

## Commercial Lease

This lease is made and entered into this day of \_\_\_\_\_, \_\_\_\_ by and between \_\_\_\_\_ (Landlord) \_\_\_\_\_ (Tenant). For and in consideration of the rental and of the covenants and agreements hereinafter set forth to be kept and performed by the Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises herein described for the term, at tile rental and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.

**1. Premises** Landlord hereby leases to Tenant, situated in the city of \_\_\_\_\_, in the county of \_\_\_\_\_, State of \_\_\_\_\_, and addressed as \_\_\_\_\_.

**2. Term** The term of this lease shall be for a period of \_\_\_\_\_ years commencing on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ and ending on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**3. Rent** Tenant shall pay to Landlord as rent for the premise in advance on the first day of each calendar month of the term of this lease without deductions, offsets in the sum of \$\_\_\_\_\_ plus its share of taxes, insurance, and CAMS as set forth in section 19.

**4. Security deposit** Concurrently with Tenant's execution of this lease, Tenant shall Deposit with Landlord the sum of \_\_\_\_\_ (\$\_\_\_\_\_). Said sum shall be held by Landlord as a Security Deposit for the faithful performance by Tenant of all of 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 and any of the monetary sums due herewith Landlord may use, apply for any other loss or damage which Landlord may suffer by reason of Tenant's default. If any portion of said deposit is so used or applied, Tenant shall, with ten days after written demand therefore deposit cash with Landlord in an amount sufficient to restore the security deposit to its original amount; Tenant's failure to do so shall be a material breach of this lease. Landlord shall not be required to keep this security deposit separate from its general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant shall fully and faithfully perform every provision of this lease to be performed by it, the security deposit or any balance shall be returned to Tenant at the expiration of the lease term and after Tenant has vacated the premises. In the event of termination of Landlord's interest in this Lease, Landlord shall transfer the Security Deposit to Landlord's successor in interest whereupon Tenant agrees to release Landlord from liability for the return of the Security Deposit or the accounting therefor. Tenant acknowledges that Landlord's lender shall have no liability or obligation with respect to the Security Deposit unless and until the Security Deposit is delivered to Landlord's lender.

## 5. TAXES.

**5.1 Personal Property Taxes.** During the term hereof Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises, and when possible, Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property of Landlord. In the event any or all of Tenant's fixtures, furnishings, equipment and other personal property shall be assessed and taxed with Landlord's real property. Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the

amount of such taxes applicable to Tenant's property. For the purpose of determining such amount, figures supplied by the County Assessor or any other taxing authority as to the amount so assessed shall be conclusive. Tenant shall comply with the provisions of any law, ordinance or rule of taxing authorities which requires Tenant to file a report of Tenant's property located in the Premises.

**5.2 Real Property Taxes.** Tenants agree to pay all real estate taxes, rental taxes (if any), levies, assessments and all other charges in the nature of taxes or assessments upon the Premises, general and special, ordinary and extraordinary of any kind and nature which during the Term of this Lease are laid, levied, assessed or imposed or become a lien upon or chargeable against the Premises. Tenant shall pay said taxes as part of a reserve for taxes, insurance, management, and Common Area Expenses, as set forth in Section 19. All taxes for the year in which the Lease commences shall be apportioned and adjusted. With respect to any assessment (other than those delineated in the tax bill) which may be levied against or upon the Premises and which under the laws then in force may be evidenced by improvement or other bonds, or which may be paid in annual installments, Landlord shall cause such bonds to be issued or cause such assessments to be paid in the maximum permissible number of annual installments, and in such event, Tenant shall only be required to pay such installment payments with interest thereon as each bond or assessment matures and Tenant shall have no obligation to continue such payments after the termination of this Lease. The term "real estate taxes" shall include all taxes imposed upon the real property and permanent improvements and all assessments levied against the Premises, but shall not include personal income taxes, inheritance taxes or franchise taxes levied against Landlord, even though such taxes may become a lien against the Premises.

**5.3 New Taxes.** In addition to rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse to Landlord, within thirty (30) days of receipt of a demand therefor, any and all taxes payable by Landlord (other than net income taxes, estate and inheritance taxes and taxes excluded in Section 5.2) whether or not now customary or within the contemplation of the parties hereto, (a) upon allocable to, or measured by the area of the Premises or on the rent payable hereunder, including without limitation any gross income tax or excise tax levied by the State, any political subdivision thereof City, County or Federal Government with respect to the receipt of such rent, or (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof, or (c) upon or measured by the value of Tenant's personal property, equipment or fixtures located in the Premises, or (d) upon this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. In addition, Tenant and any transferees of Tenant acknowledge and agree that Landlord shall not be liable for any real estate taxes, transfer taxes, leasing commissions or other amounts which may be due in connection with the transfer of the Premises and/or this Lease and Tenant and its transferees shall be solely responsible for any increase in any real estate taxes attributable to any transfer of the Premises and/or this Lease by Tenant.

## **6. USE.**

**6.1 Use.** The Premises shall be used and occupied by Tenant, continuously and without interruption, solely for the purpose of conducting retail sales and those activities common to retail businesses and for no other purpose without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Tenant acknowledges that Landlord may grant, or may have previously granted, exclusive rights to other Tenants at the Property and a material consideration to Landlord in

entering into this Lease is Tenant's covenant to limit its use of the Premises to the foregoing use of the Premises. The violation by Tenant of the exclusive rights granted to other Tenant(s) of the Property will result in Landlord suffering irreparable harm and therefore, in addition to the other rights and remedies available to Landlord under this Lease, Landlord may seek to enjoin Tenant's breach of this Section 6.1 and Tenant shall be liable for any damages incurred or sustained by Landlord to such other Tenant whose exclusive use right was breached by Tenant.

**6.2 Suitability.** Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises or the building (if any) of which the Premises may be a part with respect to the suitability of either for the conduct of Tenant's business, nor has the Landlord agreed to undertake any modification, alteration or improvement to the Premises, except as provided in this Lease. The taking of possession of the Premises by Tenant shall conclusively establish that the Premises and said building were at such time in satisfactory condition. Tenant acknowledges that neither Landlord nor its authorized representatives have made any warranties and/or representations either express or implied, written or verbal, as to the permitted use that can be made of the Premises or the building (if any) under existing laws, including without limitation, the present general plan of the city and/or county in which the Premises are located, zoning ordinances, and any other existing or future restrictions that currently pertain or may in the future pertain to the Premises. Tenant further acknowledges that neither Landlord nor any of its agents has represented or implied that Tenants use as defined in Section 6.1 is exclusive to the Property and/or building (if any), and that Landlord reserves the right, in its sole discretion, to lease other space in the Property and/or building (if any) which may compete, in whole or in part, with Tenant's permitted use.

**6.3 Prohibited Acts and Uses.**

(a) Tenant shall not do or permit anything to be done in or about the Premises which will increase the existing rate of insurance upon, or cause the cancellation of, any insurance policy covering the Premises or the Property, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any items or materials that may be prohibited by a standard form policy of fire insurance or that are explosive or highly flammable.

(b) Tenant shall not do or permit anything to be done in or about the Premises that will in any way obstruct or interfere with the rights of other Tenants, occupants, or invitees of the Property.

(c) Tenant shall not commit, nor permit to be committed, any waste in or upon the Premises, nor shall Tenant permit or cause any action or event to occur which affects the structural portions of the Premises or the Property, such actions to include, without limitation, the overloading of any floor of the Premises or the penetration of the roof.

(d) Tenant shall not use or allow the Premises or any portion thereof to be used for the conduct of a second-hand store, auction, or bogus distress, fire, bankruptcy, or going-out-of-business sale.

(e) Tenant shall not use or permit to be used any flashing lights, rotating devices, musical instruments, loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner which can be heard, seen, or experienced outside of the Premises without first obtaining Landlord's prior written consent, in Landlord's sole discretion.

(f) Tenant will not conduct, or allow others to conduct, outdoor, sidewalk or parking lot sales or sales activity outside of the Premises or in the Common Areas without Landlord's prior written consent, in Landlord's sole discretion.

(g) Tenant shall not display or offer for sale merchandise nor allow carts, portable signs, devices or any other objects to be stored or to remain outside the defined exterior walls and permanent doorways of the Premises.

