



# RETAIL LEASE AGREEMENT

**RETAIL LEASE AGREEMENT**

Between

\_\_\_\_\_,  
a \_\_\_\_\_,  
as Landlord

and

TENANT  
a \_\_\_\_\_,  
as Tenant,

Dated

As of

\_\_\_\_\_, 20\_\_

# TABLE OF CONTENTS

ARTICLE 1 – AGREEMENT TO LEASE.....	1
ARTICLE 2 – DEFINITIONS .....	3
ARTICLE 3 – TERM.....	7
ARTICLE 4 – USE AND OPERATION OF PREMISES.....	8
ARTICLE 5 – RENT AND SECURITY DEPOSIT.....	11
ARTICLE 6 – TAXES AND ASSESSMENTS.....	14
ARTICLE 7 – UTILITIES .....	14
ARTICLE 8 – INSURANCE AND HOLD HARMLESS.....	15
ARTICLE 9 – REPAIRS .....	16
ARTICLE 10 – CASUALTY AND CONDEMNATION .....	17
ARTICLE 11 – ASSIGNMENT, TRANSFER AND SUBLETTING .....	18
ARTICLE 12 – ENTRY BY LANDLORD .....	19
ARTICLE 13 – COMMON AREAS .....	19
ARTICLE 14 – LANDLORD’S INTEREST NOT SUBJECT TO LIENS.....	20
ARTICLE 15 – DEFAULT .....	21
ARTICLE 16 – RELOCATION .....	23
ARTICLE 17 – SUBORDINATION, ATTORNMENT AND ESTOPPEL CERTIFICATE .....	23
ARTICLE 18 – MISCELLANEOUS PROVISIONS.....	24
ARTICLE 19 – NOTICES .....	27
ARTICLE 20 – GUARANTY .....	28

List of Exhibits

Exhibit A	Site Plan
Exhibit B	Rules and Regulations
Exhibit C	Signage Criteria
Exhibit D	Special Stipulations
Exhibit E	Landlord’s Work
Exhibit F	Tenant’s Work
Exhibit F-1	Construction Allowance
Exhibit G	Absolute and Unconditional Guaranty

Riders (if any)

# LEASE AGREEMENT

THIS LEASE AND AGREEMENT ("Lease") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_ ("Tenant"), with reference to the following facts;

Tenant desires to lease from Landlord, and Landlord has agreed to lease to Tenant, upon the terms and conditions contained herein, certain Premises, as further described below within that certain property commonly known as \_\_\_\_\_, located at \_\_\_\_\_, \_\_\_\_\_ County, Florida (the "Property");

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

## ARTICLE 1 – AGREEMENT TO LEASE

### **1.1 Fundamental Provisions.**

Certain fundamental provisions are presented in this Section 1.1 in summary form to facilitate convenient reference.

- (a) Tenant's Trade Name: \_\_\_\_\_
- (b) Premises Space Number: \_\_\_\_\_
- (c) Address of Premises: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (d) Premises Floor Area: \_\_\_\_\_
- (e) Shopping Center: The certain shopping center known as \_\_\_\_\_ having a street address of \_\_\_\_\_ and located on the Property, as may be modified from time to time
- (f) Term: \_\_\_\_\_
- (g) Renewal Terms: \_\_\_\_ Renewal Term(s) of \_\_\_\_\_ months each (Option to Renew Rider)
- (h) Base Rent (Initial Year): \_\_\_\_\_
- (i) Adjustment to Base Rent:  Annual Increases: \_\_\_\_ percent (\_\_\_\_ %) beginning in the \_\_\_\_\_ Lease Year (Section 5.2)  
 Fixed Increases: \_\_\_\_\_ (\$\_\_\_\_) per square foot beginning in the \_\_\_\_\_ Lease Year (Section 5.2)

- No Adjustment (Section 5.2)
- Other (Special Stipulations – Exhibit D)

(j) Prepaid Rent: \_\_\_\_\_

(k) Security Deposit: \_\_\_\_\_

(l) Rent Commencement Date: the earlier of (i) \_\_\_\_\_ (\_\_\_\_) days after the Delivery Date, or (ii) the date that Tenant opens for business in any portion of the Premises.

(m) Permitted Use: \_\_\_\_\_

(n) Rent Payments:

a. Percentage Rent Rate: \_\_\_\_\_

b. Please make all checks payable to: \_\_\_\_\_

c. Please address all checks to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(o) Guarantor: \_\_\_\_\_

(p) Brokers

a. Landlord's Broker: \_\_\_\_\_

b. Tenant's Broker: \_\_\_\_\_

(q) Special Stipulations:  No Special Stipulations  
 Special Stipulations are included on the attached Exhibit D

(r) Minimum Business Hours: Between the hours of \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m., Monday through Friday and between the hours of \_\_\_\_ a.m. and \_\_\_\_ pm. Saturday and Sunday.

## ARTICLE 2 – DEFINITIONS

In addition to any other terms whose definitions are fixed and defined by this Lease, each of the following defined terms, when used in this Lease with an initial capital letter, shall have the meaning ascribed to them in this Section 2:

**2.1 “Additional Rent”**

Shall mean all sums other than Base Rent due from Tenant to Landlord pursuant to the terms and conditions of this Lease.

**2.2 “Base Rent”**

Shall have the meaning ascribed thereto in Section 1.1(h).

**2.3 “Common Area”**

Shall mean and include all improvements which may from time to time be constructed or installed within or serving the Property and intended for the common use or benefit of the tenants and/or invitees thereof, including, without limitation the following: roofs, gutters and downspouts (excluding rooftop heating or air conditioning units or other structures or apparatus on the roof exclusively serving the Premises, which are Tenant’s responsibility hereunder) and the exterior of outside walls of buildings (excluding storefronts, any glass, windows, window sashes or frames, doors, door frames or hardware, trim or closure devices, or any part of the interior side of perimeter walls or storefronts, which are Tenant’s responsibility hereunder) (without implying Tenant may use the roofs or outside walls), parking areas, service areas, loading areas, maintenance and storage rooms, entrances and exits, access drives, sidewalks, landscaping, sprinkler systems, fencing, lighting, pylon or monument signs identifying the Property, directional or traffic signals, fixtures, improvements, and surface water retention and drainage facilities.

**2.4 “Common Area Maintenance Charges”**

Shall mean the costs of operation, repair, replacement, security, maintenance and management of the Property and its Common Areas, whether located in or outside of the Property and shall include Landlord’s costs and expenses incurred in connection with the following by way of example and illustration but not limitation: (i) all buildings, roofs, retaining walls, entry-way features, water features and other building improvements and facilities used in common with other tenants of the Property, or in connection with the maintenance and/or operation of, and whether located within or outside of, the Property; (ii) all Taxes and assessments, including all costs associated with an appeal of any assessment of Taxes; (iii) governmental assessments or surcharges, including special assessments; (iv) all costs of insurance maintained by Landlord with respect to the Property; (v) all costs of maintenance, cleaning, inspection, security, fire detection and protection, supplies, janitorial, landscaping, window cleaning, garbage removal, trash removal services, parking lot cleaning, repair, replacement, or maintenance, together with the cost of maintaining, repairing, and replacing any HVAC, plumbing, electrical or other mechanical systems serving the Common Area or more than one demised space; (vi) audit, professional and consulting fees and expenses (vii) costs in erecting, maintaining, repairing and replacing pylon and/or monument signs identifying the Shopping Center and/or its anchor tenant (viii) leasing off-site parking areas for customers and employees of the tenants of the Property (ix) salaries, wages and other amounts paid or payable for all personnel (including an on-site and/or off-site property manager) involved in the repair, maintenance, administration, operation, security, gardening, landscaping, supervision, painting or cleaning of the Property, said costs shall also include such fees as may be paid in connection with same, such as management fees; (x) auditing and accounting fees and costs; (xi) any parking charges, utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by a governmental authority in connection with the use or occupancy of the Property or the parking facilities serving the Property; (xii) any fees assessed by a property owners’ association; (xiii) an administrative fee of \_\_\_\_% of Common Area Maintenance Charges

for the Property; (xiv) a management fee paid to a third party management company; (xv) the reasonable depreciation of equipment used in the operation and maintenance of Common Areas; and (xvi) any and all expenses Landlord incurs as the owner of the Property under any Declaration.

**2.5 “Effective Date”**

Shall mean the date that the last of Landlord or Tenant executes this Lease.

**2.6 “Event of Default”**

Shall have the meaning ascribed hereto in Section 15.1.

**2.7 “Gross Sales”**

Shall mean absolutely all amounts received from the sale of all goods, wares and merchandise sold and the actual charges for all services performed by Tenant or by any subtenant, licensee, concessionaire or other person, in, at, from or arising out of the use of the Premises, wholesale or retail, cash or credit, or otherwise, and includes the value of all consideration received or promised for any of the foregoing, without reserve or deduction for inability, failure or cost to collect, including, but not limited to, sales and services: (i) where the orders therefore originate in, at, from or arising out of the use of the Premises, whether delivery or performance is made from the Premises or some other place and regardless of the place of bookkeeping, payment or collection; (ii) made or performed by mail, telephone, internet or any other form of electronic commerce, or facsimile orders received or filled in, at or from the Premises; (iii) made or performed by means of mechanical or other vending devices on the Premises; (iv) which Tenant, any subtenant, licensee, concessionaire or other person, in the normal and customary course of business, would credit or attribute to its operation at the Premises; or (v) sales made over the internet from a kiosk in the Premises, or completed from inventory in the Premises. Gross Sales shall not include: (i) returns to shippers and manufacturers; (ii) cash or credit refunds to customers on transactions otherwise included in Gross Sales; (iii) sales of fixtures, machinery and equipment, which are not stock in trade, after use thereof in the operation of Tenant’s business; and (v) amounts which are separately stated and collected from customers and which are paid by Tenant to any governmental entity for sales or excise tax. No franchise fees or taxes, capital stock tax, tax based on assets or net worth or gross receipts tax, and no income or similar tax based on income or profits shall be deducted from Gross Sales.

**2.8 “Improvements”**

Shall mean the interior, non-structural elements of the Premises, including, but not limited to, the following: the ceiling system and light fixtures suspended from the roof; awnings; interior and partition walls; the finish or wall coverings applied to the interior surfaces of exterior walls or demising (i.e., party) walls; the glass, glazing, doors, windows and components thereof; floor coverings (i.e., carpet or tile), but not the slab or structural components thereof; and gas, electric, fire sprinkler, telephone, water, plumbing, heating, ventilation, and air conditioning lines, pipes, conduits, ducts, connections, meters, systems, and equipment which directly and exclusively serve the Premises (as opposed to such equipment, facilities, or systems which serve the Premises in common with other improvements or Common Area constructed in the Property) except to the extent such systems or utilities are embedded within structural components of the Premises.

**2.9 “Term”**

Shall mean the period of time defined in Section 1.1(f) which shall begin on the Rent Commencement Date defined in Section 1.1(l).

**2.10 “Initial Year”**

Shall mean the first Lease Year of this Lease, and shall include any period of time between the Rent Commencement Date and the first day of the month immediately following the Rent Commencement Date.

