease shall thereupon terminate as of the date possession shall be so taken. In the event that a portion of the floor area of the Premises shall be taken under the power of eminent domain and the portion not so taken will not be reasonably adequate for the operation of Tenant's business in Landlord's or Landlord's lender's absolute discretion, notwithstanding Landlord's performance of restoration as hereinafter provided, this Lease shall terminate as of the date possession of such portion is taken. If this Lease is terminated, all Rent shall be paid up to the date that actual possession of the Premises, or a portion thereof, is taken by public authority, and Landlord shall make an equitable refund of any Rent paid by Tenant in advance and not yet earned.

14.2 **Partial Taking.** In the event of any taking under the power of eminent domain which does not terminate this Lease as aforesaid, any obligation of Tenant under this Lease to pay Percentage Rent, and all of the other provisions of this Lease, shall remain in full force and effect, except that the Rent only shall be reduced in the same proportion that the amount of floor area of the Premises taken bears to the floor area of the Premises immediately prior to such taking, and Landlord shall, to the extent of the condemnation award actually received by Landlord, restore such part of Landlord's Work in the Premises described in **Exhibit "C"** as is not taken to as near its former condition as the circumstances will permit, and Tenant shall do likewise with respect to such part of the Tenant's Work, Trade Fixtures, Alterations and Utility Installations as are not taken.

14.3 **Award.** All damages awarded for any such taking under the power of eminent domain, whether for the whole or a part of the Premises, shall belong to and be the property of Landlord, whether such damages shall be awarded as compensation for diminution in value of the leasehold or for the fee of the Premises; provided that nothing herein contained shall prevent Tenant from making claim for loss or damage to Tenant's trade fixtures and removable personal property, goodwill and relocation expenses.

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14.4 **Transfer Under Threat of Taking.** A voluntary sale by Landlord of all or any portion of the Shopping Center to a public or quasi-public body, agency or person, corporate or otherwise, having the power of eminent domain, either under threat of condemnation or while condemnation proceedings are pending, shall be deemed to be a taking by eminent domain.

14.5 **Requisitioning.** Notwithstanding anything to the contrary in the foregoing provisions, the requisitioning of the Premises or any part thereof by military or other public authority for purposes arising out of a temporary emergency or other temporary situation or circumstances shall constitute a taking of the Premises by eminent domain only when the use and occupancy by the requisitioning authority has continued for one hundred eighty (180) days. During such one hundred eighty (180) consecutive day period, and if this Lease is not terminated under the foregoing provisions, then for the duration of the use and occupancy of the Premises by the requisitioning authority, any obligation of Tenant under this Lease to pay Percentage Rent or other amounts, and all of the other provisions of this Lease, shall remain in full force and effect, except that Rent shall be reduced in the same proportion that the amount of the floor area of the Premises requisitioned bears to the total floor area of the Premises, and Landlord shall be entitled to whatever compensation may be payable from the requisitioning authority for the use and occupation of the Premises for the period involved.

Article 15 Broker

Tenant and Landlord each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder other than the broker identified in Section 1.9, if any, in connection with this Lease, pursuant to a separate agreement. Tenant and Landlord do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

Article 16 Estoppel

If, upon any sale, assignment or hypothecation of the Premises, the Shopping Center, or the land thereunder by Landlord, an estoppel statement shall be required from Tenant, Tenant agrees to deliver in recordable form within five (5) days after written request therefor by Landlord, an estoppel statement in form as may be prescribed by Landlord, its prospective lender or purchaser. Tenant's failure or refusal to timely execute such certificate, or such other certificate the party (other than Landlord) to the sale, assignment, or hypothecation may request, shall constitute an acknowledgment by Tenant that the statements in such certificate are true and correct without exception.

Article 17 Definition of Landlord

The term "**Landlord**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Tenant's interest in the prior lease. In the event of a transfer of Landlord's title or interest in the Premises or this Lease, Landlord shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Landlord. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Landlord shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Landlord.

Article 18 Severability

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The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

Article 19 Days

Unless otherwise specifically indicated to the contrary, the word "**days**" as used in this Lease shall mean and refer to calendar days.

Article 20 Limitation on Liability

Notwithstanding any other provision hereof, neither Landlord nor any person or entity comprising Landlord shall not have any personal liability hereunder. If Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed, and if as a consequence of such default Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Shopping Center and out of rents or other income from such property receivable by Landlord, or out of the consideration receivable by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Shopping Center, subject to the rights of Landlord's mortgagee, and neither Landlord nor its employees, officers, directors, partners, shareholders or affiliates shall be liable for any deficiency.

Article 21 Time of the Essence

Time is of the essence with respect to the performance of all obligations to be performed or observed by Tenant under this Lease.

Article 22 No Prior or Other Agreements

This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

Article 23 Notices

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Article 23. The addresses specified in Section 1.12 shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

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Waivers

No waiver by Landlord of the Default or Breach of any term, covenant or condition hereof by Tenant, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Tenant of the same or of any other term, covenant or condition hereof. Landlord's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Landlord's consent to, or approval of, any subsequent or similar act by Tenant, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Landlord shall not be a waiver of any Default or Breach by Tenant. Any payment by Tenant may be accepted by Landlord on account of moneys or damages due Landlord, notwithstanding any qualifying statements or conditions made by Tenant in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Landlord at or before the time of deposit of such payment.

Article 25 Radius Clause

Tenant agrees during the Lease Term it shall not directly or indirectly own or operate any business similar to that for which the Premises are to be used, which business was not so owned or operated by Tenant as of the date of this Lease, within a radius of two (2) miles from the Premises. If Tenant violates this Section, then in addition to any other remedy by Landlord at law or equity, Tenant agrees to pay to Landlord as additional Rent, over and above any other rental required to be paid hereunder, for any period(s) that it shall continue to own or operate such other business, a sum equal to twenty-five percent (25%) of the Base Rent provided in Section 1.5(a) hereof, as adjusted, immediately upon the date the similar business opened or began operation.

Article 26 Holdover

26.1 **Holdover Tenancy.** Tenant has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Tenant holds over, then such holding over, in the absence of written agreement on the subject, shall be deemed to have created a tenancy from month-to-month, terminable on thirty (30) days' written notice by either party to the other, upon a Rent hereinafter stated, but otherwise subject to all of the terms and provisions of this Lease. During any hold over period, the Rent shall be increased to 150% of the Rent applicable immediately preceding the expiration or termination of the Lease.