(h) Tenant shall not use or permit anything to be done in or about the Premises or the Property 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, including any health and policy regulations (e.g., the Americans with Disabilities Act) ("Laws"). Without limiting the generality of the foregoing, such obligation of compliance applies to all signage used by Tenant at the Property, including pylon or pole signs (to the extent Landlord grants Tenant the right to use same, in Landlord's sole discretion). Tenant shall, at its sole cost and expense, promptly comply with all Laws and with the requirements of any board of fire underwriters or other similar bodies now or hereafter created relating to or affecting the condition, use or occupancy of the Premises. 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 Laws, shall be conclusive as between Landlord and Tenant. Tenant shall not place on, under or about the Premises, the Property or the real property adjacent to the Property, whether directly or through the use of any septic tank, sewer, wastewater or plumbing system, or by any other means, any hazardous or toxic wastes or substances (as defined in any environmental Laws). Tenant shall at all times fully comply with all environmental Laws and shall not conduct any activity or do anything, nor permit others reasonably within Tenant's control to conduct any activity or do anything that will or might cause Landlord to be in violation of any Laws. Tenant specifically covenants and agrees hereby to indemnify, defend and hold harmless Landlord for, from, and against any and all Claims, costs of clean-up and costs of compliance incurred by Landlord as a result of any acts or omissions reasonably traceable to Tenant in connection with the foregoing. A breach of this Section 6.3(h) by Tenant shall constitute an Event of Default and Landlord shall have the right, at its option, to terminate Tenant's right to possession without terminating the Lease and without any prior notice to the Tenant, and Landlord may seek any and all remedies available to it under this Lease or at law or in equity.

## **7. UTILITIES.**

**7.1 Tenant's Obligations.** In addition to all other sums Tenant is required to pay pursuant to this Lease, Tenant shall be solely responsible for and shall pay as additional rent prior to delinquency all charges for electricity, telephone, water, gas (if any), heat, telecommunications and any other utilities used or consumed on the Premises from and after the date Tenant first takes possession of the Premises. If the Premises are separately metered, Tenant agrees to pay all charges therefor attributable to the Lease Term directly to the appropriate utility service company before delinquency, whether the statement or invoice therefor is delivered to Tenant during, or after expiration of, the Lease Term. Tenant shall pay to Landlord before delinquency its pro rata share of the costs of any utility services that are not separately metered. For purposes of this Section 7.1, Tenant's pro rata share shall be equal to the ratio which Tenant's rentable ground floor area bears to the total occupied rentable ground floor area which has the benefit of, or receives, the expense or utility service for which Tenant is being charged. Nothing contained in this Lease shall limit Landlord in any way from granting or using easements on, across, over,

and under the Property for the purpose of providing utility services for Tenant or others. In no event shall Landlord be responsible for any loss, cost, liability or expense of any person or entity resulting from any interruption of utility services to Tenant and/or the Premises, nor shall rent be offset as a result of any such interruption.

## **7.2 Removal of Electrical and Telecommunications Wires.**

**(a) Landlord May Elect to Either Remove or Keep Wires.** Within thirty (30) days after the expiration or sooner termination of the Lease or at any time that any of the Wires (as defined below) are no longer in active use by Tenant, Landlord may elect (the "Election Right") by written notice to (i) Tenant to retain any or all wires, cables and similar installations Appurtenant thereto (collectively, the "Wires") installed by Tenant within the Premises or anywhere in the building, including, without limitation, the plenums or risers of the building of which the Premises is a part; (ii) remove any or all of the Wires and restore the Premises or the building of which the Premises is a part, as the case may be, to their condition existing prior to the installation of the Wires (collectively, the "Wire Restoration Work"). Landlord, at its option, may perform such Wire Restoration Work at Tenant's sole cost and expense; or require Tenant to perform all or part of the Wire Restoration Work at Tenant's sole cost and expense; or (iii) require Tenant to perform all or part of the Wire Restoration Work at Tenant's sole cost and expense.

**(b) Compliance with Laws and Discontinuance of Wire Use.** Tenant shall comply with all applicable laws with respect to the Wires, subject to Landlord's right to elect to retain the Wires. In the event that Tenant discontinues the use of all or any part of the Wires or is no longer using all or any part of the Wires, Tenant shall within thirty (30) days thereafter notify Landlord of same in writing, accompanied by a plan or other reasonable description of the current type, quantity, points of commencement and termination and routes of the Wires to allow Landlord to determine if Landlord desires to retain the same.

**(c) Condition of Wires.** In the event Landlord elects to retain any or all of the Wires (pursuant to Section 7.2(a)(i) Tenant covenants that (i) Tenant shall be the sole owner of the Wires, Tenant shall have the sole right to surrender the Wires, and the Wires shall be free of all liens and encumbrances; and (ii) all Wires shall be left in good condition, working order, property labeled and capped or sealed at each end and in each telecommunications/electrical closet and junction box. and in safe condition.

**(d) Landlord Retains Security Deposit.** Notwithstanding anything to the contrary in Section 4 Landlord may retain the Security Deposit after the expiration or sooner termination of the Lease until one of the following events has occurred with respect to all of the Wires (i) Landlord elects to retain the Wires pursuant to Section 7.2(a)(i); (ii) Landlord elects to perform the Wire Restoration Work pursuant to Section 7.2(a)(i) and the Wire Restoration Work is complete and Tenant has fully reimbursed Landlord for all costs related thereto; or (iii) Landlord elects to require Tenant to perform the Wire Restoration Work pursuant to Section 7.2(a)(iii) and the Wire Restoration Work is complete and Tenant has paid for all costs related thereto.

**(e) Landlord Can Apply Security Deposit.** In the event that Tenant fails or refuses to pay all costs of the Wire Restoration Work within thirty (30) days of Tenant's receipt of Landlord's notice requesting Tenant's reimbursement for or payment of such costs or otherwise fails to comply with the provisions of this Section, Landlord may apply all or any portion of Tenant's Security Deposit toward the payment of any costs or expenses relative to the Wire Restoration Work or Tenant's obligations under this Section.

**(f) No Limit on Landlord's Remedies.** The retention or application of the Security Deposit by Landlord pursuant to this Section does not constitute a limitation on or waiver of Landlord's right to seek further remedy under law or equity.

**19) Survival.** The provisions of this Section shall survive the expiration or sooner termination of the Lease.

## **8. MAINTENANCE AND REPAIRS; ALTERATIONS AND ADDITIONS.**

### **8.1 Maintenance and Repairs.**

(a) Landlord, at its sole cost and expense, shall maintain in a good state of repair all structural portions of the walls, floors and foundations except for any repairs caused by the wrongful or negligent act of Tenant or its agents. Landlord shall also be responsible for replacement of the roof if necessary, in Landlord's sole discretion.

(b) Tenant at Tenant's sole cost and expense shall maintain the Premises and appurtenances and every part thereof (excepting those items which Landlord is obligated to repair pursuant to Section 8.1(a)) in good order, condition and repair, including, but not limited to, exterior glass and the interior surfaces of the ceilings, roof, walls and floors, all doors, locks, windows, all plumbing pipes, electrical wiring, switches, fixtures, signs and equipment installed by or at the expense of Tenant. Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair. Tenant's maintenance, repair, and replacement obligations shall specifically include the HVAC system of the Premises. Tenant shall employ, at Tenant's sole cost and expense, during the entire Term and any extensions thereof, qualified companies (licensed in the State where the Property is located) to provide regular inspection, maintenance (including, without limitation, routine maintenance such as filter changes), repair, and replacement of the HVAC system. It is the intention of the parties that Tenant shall, in all events and for any reason whatsoever, be solely responsible for the maintenance, repair and/or replacement of the HVAC system serving the Premises and that Landlord shall have no obligation, and shall incur no cost, for the maintenance, repair and/or replacement of the HVAC system serving the Premises. Notwithstanding the foregoing, upon the expiration or earlier termination of this Lease, the HVAC system serving the Premises (including any maintenance work, repairs, and/or replacements thereof by Tenant) shall be the sole property of Landlord. Further, upon the expiration or earlier termination of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear and damage by earthquake, act of God or the elements alone excepted, and shall promptly remove or cause to be removed at Tenant's expense from the Premises any signs, notices and displays placed by Tenant. Tenant agrees to repair any damages to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery, equipment, cabinetwork, furniture, moveable partition or permanent improvements or additions, including without limitation thereto, repairing the floor and patching and painting the walls where required by Landlord to Landlord's reasonable satisfaction, all at Tenant's sole cost and expense. Tenant shall indemnify the Landlord for, from, and against any Claims resulting from delay by Tenant in so surrendering the Premises, including without limitation any Claims made by any succeeding Tenant based upon such delay. In the event Tenant fails to maintain the Premises in good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. In the event Tenant fails to promptly commence such

work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant promptly after demand with interest at ten percent (10%) per annum or the maximum rate allowable by law from the date of such work. Landlord shall have no liability to Tenant for any damage, inconvenience or interference with the use of the Premises by Tenant as a result of performing such work.

(c) Landlord and Tenant shall each do all acts required to comply with all applicable laws, ordinances, regulations and rules of any public authority relating to their respective maintenance obligations as set forth herein.