- 2.11 “Shopping Center”**  
Shall mean all the buildings located within the Property, the size of same shall be Landlord’s best estimate of the number of leasable square feet of area in the Property. Landlord shall have the sole right to adjust this estimate from time to time due to the addition, removal, or alterations to the Property or to any building on the Property.
- 2.12 “Lease”**  
Shall mean this agreement, including all exhibits, riders, amendments, or addenda, all of which are incorporated herein and made a part hereof.
- 2.13 “Lease Year”**  
Shall mean each successive twelve month period of the Term, commencing on the Rent Commencement Date (or if the Rent Commencement Date shall occur other than on the first day of a calendar month, then on the first day of the next succeeding calendar month) and on each anniversary thereof.
- 2.14 “Pass-Through Charges”**  
Shall mean the Tenant’s Proportionate Share of Common Area Maintenance Expenses as defined in Section 5.5.
- 2.15 “Permitted Transfer”**  
Shall have the meaning ascribed thereto in Section 11.4.
- 2.16 “Permitted Use”**  
Shall have the meaning ascribed thereto in Section 4.1.
- 2.17 “Possession Date”**  
Shall mean the later of the Effective Date or the date the Landlord delivers possession of the Premises to Tenant (“Delivery Date”).
- 2.18 “Premises”**  
Shall mean the portion of the Property leased to the Tenant pursuant to this lease which is identified in Exhibit A, the address of which is set forth in Section 1.1(c).
- 2.19 “Premises Floor Area”**  
The number set forth in Section 1.1(d), which Landlord and Tenant hereby agree is the area of the Premises. Notwithstanding the foregoing, Landlord and Tenant acknowledge that, at the execution of this Lease, the exact square footage of the Premises is approximate. Landlord and Tenant agree that at any time after Tenant takes possession of the Premises, Landlord may elect to determine the actual square footage of the Premises. In the event that any such remeasurement determines there is a deviation between the actual square footage of the Premises and the square footage of the Premises as set forth in Section 1.1(d) hereof of ten percent (10%) or more, and the determination is certified by an architect, this Lease shall be amended to reflect the actual square footage of the Premises as the new Premises Floor Area and to adjust proportionately the Base Rent, Tenant’s Proportionate Share, and all other charges which are calculated based upon the Premises Floor Area. If the deviation is less than ten percent (10%), then Landlord may, at Landlord's sole option, elect to either adjust such charges proportionately, or to retain such charges and the Premises Floor Area as they are set forth herein. Any underpayment of Rent resulting for any period due to any adjustment made pursuant to this Section 1.1(d) shall be promptly paid by Tenant; and any overpayment of Rent resulting for any period due to any adjustment made pursuant to this Section 1.1(d) shall be promptly refunded by Landlord.
- 2.20 “Property”**  
Shall mean the Shopping Center, all land and all buildings and Common Areas, as currently existing or hereafter constructed owned or controlled through ground lease by Landlord and contiguous with the Premises or, if not contiguous, otherwise benefiting or serving, either directly or indirectly, the Premises,



which may from time to time be expanded or contracted together with and subject to any declarations, restrictive covenants, or reciprocal easements to which Landlord may, now or hereafter, subject the Property (collectively, the "Declaration").

**2.21 "Rent"**

Shall mean the aggregate of all Base Rent, Percentage Rent, Additional Rent and all other amounts, liabilities and obligations, together with every fine, penalty, interest and cost which may be added for non-payment or late payment thereof due from the Tenant to Landlord pursuant to this lease.

**2.22 "Rent Commencement Date"**

Shall have the meaning ascribed thereto in Section 3.1.

**2.23 "Rules and Regulations"**

The Rules and Regulations attached as Exhibit B, as they may be supplemented or amended from time to time by Landlord, as set forth in Section 4.4.

**2.24 "Security Deposit"**

Shall have the meaning ascribed thereto in Section 5.8

**2.25 "Special Stipulations"**

Shall mean any terms and conditions included on an attached Exhibit D to this Lease as described in Section 1.1(q).

**2.26 "Substitute Premises"**

Shall have the meaning ascribed thereto in Section 16.

**2.27 "Taxes"**

Shall mean all real estate, personal property and other ad valorem and non-ad valorem taxes, water and sewer charges, fire, rescue and emergency medical services and similar fees and any other levies, charges, fees, impositions, local improvement rates and assessments whatsoever assessed or charged against the Property, the equipment and the improvements therein contained (all of the above being ordinary, extraordinary, general, special or otherwise), or any part thereof, by any lawful taxing authority and including any amounts assessed or charged in substitution for or in lieu of any such taxes, excluding only income, franchise, inheritance or capital gains tax, to the extent such taxes are not levied in lieu of any of the foregoing against the Property or Landlord.

**2.28 "Tenant's Proportionate Share"**

Shall mean the fraction (expressed as a percentage) determined from time to time by dividing the Premises Floor Area by ninety-five percent of the floor area contained within the Shopping Center, as reasonably stated by the Landlord, that is or shall be leased to tenants who shall be similarly subject to proportionate shares of Common Area Maintenance Charges, as herein provided, which shall be subject to adjustment from time to time. Notwithstanding the foregoing, for purposes of determining Tenant's Proportionate Share, Landlord, at its option, may exclude the leasable area of any space containing at least 20,000 square feet of leasable area from the total leaseable area of the buildings within the Property; and if Landlord does so, then any amounts received by Landlord as a contribution toward Common Area Maintenance Charges or Taxes, as applicable, for any such excluded space will be deducted from the applicable expense prior to calculating Tenant's Proportionate Share hereof. In addition, if the tenant of any space containing at least 20,000 square feet of leasable area maintains the Common Areas on its parcel at its own expense or pays its own Taxes directly to the taxing authorities, then Tenant's share of Common Area Maintenance Charges and/or Taxes, as applicable, on the remainder of the Property shall be calculated based on the denominator equal to ninety five percent of the leasable area of the buildings within the Property after deducting the leasable area of any such self-maintained space.

## ARTICLE 3 – TERM

### **3.1 Term; Rent Commencement Date**

The term (the “Term”) of this Lease shall commence on the date specified in Section 1.1(l) (the “Rent Commencement Date”) and shall continue for the term set forth in Section 1.1(f). The parties hereto acknowledge that certain obligations under various provisions hereof may commence prior to the Rent Commencement Date; e.g., provisions regarding construction, indemnification, liability insurance, etc., and the parties agree to be bound by these provisions prior to commencement of the Term.

Within ten (10) days after receiving an agreement executed by Landlord that confirms the Rent Commencement Date and such other factual matters as Landlord may reasonably request, Tenant shall deliver to Landlord a fully executed original of such agreement. If Tenant fails to make such delivery to Landlord within such ten (10) day period, all information set forth in the agreement executed by Landlord and delivered to Tenant shall be deemed accurate, unless Tenant provides Landlord with written notice of its disagreement with any information set forth therein, together with its rationale for such disagreement, within such ten (10) day period.

### **3.2 Condition**

Tenant acknowledges and agrees that the Premises shall be leased by Landlord to Tenant in an “as is” condition, except as set forth in Landlord’s Work, if any, as set forth in Exhibit E attached hereto, and that Landlord makes absolutely no representations or warranties whatsoever with respect to the Premises or the condition thereof. Tenant represents and warrants that, by leasing the Premises, Tenant has examined and approved all things concerning the Premises, which Tenant deems material to Tenant’s leasing and use of the Premises. Tenant taking possession of the Premises to install fixtures or equipment, perform Tenant’s Work (as such term is defined in Exhibit F hereof), or for any other purpose whatsoever shall be conclusive evidence against Tenant that the Premises and Landlord’s Work (if applicable) are in satisfactory condition and acceptable to Tenant. Any work (other than Landlord’s Work) which is done by Landlord at the Premises at Tenant’s request shall be at Tenant’s expense, and shall be paid for by Tenant in such manner as Landlord may reasonably require (including prepayment). Landlord shall have the right at any time to install or place upon, or affix to the roof and exterior walls of the Premises equipment, signs, displays, antennas, and any other objects or structures of any kind provided the same shall not materially affect the structural integrity of the Shopping Center.

Landlord hereby reserves the right to subject the Property to any Declaration which is not inconsistent with the rights and privileges granted to Tenant hereunder; Tenant hereby acknowledges such reservation and agrees that this Lease and all of Tenant’s rights hereunder shall at all times be subject and subordinate to the provisions of any Declaration; and Tenant hereby agrees to execute, acknowledge and deliver any such document and to take any such actions as Landlord may reasonably request in order for any such Declaration to take and remain in effect, to be amended or modified, or for Landlord to take any other action with regard thereto, and for any such Declaration, amendment, modification or other document to be recorded in the public records of \_\_\_\_\_ County, Florida; provided, however, the need for Tenant’s consent or approval to any such Declaration, amendment, modification or any other action with regard thereto shall not be deemed necessary as a result of this Paragraph. If Tenant shall fail to deliver any such document within fifteen (15) days after Landlord’s written request therefor, Landlord shall be entitled as Tenant’s special attorney-in-fact to execute and deliver any such document on behalf and in the name of Tenant. The aforesaid power of attorney is given as security, is coupled with an interest and is irrevocable.

With regard to any initial construction to be performed by Tenant on the Premises prior to Tenant opening for business at the Premises (“Tenant’s Work”), if any, Tenant, at its expense, shall perform all of Tenant’s Work, as set forth in Exhibit F attached hereto. All contractors and subcontractors performing any work

in, on or about the Premises or providing any materials, supplies or equipment therefore on behalf of Tenant, as a part of Tenant's Work or otherwise, shall be approved by Landlord in writing.

**3.3 Alterations and Additions**

Except as included in Tenant's Work, Tenant shall not make or allow to be made any alterations, additions or improvements to or of the Premises or any part thereof without first obtaining the written consent of Landlord, which may be withheld or conditioned at Landlord's sole discretion. Any alterations, additions or improvements to or of said Premises, including but not limited to, wall covering, paneling and built-in cabinet work, but excepting movable furniture and trade fixtures, shall at once become a part of the Premises and belong to the Landlord and shall be surrendered with the Premises unless Landlord shall require that same be removed as set forth in this Paragraph. In the event Landlord consents to the making of any alterations, additions or improvements to the Premises by Tenant, the same shall be made by Tenant at Tenant's sole cost and expense and in compliance with all applicable law. Upon the expiration or sooner termination of the Term hereof, Tenant shall upon written demand by Landlord, given on or before the end of the term, at Tenant's sole cost and expense, forthwith and with all due diligence, remove any alterations, additions, or improvements made by Tenant, designated by Landlord to be removed, and Tenant shall forthwith and with all due diligence, at its sole cost and expense, repair any damage to the Premises caused by such removal.

**3.4 Quiet Possession**

Upon Tenant paying the Rent reserved hereunder and observing and performing all of the covenants, conditions and provisions of Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all the provisions of this Lease.

**3.5 Holding Over**

If Tenant remains in possession of the Premises or any part thereof after the expiration of the term hereof with the express written consent of Landlord, the person or party remaining in possession shall be deemed to be a tenant at sufferance, and during any such holdover the Rent payable under this Lease by such tenant at sufferance shall be twice the last monthly Base Rent and Additional Rent together, plus all other charges payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy. Tenant shall also indemnify and hold Landlord harmless from all damages incurred by Landlord arising from Tenant's holdover after the termination or expiration of the Term hereof.

**ARTICLE 4 – USE AND OPERATION OF PREMISES**

**4.1 Use**

Tenant shall use the Premises solely for the Permitted Use as set forth in Section 1.1(m) and shall not use or permit the Premises to be used for any other purpose and shall conduct business in the Premises solely under the trade name specified in Section 1.1(a), unless expressly permitted by Landlord in writing. Tenant shall not use the Premises for any other purpose without the prior written consent of Landlord. It is understood that Landlord has absolute and arbitrary discretion as to approval of any proposed change of use. Tenant shall have no claim against Landlord for any damages in the event the Permitted Use is or becomes prohibited or substantially impaired by reason of any law, ordinance or regulation of federal, state, county or by reason of any legal or governmental or other public authority.