26.2 **Failure to Surrender.** If Tenant fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant hereby agrees to indemnify and hold Landlord harmless from loss or liability resulting from such failure including, but not limited to, any claims made by any succeeding tenant based upon Tenant's failure to surrender.

Article 27 Cumulative Remedies

The various rights, options, elections, powers and remedies contained in this Lease shall be construed as cumulative, and no one remedy shall be exclusive of any other remedy, or of any other legal or equitable remedy which either party might otherwise have in the event of breach or default in the terms hereof, and the exercise of one right or remedy by such party shall not impair its right to any other right or remedy until all obligations imposed upon the other party have been fully performed.

Article 28 Covenants and Conditions; Construction of Agreement

All provisions of this Lease to be observed or performed by Tenant are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

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Article 29 Binding Effect; Choice of Law

This Lease shall be binding upon the parties, their personal representatives, successors and permitted assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

Article 30 Subordination; Attornment; Non-Disturbance

30.1 **Subordination.** This Lease is subject and subordinate to all ground and/or other underlying leases including sale and leaseback leases, mortgages and deeds of trust or other encumbrances which now affect the Shopping Center, the Premises or any portion thereof, together with all renewals, modifications, consolidations, replacements and extensions thereof; provided if the lessor under any such lease or the holder or holders of any such mortgage, deed of trust or any encumbrance shall advise Landlord that it or they desire to require this Lease to be prior and superior thereto, upon written request of Landlord to Tenant, Tenant agrees to promptly execute, acknowledge and deliver any and all documents or instruments which Landlord or such lessor, holder or holders deem necessary or desirable therefor. This Lease is further subject and subordinate to (a) all covenants, conditions, restrictions, easements and any other matters or documents of record, together with all renewals, modifications, consolidations, replacements and extensions thereof; and (b) any zoning laws of the city, county and state where the Shopping Center is situated. Tenant hereby covenants that Tenant, and all persons in possession or holding under Tenant, will conform to and will not violate the terms of said matters of record.

30.2 **Attornment.** Notwithstanding anything to the contrary set forth in this Article, Tenant hereby attorns and agrees to attorn to any person, firm or corporation purchasing or otherwise acquiring Landlord's interest in the Shopping Center, the Premises, or the real property thereunder or any portion thereof, at any sale or other proceeding or pursuant to the exercise of any rights, powers, or remedies under such mortgages or deeds of trust or ground or underlying leases as if such person, firm or corporation had been named as Landlord herein, it being intended hereby that, if this Lease shall be terminated, cut off, or otherwise defeated by reason of any act or actions by the owner or holder of any such mortgage or deed of trust, or the lessor under any such leasehold estate, then at the option of any such person, firm or corporation so purchasing or otherwise acquiring Landlord's interest in the Shopping Center, the Premises, or the real property thereunder or any portion thereof, this Lease shall continue in full force and effect. Tenant hereby irrevocably appoints Landlord the attorney-in-fact of Tenant to execute and deliver any documents provided herein for and in the name of Tenant, and such power, being coupled with any interest, is irrevocable.

30.3 **Future Encumbrance.** Landlord shall have the right to cause this Lease to be and become and remain subject and subordinate to any and all ground and/or other underlying leases, including the sale and leaseback leases, mortgages or deeds of trust or other encumbrances which may hereafter be executed covering the Shopping Center, the Premises, the real property thereunder or any portion thereof (collectively "**Security Device**"), for the full amount of all advances made or to be made thereunder and without regard to the time or character of such advance, together with interest thereon, and subject to all of the terms and provisions thereof.

30.4 **Self-Executing.** The agreements contained in this Article 30 shall be effective without the execution of any further documents; provided that, upon five (5) days prior written request from Landlord or a Lender in connection with a sale, financing or refinancing of the Premises, Tenant shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement which provides that Tenant's possession of the Premises, and this Lease will not be disturbed so long as Tenant is not otherwise in Breach hereof and attorns to the record owner of the Premises.

Article 31 Attorneys Fees

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If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. In addition, Landlord shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach.

Article 32 Landlord's Access; Showing Premises

Landlord and Landlord's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary. All such activities shall be without abatement of rent or liability to Tenant. Landlord may at any time place on the Premises any ordinary "**For Sale**" signs and Landlord may during the last 6 months of the Lease Term place on the Premises any ordinary "**For Lease**" signs.

Article 33 Auctions

Tenant shall not conduct, nor permit to be conducted, any auction upon the Premises without Landlord's prior written consent. Landlord shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

Article 34 Signs

Tenant shall not affix or maintain upon the glass panes or supports of the show windows, or within sixty (60) inches of any window or upon the doors, roof or exterior walls of the Premises, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other similar item or items except those approved in writing in advance by Landlord as to the size, design, type, color, location, copy, nature and display qualities of such item. Tenant shall provide Landlord with drawings of its storefront sign which Landlord may approve or disapprove in its reasonable discretion. All signs erected by Tenant shall comply with the provisions of **Exhibit "F"** hereof. In addition, no advertising medium shall be utilized by Tenant the sound or effect of which extends beyond the Premises including, without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. Tenant shall not display, paint or place or cause to be displayed, painted or placed, any handbills, bumper stickers, banners, boards, balloons or any other advertising devices on any vehicle parked in the parking area or structure of the Shopping Center, whether belonging to Tenant or to Tenant's agents or to any other person; nor shall Tenant distribute, or cause to be distributed, in the Shopping Center any handbill or other advertising devices.

Article 35 Termination; Merger

Unless specifically stated otherwise in writing by Landlord, the voluntary or other surrender of this Lease by Tenant, the mutual termination or cancellation hereof, or a termination hereof by Landlord for Breach by Tenant, shall automatically terminate any sublease or lesser estate in the Premises; provided that Landlord may elect to continue any one or all existing subtenancies. Landlord's failure within 30 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Landlord's election to have such event constitute the termination of such interest.

Article 36 Consents

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Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Landlord's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Tenant for any Landlord consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Tenant upon receipt of an invoice and supporting documentation therefor. Landlord's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Tenant of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Landlord at the time of such consent. The failure to specify herein any particular condition to Landlord's consent shall not preclude the imposition by Landlord at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

Article 37 Guarantor

37.1 **Execution.** The Guarantors, if any, shall each execute the Guarantee of Lease ("**Guarantee**") attached hereto as **Exhibit "D"**, and each such Guarantor shall have the same obligations as Tenant under this Lease.