(d) Tenant acknowledges that mold spores are present essentially everywhere and that mold can grow in most any moist location. Emphasis is properly placed on prevention of moisture and on good housekeeping and ventilation practices. Tenant acknowledges the necessity of housekeeping, ventilation and moisture control (especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls) for mold prevention. Tenant agrees to immediately notify Landlord if it observes mold/mildew and/or moisture conditions (from any source, including leaks), and allow Landlord to evaluate and/or make recommendations. Tenant waives and indemnifies Landlord and Landlord's property manager for, from and against all liabilities, claims, losses, causes of action, charges, penalties, damages, costs or expenses (including reasonable attorneys' fees and costs), of whatsoever character, nature or kind, whether to property or person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected or latent or patent in any way arising from or relating to or associated with moisture or the growth of or occurrence of mold or mildew on the Premises. Tenant acknowledges that the control of moisture and mold prevention are material obligations of Tenant under this Lease.

## **8.2 Alterations and Additions.**

(a) Tenant shall make no alterations, additions or improvements to the Premises or any part thereof without first obtaining the prior written consent of Landlord. Tenant's request for Landlord's consent to cause penetration through the roof of the building, must be accompanied by plans and specifications (to be prepared by Tenant at Tenant's sole cost) for the proposed alteration, addition or improvement in detail reasonably satisfactory to Landlord. In the event Landlord consents to any proposed alterations, additions or improvements, such consent shall be conditioned upon and effective only after full execution of the Tenant Improvement Rider attached to this Lease by Tenant and Tenant's contractors.

(b) Landlord may impose as a condition to the aforesaid consent such requirements as Landlord may deem necessary in its sole discretion, including without limitation, the manner in which the work is done, a right of approval of the contractor by whom the work is to be performed, the times during which the work is to be accomplished, and the requirement that upon written request of Landlord prior to the expiration or earlier termination of the Lease. Tenant will either leave in place or remove any and all permanent improvements or additions to the Premises installed at Tenants expense.

(c) All such alterations, additions or improvements shall at the expiration or earlier termination of the Lease, at the option of Landlord, become the property of Landlord and shall remain upon and be surrendered with the Premises unless specified pursuant to Section 8.2(b) above.

(d) All articles of personal property and all business and trade fixtures, machinery and equipment, cabinetwork, furniture and moveable partitions owned by Tenant or installed by Tenant at its expenses in the Premises shall be and remain the property of Tenant and may be removed by Tenant at any time during the Lease Term, provided Tenant is not then in default thereunder.

(e) Landlord reserves the right at any time or times during the Lease Term or any extensions thereof, to remodel, refurbish, alter, modify, or expand all or any part of the Property.

**9. 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 the Premises to prospective purchasers or Tenants, to post notices of non-responsibility and "for lease" signs, and to alter, improve or repair the Premises and any portion of the Property 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, always providing that the entrance to the Premises shall not be blocked thereby, and further providing that the business of Tenant shall not be unreasonably, adversely and materially affected. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference 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 at all times have the right, but not the obligation, to retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, and 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, 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 a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

**10. LIENS.** Tenant shall keep the Premises and any building of which the Premises are a part free from any liens out of work performed, materials furnished, or obligations incurred by Tenant and shall indemnify, hold harmless and defend Landlord for, from and against any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. In the event that Tenant shall not, within twenty (20) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith including attorney's fees and costs shall be payable to Landlord by Tenant on demand with interest at the rate of twelve percent (12%) per annum or the maximum rate allowable by law. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord and the Premises, and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give to Landlord at least ten (10) business days prior written notice of the expected date of commencement of any work relating to alterations or additions to the Premises.

## **11. INDEMNITY.**

**11.1 Indemnity.** To the fullest extent permitted by law, Tenant shall, at Tenant's sole cost and expense, indemnify Landlord and Landlord's officers, directors, shareholders, partners, affiliates, employees, attorneys, accountants and representatives and the predecessors, heirs, successors and assigns of any



such party ("Landlord Parties") for, from and against all liabilities, claims, damages (including consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) (collectively, "Claims") arising from (i) any personal injury, bodily injury or property damage whatsoever occurring in or at the Premises; (ii) any bodily injury to an employee of a Tenant or Tenant's officers, directors, shareholders, partners, affiliates, employees, attorneys, accountants and representatives and the predecessors, heirs, successors and assigns of any such party ("Tenant Parties"), arising out of and in the course of employment of the employee and occurring anywhere in the Property; (iii) the use or occupancy, or manner of use or occupancy, or conduct or management of the Premises or of any business therein; (iv) subject to the waiver of subrogation provisions of this Lease, any act, error, omission or negligence of any of the Tenant Parties in, on or about the Premises or the Property; (v) the conduct of Tenant's business; (vi) any alterations, activities, work or things done, omitted, permitted or allowed by Tenant Parties in, at or about the Premises or Property, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, or judgments in existence on the date of the Lease or enacted, promulgated or issued after the date of this Lease including hazardous materials or environmental laws; (vii) any breach or default by Tenant in the full and prompt payment of any amount due under this Lease, any breach, violation or nonperformance of any term, condition, covenant or other obligation of Tenant under this Lease, or any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; (viii) all damages sustained by Landlord as a result of any holdover by Tenant or Tenant Parties in the Premises including, but not limited to, any Claims by another Tenant resulting from a delay by Landlord in delivering possession of the Premises to such Tenant; (ix) any liens or encumbrances arising out of any work performed or materials furnished by or for Tenant; (x) commissions or other compensation or charges claimed by any real estate broker or agent, with respect to this Lease by, through or, under Tenant, (xi) transfer taxes, brokerage commissions, leasing commissions or increases in real estate taxes against the Property resulting from any transfer of the Premises and/or this Lease by Tenant; or (xii) any matter enumerated in Section 11.2 below.

**11.2 Waivers.** To the fullest extent permitted by law, Tenant, on behalf of all Tenant Parties, knowingly waives all Claims against Landlord Parties arising from the following: (i) any personal injury, bodily injury, or property damage occurring in or at the Premises; (ii) any loss of or damage to property of Tenant Parties located in the Premises or other part of the Property by theft, fire sprinklers, or otherwise; (iii) any personal injury, bodily injury, or property damage to any Tenant Parties caused by other Tenants of the Property, parties not occupying space in the Property, occupants of property adjacent to the Property, or the public or by the construction of any private, public, or quasi-public work occurring either in the Premises or elsewhere in the Property; (iv) any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage; (v) business interruption or loss of use of the Premises suffered by Tenant; (vi) any latent defect in construction of the Property; (vii) damages or injuries or interference with Tenant's business, loss of occupancy or quiet enjoyment and any other loss resulting from the exercise by Landlord of any right or the performance by Landlord of Landlord's maintenance or other obligations under this Lease, or (viii) any bodily injury to an employee of Tenant Parties arising out of and in the course of employment of the employee and occurring anywhere in the Property.

**11.3 Survival.** The indemnification provided in Section 11.1 shall not be construed or interpreted as in any way restricting, limiting or modifying Tenant's insurance or other obligations under this Lease, and the provisions of Section 11 are independent of Tenant's insurance and other obligations. Tenant's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Tenant's indemnification obligations under this Lease. The provisions of this Section 11 will survive the expiration or earlier termination of this Lease until all Claims against Landlord Parties involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations.

## **12. INSURANCE.**

**12.1 Use Rate.** Tenant shall not carry any stock of goods or do anything in or about the Premises which will cause an increase in insurance rates on the building in which the Premises are located. In no event shall Tenant perform any activities which would invalidate any insurance coverage on the Property or the Premises. Tenant shall pay on demand any increase in premiums that may be charged as a result of Tenant's use or activities or vacating or otherwise failing to occupy the Premises, but this provision shall not be deemed to limit in any respect Tenant's obligations under this Lease.

### **12.2 Liability Insurance**

(a) Tenant's Insurance. Tenant shall, during the Lease Term, at its sole expense, maintain in full force a policy or policies of commercial general liability insurance issued by one or more insurance carriers insuring against liability for personal injury, bodily injury (including death of persons) and property damage occurring in, on or about the Premises and any portion of the Common Area which is subject to Tenant's exclusive control. Said liability insurance shall be in an amount of not less than \$2,000,000 combined single limit per occurrence. Tenant's policy of commercial general liability insurance shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for personal injury and shall be endorsed as needed to provide cross liability coverage for Tenant, Landlord, Landlord's lender, and Landlord's management agent and shall provide for severability of interests. In addition, if the Tenant's use of the Premises includes the sale of alcoholic beverages, Tenant's policy of commercial general liability insurance shall include coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than \$3,000,000 per occurrence.

(b) Landlord's Insurance. Landlord shall, during the Lease Term, at its expense, subject to payment by Tenant in the manner set forth in Section 19 herein, maintain in full force a policy or policies of commercial liability insurance issued by one or more insurance carriers insuring against liability for personal injury, bodily injury (including death of persons) and property damage occurring in or on the Common Area, except any portion thereof subject to Tenant's exclusive control. Said liability insurance shall be in an amount of not less than \$1,000,000 combined single limit.