**4.2 Radius Restriction**

Tenant covenants and agrees that, during the Term, neither Tenant nor Tenant's management; nor any person or entity controlled by Tenant or controlled by any of the same persons or entities controlling Tenant, or otherwise affiliated with Tenant; nor any guarantor of this Lease, shall directly or indirectly own, operate, be employed in, direct or serve any other place of business which is (a) the same, similar to,

or in competition with the business Tenant is obligated to operate in the Premises by virtue of the provisions of this Lease; and (b) located within a radius of \_\_\_\_\_ ( ) miles from the outside boundary of the Property (which distance shall be measured in a straight line without reference to road mileage). In the event that this covenant is violated, then, in addition to any other remedy Landlord may have, during any such violation, the Base Rent provided for in this Lease shall be increased by fifty percent (50%); and, in addition, for the purpose of computing Percentage Rent, if any, owed hereunder, the Gross Sales of any such other place of business shall be considered to be a part of the Gross Sales derived in, on, or from the Premises, and Tenant agrees to pay Percentage Rent to Landlord computed on the basis of such combined Gross Sales. The foregoing radius restriction shall not apply to any business operated by Tenant as of the Lease Date, provided that: (i) the nature and character of any such business remains the same as that operated on the Lease Date, and (ii) such business is continuously operated by Tenant at the same location in which it operated on the Lease Date.

#### 4.3 Prohibited Uses

Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which is not within the Permitted Use of the Premises or which will in any way increase the existing rate of or affect any fire or other insurance upon the Property or any of its contents, or cause a cancellation of any insurance policy covering said Property or any part thereof or any of its contents. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure or annoy them or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises. Tenant shall not use the Premises for any purpose which generates an odor or smell which can be detected outside the Premises. Tenant shall not conduct or permit to be conducted any sale by auction in, upon or from the Premises whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors or pursuant to any bankruptcy or other insolvency proceeding. Unless otherwise consented to by Landlord, in writing, Tenant shall be prohibited from operating a recreational or medical marijuana dispensary on the Premises, regardless of state law.

#### 4.4 Exclusive Use.

During the Term of this Lease, provided that Tenant is open and operating in all of the Premises for its Permitted Use under the trade name specified in Section 1.1(a) hereof and is not otherwise in default hereunder, Landlord shall not lease any space located within the Shopping Center [**evaluate as to whether Landlord needs to carve out any outparcels**] to any other tenant whose permitted use is substantially the same as Tenant's Primary Use (the "Exclusive Use"). For purposes of this Section, Tenant's "Primary Use" shall be deemed to be \_\_\_\_\_. Notwithstanding anything herein to the contrary, no tenant of the Shopping Center (nor its successors, sublessees, licensees, concessionaires or assignees) which leases 5,000 square feet or more shall be subject to Tenant's Exclusive Use, nor shall any tenant of the Shopping Center utilizing not more than fifteen percent (15%) of such tenant's leaseable floor area for the incidental sale of items included within Tenant's Exclusive Use be subject to Tenant's Exclusive Use nor shall any existing tenant of the Shopping Center, or its successors, sublessees, licensees, concessionaires or assignees be subject to Tenant's Exclusive Use (collectively, the "Other Authorized Providers"). If, for any period of time during the Term of this Lease, any tenant of the Shopping Center (other than Tenant and any Other Authorized Providers) is permitted under its lease with Landlord to violate Tenant's Exclusive Use (any such other tenant being referred to herein as a "Violating Tenant"), and such Violating Tenant shall continue to violate Tenant's Exclusive Use for more than three hundred sixty five (365) consecutive days after Landlord receives written notice of such violation from Tenant, then, as Tenant's sole remedy therefor, Tenant shall have the right, within thirty (30) days after such 365th consecutive day, to terminate this Lease by written notice given to Landlord within said 30-day period,

which termination shall be effective thirty (30) days after the date of such written notice. If Tenant fails to terminate this Lease within said 30-day period, Tenant shall be deemed to have forever waived the right to enforce this provision against the Violating Tenant and/or Landlord. Notwithstanding anything to the contrary contained in this Section, (i) Tenant may not terminate this Lease as aforesaid at any time during a default by Tenant hereunder or at any time after having exercised a Renewal Option hereunder (if Tenant notified Landlord of a violation of Tenant's Exclusive Use prior to exercising the Renewal Option); (ii) the provisions of this Section shall not apply to tenants (nor to their successors, sublessees, licensees, concessionaires or assignees) under leases or other occupancy agreements in existence as of the Effective Date, nor to situations where Landlord does not have approval or consent rights to another tenant's ability to assign or sublet; and (iii) Landlord shall not be obligated to ensure that its tenants, or the assignees or subtenants of its tenants, use their premises in the Shopping Center only for those purposes for which they are permitted to be used under their respective leases; and Landlord shall not be in default hereunder due to, or have any obligation or responsibility with regard to, any tenant which violates Tenant's Exclusive Use where such tenant is not expressly permitted to do so pursuant to the terms of its lease with Landlord.

#### **4.5 Compliance with Law**

Tenant shall not use the Premises, or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall at its sole cost and expense promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may be hereafter be in force and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between the Landlord and Tenant. Landlord does not warrant or represent that the Premises or the Property comply with the Americans with Disabilities Act ("ADA"). It shall be the responsibility of the Tenant to comply, at Tenant's sole expense, with the ADA as to the Premises.

#### **4.6 Rules and Regulations**

Tenant shall faithfully observe and comply with the Rules and Regulations as listed in Exhibit B throughout the term. Landlord reserves the right to adopt additional Rules and Regulations, or amend any existing Rules and Regulations, which shall be deemed incorporated herein as of the effective date of notice to Tenant setting forth such additional or amended Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any said Rules and Regulations by any other tenants or occupants.

#### **4.7 Hazardous Substances**

Tenant will not generate, store, use, handle, discharge, or release hazardous waste materials on the Premises contrary to applicable law. Tenant agrees to save harmless, defend, and indemnify Landlord against, and compensate and reimburse Landlord for, all losses resulting from any storage, use, release or disposal of hazardous waste materials on the Premises by Tenant, including but not limited to court costs, attorney fees, fines, forfeitures, clean up expenses, repairs, loss of use of property, and all similar or dissimilar losses. This indemnity agreement shall continue in full force and effect after termination of this Lease. The term "hazardous waste materials" shall mean asbestos, asbestos-containing materials, polychlorinated biphenyls, mercury, lead, lead-based paint, chlorofluorocarbons, petroleum-based products, petroleum byproducts, explosives and other substances regulated by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601 et seq., the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or any other federal, state or local laws,

rules, regulations or ordinances relating to the regulation of toxic or hazardous materials or otherwise to the environment, all as the same may have heretofore been or may hereafter be amended.

**4.8 Displays**

Tenant may not display or sell merchandise or allow grocery carts or other similar devices within the control of Tenant to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises. Tenant further agrees not to install any exterior lighting, amplifiers or similar devices or use in or about the Premises any advertising medium which may be heard or seen outside the Premises, such as flashing lights, searchlights, loudspeakers, phonographs or radio broadcasts.

**4.9 Remodel of Property.**

Landlord reserves the right to redevelop the Property and/or the Shopping Center in whole or in part, in Landlord's sole discretion. In the event that Landlord shall redevelop either the Property or the Shopping Center in whole or in the majority in either case, Landlord may terminate this Lease upon no less than twelve (12) months prior written notice to Tenant.

In the event Landlord remodels the facade or signage of the Shopping Center or the building in which the Premises is located generally at any time during the Lease Term, within ninety (90) days after the completion of such work, Tenant shall remodel any storefront design elements unique to Tenant's branding of the Premises ("Tenant's Trade Dress") if requested by Landlord. Prior to the start of construction, Tenant shall submit detailed plans of the proposed construction for Landlord's written approval. Additionally, Tenant shall install new awnings and/or signs in conformity with new sign criteria developed in conjunction with such remodeling work, if any. Detailed specifications for such awnings or signs shall be submitted for Landlord's written approval prior to installation, which approval shall not be unreasonably withheld.

**4.10 Continuous Operation**

Commencing on the Rent Commencement Date, and continuing for the Term of this Lease, Tenant shall open to the public for business and continuously operate its business, fully stocked and staffed, in a manner consistent with reputable business standards and practices, during Tenant's Minimum Business Hours as set forth in Section 1.1(r) herein. Tenant shall use only such portions of the Premises for storage and office purposes as are reasonably necessary for the Permitted Use.

**ARTICLE 5 – RENT AND SECURITY DEPOSIT**

**5.1 Base Rent**

Tenant agrees to pay to Landlord as Rent, without notice, demand, or offset, the amount of Base Rent set forth in Section 1.1(h), in advance on or before the first day of each and every successive calendar month during the Term hereof. If the Rent Commencement Date is other than the first day of the month, the Base Rent for such partial month shall be due and payable on the first day of the following month and shall be prorated at the Base Rent rate applicable to the first full month of the term. Notwithstanding the foregoing, the prepaid rent shall be paid upon execution of this Lease.

**5.2 Adjustment to Base Rent**

Tenant's annual Base Rent shall adjust from time to time as described in Section 1.1(i)

**5.3 Sales or Privilege Tax**

Tenant shall pay all sales and privilege taxes imposed upon the privilege of leasing or renting real property by any city, county, state, or federal taxing authority, which amount shall be added to each of the installments of Base Rent and Additional Rent payable hereunder. (currently %)

**5.4 Additional Rent**

Commencing at the same time as Base Rent commences under this Lease, Tenant shall pay to Landlord, as Additional Rent, any other amounts (other than Base Rent) for which Tenant is liable to Landlord hereunder, including but not limited to Common Area Maintenance Charges and sales or privilege tax. Additional Rent shall be due and payable by Tenant to Landlord, together with all applicable sales taxes thereon, if any, simultaneously with the next succeeding monthly installment of Base Rent.

**5.5 Pass-Through Charges**

Tenant shall pay to Landlord Tenant's Proportionate Share of all Common Area Maintenance Charges ("Pass-Through Charges"), which shall be determined for each year by multiplying the total Common Area Maintenance Charges by Tenant's Proportionate Share, expressed as a fraction.

Upon the Rent Commencement Date, Landlord shall submit to Tenant a statement of the anticipated monthly Pass-Through Charges (for the period between the Commencement Date and the following January) and Tenant shall pay these charges as Additional Rent. In any year in which resurfacing of the parking lots or driveways or other similar capital improvements are contemplated, to the extent same may be passed through as Common Area Maintenance Charges, Landlord shall be permitted to include the anticipated cost of same as part of the estimated monthly Passthrough Charges. By March 1st of each year Landlord shall endeavor to give Tenant a statement showing the total Common Area Maintenance Charges for the Property for the prior calendar year and Tenant's Proportionate Share thereof. In the event the total of the monthly payments which Tenant has made for the prior calendar year is less than the Tenant's actual share of such Pass-Through Charges, then Tenant shall pay the difference in a lump sum within ten days after receipt of such notice from Landlord. Any overpayment by Tenant shall be credited towards the Pass-Through Charges for the then current year, with actual determination of such Passthrough Charges after each calendar year as above provided. Unless Tenant objects to any such statement within thirty (30) days of receipt thereof, Tenant shall be deemed to have waived the right to make any objections to such statement or to the amount of Tenant's Proportionate Share of Common Area Maintenance Charges for such calendar year.