37.2 **Default.** It shall constitute a Default of the Tenant if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

Article 38 Quiet Possession

Conditioned upon the timely payment by Tenant of the Rent and performance of all of the covenants, conditions and provisions on Tenant's part to be observed and performed under this Lease, Tenant shall have quiet possession and quiet enjoyment of the Premises during the Term hereof.

Article 39 Options

If Tenant is granted an "Option", as defined below, then the following provisions shall apply. Tenant may exercise Option by first giving to Landlord a minimum of 12 months written notice, but not more than 24 month written notice of Tenant's intent to exercise Option.

39.1 **Definition.** "**Option**" shall mean the right to extend the term of or renew this Lease.

39.2 **Options Personal To Original Tenant.** Any Option granted to Tenant in this Lease is personal to the original Tenant, and cannot be assigned or exercised by anyone other than the original Tenant and only while the original Tenant is in full possession of the Premises and, if requested by Landlord, with Tenant certifying that Tenant has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Tenant has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Tenant shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent

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is unpaid (without regard to whether notice thereof is given Tenant), (iii) during the time Tenant is in Breach of this Lease, or (iv) in the event that Tenant has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise an Option because of the provisions of Section 39.4(a).

Article 40 Security Measures

Tenant hereby acknowledges that the Rent payable to Landlord hereunder does not include the cost of guard service or other security measures, and that Landlord may, but shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of the Premises, Tenant, its agents and invitees and their property from the acts of third parties.

Article 41 Reservations

Landlord reserves the right: (i) to grant, without the consent or joinder of Tenant, such easements, rights and dedications that Landlord deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Tenant. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate such rights.

Article 42 Authority

If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each party shall, within 30 days after request, deliver to the other party satisfactory evidence of such authority.

Article 43 Offer

Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

Article 44 Amendments

This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Tenant's obligations hereunder, Tenant agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

Article 45 Multiple Parties

If more than one person or entity is named herein as either Landlord or Tenant, such multiple Parties shall have joint and several responsibility to comply with the terms of this Lease.

Article 46 Waiver of Jury Trial

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The Parties hereby waive their respective rights to trial by jury in any action or proceeding involving the Property or arising out of this Agreement.

Article 47 Landlord's Right to Relocate Premises

Landlord shall have the right to relocate the Premises to another part of the Shopping Center in accordance with the following:

A. **Decor.** The new Premises shall be substantially the same in size as the Premises described in this Lease and shall be placed in such condition by Landlord at its cost.

B. **Relocation.** The physical relocation of the Premises shall be accomplished by Landlord at Landlord's cost.

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

D. **Time.** Landlord shall diligently pursue the relocation of the Premises, and Rent and all other sums and charges payable under this Lease shall abate during the period of such relocation.

E. **Frequency.** Landlord shall not have the right to relocate the Premises more than two (2) times during the Lease Term.

F. **Size.** If the relocated Premises are smaller than the Premises as they existed before the relocation, Rent and other charges hereunder shall be reduced to a sum computed by multiplying the square footage of the relocated Premises by the price per square foot of Rent then existing for the Premises.

G. **Amendment.** The parties shall immediately execute an amendment to this Lease stating the relocation of the Premises and the reduction or increase of Rent, if any.

Article 48 Non-Discrimination

Tenant herein covenants by and for itself, its heirs, executors, administrators, successors and assigns, and all persons claiming under or through them, and this Lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry or national origin, in the leasing, renting, subleasing, transferring, use, occupancy, tenure or enjoyment of the land herein leased, nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants or vendees in the land herein leased.

Article 49 Operation of Tenant's Business

49.1 **Continuous Operation.** INTENTIONALLY DELETED

49.2 **Operating Hours.** INTENTIONALLY DELETED

Article 50 Mediation and Arbitration of Disputes

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50.1 **Mediation of Disputes.** Landlord and Tenant agree to attempt to resolve any dispute, claim or controversy arising out of or relating to this Lease by mediation before pursuing arbitration. Mediation shall be conducted under the then current mediation procedures of Judicial Arbitration and Mediation Services (JAMS) or any other procedure upon which the parties may agree.

A. Landlord or Tenant may commence the mediation process by providing to the other party with written notice to participate in mediation (Initial Notice), setting forth the subject of the dispute, claim or controversy and the relief requested. Within ten (10) days after the receipt of the Initial Notice, the other party shall deliver a written response to the Initial Notice. The mediation session shall be held within thirty (30) days after the date of the Initial Notice. The parties agree to share equally the costs and expenses of the mediation (which shall not include the expenses incurred by each party for its own legal representation in connection with the mediation).

B. Landlord and Tenant further acknowledge and agree that mediation proceedings are settlement negotiations, and that to the extent applicable by law, all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties or their agents shall be confidential and inadmissible in any arbitration or other legal proceeding involving the parties; provided, however, that evidence which is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

C. The provisions of this section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered.

50.2 **Arbitration of Disputes.** In the event that any dispute between Landlord and Tenant arising out of or relating to this Lease or the breach hereof is not resolved by mediation, any such dispute shall be resolved pursuant to the following arbitration procedures:

A. **Arbitration of Disputes.** The parties intend to and do hereby establish a quick, final and binding out-of-court dispute resolution procedure to be followed in the event controversy should arise between the parties arising out of or relating to this Lease or the breach hereof (the "Arbitration Disputes"). Should any dispute(s) arise with regard to the Arbitration Disputes, which dispute(s) the parties cannot resolve, then the parties shall submit such Arbitration for determination by binding arbitration as provided below.

B. **Arbitration of Disputes by JAMS or ADR.** A party shall initiate arbitration of an Arbitration Dispute by serving, either personally or by mail, all parties with a demand for arbitration and notice of claim, and filing a copy of the demand for arbitration and notice of claim with either: (a) the Los Angeles office of the Judicial Arbitration and Mediation Service ("JAMS"), or the office of JAMS then nearest to Los Angeles, California; or (b) the Century City office of Action Dispute Resolution Services ("ADR"), or the office of ADR then nearest to Los Angeles, California, within fifteen (15) days following the date such dispute arises. The demand for arbitration and notice of claim shall include a statement setting forth the nature of the dispute, the amount involved, if any, remedy sought, a sworn proof of service on the other party and the address and telephone number of the other party. The claimant shall provide a complete copy of this Lease and any amendments thereto to JAMS or ADR, whichever is the selected arbitration service ("Arbitration Service") at the time of filing the demand for arbitration and notice of claim.