**12.3 Worker's Compensation Insurance.** Tenant shall at all times maintain worker's compensation insurance in compliance with the law of the state where the Property is located and a policy of employer's liability insurance with limits of liability as required by applicable law. Both such policies shall contain waivers of subrogation in favor of Landlord.

### **12.4 Property Insurance.**

(a) Landlord's Insurance. Landlord shall pay for and shall maintain in full force and effect during the term of this Lease a standard form of extended coverage endorsement and standard form of lender's loss payable endorsement issued to the holder or holders of Landlord's mortgage or deed of trust, in an amount equal to the replacement cost (without deduction for depreciation) of the Property, including the Premises (which coverage may include, at Landlord's sole option, special extended coverage, earthquake and sprinkler leakage coverage as well as boiler and machinery, difference in conditions, business income and extra expense, building ordinance and excess rental value endorsements), and rental loss insurance equal to fixed minimum rent and all other monetary charges payable hereunder for up to eighteen (18) months. Tenant shall pay for the costs of premiums incurred by Landlord for such insurance, together with an administrative fee to Landlord in an amount equal to fifteen percent (15%) of the premiums which Tenant is required to pay hereunder, at Landlord's election, either in accordance with the payment provisions set forth in Section 19 or within ten (10) days after delivery to Tenant of Landlord's statement therefor. If such insurance covers premises in addition to Tenant's Premises, Tenant's share of the premiums shall be based upon the ratio which Tenant's rentable ground floor area bears to the total occupied rentable ground floor area which is covered by such insurance. Landlord's obligation to carry the insurance required in this Section 12.4 may be brought within the coverage of any so-called blanket policy or policies of insurance carried and maintained by Landlord, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance.

(b) Tenant's Insurance. Tenant shall pay for and shall maintain in full force and effect during the term of this Lease a policy of "Causes of Loss-Special Form" property insurance, together with business income insurance, covering all exterior glass, whether plate or otherwise, and all interior glass and stock in trade, trade fixtures, equipment, and other personal property and improvements located in the Premises and used by Tenant in connection with its business in an amount not less than one hundred percent (100%) of the full replacement value of Tenant's trade fixtures, merchandise and personal property.

**12.5 Environmental Insurance.** If required by Landlord, Tenant shall obtain appropriate insurance coverage insuring Tenant and Landlord against any and all liability with respect to Hazardous Materials (defined below) during the Lease Term and such other periods of time within which Tenant or Landlord may be liable with respect to Hazardous Materials under applicable governmental laws. Such insurance shall be carried in the amounts and from such carriers as Landlord shall reasonably approve and shall name Landlord as an additional insured.

**12.6 Waiver of Subrogation.** Tenant hereby waives, and Tenant's insurance policy or policies shall include a waiver of such carrier's, entire right of recovery (i.e., subrogation) against Landlord and the officers, directors, agents, representatives, employees, successors and assigns of Landlord which arises or might arise by reason of any payment under Tenant's property, worker's compensation and employer's liability insurance policy or by Tenant or by reason of any act or omission (including negligent acts or omissions) of Landlord, its directors, partners, agents, employees or representatives.

**12.7 General Requirements.** All policies of insurance required to be carried hereunder by Tenant shall:

(a) Be written by companies reasonably satisfactory to Landlord and licensed to do business in the state where the Property is located. The insurance carrier shall at all times during the term of this Lease have a policyholder's rating of at least 'A' as rated in the most current available "Best's Key Rating Guide."

(b) Contain a clause that such policy and the coverage evidenced thereby shall be primary and noncontributing with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance. All insurance coverage must be on an "occurrence basis"; "claims made" forms of insurance are not acceptable.

(c) Name Landlord and the manager of the Property as additional insureds utilizing ISO Endorsement 20-26 or its equivalent ('certificate holder' status is not acceptable).

(d) Not be subject to cancellation or reduction in coverage except upon at least thirty (30) days prior written notice to each additional insured. The policies of insurance containing the terms specified herein, or duly executed certificates evidencing them (Acord Form 27 or its equivalent), together with satisfactory evidence of the payment of premiums thereon, shall be deposited with each additional insured at least thirty (30) days prior to the Commencement Date and subsequently not less than thirty (30) days prior to the expiration of the original or any renewal term of such coverage. If Tenant fails to comply with the insurance requirements set forth in this Lease, Landlord shall have the right, but not the obligation, at any time and from time to time, without notice, to procure such insurance and/or pay the premium for such insurance, in which event Tenant shall repay Landlord, immediately upon demand by Landlord, as additional rent, all sums so paid by Landlord together with interest thereon and any costs or expenses incurred by Landlord in connection therewith, without prejudice to any other rights and remedies of the Landlord under this Lease.

12.8 Blanket Insurance. Subject to approval of such policy by Landlord and Landlord's lender(s), Tenant shall be entitled to fulfill its insurance obligations hereunder by maintaining a so-called "blanket" policy or policies of insurance. Such policy shall contain an endorsement that names Landlord as additional insured, references the Premises, and guarantees a minimum limit of coverage available for the obligations under this Lease at least equal to the insurance amounts required hereunder.

### **13. DAMAGE TO PREMISES.**

**13.1 Partial Damage - Insurance Available.** In the event of damage causing a partial destruction of the Premises during the term of this Lease and there is made available to Landlord pursuant to Section 12.4 insurance proceeds for such damage paying eighty percent (80%) or more of the cost of repairing such damage, Landlord shall utilize such insurance proceeds and pay any additional cost and cause the Premises to be repaired promptly to a condition reasonably comparable to that existing immediately prior to such damage, with the Lease to continue in full force and effect.

**13.2 Partial Damage - Insurance Not Available.** In the event of damage causing a partial destruction of the Premises during the Lease Term and there are no insurance proceeds available, or the insurance proceeds available are less than eighty percent (80%) of the cost of repairing such damage, then Landlord shall have the option for a period of sixty (60) days after the unavailability or amount of insurance proceeds is determined to elect to terminate this Lease and to retain all insurance proceeds or to repair the damage at Landlord's expense. The failure of Landlord to take any action within the sixty(60) day period shall be deemed to be an election to terminate the Lease. In the event Landlord elects to repair such damage, such work shall be completed promptly restoring the Premises to the condition reasonably comparable to that existing immediately prior to such damage, and this Lease shall continue in full force and effect. In the event Landlord elects to terminate the Lease, Tenant shall have thirty (30) days thereafter to elect to pay for the cost of such repairs to the extent insurance proceeds

are not available. In the event Tenant elects to do so, immediately following such election, Tenant shall deposit with Landlord or make available to Landlord, on terms acceptable to Landlord, the amount required in addition to any available insurance proceeds to complete the repairs. Landlord shall cause such repair work to be completed promptly thereafter restoring the Premises to a condition existing reasonably comparable to that existing immediately prior to such damage, and this Lease shall continue in full force and effect.

**13.3 Destruction.** In the event the Premises are totally destroyed or the Premises cannot be repaired as required herein under applicable laws and regulations, notwithstanding the availability of insurance proceeds or contributions from Tenant, this Lease may, at the sole discretion of Landlord, be terminated effective the date of the damage.

**13.4 Damage to Property or Damage During Last Six Months of Lease Term.** In the event of (i) any partial destruction to the Property representing thirty percent (30%) or more of the replacement cost of the Property even though the Premises are not damaged, or (ii) any partial destruction to the Premises occurring during the last six (6) months of the Term or any extension thereof, notwithstanding the provisions of Sections 13.1 and 13.2 Landlord shall have the right for a period of thirty (30) days after the determination of the availability of insurance proceeds to retain all insurance proceeds and to terminate this Lease.

**13.5 Abatement of Rent.** In the event of any partial destruction which is repaired by Landlord for the period between the date of damage until the repairs are completed, and in the event of the termination of this Lease for the period between the date of the damage and the date of termination, the rent payable by Tenant shall be reduced in the proportion which the area of the Premises that are not usable bears to the total area of the Premises, as determined by Landlord. This right to partial abatement of rent shall be Tenant's sole remedy as a result of any such damage and repair. Landlord shall not be required to make any repair or restoration of injury or damage to any improvement or property installed on the Premises by or at the expense of Tenant. Such items shall be replaced by Tenant at Tenant's sole cost and expense.