Even though the Term has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's share of said Pass-Through Charges incurred through the date of termination of this Lease for the year in which this Lease terminates, Tenant shall immediately pay any increase due over the estimated Pass-Through Charges previously paid, and conversely, any overpayment made shall be immediately rebated by Landlord to Tenant. Failure of Landlord to submit statements as called for herein shall not be deemed to be a waiver of Tenant's requirement to pay sums as herein.

**5.6 Payment of Rent**

All Base Rent, Percentage Rent, Additional Rent and other sums shall be paid to Landlord without demand and without deduction, set-off, claim or counterclaim of any nature whatsoever which Tenant may have or allege to have against Landlord. All such Rent and other sums shall be paid to Landlord in legal tender of the United States in accordance with Section 1.1(o). The obligation of Tenant to pay Rent is independent of any other covenant, agreement, term or provision of this Lease.

**5.7 Past Due Rent and Late Charges**

Tenant hereby acknowledges that late payment by Tenant to Landlord of Rent or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Landlord by terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of Rent or any sum due from Tenant shall not be received by Landlord or Landlord's designee within five (5) days after said amount is due, then Tenant shall

pay to Landlord a late charge equal to 10% of such overdue amount, plus any attorney's fees incurred by Landlord by reason of Tenant's failure to pay Rent and/or other charges when due hereunder. In the event any check, draft, money order or other instrument for the payment of Rent is returned for insufficient funds or is otherwise not honored, Tenant shall pay Landlord a service charge of the highest amount allowed by law, or if there is no statutory provisions for the same, then a charge not to exceed the greater of \$25.00 or five percent (5%) of the amount of the instrument not honored. The parties hereby agree that such late charges represent a fair and reasonable estimate of the cost that Landlord will incur by reason of the late payment by Tenant. Acceptance of such late charges by the Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder.

**5.8 Security Deposit**

Concurrently with Tenant's execution of this Lease, Tenant has deposited with Landlord the Security Deposit in the amount set forth in the Section 1.1(k). Said Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions of this Lease to be kept and performed by Tenant during the Term hereof. If Tenant defaults with respect to any provision of this Lease, including, but not limited to the provisions relating to the payment of Rent, Landlord may (but shall not be required to) use, apply or retain all or any part of this Security Deposit for the payment of any Rent or any other sum in default, or for the payment of any amount which Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said Security Deposit is so used or applied, Tenant shall, within five days after written demand therefore, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall be a default under this Lease. Landlord shall not be required to keep this Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant (or, at Landlord's option, to the last assignee of Tenant's interest hereunder) within thirty days following expiration of the Term. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer said Security Deposit to Landlord's successor in interest.

**5.9 Percentage Rent.**

In addition to the Base Rent, Tenant shall also pay to Landlord each year percentage rent in an amount equal to percentage rent rate specified in Section 1.1(n) of this lease multiplied by the excess of (i) the total Gross Sales made in or from the Premises during the calendar year in question over (ii) the Breakpoint. As used herein, the "Breakpoint" shall mean the aggregate of the minimum guaranteed rent payable for the calendar year in question divided by \_\_\_\_\_. The percentage rent shall be paid on or before January 10 following each calendar year in which the Gross Sales made in or from the Premises exceeds the Breakpoint. In no event shall the Rent to be paid by Tenant and retained by Landlord for any calendar year be less than the Base Rent specified in this lease.

If this lease should commence on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, the Breakpoint shall be calculated by reference to the aggregate minimum guaranteed rent payable during such fractional part of the calendar year following the Rent Commencement Date or preceding the termination date as the case may be, and the amount of gross sales used to calculate percentage rent shall be the total gross sales made in or from the Premises during such fractional calendar year. Upon the termination of this lease, Tenant shall make a payment of percentage rent for the final fractional calendar year within ten (10) days after the termination of this Lease. The provisions of this Section shall survive the expiration or termination of this Lease.



**5.10 Reporting**

During the term of the Lease Agreement, Tenant shall maintain full, complete and accurate permanent records and accounts in accordance with general accounting practices acceptable to Landlord and such records and accounts and all supporting records shall at all times be open to inspection and audit at the Premises by Landlord or its duly authorized agents or representatives during ordinary business hours. Tenant shall keep and preserve said records for not less than thirty-six (36) months.

Tenant shall deliver to Landlord, and/or any party designated by Landlord, detailed financial statements of Tenant, certified by Tenant (or an authorized officer if Tenant is a corporation) as reasonably requested from time to time by Landlord including, but not limited to, financial statements for any prior years. Any such financial statement delivered by Tenant may be relied upon by Landlord and by any such party. If Tenant shall fail to deliver any such requested financial statements within thirty (30) days of Landlord's request therefore, in addition to any other rights or remedies Landlord may have, upon fifteen (15) days' notice to Tenant, Landlord may impose on Tenant a fine in the amount of not more than One Thousand and 00/100 Dollars (\$1,000) for Tenant's failure to timely deliver any such financial statements, which fine shall be paid upon demand as Additional Rent.

Tenant shall furnish to Landlord, within thirty (30) days after the end of each Lease Year, a complete statement, certified by Tenant (or an authorized officer if Tenant is a corporation), of the amount of Gross Sales made from the Premises during such Lease Year. If Tenant shall fail to deliver any such requested financial statements within thirty (30) days of Landlord's request therefor, in addition to any other rights or remedies Landlord may have, upon fifteen (15) days' notice to Tenant, Landlord may impose on Tenant a fine in the amount of not more than One Thousand and 00/100 Dollars (\$1,000) for Tenant's failure to timely deliver any such financial statements, which fine shall be paid upon demand as Additional Rent.

**ARTICLE 6 – TAXES AND ASSESSMENTS**

Tenant shall pay, or cause to be paid, before delinquency any and all taxes levied or assessed and which become payable during the term hereof upon all of Tenant's leasehold improvements, equipment, furniture, fixtures, and any other personal property located in the Premises. In the event any or all of the Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

**ARTICLE 7 – UTILITIES**

**7.1 Tenant's Obligations**

Tenant shall pay for all water, gas, heat, light, power, sewer charges, telephone service and all other services and utilities supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises. Tenant shall be responsible for any deposits with the utility company servicing the Premises. Tenant shall arrange for, at Tenant's sole expense, regular janitorial service to the Premises.

**7.2 Pest Control**

Tenant shall arrange for, at Tenant's sole expense, regular pest control service for the Premises.

## ARTICLE 8 – INSURANCE AND HOLD HARMLESS

### **8.1 Insurance by Tenant**

Tenant shall, at its sole cost and expense, maintain in full force and effect the following types and amounts of insurance coverage:

- (a) Property Insurance. A policy of insurance upon Tenant's leasehold improvements and personal property against loss or damage by hazard insured either under the broadest possible "all-risk" or "Special Form" policy, but at least as broad as ISO CP 1030, including collapse, vandalism, boiler and machinery, plate glass, signage, doors and windows, and sprinkler leakage, in an amount equal to one hundred percent (100%) of the full replacement cost thereof and having a commercially reasonable deductible, not to exceed \$25,000.
- (b) Liability Insurance. A policy of comprehensive public liability insurance insuring Landlord, Landlord's property manager, and at Landlord's request Landlord's mortgagee, and Tenant against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. The limit of any such insurance shall not, however, limit the liability of the Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsement attached thereto together with a list identifying the Premises as a covered property and a schedule of values. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be required to, procure and maintain same, but at the expense of Tenant. Such insurance, and any and all other liability insurance maintained by Tenant in excess of or in addition to that required hereunder, shall be endorsed to name Landlord, Landlord's property manager, and at Landlord's request, Landlord's mortgagee as additional insureds.
- (c) Minimum General Liability Insurance Coverage. \$2,000,000.00 for injury or death of one person in any one accident or occurrence and in the amount of not less than \$2,000,000.00 for injury or death of more than one person in any one accident or occurrence. Tenant shall also maintain umbrella liability coverage in the amount of at least \$2,000,000.00, except that if Tenant's Permitted Use includes use for a restaurant, bar or other establishment that serves food or alcohol for on-premises consumption, Tenant's umbrella liability coverage shall be no less than \$4,000,000.00. In the event that Tenant's operations at the Premises include the sale of alcoholic beverages from the Premises, then Tenant shall also maintain liquor liability insurance (a/k/a "dram shop insurance") in the amounts of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. Such insurance shall further insure Landlord and Tenant against liability for property damage of at least \$250,000.00.
- (d) Carriers and Features. Insurance required hereunder shall be in companies rated A:VIII or better in "Best's Key Rating Guide". Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein or certificates evidencing the existence and amounts of such insurance with loss payable clauses satisfactory to Landlord. No policy shall be cancelable or subject to reduction of coverage without 30 days' notice to Landlord. All such policies shall be written as primary policies not contributing with and not in excess of coverage which Landlord may carry.

### **8.2 Waiver of Subrogation**

Landlord and Tenant hereby mutually waive their respective rights of recovery against each other for any loss insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall apply to their insurers to obtain said waivers. Each party shall obtain

any special endorsements, if required by their insurer to evidence compliance with the aforementioned waiver.

**8.3 Increase of Premiums**

If, by reason of Tenant's use or occupation of the Premises or the keeping or maintenance of the Improvements or personal property, the insurance rate to Landlord for the Premises or the Property shall increase, then Tenant shall be responsible for paying the increased cost, and such payment shall be considered Additional Rent and be due and payable upon demand by Landlord. Tenant shall not use, or permit the use of, the Premises in any manner that would violate any requirement of any policy of insurance held by Landlord.

**8.4 Hold Harmless.**

Tenant shall indemnify and hold harmless Landlord and Landlord's shareholders, directors (if Landlord is a corporation) members (if Landlord is a limited liability company), officers, employees, and agents (collectively the "Indemnified Parties") against and from, and compensate and reimburse Landlord for, any and all losses, liabilities, claims, damages, and expenses (including without limitation reasonable attorneys' fees and costs) (collectively "Losses") arising from Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Tenant in or about the Premises, and shall further indemnify and hold harmless the Indemnified Parties against and from any and all Losses arising from any breach or default the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest or invitee of Tenant, and from, and compensate and reimburse Landlord for, all costs, attorney's fees, losses, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon, excluding however any Losses arising solely from the negligence of Landlord. In case any action or proceeding is brought against any of the Indemnified Parties by reason of such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence, and Tenant hereby waives all claims in respect thereof against Landlord. Tenant shall give prompt notice to Landlord in case of casualty or accidents in the Premises.

Neither Landlord nor its agent shall be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water or rain which may leak from any part of the Shopping Center or from the pipes, appliances or plumbing works therein or from the roof, street or subsurface or from any other place resulting from dampness or any other cause whatsoever, unless caused by or due to the negligence of Landlord, its agents, servants or employees. Landlord or its agents shall not be liable for interference with the light, air, or for any latent defect in the Premises.