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C. Response. If the responding party wishes to file a response and/or counterclaim, such party must do so within fifteen (15) days of service of the demand. Failure to file a counterclaim or response will not operate to delay the arbitration proceedings. After the filing of the claim, response and counterclaim, no permitted further claims or counterclaims may be made except on motion to the arbitrator. No counterclaims shall be permitted that expand the scope of the issue(s) beyond the Arbitration Dispute, and no arbitration decision shall be res judicata or have collateral estoppel effect except as to the Arbitration Dispute.

D. Appointment and Powers of Sole Arbitrator. Within fifteen (15) days of the filing of a demand for arbitration and notice of claim, the Arbitration Service shall provide each party with a list of prospective arbitrators numbering one more than there are parties to the dispute. If the Arbitration Service fails to provide a list of prospective arbitrators within said fifteen (15) days, the arbitration process shall start over with the Los Angeles office of the Arbitration Service which was not initially selected acting as the arbitrating office. Each party may strike one entire panel of arbitrators and may also strike one name from a panel by informing the Arbitration Service within ten (10) days. If a party strikes a whole panel, the Arbitration Service will provide a subsequent panel within ten (10) days. If a party fails to exercise its right to strike a name/panel within such time period, such party shall lose its right to strike a name. If more than one prospective arbitrator remains, then the Arbitration Service's administrator shall choose a single arbitrator from the list of remaining prospective arbitrators.

E. Discovery Shall be Limited. Each party shall be allowed the following pre-arbitration discovery: (a) two (2) depositions; and (b) fifteen (15) requests for production of documents. The arbitrator may, in his or her discretion, order pre-hearing exchanges of requested documents and summaries of testimony of proposed witnesses.

F. Time of Hearing. Arbitration hearing shall commence at the Arbitration Service offices in Los Angeles, California, within sixty (60) days of the filing of demand for arbitration and notice of claim with the Arbitration Service.

G. Use of Arbitration Service's Rules of Practice and Procedures. Except where specifically stated otherwise in this agreement, the then current Arbitration Service's rules of practice and procedure shall control.

H. Applicable Law. The arbitrator shall apply the substantive law of the State of California. Enforceability of Award and Attorneys' Fees. The award may be judicially enforced by ex parte application. Additionally, the prevailing party as determined by the arbitrator shall be entitled to recover from the other party all reasonable fees, expenses, costs and attorneys' fees, including fees paid to expert witnesses, incurred in prosecuting or defending this claim.

I. Successor Dispute Resolution Entity. If both Arbitration Services or any successor entities are no longer in existence at the time an Arbitration Dispute arises, then the parties hereby agree to binding arbitration of the Arbitration Dispute before the Los Angeles Regional Office of the American Arbitration Association ("AAA"), pursuant to the commercial arbitration rules of the AAA, which shall supersede any inconsistent provision herein. Any Award in such proceedings may be judicially enforced.

50.3. Unlawful Detainer and Suits in Equity Excluded from Mediation and Arbitration. Notwithstanding the foregoing, nothing contained in Article 50 herein shall preclude, prohibit or limit Landlord from filing an action or lawsuit and litigating in a court of competent jurisdiction any dispute pertaining to or arising out of the tenant's failure to perform any covenant or pay any minimum rent,

additional rent or any other sum under the lease, including, without limitation, an action for unlawful detainer, and Landlord reserves all such rights and remedies (including all rights to send notices prerequisite to such actions). If Landlord does initiate litigation in a court of competent jurisdiction pursuant to this provision, nothing in Section 19 of this Lease shall prohibit Tenant from including in such litigation, any defense or counterclaim thereto. Furthermore, either Landlord or Tenant may file an action in a court of competent jurisdiction when the complaining party is seeking equitable relief (e.g., declaratory relief or injunctive relief) or a provisional remedy, (e.g. writ of attachment).

NOTICE: BY INITIALING IN THE SPACE BELOW, YOU ARE AGREEING TO HAVE ANY ARBITRATION DISPUTES ARISING OUT OF THE MATTERS DESCRIBED IN THIS ARBITRATION PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTOOD THE FOREGOING AND AGREE TO SUBMIT ARBITRATION DISPUTES ARISING OUT OF THE MATTERS DESCRIBED IN THIS ARBITRATION PROVISION TO NEUTRAL ARBITRATION AS PROVIDED HEREIN.

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Article 51
Exclusive Use

51. **Exclusive Use.** During the Lease Term and any Option periods exercised, and so long as Tenant is open and operating primarily for the Agreed Use stated in Section 1.8, Landlord agrees not to sell, lease or permit the use or occupancy of any portion of the Shopping Center owned or controlled by Landlord for the sale of or providing to the general public any of the following products or services: _____ . Such exclusive shall not apply to the existing tenants which are leasing space within the Shopping Center on the Effective Date of this Lease, and shall automatically terminate and be of no further force and effect if (i) Tenant at any time commits a default under the this Lease and fails to cure the same within the applicable cure period, (ii) Tenant without Landlord's consent assigns its rights under this Lease or sublets all or any portion of the Premises, or (iii) Tenant fails to operate the Premises for the Agreed Use for more than thirty (30) days. In the event of any claim or action alleging that Landlord's agreement pursuant to the foregoing exclusive constitutes a restraint of trade or gives rise to alleged violations of federal or state anti-trust laws, then Landlord may notify Tenant in writing and Tenant shall within ten (10) days: (a) agree to indemnify, defend, and hold Landlord harmless from and against all losses, costs, liabilities, damages or expenses, including reasonable attorneys' fees and costs; or (b) waive this Section 51, in which case this Lease shall continue without change except as to this Section 51. In the event Tenant does not notify Landlord of its election pursuant to the preceding sentence within twenty (20) days of such notification by Landlord, Tenant shall be deemed to have waived the exclusive use covenant set forth in Section 51.

Article 52
Accessibility

52.1 **Inspection.** The Premises have not undergone an inspection by a Certified Access Specialist (“CASp”).

52.2 **Covenant / Warranty.** Landlord makes no covenant, warranty or representation regarding any compliance by the Premises with the Americans with Disabilities Act (U.S.C. §§12101 et seq.) or any similar legislation presently affecting the accessibility of the Premises (“Accessibility Laws”). In the event that Tenant’s use of the Premises requires any modifications, alterations or additions in order to comply with the Accessibility Laws, Tenant shall, at its sole cost and expense, make all required modifications, alterations or additions.