**14. CONDEMNATION.** If all or any part of the Premises shall be taken or appropriated for public or quasi-public use by right of eminent domain, with or without litigation, or transferred by agreement in connection with such public or quasi-public use, either party hereto shall have the right, but not the obligation, exercisable within thirty (30) days of receipt of notice of such taking, to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before Tenant may terminate this Lease by reason of taking or appropriation as provided herein, such taking or appropriation shall be of such an extent and nature as to materially and adversely handicap, impede or impair Tenant's use of the Premises. If any part of the Property other than the Premises shall be so taken or appropriated, Landlord shall have the right, but not the obligation, to terminate this Lease. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any award which may be made in such taking or condemnation, together with any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in or to require Tenant to assign to Landlord any award made to Tenant for the taking of personal property and fixtures belonging to Tenant and/or for the interruption of or damage to Tenant's business and/or for Tenant's unamortized cost of leasehold improvements installed by and paid for by Tenant. In the event of a partial taking which does not result

in a termination of this Lease, rent shall be abated in the proportion which the part of the Premises so made unusable bears to the rented area of the Premises immediately prior to the taking. No temporary taking of the Premises and/or of Tenant's rights therein or under this Lease shall terminate this Lease or give Tenant any right to any abatement of rent or other charges due under this Lease. Any award made to Tenant by reason of any such temporary taking shall belong entirely to Tenant and Landlord shall not be entitled to share therein.

## **15. ASSIGNMENT AND SUBLETTING.**

**15.1 Landlord's Consent Required.** Tenant shall not voluntarily or involuntarily assign, transfer, mortgage, pledge, hypothecate or encumber this Lease or any interest therein, and shall not sublet the Premises or any part thereof, without the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion, and any attempt to do so without such consent being first had and obtained shall be wholly void and shall constitute a breach of this Lease at the election of the Landlord.

**15.2 Reasonable Consent.** If Tenant complies with the following conditions, Landlord shall not unreasonably withhold its consent to the subletting of the Premises or any portion thereof or the assignment of the Lease. Tenant shall submit in writing to Landlord (a) the name and legal composition of the proposed sub-Tenant or assignee; (b) the nature of the business proposed to be carried on in the Premises; (c) the terms and provisions of the proposed sublease; (d) such reasonable financial and other information as Landlord may request concerning the proposed sub-Tenant or assignee, and Landlord shall be reasonably satisfied in Landlord's sole discretion with the proposed use of the subject Premises and with the ability and willingness of the proposed sub-Tenant or assignee to fulfill all of the terms, covenants, conditions, and obligations hereunder. It shall be reasonable for Landlord to withhold its consent to any assignment or sublease if (i) Tenant is in default of any provisions of this Lease; (ii) the proposed transferee does not intend to use the Premises for the Use set forth in Section 6.1; (iii) the proposed transferee does not have a tangible net worth, calculated in accordance with generally accepted accounting principles consistently applied, that is comparable to the tangible net worth of Tenant as of the date of this Lease; or (iv) the proposed transferee is an existing or prospective Tenant of the Property with whom Landlord or its broker have discussed leasing space.

**15.3 No Release of Tenant.** No consent by Landlord to any assignment or subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent, assignment or subletting. The consent by Landlord to any assignment or subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or subletting. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any assignment, subletting or other transfer. Consent to one assignment, subletting or other transfer shall not be deemed to constitute consent to any subsequent assignment, subletting or other transfer.

**15.4 Landlord's Costs.** If Landlord shall consent to a sublease or assignment under this Section 15, Tenant shall pay Landlord's reasonable attorney's fees and administrative costs in connection with giving such consent, which fees and costs shall in no event be less than \$1,000.00.

## **16. SUBORDINATION; QUIET ENJOYMENT; ATTORNMENT.**

**16.1 Subordination.** This Lease, at Landlord's option, shall be subject to all ground or underlying leases which now exist or may hereafter be executed affecting the Premises, the Property, or the land upon which the Premises and/or Property are situated or both, and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the land or improvements or either thereof of which the Premises are a part, or on or against Landlord's interest or estate therein, or on or against any ground or underlying lease, without the necessity of the execution and delivery of any further instruments on the part of the Tenant to effectuate such subordination. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease is dated prior or subsequent to the date of said mortgage, deed of trust, or ground lease or the date of the recording thereof.

**16.2 Subordination Agreements.** Tenant covenants and agrees to execute and deliver upon demand, without charge therefore, such further instruments evidencing subordination of this Lease to such ground or underlying leases and to the lien of any such mortgages or deeds of trust as may be required by Landlord, in a form to be prepared by Landlord. Tenant hereby irrevocably appoints Landlord as Tenant's attorney-in-fact to execute and deliver any such agreements, instruments, releases or other documents.

**16.3 Quiet Enjoyment.** Landlord covenants and agrees with Tenant that, upon Tenant paying rent and other monetary sums due under the Lease, performing its covenants and conditions under the Lease and, if applicable, upon recognizing a subsequent purchaser of the Premises as Landlord pursuant hereto, Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the Lease Term, subject, however, to the terms of the Lease and of any of the aforesaid ground leases, mortgages or deeds of trust described above. Except to the extent arising from Landlord's negligence or willful misconduct, the provisions of this Section 16.3 shall not extend to any disturbance, act or condition brought about by any other person or entity, including another Tenant in the Property.

**16.4 Attornment.** In the event any proceedings are brought for default under any ground or underlying lease or in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Premises, Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Lease. Landlord and Tenant acknowledge and agree that Landlord's lender shall have no obligation or liability whatsoever to Tenant with respect to this Lease or otherwise unless and until Landlord's lender acquires title to the Property.

## **17. DEFAULT; REMEDIES.**

**17.1 Default** The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant (a) Any failure by Tenant to pay the rent or any other monetary sums required to be paid hereunder when due; (b) The abandonment or vacation of the Premises by Tenant. Absence from the Premises for ten (10) consecutive days or more shall conclusively be deemed abandonment or vacation information required to be furnished to Landlord; (d) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for twenty (20) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said twenty (20) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and

thereafter diligently prosecute the same to completion; (e) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days; or evidence of the inability of Tenant or any guarantor of Tenant's obligations under this Lease to pay its debts when due; and (f) The death of Tenant or any guarantor of Tenant's obligations.

**17.2 Remedies.** In the event of any such material default or breach by Tenant, Landlord may, at any time thereafter, without limiting Landlord in the exercise of any right or remedy at law or in equity which Landlord may have by reason of such default or breach:

(a) Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Tenant's right to possession irrespective of whether Tenant shall have abandoned the Premises. In the event Landlord elects not to terminate the Lease, Landlord shall have the right to attempt to relet the Premises at such rent and upon such conditions and for such a term, and to do all acts necessary to maintain or preserve the Premises as Landlord deems reasonable and necessary without being deemed to have elected to terminate the Lease, including removal of all persons and property from the Premises. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant. In the event any such re-letting occurs, this Lease shall terminate automatically upon the new Tenant taking possession of the Premises. Notwithstanding that Landlord fails to elect to terminate the Lease initially, Landlord at any time during the term of this Lease may elect to terminate this Lease by virtue of such previous default of Tenant; or

(b) Terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including without limitation thereto, the following: (i) the worth at the time of award of any unpaid rent which had been earned at the time of such termination; plus (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that is proved could have been reasonably avoided; plus (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that is proved could be reasonably avoided; plus (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of events would be likely to result therefrom; plus (v) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable state law. Upon any such re-entry, Landlord shall have the right to make any reasonable repairs, alterations or modifications to the Premises which Landlord in its sole discretion deems reasonable and necessary. As used in (i) above, the "worth at the time of award" is computed by allowing compounding interest at the rate of twelve percent (12%) per annum or the maximum rate allowable by law from the date of default.



As used in (ii) and (iii) the "worth at the time of award" Property obtained by Landlord pursuant to this Lease, including any coverage which may be required by Landlord's lender(s), or otherwise obtained by Landlord (Tenant is to pay its prorata share of the costs in connection with such insurance); (10) rental of or cost of tools, machinery, and equipment used in connection with managing and maintaining the Common Area; (11) the cost of the heating, ventilation and air conditioning contract provided for in Section 8.1(b) (if procured by Landlord); (12) all real property and personal property taxes and assessments levied or assessed against the Property or the Common Area; (13) the cost of all janitors, gardeners, window cleaning, pest control, security personnel and equipment performing services on the Common Area; (14) taxes required pursuant to Section 5; (15) insurance premiums to be paid by Landlord pursuant to Section 12; (16) Common Area patrols provided pursuant to Section 19.9; and (17) a fee to Landlord for administration of the Common Area in an amount equal to fifteen percent (15%) of the expenses incurred by Landlord pursuant to this Section 19.3.

**19.4 Records.** Landlord shall keep accurate records showing in reasonable detail all expenses incurred for such maintenance. These records shall, upon at least five (5) business days' request, be made available during business hours at the offices of Landlord for inspection by Tenant. Any such inspection by Tenant shall take place, if at all, prior to the expiration of the calendar year in which Tenant receives the annual reconciliation statement (defined below). Failure by Tenant to timely inspect such records shall be deemed an acceptance by Tenant of the annual reconciliation statement and a waiver by Tenant of any further right to object to such annual reconciliation statement.