**ARTICLE 9 – REPAIRS**

**9.1 Repairs by Tenant**

Tenant shall, at Tenant's sole cost and expense, keep the Premises and every part thereof in first class, good condition and repair (except as hereinafter provided with respect to Landlord's obligations) including without limitation, the maintenance, replacement and repair of any entrance to the Premises (including plate glass), doors, window casements, glazing, plumbing, pipes, electrical wiring and conduits, HVAC system, and any grease traps serving the Premises. Tenant shall replace light bulbs in the Premises. Tenant shall obtain a service contract for repairs and maintenance of any HVAC systems serving only the Premises, which maintenance contract shall conform to the requirements under the warranty, if any, on said systems. Tenant shall maintain an industry standard service contract with a qualified and licensed HVAC service contractor providing for regular seasonal maintenance (as per manufacturer's recommendation, but

not less than four (4) times per year, including the manufacturer's recommended points for service and repair) of the HVAC system ("HVAC Service Contract"). Within ten (10) days after Landlord's request therefor, which requests may be made from time to time, Tenant shall furnish Landlord with a copy of the HVAC Service Contract required to be maintained by Tenant hereunder and copies of paid invoices and work orders verifying the nature of the work performed under such contract. If Tenant fails to maintain any such HVAC Service Contract or timely deliver to Landlord the documentation requested by Landlord relating thereto, Landlord may, at its option, after ten (10) days' notice to Tenant, enter into an HVAC Service Contract; and, upon demand, Tenant shall pay to Landlord, as Additional Rent, all charges incurred by Landlord under any such contract, together with a sum equal to twenty five percent (25%) of said charges for overhead and administration.

Tenant shall, upon the expiration or sooner termination of this Lease hereof, surrender the Premises to the Landlord in good condition, broom clean, ordinary wear and tear and damage from causes beyond the reasonable control of Tenant excepted. Any damage to adjacent premises caused by Tenant's use of the Premises shall be repaired at the sole cost and expense of Tenant. Specifically but not by way of limitation, Tenant shall not use or utilize the plumbing fixtures or systems installed in or serving the Premises for any purpose other than for such purposes for which they are intended, and no substance other than substances intended to be disposed of in such plumbing shall be deposited therein. Tenant shall bear the sole expense of correcting any violation of the immediately preceding sentence.

**9.2 Repairs by Landlord**

Notwithstanding the provisions of Section 9.1 above, Landlord shall repair and maintain the structural portions of the Property, including the exterior walls and roof, unless the need for such maintenance and repairs is caused in part or in whole by the act, neglect, fault or omission of any duty by the Tenant, its agents, servants, employees, invitees, or any damage caused by breaking and entering in which case Tenant shall pay to Landlord the actual cost of such maintenance and repairs. Landlord shall not be liable for any failure to make such repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Except as provided in Section 10 hereof, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Property or the Premises or in or to fixtures, appurtenances and equipment therein. Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance nor or hereafter in effect

**ARTICLE 10 – CASUALTY AND CONDEMNATION**

**10.1 Eminent Domain**

If more than 25% of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, either party hereto shall have the right at its option, within 60 days after said taking, to terminate the Lease upon 30 days written notice. If either less than 25% of the Premises shall be so taken or appropriated (or more than 25% of the Premises are so taken or appropriated and neither party elects to terminate as herein provided), the Base Rent thereafter to be paid shall be equitably reduced. If any part of the Property other than the Premises may be so taken or appropriated, Landlord shall within 60 days of said taking have the right at its option to terminate this Lease upon written notice to Tenant. In the event of any taking or appropriation whatsoever, Landlord shall be entitled to any and all awards and/or settlements which may be given and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.

**10.2 Reconstruction Covered by Insurance**

In the event the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair same, and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the Base Rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall materially interfere with the business carried on by the Tenant in the Premises, as determined by the Landlord in its reasonable discretion. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of Rent.

**10.3 Reconstruction Not Covered by Insurance**

In the event the Premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall have the option to: (1) repair or restore such damage, this Lease continuing in full force and effect, but the Base Rent to be proportionately reduced as herein above in this Section, or (2) give notice to Tenant at any time within 60 days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than 30 days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate on the date so specified in such notice and the Base Rent, reduced by a proportionate reduction based upon the extent, if any, to which such damage interfered with the business carried on by the Tenant in the Premises, and Additional Rent shall be paid up to date of said such termination.

**10.4 Limitation on Reconstruction**

- (a) Notwithstanding anything to the contrary contained in this Lease, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Section occurs during the last twenty four months of the Term of this Lease or any extension or renewal term thereof.
- (b) Landlord shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or replacements of any Improvements, fixtures, or other personal property of Tenant

**ARTICLE 11 – ASSIGNMENT, TRANSFER AND SUBLETTING**

**11.1 Transfers Prohibited Without Consent**

Tenant shall not without the prior written consent of Landlord, which consent may be withheld or conditioned by Landlord in its sole discretion, either voluntarily, or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the said Premises or any part thereof, or any right or privilege appurtenant thereto, or allow any other person (the employees, agents, servants and invitees of Tenant excepted) to occupy or use the said Premises, or any portion thereof. In determining whether (or not) to grant its consent, Landlord shall have the right to request from any potential assignee or subtenant such financial and operational information as Landlord shall determine in order to reasonably satisfy itself that a potential assignee or subtenant and guarantor(s) have suitable experience and financial strength. Consent to one assignment, subletting, occupation or use by any other person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Consent to any such assignment or subletting shall in no way relieve Tenant or any Guarantor of any liability under this Lease. Any such assignment or subletting without such consent shall be void, and shall, at the option of the Landlord, constitute a default under the terms of this Lease.

**11.2 Administrative Fee**

In the event that Landlord shall consent to a sublease or assignment hereunder, Tenant shall pay Landlord a fee of One Thousand Five Hundred Dollars (\$1,500.00) to cover costs incurred by Landlord in connection with the processing of documents necessary to giving of such consent.

**11.3 Excess Rent**

In the event Tenant shall sell, assign, transfer, or sublet the Premises or its interest in this Lease for an amount in excess of the Base Rent stipulated herein, such excess rent shall be deemed to be Additional Rent due and owing Landlord and be payable in accordance with the terms and conditions of this Lease.

**11.4 Permitted Transfer**

Notwithstanding the provisions of Section 11.1 above to the contrary, Landlord shall not unreasonably withhold its consent for (i) an assignment or sublease of this Lease to Tenant's franchisor, Tenant's parent company, subsidiary or affiliate, or (ii) an assignment of this Lease that results from a transfer, merger, sale or consolidation of Tenant's stock or assets provided that the surviving or acquiring entity has a net worth of at least \$10,000,000.00 (in the case of (i) or (ii), a "Permitted Transfer"). It shall not be unreasonable for Landlord to withhold its consent to a transfer if: (i) Landlord determines that the proposed assignee's or sublessee's use of the Premises is not substantially the same as Tenant's Permitted Use or materially conflicts with any other provision of this Lease or any existing occupancy of the Property; (ii) in Landlord's reasonable determination, the proposed assignee or sublessee has a net worth less than the greater of (A) that of Tenant at the time of such request for consent, or (B) that of Tenant as of the Effective Date; (iii) in Landlord's reasonable determination, the proposed assignee or sublessee lacks sufficient business reputation or experience to conduct a business of the type and quality equal to that conducted by Tenant or conducted in a first class shopping center; (iv) the proposed assignee or sublessee requires any material change to the Lease; or (v) the proposed assignee or sublessee is an existing tenant of the Property or is a prospective tenant with respect to other space in the Property. In the event of any such assignment, sublease, or transfer, Tenant and any Guarantor shall remain liable for the performance of the Lease as set forth in Section 11.1 thereof.

**ARTICLE 12 – ENTRY BY LANDLORD**

Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, to post notices of non-responsibility, to post "For Rent" signs, to repair the Premises and any portion of the Property of which the Premises are a part that Landlord may deem necessary or desirable, without abatement of Rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed. Tenant hereby waives any claim for damages or for any injury or inconvenience with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care for Tenant's property and any entry to the premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

**ARTICLE 13 – COMMON AREAS**

**13.1 Use**

Tenant, for the use and benefit of Tenant, its agents, employees, customers and licensees, shall, subject to the rights of tenants in the Property having the exclusive right to use certain portions of the Common Areas

and automobile parking areas, have the non-exclusive right in common with Landlord, and other present and future owners, tenants and their agents, employees, customers and licensees, to use said Common Areas and parking areas during the entire Term, or any extension thereof, for ingress and egress, and automobile parking. The Tenant, in the use of said common and parking areas, agrees to comply with such reasonable rules, regulations and charges for parking as the Landlord may adopt from time to time for the orderly and proper operation of said Common Areas and parking areas. Such rules may include but shall not be limited to the following: (i) the restricting of employee parking to a limited, designated area or areas, and (ii) the regulation of the removal, storage and disposal of Tenant's refuse and other rubbish at the sole cost and expense of Tenant. Landlord shall have the right, without notice to or consent of Tenant, to alter the Common Areas and/or automobile parking areas from time to time, to change the size, location, elevation and nature of all or any portion of the Property, including the Common Areas, and the stores in the Property; and to remove, repair, alter, improve or rebuild all or any part of the Property, including the Common Areas. Without limiting the foregoing, Landlord expressly reserves the right to modify, from time to time, the Property's traffic flow pattern, layout of parking spaces and the entrances-exits to adjoining public streets or walkways, to utilize portions of the Common Areas for entertainment and displays, and to do such other acts in and to the Common Areas, as in its judgment may be desirable. Landlord shall have the right to close any Common Areas or other facilities, or temporarily to abate the operations of such facilities, all without being deemed an eviction of Tenant or a default by Landlord hereunder. Landlord shall have the right, at any time, to change the location, shape, height, size, nature and configuration of stores, buildings, drive aisles, parking, and entrances, to locate and construct thereon kiosks, additional buildings and improvements of any type, to make alterations or additions and to build additional stories on the Shopping Center and the Premises. Any site plan, drawing or similar exhibit relating to the Property, the Shopping Center and/or the Premises contained in this Lease are diagrammatic and approximate and is not, and shall not be deemed to be, a representation or warranty of any the location or existence of any Common Areas or any existing or future tenant, occupant, or owner of the Shopping Center or the Property.

**13.2 Landlord's Responsibility**

All of Landlord's expenses in connection with said automobile parking and Common Areas shall be charged and prorated in the manner as set forth in Section 5.5 hereof.

**ARTICLE 14 – LANDLORD'S INTEREST NOT SUBJECT TO LIENS**

**14.1 Liens, Generally**

Tenant shall keep the Premises and the Property free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Tenant. Landlord may require, at Landlord's sole option, that Tenant shall provide to Landlord, at Tenant's sole cost and expense, a payment and performance bond in an amount equal to the contract amount for the cost of any improvements, additions or alterations in the Premises which the Tenant desires to make to insure Landlord against any liability for construction and materialmen's liens and to insure completion of the work.

**14.2 Construction Liens**

No construction liens shall be placed against the Landlord's title in the Premises for or on account of the construction of any improvement upon the Premises or any repair, alterations, demolition, or removal of such improvement, or for any other purpose, by any laborer, contractor, materialman, or other person contracting with Tenant. All laborers, mechanics, materialmen, contractors, subcontractors, and others are called upon to take due notice of this clause, it being the intent of the parties hereby to expressly prohibit any such lien against the Landlord's title or interest by the use of this language as and in the manner contemplated by Section 713.10 of the Florida Statutes. Tenant agrees to promptly pay or bond any liens,

and further agrees to indemnify and save harmless the Landlord from and against any loss, cost or expense occasioned by any lien prohibited hereby, including the cost and expense of defending or removing the same, whether the claim therefore be with or without merit or valid or invalid. Further, the Tenant agrees to promptly notify any contractor making any improvements to the Premises of the provisions of this Lease contained in this paragraph. It is the intent of this language to comply with Section 713.10 of the Florida Statutes, as amended. Tenant further agrees that upon request of Landlord, Tenant shall execute a notice that sets forth the foregoing provisions, which notice may be recorded by Landlord in the public records of the county where the Property is located. Tenant shall also require the contractor to identify Landlord in any Notice of Commencement relating to the Premises as a party designated by owner upon whom notices or other documents are to be served.