52.3 **Indemnity.** Tenant shall indemnify, defend, hold harmless and reimburse Landlord from and against any and all claims, actions, causes of action, damages, demands, liabilities, obligations, losses or expenses (specifically including, but not limited to reasonable attorneys’ fees, court costs, and expert witness fees), proceedings, suits, debts, or any claimed indebtedness alleged against Landlord, its agents and assigns, arising out of or in connection with, in whole or in part, directly or indirectly, any use by Tenant, its agents and assigns of the Premises not in compliance with the Accessibility Laws or the failure of Tenant, its agents and assigns to maintain the Premises in compliance with the Accessibility Laws.

Article 53
Miscellaneous Provisions

53.1 **Right to Lease.** Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord in the exercise of its sole business judgment shall determine. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or type or number of tenants shall, during the Lease Term, occupy any space in the Shopping Center.

53.2 **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other casualty, and other non-financial causes beyond the reasonable control of the party obligated to perform, shall excuse the performance of such party for a period equal to any such prevention, delay or stoppage, except the obligations, once accrued, imposed with regard to Rent and other charges to be paid by Tenant pursuant to this Lease.

53.3 **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of rent nor any other provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

53.4 **Reference Only.** The captions of Articles and Sections of this Lease are for convenience only and do not in any way limit or amplify the terms and provisions of this Lease.

53.5 **No Representations or Warranties.** Other than as expressly set forth herein, there are no agreements, understandings, promises, statements or representations made by Landlord or any of Landlord's agents, employees or representatives, including without limitation real estate brokers or salespersons, which Tenant has relied upon in entering into this Lease. There are no oral agreements between Landlord and Tenant with respect to the Premises or the use or condition of the Premises.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR

INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE EFFECTUATE THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

The parties hereto have executed this Lease as of the date first set forth above.

"LANDLORD"

WLM-CCC, LLC,
a California limited liability company

BY: _____
William L. McIntyre

"TENANT"

EXHIBIT "A"
LEGAL DESCRIPTION OF THE SHOPPING CENTER

THAT PORTION OF LOT 71 OF TRACT 930 IN THE CITY OF WEST COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 17 PAGE 38 OF MAPS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT SOUTHERLY ALONG SAID WESTERLY LINE 658.79 FEET FROM THE SOUTHERLY LINE OF THE NORTHERLY 10 FEET OF SAID LOT; THENCE SOUTH 89 DEGREES 19 MINUTES 40 SECONDS EAST AT RIGHT ANGLES TO SAID WESTERLY LINE 10.00 FEET; THENCE NORTH 0 DEGREES 40 MINUTES 20 SECONDS EAST 9.41 FEET; THENCE NORTH 0 DEGREES 11 MINUTES 51 SECONDS EAST 117.46 FEET; THENCE NORTH 5 DEGREES 13 MINUTES 26 SECONDS EAST 13.89 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 40.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13 DEGREES 38 MINUTES 10 SECONDS AN ARC DISTANCE OF 9.52 FEET TO A POINT ON SAID CURVE, A RADIAL LINE OF SAID CURVE TO SAID POINT BEARS NORTH 71 DEGREES 08 MINUTES 24 SECONDS WEST; THENCE SOUTH 89 DEGREES 48 MINUTES 09 SECONDS EAST 96.83 FEET TO THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE SOUTH 00 DEGREES 11 MINUTES 51 SECONDS WEST 120.00 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 09 SECONDS WEST 60.00 FEET; THENCE SOUTH 0 DEGREES 11 MINUTES 51 SECONDS WEST 30.00 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 09 SECONDS WEST 40.08 FEET; THENCE NORTH 89 DEGREES 19 MINUTES 40 SECONDS WEST 10.00 FEET TO SAID WESTERLY LINE; THENCE SOUTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF THE LAND DESCRIBED AS PARCEL NO. 471, IN FINAL DECREE OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 766503, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK D-1577 PAGE 65, OFFICIAL RECORDS, OF SAID COUNTY; THENCE EASTERLY ALONG SAID NORTHERLY LINE TO THE EASTERLY LINE OF SAID LOT 71; THENCE NORTHERLY ALONG SAID EASTERLY LINE TO A POINT ON SAID EASTERLY LINE DISTANT SOUTH 1 DEGREES 27 MINUTES 40 SECONDS EAST 348.12 FEET FROM THE NORTHEASTERLY CORNER OF SAID LOT; THENCE SOUTH 51 DEGREES 24 MINUTES 48 SECONDS WEST 105.46 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 281.68 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE SOUTHERLY BOUNDARY OF THE LAND DESCRIBED AS PARCEL 2 IN THE DEED TO THE STATE OF CALIFORNIA FILED AS DOCUMENT NO. 23045-J ON DECEMBER 30, 1941 IN THE OFFICE OF THE REGISTRAR OF LAND TITLES OF SAID COUNTY; THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY BOUNDARY TO A LINE WHICH BEARS SOUTH 0 DEGREES 11 MINUTES 51 SECONDS WEST AND PASSES THROUGH THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LAST MENTIONED LINE SOUTH 0 DEGREES 11 MINUTES 51 SECONDS WEST TO THE TRUE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF LOT 71 OF TRACT NO. 930 IN THE CITY OF WEST COVINA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS RECORDED IN BOOK 17, PAGE 38 OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY, BEING A STRIP OF LAND 10.00 FEET IN WIDTH, THE WESTERLY LINE OF SAID STRIP BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE WESTERLY LINE OF SAID LOT DISTANT SOUTHERLY, ALONG SAID WESTERLY LINE 658.79 FEET FROM THE SOUTHERLY LINE OF THE NORTHERLY 10.00 FEET OF SAID LOT; THENCE CONTINUING SOUTHERLY ALONG SAID WESTERLY LINE TO THE NORTHERLY LINE OF THE LAND DESCRIBED AS PARCEL NO. 471 IN FINAL DECREE OF CONDEMNATION ENTERED IN LOS ANGELES COUNTY SUPERIOR COURT CASE NO. 766503, A CERTIFIED COPY OF WHICH WAS RECORDED IN BOOK D-1577, PAGE 65 OFFICIAL RECORDS OF SAID COUNTY. FOR STREET AND HIGHWAY PURPOSES TO BE KNOWN AS CITRUS STREET.