**19.5 Tenant's Contribution.** From and after the date Landlord tenders possession of the Premises to Tenant and during the entire Lease Term and any renewal term(s), Tenant shall pay to Landlord on the first day of each month, Tenant's pro rata share of the amount of all expenses described in Section 19.3 ("Common Area Expenses") based upon, at Landlord's election, either: (a) the amount of such expenses actually incurred during the billing period; or (b) equal periodic installments which have been estimated in advance by Landlord for a particular period. Landlord may revise such estimates upward or downward at any time without prior notice to Tenant. If Landlord elects to bill Tenant based upon estimates, Landlord shall, within sixty (60) days after the end of the calendar year, or as soon thereafter as possible, forward to Tenant a written statement (the "Annual Reconciliation Statement") which adjusts the estimated expenses to reflect the actual expenses incurred for such year. If the Annual Reconciliation Statement shows the actual expenses to have exceeded the estimated expenses, then Tenant's share of such additional amount shall be paid by Tenant to Landlord within ten (10) days of receipt of the Annual Reconciliation Statement. If the Annual Reconciliation Statement shows the actual expenses to have been less than the estimated expenses, Landlord shall credit Tenant's share against the sums next due hereunder from Tenant to Landlord (or against any outstanding sums then due). Notwithstanding the estimate of Tenant's pro rata share set forth in Section 3 of this Lease, Tenant shall be responsible for its actual pro rata share of Common Area Expenses. Tenant's pro rata share shall be equal to the ratio which Tenant's rentable ground floor area bears to the total rentable ground floor area which has the benefit of, or participates in, the expense(s) or service(s) for which Tenant is being charged.

**19.6 Operation and Control.** Landlord shall have control and non-exclusive possession of the entire Common Area and may from time to time adopt rules and regulations pertaining to the use thereof. Landlord shall, except as otherwise provided herein, operate and maintain the Common Area during the Lease Term. The manner in which the Common Area shall be operated and maintained and the expenditures therefor shall be in Landlord's sole discretion. Landlord reserves the right to appoint a

substitute operator to carry out any or all of Landlord's rights and duties with respect to the Common Area as provided in this Lease; and Landlord may enter into a contract either by a separate document or in a Lease agreement with such operator on such terms and conditions and for such period as Landlord shall deem proper.

**19.7 Employee Parking.** Landlord may designate from time to time what part of the Common Area, if any, shall be used for vehicle parking by Tenant, employees of owners and employees of Tenants, occupants, and licensees. No Tenant or employee of any such owner, Tenant, occupant, or licensee shall use any part of the Common Area for parking except such area or areas as may be so designated. The right to use such area may be revoked, or the area may be redesignated, at any time by Landlord.

**19.8 Obstructions.** No fence, wall, structure, division, rail or obstruction shall be placed, kept, permitted or maintained upon the Common Area or any part thereof by Tenant. Tenant shall not conduct any sale, display, advertising, promotion, or storage of merchandise or any business activities of any kind whatsoever in or upon the Common Area without Landlord's prior written consent. Tenant shall not use the Common Area for solicitations, demonstrations or any other activities that would interfere with the

**19.9 Common Area Patrols.** Landlord may provide courtesy patrols for the Common Areas in such manner as Landlord shall determine from time to time in its sole discretion. Landlord shall not be liable to Tenant or any other person or entity for direct or consequential damages or otherwise with respect to such courtesy patrols. Tenant acknowledges that any patrol service provided by Landlord hereunder may be at such intervals and with such manpower as Landlord may determine in its sole discretion. Tenant further acknowledges that such patrol service is intended to be deterrent in nature and Landlord does not undertake to insure that damage to persons or property will thereby be prevented upon the Premises or the Property. Tenant for itself and for all Tenant Parties hereby releases Landlord and Landlord Parties for, from and against any and all liability arising out of the provision of courtesy patrols under this Lease. In no event shall courtesy patrols be provided by Landlord to Tenant with respect to the Premises. The terms, covenants and provisions of this Lease, including the provisions of this Section 19.9 are not intended to benefit any person or entity other than Landlord and Tenant and no person or entity other than Landlord or Tenant shall have any right or cause of action as a result of the provisions of this Lease, including the provisions of this Section 19.9.

## **20. MISCELLANEOUS.**

**20.1 Estoppel Certificate.** Tenant shall within five (5) days of written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) 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 rent or other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one (1) month's rent has been paid in advance.. If Landlord desires to finance or refinance the Premises, or any part thereof, or any building of which the Premises may be a part, Tenant hereby agrees to

deliver to any lender designated by Landlord such financial statements of Tenant as may be reasonably required by such lender. Such statements shall include the past three years' financial statements of Tenant. All such financial statements shall be received by Landlord in confidence and shall be used only for the purposes herein set forth.

**20.2 Transfer of Landlord's Interest.** In the event of a sale or conveyance by Landlord of Landlord's interest in the Premises or in any building of which the Premises may be a part, other than a transfer for security purposes only, Landlord shall be relieved from and after the date specified in any such notice of transfer of all obligations and liabilities accruing thereafter on the part of Landlord, provided that any funds in the hands of Landlord at the time of transfer in which Tenant has an interest shall be delivered to the successor of Landlord. The validity of this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee.

**20.3 Captions; Attachments; Defined Terms.**(a) The captions of the sections of this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Lease. (b) Exhibits attached hereto, and addenda and schedules initialed by the parties, are deemed by attachment to constitute a part of this Lease and are incorporated herein. (c) The words "Landlord" and "Tenant". as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Landlord or Tenant, the obligations hereunder imposed upon Landlord or Tenant shall be joint and several. As to a Tenant which consists of husband and wife, the obligations shall extend individually to their sole and separate property as well as community property. The-term "Landlord" shall mean only the owner or owners at the time in question of the fee title or a Tenants interest in a ground lease of the Premises. The obligations contained in this Lease to be performed by Landlord shall be binding upon Landlord's successor's and assigns only during their respective periods of ownership.

**20.4 Entire Agreement.** This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Lease and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant. Landlord and Tenant agree that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the Premises are merged in or revoked by this Lease.

**20.5 Severability.** If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby. and each item and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

**20.6 Costs of Suit.**

(a) If Tenant or Landlord shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of rent or possession of the Premises, the losing party shall pay the successful party a reasonable sum for attorneys' fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. In addition, should it be necessary for Landlord to employ legal

counsel to enforce any of the provisions herein contained, Tenant agrees to pay all attorneys' fees and court costs reasonably incurred.

(b) Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Premises by license of Tenant, or for the foreclosure of any lien for labor or material furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such person, Tenant covenants to save and hold Landlord harmless for, from and against any judgment rendered against Landlord or the Premises or any part thereof, and all costs and expenses, including reasonable attorneys' fees incurred by Landlord in or in connection with such litigation.

**20.7 Time; Joint and Several Liability.** Time is of the essence of this Lease and each and every provision hereof, except as to the conditions relating to the delivery of possession of the Premises to Tenant. All the terms, covenants and conditions contained in this Lease to be performed by either party, if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and nonexclusive of any other remedy at law or in equity.

**20.8 Binding Effect; Choice of Law.** The parties agree that all provisions of this Lease are to be construed as both covenants and conditions as though the words containing such covenants and conditions were used in each separate section of this Lease. Subject to any provisions of this Lease restricting assignment or subletting by Tenant and subject to Section 19.2 all of the provisions of this Lease shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Property is located.

**20.9 Waiver.** No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver or the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing.

**20.10 Surrender of Premises.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

**20.11 Holding Over.** If Tenant remains in possession of all or any part of the Premises after the expiration of the Lease Term, with or without the express or implied consent of Landlord, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term, and in such case, rent and other monetary sums due hereunder shall be payable at two ( 2 ) times the amount payable during the last year of the Lease Term and at the time specified in this Lease. However, if no amount is specified in this Lease, said amount shall be determined by Landlord and such month to month tenancy shall be subject to every other term, covenant and agreement contained herein.

**20.12 Signs.** (a) Tenant shall not inscribe, paint, affix, place or permit to be placed any projecting sign, marquee, awning, advertisement, sign, notice or placard on the exterior or roof of the Premises or upon or about the entrance doors, windows, sidewalks or areas adjacent to the Premises or Common Areas without Landlord's prior written consent. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof, exterior sidewalks and rear wall of the Premises or any portion of the Property or Common Areas of which the Premises may constitute a part but which are not leased to Tenant, such notices, signs, marquees and advertisements as Landlord may deem appropriate in the operation of Landlord's affairs.

(b) Any such signs or other items described above installed by Tenant with Landlord's consent shall be in compliance with applicable governmental laws and the sign criteria established for the Property by Landlord and shall be removed at the expiration or earlier termination of the Lease at Tenant's expense and Tenant shall repair any damage caused to the Premises resulting from such removal or, at the option of Landlord, said signs shall be left in place. If Tenant fails to comply with the above referenced provision, Landlord may cause same to be carried out on Tenant's behalf, at Tenant's expense. If Tenant installs such items without Landlord's consent, Tenant shall remove same promptly upon receipt of a request by Landlord to do so and shall repair the Premises accordingly. If Tenant fails to do so, Landlord may cause such removal and repair to be performed on Tenant's behalf, at Tenant's expense. Tenant shall not be allowed to use the name of the building in which the Premises are located (if any) or of the owner of such building or of the Premises or words to such effect in connection with any business carried on in the Premises (except as the address of the Tenant) without the prior written consent of Landlord. Landlord reserves the right to change the name and title of the building at any time during the Term. Tenant hereby expressly agrees to such change at the option of the Landlord and waives any and all damage occasioned thereby.