## **ARTICLE 15 – DEFAULT**

### **15.1 Events of Default**

The occurrence of any one or more of the following events shall be an Event of Default hereunder and constitute a default and breach of this Lease by Tenant:

- (a) The vacating or abandonment of the Premises by Tenant.
- (b) The failure by Tenant to make any payment of Rent or any other payment required to be made by Tenant hereunder when due.
- (c) The assignment, transfer, sublease, merger or encumbrance made or deemed to be made that is in violation of the terms and conditions of this Lease.
- (d) The failure by Tenant to observe or perform any other covenants, conditions or provisions of this Lease to be observed or performed by the Tenant, where such failure shall continue for a period of ten days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than ten days are reasonably required for its cure, Tenant shall not be deemed to be in default if Tenant commences such cure within said ten-day period and thereafter diligently prosecutes such cure to completion.
- (e) The making by Tenant of any general assignment or general arrangement for the benefit of creditors, or the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless in the case of a petition filed against Tenant, the same is dismissed within 60 days), or the appointment of a trustee or a 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 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.
- (f) The death of Tenant or any guarantor of Tenant's obligations hereunder; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations hereunder, or toward the liquidation of any of their respective assets.
- (g) The occurrence of any other event described as a default elsewhere in this Lease, or any addendum or amendment hereto, regardless of whether such event is defined as an "Event of Default."



**15.2 Remedies on Default**

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, in its sole discretion, with or without notice or demand and without limiting Landlord in the exercise of a right or remedy which Landlord may have by reason of such default or breach:

- (a) Terminate Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including, but not limited to the cost of recovering possession of the Premises; expenses of re-letting, including necessary renovation and alteration of the Premises; reasonable attorney's fees; the worth at the time of award by the court having jurisdiction thereof of the amount by which the unpaid Rent, Additional Rent and other charges called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Tenant proves could be reasonably avoided; and that portion of any leasing commission paid by Landlord and applicable to the unexpired term of this Lease. Unpaid installments of Rent or other sums shall bear interest from the date due at the maximum legal rate;
- (b) Maintain Tenant's right to possession, in which case this Lease shall continue in effect whether or not Tenant shall have abandoned the Premises. In such event Landlord shall be entitled to enforce all of Landlord's rights and remedies under this Lease including the right to recover the Base Rent, Additional Rent and other charges as may become due hereunder;
- (c) Accelerate the Rent for the entire balance of the Term or any part thereof, and any costs and sheriff's, marshal's, constable's or other official's commissions, whether chargeable to Landlord or Tenant, as if by the terms of this Lease said balance of the Rent and such other charges and expenses were payable in advance on the date of such acceleration. For purposes of accelerating the Rent for the balance of the Term, Landlord shall be entitled to calculate the Rent for the then remaining Term by assuming a five percent (5%) increase in CAM Expenses, Taxes and Landlord's Insurance Expenses for each Accounting Period or portion thereof remaining in the Term. Nothing herein shall relieve Tenant of liability for actual Rent in excess of such calculations for any period by Landlord pursuant to this Section. If such calculations exceed the amount of actual Rent for such period, Landlord shall either refund such excess to Tenant or apply such excess to other sums which may become due to Landlord under this Lease;
- (d) Pursue any other remedy now or hereafter available to Landlord under the laws or judicial decisions of the State of Florida.

**15.3 Default by Landlord**

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than 30 days after written notice by Tenant to Landlord, specifying wherein Landlord has failed to perform such obligation, provided, however, that if the nature of Landlord's obligation is such that more than 30 days are required for performance than Landlord shall not be in default if Landlord commences performance within such 30 days period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction.

**15.4 Rights Cumulative**

No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

## ARTICLE 16 – RELOCATION

Landlord shall have the right to relocate Tenant to other premises (the “Substitute Premises”) in the Property. . Tenant shall, within thirty (30) days after receipt of Landlord’s written notice of relocation to a Substitute Premises, vacate the Premises and relocate all of Tenant’s trade fixtures, equipment and inventory to tohe Substitute Premises. Landlord shall pay the reasonable costs incurred by Tenant of such relocation within t hirty (30) days of Landlord’s receipt of invoices for such moving expenses. Landlord shall pay for the completion of interior improvements in the new premises substantially similar to those paid for by Landlord pursuant to this Lease in the Premises. All other costs of remodeling, outfitting and furnishing the new premises shall be borne by Tenant. Tenant shall arrange for the transfer of all utilities to the Substitute Premises. Tenant shall execute and deliver such further documentation as Landlord may prepare to memorialize the same. In the event that Landlord exercises its right to relocate hereunder, this Lease shall remain in full force and effect and thereupon be deemed applicable to such Substitute Premises.

## ARTICLE 17 – SUBORDINATION, ATTORNMENT, ESTOPPEL CERTIFICATE, AND SECURITY INTEREST

### **17.1 Subordination**

Tenant covenants and agrees that this Lease and the Tenant's rights hereunder shall be and is hereby made subject to and subordinate to all existing mortgages, deeds of trust, security interests and other rights of the Landlord's creditors secured by the Premises, as well as any such mortgages, deeds of trust, security interest and other rights of Landlord's creditors which may hereafter be created. The provisions of this paragraph shall be self-operative, but the Tenant covenants and agrees that it will, within ten (10) days of written request of the Landlord, in writing subordinate its rights hereunder to the lien of any mortgage or deed of trust to any bank, insurance company or other lending institution, now or hereafter in force against the Premises, and to all advances made or hereafter to be made upon the security thereof.

### **17.2 Attornment**

In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or deed of trust made by the Landlord covering the Premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Landlord under this Lease.

### **17.3 Estoppel Certificate**

Tenant shall at any time and from time to time, upon not less than ten (10) days written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults if any are claimed, (c) setting forth the date of commencement of Rents and expiration of the term hereof, (d) that all improvements required to be completed by Landlord have been completed and that there are no sums due Tenant from Landlord; and (e) such other matters as Landlord, Landlord’s purchaser, or Landlord’s mortgagee may reasonably request. Any such statement may be relied upon by the prospective purchaser or encumbrancer of all or any portion of the Property of which the Premises are a part.

### **17.4 Landlord’s Security Interest**

In addition to Landlord’s statutory Landlord's lien and any lien provided by common law, Landlord shall have at all times a valid security interest to secure payment of all Rent and other sums of money becoming due hereunder from Tenant, and to secure payment of any damages or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained herein, upon all goods,

wares, equipment, fixtures, furniture, improvements and other personal property of Tenant presently, or which may hereafter be, situated on the Premises, and all proceeds therefrom, and such property shall not be removed without the consent of Landlord until all arrearages in Rent as well as any and all other sums of money then due to Landlord or to become due to Landlord hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by Tenant. Upon the occurrence of an event of default by Tenant, Landlord may, in addition to any other remedies provided herein, enter upon the Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant situated on the Premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the Landlord or its assigns may purchase unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving Tenant reasonable notice, the requirement of reasonable notice shall be met if such notice is given in the manner prescribed in this lease at least five (5) days before the time of sale. Any sale made pursuant to the provisions of this Section shall be deemed to have been a public sale conducted in a commercially reasonable manner if held in the Premises or where the property is located after the time, place and method of sale and a general description of the types of property to be sold have been advertised in a daily newspaper published in the county in which the property is located, for five (5) consecutive days before the date of the sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this Section. Any surplus shall be paid to Tenant or as otherwise required by law; Tenant shall pay any deficiencies forthwith. Tenant hereby agrees that a carbon, photographic or other reproduction of this lease shall be sufficient to constitute a financing statement. Tenant authorizes Landlord to file a financing statement in form sufficient to perfect the security interest of Landlord in the aforementioned property and proceeds thereof under the provision of the Uniform Commercial Code in force in Florida.

## **ARTICLE 18 – MISCELLANEOUS PROVISIONS**

### **18.1 Signs**

Tenant may affix and maintain upon the glass panes and supports of the Premises windows and within twelve (12) inches of any window and upon the exterior walls of the Premises only such signs, advertising, placards, names, insignia, trademarks and descriptive material as shall have first received the written approval of the Landlord as to type, size, color, location, copy nature and display qualities. Anything to the contrary in this Lease notwithstanding, Tenant shall not affix any sign to the roof of the Property. Tenant may, however, at its own expense, erect one sign on the front façade of the Premises not later than the date Tenant opens for business, in accordance with the signage criteria set forth on Exhibit C attached hereto. Tenant must utilize the services of a sign company approved by Landlord for the installation of such sign.

### **18.2 Exhibits and Riders**

Clauses, exhibits, riders and addendums, if any, affixed to this Lease are hereby made a part hereof.

### **18.3 Brokers**

Landlord and Tenant hereby represent and warrant to each other that they have not engaged, employed or utilized the services of any business or real estate brokers, salesmen, agents or finders in the initiation, negotiation or consummation of the business and real estate transaction reflected in this Lease, other than those listed in Section 1.1(p), to which a commission will be paid by Landlord, pursuant to a separate agreement. Each party hereby agrees to indemnify and save and hold the other party harmless from and

against the payment of any commissions or fees to or claims for commissions or fees by any real estate or business broker, salesman, agent or finder other than those listed in Section 1.1(p) resulting from or arising out of any actions taken or agreements made by them with respect to the business and real estate transaction reflected in this Lease.

**18.4 Waiver**

The waiver by Landlord of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition herein contained. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease, other than the failure of the Tenant to pay the particular rental so accepted, regardless of Landlord's knowledge of such preceding default at the time of the acceptance of such Rent.

**18.5 Joint Obligation**

If there is more than one Tenant the obligations hereunder imposed shall be joint and several.

**18.6 Marginal Headings**

The marginal headings and article titles to the articles of the Lease are not a part of the Lease and shall have no effect upon the construction or interpretation of any part hereof.

**18.7 Time**

Time is of the essence of this Lease and each and all of its provisions in which performance is a factor.

**18.8 Successors and Assigns**

The covenants and conditions herein contained, subject to the provisions as to assignment, inure to the benefit of and are binding upon the heirs, successors, executors, administrators and assigns of the parties hereto.

**18.9 Recording**

Neither this Lease or a memorandum, short form or affidavit thereof, shall be recorded without the written consent of Landlord.

**18.10 Prior Agreements**

This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. This Lease shall not be effective or binding on any party until fully executed by both parties herein.

**18.11 Inability to Perform**

This Lease and the obligations of each party hereunder shall not be affected or impaired because the other party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the other party except that the foregoing shall not apply to Tenant's obligation to pay Base Rent, Additional Rent or any other monetary obligation under the Lease.

**18.12 Partial Invalidity**

Any provision of this Lease which shall prove to be invalid, void, or illegal shall in no way affect, impair or invalidate any other provision hereof and such other provision shall remain in full force and effect.

**18.13 Applicable Law**

This Lease shall be governed by the laws of the State of Florida both as to interpretation and performance. Venue of any action brought hereunder shall lie in the county in which the Premises are located.