And

Parcel 1:

THAT portion OF LOT 72 OF Tract No. 930, IN THE CITY OF west COVINA, County of Los Angeles, State of California, as per map recorded in book 17 PAGES 38 AND 39 of maps, in the office of the county recorder of said county, described as follows:

beginning at a point IN THE westerly LINE of said lot Distant thereon south $0^{\circ} 25' 18''$ west 348.12 FEET FROM THE northwesterly corner of said lot, SAID point ALSO BEING THE MOST southerly corner OF THE LAND described IN DEED TO THE State of California recorded ON JULY 23, 1954 as Instrument No. 3353 in book 45144 PAGE 200, official records OF SAID COUNTY; thence ALONG THE southeasterly LINE of said land OF THE State of California North $51^{\circ} 09' 46''$ east 155.06 FEET TO THE southerly LINE OF THE northerly 250.00 FEET of said lot; thence ALONG THE northwesterly AND northeasterly LINES OF THE LAND described IN THE DEED TO CLIFFORD R. WILSON, ET AL., recorded ON September 30, 1960 as Instrument No. 3835, in book 992 PAGE 373 official records OF SAID COUNTY, North $61^{\circ} 09' 46''$ east 144.35 FEET AND south $38^{\circ} 50' 14''$ east 10.00 FEET TO AN ANGLE GOING IN THE westerly LINE OF THE LAND described IN parcel 41 OF THE FINAL DECREE OF CONDEMNATION recorded ON February 7, 1962 as Instrument No. 3709 in book D1505 PAGE 575, official records OF SAID COUNTY; thence ALONG THE westerly AND northwesterly LINES OF SAID parcel 41 AS FOLLOWS: south $41^{\circ} 02' 52''$ east 8.20 FEET; south $6^{\circ} 30' 20''$ east 385.62 FEET TO THE beginning OF A TANGENT curve concave northwesterly AND having a radius of 306 FEET; AND southwestly ALONG SAID curve 418.73 FEET TO THE easterly LINE OF THE LAND described IN Parcel No. 468 OF SAID FINAL decree of condemnation; thence along the easterly and northerly lines of said parcel no. 468, North $18^{\circ} 06' 06''$ west 15.29 feet, and south $79^{\circ} 51' 25''$ west to said westerly line of said lot; thence northerly along said westerly line to the point of beginning.

except therefrom all "precious metals and ores thereof" as excepted from the partition between John Rowland Sr. and William Workman in the partition deed recorded in book 10 page 39, of deeds.

Parcel 2:

an easement to construct, reconstruct, operate, maintain and use a building and parking deck over and across that portion of that part of lot 72, Tract No. 930, as shown on map recorded in book 17 pages 38 and 39 in the office of the county recorder of said county of Los Angeles described as Parcel No. 41 in a final order of condemnation had in superior court case no. 766503, a certified copy of which is recorded in book D1505 page 575 of official records of the office of said recorder, within the following described boundaries:

EXHIBIT "B"
SITE PLAN
(TO BE ATTACHED)

EXHIBIT "C"

CONSTRUCTION PROVISIONS

I. LANDLORD'S WORK. Landlord, at its cost and expense, will construct the Premises in accordance with Landlord's plans and specifications prepared by Landlord, or Landlord's architect, inclusive of items 1 through 14 described below (hereinafter "**Landlord's Work**"):

1. Walls - Standard demising walls consisting of unpainted masonry or drywall over studs in a ready for paint condition.
2. Ceiling open beam.
3. Floor - concrete slab.
4. Heating/Air Conditioning - Standard HVAC system consistent with Title 24 requirements. Air conditioning will not be provided for special use such as dry cleaning plants, laundries, restaurant kitchens and the like. Additional HVAC requirements resulting from Tenant's use or interior design will be at Tenant's expense (2.0 Tons per 1,000 square feet).
5. Electrical Outlets - 110 volt duplex outlet(s) per Landlord's building standard quantity and distribution in stud walls.
6. Telephone Outlet - One (1) outlet and conduit for use by Tenant's telephone installation contractor.
7. Light Switch - One (1) duplex light switch, consistent with Title 24 requirements.
8. Light Fixture - One (1) standard 2' x 4' fluorescent fixture for every 80 square feet of usable floor area, up to a maximum of 15 fixtures.
9. Restroom - One (1) standard restroom built to handicap specifications consisting of vinyl flooring, or epoxy one (1) water closet, one (1) lavatory, one (1) incandescent light fixture, one (1) wall outlet, one (1) exhaust fan, and rough-in plumbing for hot water heater (water heater not included).
10. Electrical Service - 100 amps - 3 phase, 30 circuit service panel with 110 volt power, 3 phase, 4 wire system.
11. One (1) Fascia sign circuit (to be provided by Landlord) with J-Box (20 amp) with connection to House Meter and Timer.
12. Sewer - All laterals, hookup charges, and capacity fees paid for by Landlord on unimproved shell. Additional fees and costs due to Tenant's specific use will be paid by Tenant.
13. Water - Water service for irrigation and standard building requirements. Individual meters and lines required by or of Tenant shall be at Tenant's expense.
14. Gas Lines - One inch (1") gas line stubbed to space, if required by Tenant's use.

Any work in addition to items 1 through 14 outlined above shall be provided by Tenant at its sole cost and expense. Any equipment or work other than those items specifically enumerated in items 1 through 14

outlined above, which Landlord installs or constructs in the Premises on Tenant's behalf, shall be paid for by Tenant within fifteen (15) days after receipt of a bill therefor. Said bill will be inclusive of Landlord's cost plus supervision, architectural and engineering expenses.

II. TENANT'S WORK

A. Any improvements desired not listed in Landlord's work.

EXHIBIT "D"

GUARANTEE OF LEASE

THIS GUARANTEE OF LEASE ("Guarantee") is entered into as of the ___ day of _____, 20____, by _____ ("Guarantor"), whose address is _____ for the benefit of WLM-CCC, LLC, a California limited liability company ("Landlord"), with reference to the following facts:

A. Landlord and _____ ("Tenant") have entered or will enter into a Shopping Center Lease of even date herewith ("Lease").

B. By its covenants herein set forth, Guarantor has induced Landlord to enter into the Lease with Tenant, which was made and entered into in consideration for Guarantor's covenants.