**20.13 Reasonable Consent.** Except as limited elsewhere in this Lease, wherever in this Lease Landlord or Tenant is required to give its reasonable consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld. In the event of failure to give any such reasonable consent, the other party shall be entitled to specific performance at law and shall have such other remedies as are reserved to it under this Lease, but in no event shall Landlord or Tenant be responsible in monetary damages for failure to give consent unless said reasonable consent is withheld maliciously or in bad faith.

**20.14 Interest on Past Due Obligations.** Except as expressly herein provided, any amount due to Landlord that are not paid when due shall bear interest at twelve percent (12%) or the maximum rate allowable by law from the due date. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

**20.15 Arbitration.** Any question, dispute, or controversy arising under the provisions of Sections 13 and 14 of this Lease, at the option of Landlord, shall be determined by arbitration. Such arbitration shall be conducted pursuant to the provisions of the laws of the state where the Property is located then in force, with the rules of procedure to be those of the American Arbitration Association or its successor insofar as said rules of procedure do not conflict with the laws of the state where the Property is located then in force. Any award entered as a result of arbitration shall be entered as a judgment, with the costs of arbitration to be paid as ordered by the arbitrator.

**20.16 Notices.** All notices or demands of any kind required or desired to be given by Landlord or Tenant hereunder shall be in writing and must be given only by one of the following methods: (i) personal delivery (in which case notice or demand shall be deemed delivered on the date of delivery), or (ii) depositing the notice or demand in the United States mail, certified, return-receipt requested and postage prepaid (in which case notice or demand shall be deemed delivered forty-eight (48) hours after deposit in the U.S. mail). Each notice or demand shall be addressed to the Landlord or Tenant, as the case may be, at the addresses set forth after their signatures at the end of this Lease or as notified subsequently in writing. Notices by a party may be given by the legal counsel to such party and/or an authorized agent of such party. In this regard, any notice to be given by or on behalf of Landlord under this Lease shall be effective if given by Landlord's legal counsel and/or Landlord's property manager.

**20.17 Changes or Modifications.** Any plan or exhibit attached to this Lease is intended to show only the general layout of the Property or part thereof. Landlord reserves the right to alter, add to, or omit in whole or in part the structures and/or common areas currently existing or hereafter constructed on the Property or shown on any plan. The Property is subject to change or modification as may be made by Landlord in its sole discretion or required by any authority having jurisdiction. Any and all measurements, distances or square footages are approximate. Landlord does not covenant or represent that any occupant currently or hereafter located at the Property will remain a Tenant. Landlord makes no representations, either express or implied, as to the current or future addition or subtraction of Tenants and/or occupancy of the Property.

**20.18 Landlord's Control Over Parking.** Tenant and its authorized representatives shall park their cars only in areas specifically designated from time to time for that purpose by Landlord, whether such areas be inside or outside (as long as reasonably near) the Property. Within five (5) days after request by Landlord, Tenant shall furnish to Landlord the automobile license numbers assigned to its cars and the cars of all its authorized representatives. If Tenant or its authorized representatives fail to park their cars in designated parking areas, after one (1) written warning, Landlord may charge Tenant, as and for liquidated damages, Twenty-Five and No/100 DOLLARS (\$25.00) for each day or partial day for each car parked in any area other than those designated. The parties acknowledge that it is extremely difficult and impractical for the Landlord to determine the precise damages for violation of this provision, and the parties further agree that Twenty-Five and No/100 DOLLARS (\$25.00) a day represents a good faith estimate of Landlord's actual damages. Notwithstanding the foregoing, however, such liquidated damages shall not preclude Landlord from maintaining any legal and/or equitable proceedings against Tenant as a result of such violation. Tenant shall not at any time park or permit the parking of its permitted vehicles adjacent to loading areas so as to interfere in any way with the use of such areas. Landlord shall also have the right to institute, at any time during the term hereof, reasonable rules, procedures and/or methods in order to enforce the terms of this Section 20.18. Notwithstanding the imposition of liquidated damages, Tenant's failure to adhere to the parking provisions contained in this Section 20.18 will be deemed a material breach of the Lease, and entitle Landlord to all remedies provided for at law or pursuant to the terms of this Lease.

**20.19 Limitation of Landlord's Liability.** If Landlord is in default of this Lease, or if any litigation arises from the negotiation of this Lease or the Landlord/Tenant relationship, and as a consequence Tenant recovers a money judgment against Landlord judgment shall be satisfied only out of the proceeds of sale received on execution of the judgment and levy against the right, title, and interest of Landlord in the Property, and out of rent or other income from the Property receivable by Landlord or out of the

consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title, and interest in the Property. Tenant hereby waives, to the fullest extent permitted by law, any right to satisfy a money judgment against Landlord or Landlord Parties, except as set forth in this

**Section 20.19.**

**20.20 Tenant Improvements.** Whether or not required in this Lease, any improvements constructed by Tenant shall be constructed by using licensed, bonded and insured contractors approved by Landlord in compliance with all applicable federal, state, and municipal laws and rules and regulations of the departments and bureaus having jurisdiction thereof. Tenant shall pay all applicable costs, fees, and charges levied by any governmental agency or otherwise, attendant to the construction and operation of said improvements, including but not limited to municipal or other fees, permit costs, and other charges relating to the construction and operation of the Premises. Tenant is to perform all work and supply all materials at Tenant's sole cost and expense to make the subject Premises suitable for Tenant's specific use. Tenant shall obtain the written approval of Landlord prior to the commencement of any improvements. Landlord must approve both the improvements and the contractors to perform the work, which approval shall not be unreasonably withheld. No representations, inducements, understanding or anything of any nature whatsoever made, stated or represented by Landlord or anyone acting for or on Landlord's behalf, either orally or in writing, have induced Tenant to enter into this Lease, and Tenant acknowledges, represents and warrants that Tenant has entered into this Lease under and by virtue of Tenant's own independent investigation. Tenant hereby accepts the Premises in an "as is" and "where is" condition without warranty of any kind, express or implied, including, without limitation, any warranty as to title, physical condition or the presence or absence of Hazardous Materials, and if the Premises are not in all respects entirely suitable for the use or uses to which the Premises or any part thereof will be put, then it is the sole responsibility and obligation of Tenant (subject only to the obligations of Landlord set forth in Exhibit "B", if any) to take such action as may be necessary to place the Premises in a condition entirely suitable for such use or uses.

**20.21 Relocation.** In the event Landlord requires the Premises for use in conjunction with another store or for other reasons connected with the Property planning and leasing, Landlord, upon notifying Tenant in writing, shall have the right to move Tenant to another space in the Property, at Landlord's sole cost and expense, and the terms and conditions of the original Lease shall remain in full force and effect, save and excepting that the Premises shall be in a new location. If the new Premises are larger or smaller in square footage than the old Premises, the rent and other charges payable by Tenant shall be adjusted accordingly. However, if the new Premises does not meet with Tenant's reasonable approval, Tenant shall have the right to cancel this Lease upon giving Landlord thirty (30) days written notice within ten (10) days of receipt of Landlord's notice of relocation.

**20.22 Multiple Tenant Building.** Tenant agrees that it will abide by, heed and observe all rules and regulations set forth on Exhibit 'C', along with all reasonable rules and regulations which Landlord meeeeeee from time to time for the management, safety, care, and cleanliness of the building and grounds, the parking of vehicles and the preservation of good order therein, as well as for the convenience of other occupants and Tenants of the building. Tenant acknowledges that Landlord shall have the right (but not the obligation) to, from time to time change, alter, amend and enforce the rules and regulations set forth on Exhibit "C". Violation of any such rules and regulations shall be deemed a material breach of this Lease by Tenant.