**18.14 Attorney's Fees**

If either party hereto shall commence any action or other proceeding against the other arising out of, or relating to, this Lease or the Premises, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, its actual reasonable attorneys' fees irrespective of whether or not the action or other proceeding is prosecuted to judgment, including but not limited to such fees and costs incurred in establishing the right to recover such fees and costs and the amount to be recovered. In addition, in the event that Tenant requests that Landlord execute any document or instrument in connection with Tenant's occupancy and/or use of the Premises, including without limitation any Landlord's Waiver or similar instrument requested by any lender of Tenant, Tenant shall reimburse Landlord, as Additional Rent, for any and all reasonable attorneys' and other professional fees incurred by Landlord in connection with Landlord's review, evaluation, revision and/or execution of any such document or instrument.

**18.15 Sale of Premises by Landlord**

In the event of any sale of the Premises by Landlord, Landlord shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations in or derived from this Lease arising out of any act, occurrence or omission occurring after the consummation of such sale; and the purchaser, at such sale or any subsequent sale of the Premises shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the Landlord under this Lease.

**18.16 Radon Gas**

Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

**18.17 Relationship of the Parties**

Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be responsible in any way for the debts or obligations of Tenant or anyone else.

**18.18 Corporate Authority; Partnership Authority; Limited Liability Authority**

If Tenant is a corporation, each person signing this Lease on behalf of Tenant represents and warrants that he or she has full authority to do so and that this Lease binds the corporation. Within 30 days after this Lease is executed by Tenant, Tenant shall deliver to Landlord a certified copy of a resolution of Tenant's board of directors authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord. If Tenant is a partnership, each person signing this Lease for Tenant represents and warrants that he or she or it is a general partner of the partnership, and that he or she or it has full authority to sign for the partnership, and that this Lease binds the partnership and all general partners of the partnership. Tenant shall give written notice to Landlord of any general partner's withdrawal or addition. Within 30 days after this Lease is executed by Tenant, Tenant shall deliver to Landlord a copy of Tenant's recorded statement of partnership, certificate of limited partnership, or other evidence of partnership satisfactory to Landlord. If Tenant is a limited liability company, each person signing this Lease on behalf of Tenant represents and warrants that he or she has full authority to do so and that this Lease binds the company. Within 30 days after this Lease is executed by Tenant, Tenant shall deliver to Landlord a

certified copy of a resolution of Tenant's members authorizing the execution of this Lease or other evidence of such authority reasonably acceptable to Landlord.

**18.19 Tenant's Financial Condition**

Within 10 days after written request from Landlord, Tenant shall deliver to Landlord such financial statements as Landlord reasonably requires to verify the net worth of Tenant or any guarantor of Tenant. In addition, Tenant shall deliver to any prospective buyer or lender designated by Landlord any financial statements required by such lender to facilitate the sale, financing or refinancing of the Property. Tenant represents and warrants to Landlord that each such financial statement is a true and accurate statement as of the date of such statement. All financial statements shall be confidential, and shall be used only for the purposes set forth in this Lease.

**18.20 Deliveries**

Landlord reserves the right to regulate the activities of Tenant in regard to deliveries to and servicing of the Premises, and Tenant agrees to abide by such further regulations of Landlord. Rear deliveries may be made at any time during the day.

**18.21 Counterparts**

This Lease may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which, collectively, shall constitute one agreement, it being understood and agreed that signature pages may be detached from one or more such counterparts and combined with the signature pages from any other identical counterpart in order that one or more fully executed originals may be assembled.

**18.22 Waiver of Jury Trial**

In the interest of obtaining a speedier and less costly hearing of any dispute, Landlord and Tenant hereby expressly waive trial by jury in any action, proceeding or counterclaim brought by either party against the other and any rights to a trial by jury under any statute, rule of law or public policy in connection with any matter whatsoever arising out of or in any way relating to this Lease.

**ARTICLE 19 – NOTICES**

Any notice required or permitted to be given under this Lease must be given only by one of the following: (a) United States registered or certified mail, postage prepaid, return receipt requested, (b) reputable overnight courier service which provides written evidence of delivery, or (c) personal delivery; and addressed as follows:

If to Landlord:

\_\_\_\_\_  
c/o DRESI, LLC  
1350 N. Orange Avenue, Suite 100  
Winter Park, Florida 32789

If to Tenant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address as may be designated by either party by written notice to the other. Except as otherwise provided in this Lease, every notice, demand, request or other communication shall be deemed to have been given or served upon actual receipt thereof. Notwithstanding the foregoing, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease shall not be deemed ineffective if actual delivery cannot be made due to a change of

address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

**ARTICLE 20 – GUARANTY**

To induce Landlord to enter into this Lease, the Guarantor (s) agreed to, jointly and severally if more than one guarantor, serve as guarantor of Tenant’s liabilities and obligations hereunder for the Term, which guarantor obligations shall be as set forth pursuant to that certain Guaranty dated on or about even date herewith and incorporated herein as Exhibit G (the “Guaranty”). Guarantor’s execution of the Guaranty is hereby made an express condition precedent to Landlord’s obligations under this Lease.]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be duly executed on or as of the day and year first above written.

**LANDLORD:**

\_\_\_\_\_, a  
\_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(Print Name)\_\_\_\_\_

\_\_\_\_\_  
(Print Name)\_\_\_\_\_  
Two Witnesses

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As its: \_\_\_\_\_

[CORPORATE SEAL]

**TENANT:**

\_\_\_\_\_, a  
\_\_\_\_\_

Signed, sealed and delivered in the presence of:

\_\_\_\_\_  
(Print Name)\_\_\_\_\_

\_\_\_\_\_  
(Print Name)\_\_\_\_\_  
Two Witnesses

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As its: \_\_\_\_\_

[CORPORATE SEAL]



**EXHIBIT "A"**

**SITE PLAN**

**EXHIBIT "B"**

**RULES AND REGULATIONS**

1. The sidewalks, entries, passages, or corridors, shall not be obstructed by any of the Tenants, their employees or agents, or used by them for purposes other than ingress and egress to and from their respective premises.
2. Tenant will refer all contractors, contractors' representatives and installation technicians rendering any work or service on or to the Premises for Tenant to Landlord for Landlord's approval and supervision before performance of any contractual work or service. This provision shall apply to all work performed in the building, including installation of telephones, telegraph equipment, electrical devisees and attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceiling, equipment or any other physical portion of the building.
3. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances reasonably designated for such purposes by Landlord.
4. The delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be subject to such reasonable rules and regulations as in the judgment of Landlord are necessary for the proper operation of the Premises and the Property.
5. It is the responsibility of each and every store to notify the Landlord, or its agents, when there is a change in store managers or assistant managers. Stores are required to furnish Landlord, or its agents, with emergency telephone numbers of key personnel.
6. The security of the Premises is the responsibility of the Tenant. In the event of a problem it is the responsibility of the Tenant to contact the police.
7. Tenant shall keep the signs, exterior lights and display window lights on the Premises lighted each and every day of the Term during the hours designated by Landlord.
8. Tenant shall keep the outside areas immediately adjoining the Premises and window sills clean and free from dirt and rubbish to the satisfaction of the Landlord. Tenant shall not burn, place, or permit any rubbish, obstruction, or merchandise in such areas.
9. No merchandise may be displayed on the exterior of the Premises for sale or promotional purposes at any time except as specifically set forth in this Lease.
10. Tenant must institute a regular program of cleaning the interior/exterior storefront glass.
11. Tenant and Tenant's employees shall park their cars only in those portions of the parking areas designated for that purpose by Landlord, if applicable. Tenant, upon request from Landlord, shall from time to time furnish Landlord with state automobile license numbers assigned to Tenant's car or cars and cars of Tenant's employees. Any signage displayed on operable vehicles is restricted to a size which does not require the issuance or a permit by government authorities for use. Parking is not permitted in fire lanes, loading zones, and/or space reserved for the handicapped, or areas not designated by Landlord.
12. Tenant and its employees shall not solicit business on the parking lot or in Common Areas, nor may Tenant distribute handbills or other advertising matter in the Common Areas or on automobiles in the parking area. The solicitation of memberships, pledges, collections of funds, circulation of petitions, distribution of printed materials and other similar types of activities will not be permitted.

13. No drinking of alcoholic beverages is permitted in the Common Areas or parking areas of the Property.
14. No pets of any kind are permitted in the Property, except ADA assistance animals.
15. Cartons must be broken down before they are picked up by the trash service. Any Tenant found putting trash outside the Premises and not in the dumpsters provided by Landlord shall be assessed a One Hundred Dollar (\$100.00) fine for each occurrence. Tenant shall keep all garbage and refuse and place same outside the Premises prepared for collection in a manner and at times reasonably specified by Landlord. Tenant must comply with city, county, or state recycling regulations, if applicable.
16. The maintenance personnel may at all times keep a pass key to the entry doors for the Premises, and the maintenance personnel and other employees of the Landlord shall at all times be allowed admittance to said Premises.
17. No additional locks shall be placed upon any entry doors without the written consent of the Landlord. All necessary keys shall be furnished by the Landlord, and the same shall be surrendered on the termination of this Lease.
18. No portion of the building shall be used for the purpose of lodging or for any immoral or unlawful purposes.
19. All glass, locks and trimmings in or about the doors and windows and all electric fixtures belonging to the building shall be kept whole, and whenever broken by anyone shall be immediately replaced or repaired and put in order by Tenant under the direction and to the satisfaction of Landlord, and on removal shall be left whole and in good repair.
20. No one is allowed access to the roof of the building without permission of the Landlord.

**EXHIBIT "C"**

**SIGNAGE CRITERIA**

**EXHIBIT "D"**

**SPECIAL STIPULATIONS**

**EXHIBIT "E"**

**LANDLORD'S WORK**

**EXHIBIT "F"**

**TENANT'S WORK**

Tenant shall, at its sole cost and expense, complete all work necessary to prepare the Premises for occupation and operation for the Permitted Use, such occupation to be evidenced by unconditional certificates of occupancy obtained by Tenant at its sole cost and expense from all applicable governing authorities (the "**Tenant's Work**"). [Notwithstanding the foregoing, Landlord agrees to contribute to the cost of Tenant's Work as set forth in Exhibit F-1 attached hereto and incorporated herein by reference. Tenant's Work shall include the following items:

---

---

---

---

Tenant shall, within fifteen (15) days of the Effective Date of the Lease submit for Landlord's approval, two (2) copies of all documents relating to all alterations and additions which Tenant plans to make to the Premises, including, without limitation, (i) design drawings (specifically including a colored rendering of the proposed storefront and signage, if any, a materials sample board, and the interior layout of the Premises) (collectively, "**Design Drawings**") and (ii) working drawings and specifications for architectural, signage, electrical, mechanical, sprinkler, plumbing work and all other Tenant's Work within the Premises (collectively, "**Plans and Specs**"); and (iii) a list of all tenant's contractors and subcontractors (the "**Tenant's Contractors**") (the Design Drawings, Plans and Specs and Tenant's Contractors list are hereinafter collectively, the "**Construction Documents**"). Tenant's Design Drawings and Plans and Specs shall be prepared and sealed by an architect or engineer duly licensed in the state in which the Property is located; and, if they are not, Landlord shall have the right to have its architect redraft, sign and seal the same at Tenant's cost and expense. Failure by Tenant to timely submit the Construction Documents shall constitute a default under this Lease.