1. Guarantor unconditionally guarantees, without deduction by reason of setoff, defense or counterclaim, to Landlord and its successors and assigns the full and punctual payment, performance and observance by Tenant, of all of the terms, covenants and conditions in the Lease contained on Tenant's part to be kept, performed or observed.

2. If Tenant shall at any time default in the performance or observance of any of the terms, covenants or conditions in the Lease contained on Tenant's part to be kept, performed or observed, Guarantor will keep, perform and observe same, as the case may be, in the place and stead of Tenant.

3. Any act of Landlord, or its successors or assigns, consisting of a waiver of any of the terms or conditions of the Lease, or the giving of any consent to any manner or thing relating to the Lease, or the granting of any indulgences or extension of time to Tenant, may be done without notice to Guarantor and without releasing Guarantor from any of its obligations hereunder.

4. The obligations of Guarantor hereunder shall not be released by Landlord's receipt, application or release of any security given for the performance and observance of any covenant or condition in the Lease contained on Tenant's part to be performed or observed, nor by any modification of the Lease, regardless of whether Guarantor consents thereto or receives notice thereof.

5. The liability of Guarantor hereunder shall in no way be affected by (a) the release or discharge of Tenant in any creditor's receivership, bankruptcy or other proceeding; (b) the impairment, limitation or modification of the liability of Tenant or the estate of Tenant in bankruptcy, or of any remedy for the enforcement of Tenant's liability under the Lease resulting from the operation of any present or future provision of the National Bankruptcy Act or other statute or from the decision in any court; (c) the rejection or disaffirmance of the Lease in any such proceedings; (d) the assignment or transfer of the Lease by Tenant; (e) any disability or other defense of Tenant; (f) the cessation from any cause whatsoever of the liability of Tenant; (g) the exercise by Landlord of any of its rights or remedies reserved under the Lease or by law; or (h) any termination of the Lease.

6. Guarantor further agrees that it may be joined in any action against Tenant in connection with the obligations of Tenant under the Lease and recovery may be had against Guarantor in any such action. Landlord may enforce the obligations of Guarantor hereunder without first taking any action whatsoever against Tenant or its successors and assigns, or pursue any other remedy or apply any security it may hold, and Guarantor hereby waives all right to assert or plead at any time any statute of limitations as relating to the Lease, the obligations of Guarantor hereunder and any and all surety or other defenses in the

nature thereof including, without limitation, the provisions of California Civil Code Section 2845 or any similar, related or successor provision of law.

7. Until all the covenants and conditions in the Lease on Tenant's part to be performed and observed, are fully performed and observed, Guarantor (a) shall have no right of subrogation against Tenant by reason of any payments or performance by Guarantor hereunder; and (b) subordinates any liability or indebtedness of Tenant now or hereafter held by Guarantor to the obligations of Tenant to Landlord under the Lease.

8. If Landlord desires to sell, finance or refinance the Shopping Center, or any part thereof, Guarantor hereby agrees to deliver to any lender or buyer designated by Landlord such financial statements of Guarantor as may be reasonably required by such lender or buyer. Such statements shall include the past three (3) years' financial statements of Guarantor. All such financial statements shall be received by Landlord in confidence and shall be used only for the foregoing purposes.

9. This Guarantee shall apply to the Lease, any extension, renewal, modification or amendment thereof and to any assignment, subletting or other tenancy thereunder or to any holdover term following the term granted under the Lease or any extension or renewal thereof, regardless of whether Guarantor consents thereto or receives notice thereof.

10. In the event this Guarantee shall be held ineffective or unenforceable by any court of competent jurisdiction or in the event of any limitation of Guarantor's liability hereunder other than as expressly provided herein, then Guarantor shall be deemed to be a tenant under the Lease with the same force and effect as if Guarantor were expressly named as a joint and several tenant therein with respect to the obligations of Tenant thereunder hereby guaranteed.

11. In the event of any litigation between Guarantor and Landlord with respect to the subject matter hereof, the unsuccessful party to such litigation agrees to pay to the successful party all fees, costs and expenses thereof, including reasonable attorneys' fees and expenses.

12. No delay on the part of Landlord in exercising any right hereunder or under the Lease shall operate as a waiver of such right or of any other right of Landlord under the Lease or hereunder, nor shall any delay, omission or waiver on any one occasion be deemed a bar to a waiver of the same or any other right on any future occasion.

13. If there is more than one undersigned Guarantor, the term Guarantor, as used herein, shall include all of the undersigned; each and every provision of this Guarantee shall be binding on each and every one of the undersigned jointly and severally liable hereunder; and Landlord shall have the right to join one or all of them in any proceeding or to proceed against them in any order.

14. This instrument constitutes the entire agreement between Landlord and Guarantor with respect to the subject matter hereof, superseding all prior oral or written agreements or understandings with respect thereto and may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by Guarantor and Landlord.

15. This Guarantee shall be governed by and construed in accordance with the laws of the State of California.

16. Notice hereunder shall be in writing and shall be effective upon personal service or five (5) days after deposit thereof in the United States Mail, registered or certified delivery, return receipt requested, to the other party at its above address, except that under no circumstances shall Landlord be obligated to give Guarantor any notice not specifically required to be given by Landlord pursuant to this Guarantee. Either party may by notice given as aforesaid designate a different address for notice purposes. Any action to declare or enforce any rights or obligations under this Lease may be commenced by Landlord in the Superior Court of the

County in which the Shopping Center is located. Guarantor hereby consents to the jurisdiction of such Court for such purposes and agrees that any notice, complaint or legal process so delivered shall constitute adequate notice and service of process for all purposes and shall subject Guarantor to the jurisdiction of such Court for purposes of adjudicating any matter related to this Guarantee.

IN WITNESS WHEREOF, Guarantor has executed this Guarantee as of the date first above written.

"GUARANTOR"

BY: _____

BY: _____

EXHIBIT "E"

FORM OF TENANT'S CERTIFICATE

The undersigned, as Tenant, under that certain Shopping Center Lease dated _____, 20__, made with WLM-CCC, LLC, a California limited liability company, as Landlord, hereby certifies as follows:

1. That the undersigned has entered into occupancy of the Premises described in the Lease;
2. That the Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way, except as follows: _____

3. That the Lease represents the entire agreement between the parties as to the leasing of the Premises:
4. That the Rental Commencement Date of the Lease is _____;
5. That there is an unexpired term under the Lease of _____ (_____) years;
6. That all conditions of the Lease to be performed by Landlord and necessary to the enforceability of the Lease have been satisfied;
7. That there are no defaults by either Tenant or Landlord thereunder;
8. That no rents have been prepaid, other than as provided in the Lease; and
9. That on this date there are no existing defenses or offsets which the undersigned has against the enforcement of the Lease by Landlord.