**20.23 Toxic Materials.** Tenant shall not store, use, or dispose of any hazardous materials, toxic materials, radioactive material, wastes, or any other material, chemical, compound or substance controlled by any federal, state, or municipal law, rule, ordinance or regulation ("Hazardous Materials") on the Premises without Landlord's express written consent. In the event said consent is given by Landlord, Tenant shall, at its sole cost and expense, comply with all laws, rules, and regulations relating to the storage, use, and disposal of Hazardous Materials ("Hazardous Materials Laws"). Tenant shall be solely responsible for, and shall defend, indemnify, and hold Landlord harmless for, from and against any and all Claims, costs, liabilities, attorneys' fees and expenses caused by Tenant's storage, use, or disposal of Hazardous Materials in or about the Premises. If Tenant causes any contamination or deterioration of water or soil, whether on any portion of the Premises or elsewhere, then Tenant shall immediately notify Landlord, and Tenant shall promptly take all action necessary to clear up such contamination or repair such deterioration in compliance with all Hazardous Materials Laws. In addition to the foregoing, Tenant shall immediately repair or replace all damage caused directly or proximately by the Tenant's storage, use, or disposal of Hazardous Materials, to any structure or improvement on the demised Premises, whether internal or external, including without limitation all foundations, subfloorings, flooring beams, supports, roofs, windows, walls, ceilings, plumbing, sewer, and electrical lines. All such repairs or replacements shall be affected by a bonded, licensed and insured contractor approved by Landlord, which approval shall not be unreasonably withheld. Tenant shall strictly comply with, and shall maintain the Premises in compliance with, all Hazardous Materials Laws. Tenant shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Tenant's operations on the Premises under any Hazardous Materials Laws and shall comply with all terms and conditions thereof. At Landlord's request, Tenant shall deliver copies of, or allow Landlord to inspect, all such permits, licenses and approvals. Tenant shall comply with the requirements of Landlord's and Tenant's respective insurers regarding Hazardous Materials and with such insurers' recommendations based upon prudent industry practices regarding management of Hazardous Materials. Upon the termination or expiration of this Lease, Tenant shall remove any equipment, improvements or storage facilities utilized in connection with any Hazardous Materials and shall, clean up, detoxify, repair and otherwise restore Premises to a condition free of Hazardous Materials. Tenant shall protect, indemnify, defend and hold Landlord and Landlord Parties harmless for, from and against any and all losses, liabilities, claims, losses, causes of action, charges, penalties, damages, costs or expenses (including reasonable attorneys' fees and costs), of whatsoever character, nature and kind, whether to property or person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, or latent or patent, investigations and proceedings arising out of or in connection with any breach of any provisions of this Section 20.23 or directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Materials by Tenant or any sublessee or assignee of Tenant or their respective representatives, agents, contractors, employees, licensees, or invitees, on, under or about the Premises during the Lease Term or Tenant's occupancy of Premises, including, but not limited to, all foreseeable and unforeseeable consequential damages and the cost of any remedial work. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor the strict compliance with all Hazardous Material Laws shall excuse Tenant from Tenant's indemnification obligations pursuant to this Section 20.23. The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Section 11 of this Lease. Tenant's obligations pursuant to this Section 20.23 shall survive the termination or expiration of this Lease.



**20.24 Tenant Trash Removal.** Tenant shall clean daily around the immediate area of its Premises and shall also clean any litter from its Premises by its invitees and clients which may be in the parking lot or other areas of the Property. If Tenant generates a greater amount of trash than the other occupants of the Property, Tenant may be assessed at Landlord's sole discretion, additional special charges for trash removal.

**20.25 Mailbox Keys.** Tenant shall be solely responsible for contacting the United State Post Office, or the comparable mail carrier serving the Property, to obtain keys for the mailbox serving the Premises. In addition, Tenant shall pay all costs and expense related to such keys and Tenant's mailbox including, without limitation, any costs assessed for issuance of mailbox keys and repairs to Tenant's mailbox.

**20.26 Execution of Lease by Landlord.** The submission of this document and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises, and this document becomes effective and binding only upon the execution and delivery hereof by Landlord and by Tenant. LANDLORD AND TENANT EACH HEREBY WAIVE AND DISCLAIM ANY COVENANT OR OBLIGATION OF GOOD FAITH AND FAIR DEALING THAT MAY BE IMPLIED IN THIS LEASE, AND EACH OF LANDLORD AND TENANT ACKNOWLEDGE AND AGREE THAT NEITHER HAS ANY OBLIGATION TO BARGAIN IN GOOD FAITH OR IN ANY WAY OTHER THAN AT ARM'S LENGTH. NEITHER LANDLORD NOR TENANT MAY REASONABLY RELY ON ANY PROMISE INCONSISTENT WITH THE PROVISIONS OF THIS SECTION. THIS SECTION SUPERSEDES ANY OTHER CONFLICTING LANGUAGE CONTAINED IN THIS LEASE WHICH MAY IMPLY THE EXISTENCE OF A COVENANT OF GOOD FAITH AND FAIR DEALING. Landlord reserves the absolute right to lease the Premises to any other person or entity until the full execution of this Lease by Landlord and Tenant.

**20.27 Warranties by Tenant.** If Tenant is a corporation, limited liability company, limited partnership, limited liability partnership, or any other entity, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord, that: (a) Tenant is a valid and existing entity, in good standing under the laws of the state where the entity was formed; (b) all things necessary to qualify Tenant to do business in the state where the Property is located have been accomplished prior to the date of this Lease; (c) all franchise and other taxes have been paid to the date of this Lease; (d) all forms, reports, fees and taxes required to be filed or paid by such entity have been filed or paid; and (e) the individuals executing this Lease represent and warrant they have authority to do so pursuant to a duly adopted resolution of the board of directors. If Tenant is a married individual, Tenant represent and warrant to Landlord, that: (a) Tenant and his/her spouse shall both execute this Lease; and (b) in the event of a default by Tenant under this Lease, Landlord may recover any and all of Landlord's damages from both the separate property and community property of Tenant.

**20.28 Specially Designated Nationals and Blocked Persons List.** Neither Tenant nor any member shareholder, officer, director, partner, principals, agents or representatives of Tenant (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to Executive Order Number 13224, 66 Federal Register 49079 (September 25, 2001) (the "Order") . (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules and regulations, legislation or orders are collectively in this Section 20.28 called the "Orders"); (iii) is engaged in activities prohibited in the Orders; or (iv) has been

convicted, pleaded no lo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicated crimes to money laundering.

**21. The attached exhibit(s) A, B, C are made a part hereof of this Lease.**

Buy signature below the Landlord and Tenant execute this lease the date and year first above written.

_____		_____	
Landlord	Date	Tenant	Date
_____		_____	
Print Name and Title		Print Name and Title	
_____		_____	
Mailing Address		Mailing Address	
_____		_____	
_____		_____	
Phone	Email	Phone	email

**Addendum**

1. If there is a NFS check from your rent payment there will be a charge of \$30.00 plus a late fee to your rent payment. After the 3rd of the month rent is considered late and there's a fee of \$10.00 per day Minimum charge of \$75 after the 3rd this is for collection time
2. Everything inside your unit is your responsibility to maintain. An example of this could be your air conditioner unit may need to be repaired or anything in your unit is your responsibility to keep up. Tenant needs to pay for it if it is solely used by Tenant or that Tenant controls. Another example is if your door or window breaks. You need to pay for the repairs not the Landlord. The ac is for Suites not small offices that do not control ac. If you control the ac you are responsible for maintenance for the unit.
3. Even though you have 24/7 access the building is not a place to live absolutely no overnight sleeping.
4. If a light bulb goes out in a suite where the electric is included if it's only serving you then you have to replace it. The common hallway isn't your responsibility.
5. Exterminating- If you are in the food business you will need to exterminate on a regular basis so others will not have problems with bugs.
6. Checks for rent need to be payable to Pomykala Management and forwarded to 405 W. Southern Ave. Suite 207 Tempe, AZ 85282 or TurboTenant.
7. If you share an entry please make sure you lock the door when you leave.

8. This building was built after 1978 and may have had lead base paint used on it. Landlord has no knowledge of any problems and do not have any reports of any problems.
9. Landlord must have a key for all units. Please make sure you tell us if you have an alarm so we can contact you if we need to get in.
10. Your space must be in Storefront condition when Tenant moves out. All trade fixtures that a Tenant may have put in need to be removed by Tenant upon termination of a lease.
11. If there is a large increase in the rate of electric bill there may be a slight increase in rent to offset the cost for that month.
12. If you are adding or doing anything with the internet in your suite that also can affect others you need to contact Andrea. This is to make sure that what you did didn't interrupt others and if you did mess the system up you will need to correct the problem. Make sure you do not give out the password to anyone. You may be revoked internet access if we are reported to have violations.
13. Please make sure you take out your own garbage. The garbage can is in the parking lot, especially if you have a bunch of leftover food. So it doesn't smell throughout the office.
- 13 Parking If you are only renting a small 12 by 10 office you are allowed one car and it's not overnight parking either. If you need more than one car here, then that needs to be discussed. If you are renting over a 1,000 sq feet that is different, then you are allowed 2 to 3 cars but we definitely need to discuss what your expectations are for the space inside and out.
14. Garbage needs to be put in the dumpster outside in the back parking lot.
15. Smoking needs to be 20 feet from building
16. No working on cars in Parking lot
17. No responsible for stolen items in the building or outside of building

Leasee	Date	Leasee	Date
Lessor			