The Construction Documents shall be reviewed by Landlord within fifteen (15) days after having received all of the Construction Documents. Landlord may either (1) evidence its approval by endorsement to that effect by signature or initials on one (1) set of said Construction Documents and the return of such signed or initialed set to Tenant (whereupon such approved Construction Documents shall then constitute the "**Final Construction Documents**"), or (2) refuse such approval if Landlord shall determine that the same (a) do not conform to the architectural theme of the Property, including, without limitation, standards of design, motif and décor, established or adopted by Landlord and/or other tenants in the Property; (b) would subject Landlord to any additional cost, expense or liability or would subject the Premises to any violation, fine or penalty; (c) would in any way, adversely affect the reputation, character and/or nature of the Property; (d) provide for or require any installation or work which is, or might be, unlawful or create an unsound or dangerous condition or adversely affect the structural soundness of the Premises and/or the building of which the Premises are a part; and/or (e) interfere with or abridge the use or enjoyment of any adjoining space in the building in which the Premises are located. If the Landlord refuses approval, any modifications or changes requested by Landlord shall be made by Tenant and, within ten (10) days of such refusal, Tenant shall resubmit revised Construction Documents to Landlord for its approval in accordance with this Section. In the event Tenant does not timely resubmit the Construction Documents, Landlord may place Tenant in default. The foregoing process shall be repeated until the Construction Documents are approved by Landlord.

All of Tenant's Work shall be completed in accordance with the Final Construction Documents. Tenant shall make no changes to the Final Construction Documents without, in each instance, the prior written approval of Landlord; and Tenant shall not commence any work until all Construction Documents have been approved by Landlord. Any revisions to the Final Construction Documents shall be subject to Landlord's prior written approval. Tenant shall pay for any and all requested changes, substitutions or eliminations of the Final Construction Documents and the cost of Landlord's review of any such changes, substitutions or eliminations.

Tenant is solely responsible for timely preparation and submission of all Construction Documents to Landlord for approval and to the jurisdictional authorities for timely procurement of all necessary permits, for timely bidding and award of contracts and ordering of material and equipment, and for timely performance of all other acts necessary for Tenant to commence construction of Tenant's Work and to open the Premises for business when required by this Lease. Tenant acknowledges that failure to open the Premises for business as required hereunder renders Tenant liable to Landlord for late opening damages and for all other remedies available to Landlord under this Lease and at law or in equity.

Tenant shall (i) take physical possession of the Premises on the Delivery Date, (ii) commence Tenant's Work within fifteen (15) days thereafter, and (iii) diligently prosecute Tenant's Work to completion on or before the Rent Commencement Date. Notwithstanding anything to the contrary contained in any provision of this Lease, Tenant shall not be entitled to possession, nor shall any act of Tenant, be deemed to constitute possession of, nor to give to Tenant a possessory interest in, the Premises prior to the Delivery Date.

Tenant shall work in harmony with Landlord and (whether union or non-union) the labor hired by Landlord or Landlord's contractors and Tenant shall not employ or permit to be employed by Tenant's contractors anyone whose presence is likely to cause labor disputes or work stoppages at the Premises or any other part of the Property.

At all times during the course of the performance of Tenant's Work, Landlord and the authorized representatives of Landlord (including Landlord's lender) shall be afforded access to the Premises for the purpose of inspecting the performance of Tenant's Work, in such manner and at such times as shall not interfere therewith.

Upon completion of Tenant's Work (and in any event no later than the Rent Commencement Date, Tenant shall promptly deliver to Landlord: (a) a certificate from the Tenant's architect or engineer certifying the completion of Tenant's Work, (b) a copy of the unconditional permanent certificates (state and local) of occupancy for Tenant's Work, (c) a complete set of "as built" plans and specifications for Tenant's Work, (d) a final lien waiver from each of Tenant's contractors, and (e) such other items as Landlord or its mortgage lender may reasonably request.



**EXHIBIT "F-1"**

**CONSTRUCTION ALLOWANCE**

Landlord agrees to contribute an amount equal to [Zero and 00/100 Dollars (\$0.00)] (the "Construction Allowance"), toward the cost of Tenant's Work; provided, however, in no event shall all or any portion of the Construction Allowance be applied toward the cost or expense of Tenant's personal property, trade fixtures, signs or architect fees. If the cost of Tenant's Work exceeds the Construction Allowance, such excess amount shall be borne solely by Tenant. Landlord shall pay the Construction Allowance to Tenant by offsetting [\_\_\_\_ percent (\_\_\_%)] of Tenant's monthly payments of Base Rent due and payable under the Lease commencing on the Rent Commencement Date and continuing until the Construction Allowance is paid in full; provided that Tenant has first delivered to Landlord the following:

(a) An executed estoppel certificate in the form prescribed by Landlord and reasonably acceptable to Landlord in substance;

(b) A copy of the unconditional permanent "Certificate of Occupancy" issued by the applicable building department in the city in which the Shopping Center is located;

(c) A copy of Tenant's recorded, valid "Notice of Completion", if applicable, in the state where the Shopping Center is located;

(d) A complete list of the names, addresses, telephone numbers and contract amounts for all contractors, subcontractors, vendors and/or suppliers providing materials and/or labor for Tenant's Work;

(e) All mechanics' lien releases or other lien releases on account of Tenant's Work which are notarized, unconditional, in recordable form, and otherwise in such form as Landlord shall have approved;

(f) Copies of all building permits, indicating inspection and approval by the issuer of said permits; and

(g) A complete set of "as built" plans and specifications for Tenant's Work;

(h) An architect's certification that the Premises have been constructed in accordance with Tenant's approved plans and are 100% complete in accordance with such plans.

The cost of any additional work performed by Landlord for the benefit of Tenant as well as any rentals due and owing under this Lease shall be deducted from the Construction Allowance before the Construction Allowance is paid to Tenant. If Tenant is in default under this Lease (including but not limited to its obligation to commence doing business at the Premises on or before the Rent Commencement Date and to continuously operate at the Premises for the Term), or any condition has occurred which, with the giving of notice, the passage of time, or both, would constitute a default by Tenant hereunder, then for so long as such default (or potential default) is continuing Landlord shall not be obligated to pay Tenant the Construction Allowance. If, at any time during the Term, Landlord terminates this Lease and Tenant's right to possession of the Premises pursuant to any right to do so hereunder, Tenant shall pay to Landlord (in addition to any damages recoverable by Landlord pursuant to this Lease) the unamortized cost of the Construction Allowance, amortized on a straight-line basis over the Term.

**EXHIBIT "G"**

**FORM OF ABSOLUTE AND UNCONDITIONAL GUARANTY**

**ABSOLUTE AND UNCONDITIONAL GUARANTY**

THIS ABSOLUTE AND UNCONDITIONAL GUARANTY ("Guaranty") is executed and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, and \_\_\_\_\_ (hereinafter, collectively, "Guarantor") in favor of \_\_\_\_\_, a Florida limited liability company ("Landlord").

R E C I T A L S:

A. Landlord and \_\_\_\_\_, a \_\_\_\_\_ entered into that certain Lease Agreement dated of even date herewith, (the "Lease"), for that certain premises located at \_\_\_\_\_ (the "Premises").

B. In consideration of and as a material inducement to the Landlord's to enter into the Lease, Guarantor has agreed to execute and deliver to Landlord this Guaranty.

C. Guarantor acknowledges that Landlord would not have entered into the Lease without the execution and delivery by Guarantor of this Guaranty.

NOW THEREFORE, in consideration of these presents, and in further consideration of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid to the Guarantor by Landlord, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Guarantor irrevocably and unconditionally guarantees payment when due, whether by acceleration or otherwise, of all amounts due under the Lease, together with all interest thereon and all attorneys' fees, cost and expenses of collection incurred by the Landlord in collecting such amounts, and does also irrevocably and unconditionally guarantee the performance by Tenant of all the duties and obligations to be performed by Tenant under the terms of the Lease. This is a guarantee of payment and not of collection.

2. Guarantor shall have no right of subrogation whatsoever with respect to the amounts owed by the Tenant to the Landlord unless and until Landlord shall have received full payment of all the amounts due under the Lease through the end of the term thereof.

3. The obligations of Guarantor hereunder shall not be released, discharged, impaired, modified or in any way affected by reason of:

(a) The unenforceability, non-existence, or invalidity of any of the terms of the Lease.

(b) The modification or other change of any terms of all or any part of the Lease, any renewal thereof and any other indulgence with respect thereto, and any release, compromise or settlement with respect to the Tenant or any Guarantor.

(c) The financial condition of the Tenant or any guarantor with may have changed or may hereafter change.

(d) Any understanding or agreement that any other individual or entity was or is to execute this Guaranty.

(e) The death, insolvency or bankruptcy of the Tenant or any other Guarantor, or the failure of the Landlord to file a claim against the estate of any such deceased or bankrupt party for such party's liability or obligation to the Landlord.

(f) Any default by the Tenant under the Lease, whether or not notice of any such default is

4. Guarantor hereby waives all notice of acceptance of this Guaranty, notice of maturity, payment or default, and any other requirement or notice necessary to bind Guarantor hereunder, including, but not limited to, presentment, notice of dishonor and protest.

5. Guarantor hereby consents that from time to time Landlord may, without notice to Guarantor and without affecting any liability of Guarantor, waive or fail to enforce any of Landlord's rights under the terms of the Lease.

6. If more than one party shall execute this Guaranty, the term "Guarantor" shall mean all parties executing this Guaranty, and all such parties shall be jointly and severally liable.

7. Notwithstanding anything in this Guaranty to the contrary, if a bankruptcy petition is filed by or against Tenant or Guarantor, and the Tenant or Guarantor have made payments to the Landlord during any preference period as established by any bankruptcy or other similar laws, this Guaranty shall not be terminated, unless and until a final non-appealable decision of a court of competent jurisdiction has been entered determining that the Landlord shall be entitled to retain all such monies paid it by the Tenant or the Guarantor during such preference period. The obligations of the Guarantor under this Guaranty shall include the obligations to reimburse Landlord for any preferential payments received by Landlord during such period which Landlord has been required to return or repay. The Guarantor also hereby waive(s) any claim, right or remedy which the Guarantor may now have or hereafter acquire against the Tenant that arises hereunder and/or from the performance by any Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, indemnification, or participation in any claim, right or remedy of Landlord against the Tenant, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

8. The undersigned expressly agree(s) that this Guaranty is governed by the laws of the State of Florida, and the United States of America, whichever the context may require or permit and that proper venue for any action which may be brought under this Guaranty in addition to any other venue permitted by law shall be Orange County, Florida. Should Landlord institute any action under this Guaranty, the undersigned hereby submits itself to the jurisdiction of any court sitting in Florida.

9. Guarantor agrees to pay to Landlord all costs incurred by Landlord in collecting the amounts due hereunder, enforcing the performance of the Guarantor hereunder and/or protecting its rights hereunder, including, but not limited to, reasonable fees for attorneys, paralegals and legal assistants, and expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, receivership, or other proceedings. Such costs shall be paid regardless of whether suit is brought and shall include all trial and appellate levels including bankruptcy court.

10. This Guaranty may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which, collectively, shall constitute one agreement; it being understood and agreed that signature pages may be detached from one or more such counterparts and combined with the signature pages from any other identical counterpart in order that one or more fully executed originals may be assembled.

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date and year first above written.

Signed, sealed and delivered in presence of:

\_\_\_\_\_  
(Print Name)\_\_\_\_\_

\_\_\_\_\_  
[Print Name]\_\_\_\_\_

\_\_\_\_\_  
(Print Name)\_\_\_\_\_

Two Witnesses

STATE OF