The undersigned hereby agrees:

1. To disclaim all right, title or interest in the Premises except the rights granted by the Lease; and
2. To notify the holder of any mortgage affecting the Premises of any default on the part of Landlord which Tenant proposes to cure and deduct from rentals, or use as a basis for cancellation of the Lease and hereby grants to any such holder the option to cure said default within a reasonable length of time. Tenant further agrees not to invoke any of its remedies under the Lease during any period that any such holder is proceeding to cure such default with due diligence, or is taking steps with due diligence to obtain the legal right to enter the Premises and cure the default. The undersigned hereby acknowledges that _____
_____ is presently the holder of a mortgage affecting the Premises.

EXECUTED this _____ day of _____, 20__.

BY: _____
ITS: _____

BY : _____
ITS: _____

EXHIBIT "F"
SIGN CRITERIA

(TO BE ATTACHED)

EXHIBIT "G"

RULES AND REGULATIONS

Landlord hereby establishes the following rules and regulations for the safety, care and cleanliness of (i) the store areas (hereinafter referred to as the "demised premises") of any tenant or tenants of the Shopping Center (hereinafter referred to as the "tenant"); (ii) the common area; and (iii) the Shopping Center in general, or for the preservation of good order:

A. FOR THE STORE AREAS:

1. All floor areas of the demised premises (including vestibules, entrances, and air returns), doors, fixtures, windows, and plate glass shall be maintained in a clean, safe and good condition.
2. All trash, refuse, and waste materials shall be stored in adequate containers and regularly removed from the demised premises. These containers shall not be visible to the general public and shall not constitute a health or fire hazard, or a nuisance to any other tenant. In the event that any tenant shall fail to remedy such a health or fire hazard, or nuisance, within five (5) days after written notice by Landlord, Landlord may remedy and/or correct such health or fire hazard or nuisance at the expense of the tenant involved.
3. No portion of the demised premises shall be used for lodging purposes.
4. Neither sidewalks nor walkways shall be used to display, store, or place any merchandise, equipment or devices, except in connection with sidewalk sales held with Landlord's prior written approval. The roof of the demised premises shall not be used for the storage of merchandise or equipment.
5. No public telephone, newsstand, shoeshine stand, refreshment, vending or other coin operated machine shall be installed or placed on the sidewalk or walkway area adjacent to the demised premises or on the Common Area without Landlord's prior written approval in each instance.
6. No person or persons shall use the demised premises, or any part thereof, for conducting therein a second-hand store, auction, distress or fire sale or bankruptcy sale, or "going-out-of-business" sale or "lost our lease" sale, without Landlord's prior written consent.
7. No portion of the demised premises shall be used for the storage of any merchandise, materials or other properties, other than those reasonably necessary for the operation of a tenant's business. Landlord may, from time to time, inspect the demised premises to insure compliance with the foregoing provisions.
8. Except for professionally prepared signs, Tenant shall not black out or otherwise obstruct the windows of the demised premises, without Landlord's prior written consent.
9. If a tenant provides its customers with the use of shopping carts and/or baskets, such tenant shall be responsible for causing said carts and/or baskets to be stored only in areas designated by Landlord. If such tenant fails to routinely collect and store said carts as necessary (at least twice on a daily basis), Landlord may assume the responsibility of same and may bill the tenant involved on an estimated monthly basis for such service.

B. FOR THE COMMON AREA:

1. All tenants and their authorized representatives and invitees shall use any roadway, walkway, or mall (including the enclosed mall, if any) only for ingress and egress from the stores in the Shopping Center. Use of the Common Area shall be in an orderly manner in accordance with directional or other signs or guides. Roadways shall not be used at a speed in excess of ten (10) miles per hour and shall not be used for parking or stopping, except for the immediate loading or unloading of passengers. Walkways and malls (including the enclosed mall, if any) shall be used only for pedestrian travel.

2. All tenants and their authorized representatives and invitees shall not use the parking areas for anything but parking motor vehicles. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak periods of business activity, Landlord can impose any and all controls Landlord deems necessary to operate the parking lot including, but not limited to, the length of time for parking use.

3. No person shall use any utility area or truck loading area reserved for use in conducting business, except for the specific purpose for which permission to use these areas has been given.

4. No employee shall use any area for motor vehicle parking except the area specifically designated for employee parking for the particular period of time the use of to be made. No tenant shall designate an area for employee parking except the area designated in writing by Landlord.

5. Without the prior written consent of Landlord, no person shall use any of the Common Area for (i) Vending, peddling or soliciting orders for sale or distributing of any merchandise, device, service, periodical, book, pamphlet, or other matter; (ii) Exhibiting any non-professional sign, placard, banner, notice or other written material or distributing any circular, booklet, handbill, placard, or other material; (iii) Soliciting membership in any organization, group, or association, or soliciting contributions for any purpose or parading, patrolling, picketing, demonstrating, or engaging in conduct that might interfere with the use of the Common Area or be detrimental to any of the business establishments in the Shopping Center; (iv) Using the Common Area for any purpose when none of the business establishments in the Shopping Center are open for business; (v) Discarding any paper, glass, or extraneous matter of any kind, except in designated receptacles; (vi) Using a sound-making device that is grossly annoying or unpleasant to the general public; or (vii) Damaging any sign, light standard, or fixture, landscaping material or other improvement or property within the Shopping Center.

The above listing of specific prohibitions is not intended to be exclusive, but is intended to indicate the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the business establishments in the Shopping Center is limited and controlled by Landlord.

EXHIBIT "H"

EXCLUSIVE USES/PROHIBITED USES

(to be attached, if any)

Tenant shall not engage in the sale or preparation of any of the following:

1. Full Service Sit Down Japanese Restaurant
2. Bakery and /or any business primarily selling drink products similar to 85°C
3. Fusion Chinese Foods with a menu of 50% or more in fresh fruits, shaved ice and assorted brick toasts items, or SinBala Restaurant
4. Commercial Bank
5. Restaurant with a menu serving more than 20% or more in hot dogs, sausages or hamburgers.
6. Restaurant serving more than 20% or more in ice cream.