

**APPENDIX I:**

**TRANSPORTATION DATA**

**I.1:** Overland Traffic Consultants,  
Transportation Evaluation,  
11905 Wilshire Mixed-Use Project at 11905 Wilshire Boulevard,  
September 1, 2022.

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## REFERRAL FORMS:

# TRANSPORTATION STUDY ASSESSMENT

## DEPARTMENT OF TRANSPORTATION - REFERRAL FORM

**RELATED CODE SECTION:** Los Angeles Municipal Code Section 16.05 and various code sections.

**PURPOSE:** The Department of Transportation (LADOT) Referral Form serves as an initial assessment to determine whether a project requires a Transportation Assessment.

### GENERAL INFORMATION

- Administrative: Prior to the submittal of a referral form with LADOT, a Planning case must have been filed with the Department of City Planning.
- All new school projects, including by-right projects, must contact LADOT for an assessment of the school's proposed drop-off/pick-up scheme and to determine if any traffic controls, school warning and speed limit signs, school crosswalk and pavement markings, passenger loading zones and school bus loading zones are needed.
- Unless exempted, projects located within a transportation specific plan area may be required to pay a traffic impact assessment fee regardless of the need to prepare a transportation assessment.
- Pursuant to LAMC Section 19.15, a review fee payable to LADOT may be required to process this form. The applicant should contact the appropriate LADOT Development Services Office to arrange payment.
- LADOT's Transportation Assessment Guidelines, VMT Calculator, and VMT Calculator User Guide can be found at <http://ladot.lacity.org>.
- A transportation study is not needed for the following project applications:
  - Ministerial / by-right projects
  - Discretionary projects limited to a request for change in hours of operation
  - Tenant improvement within an existing shopping center for change of tenants
  - Any project only installing a parking lot or parking structure
  - Time extension
  - Single family home (unless part of a subdivision)
- This Referral Form is not intended to address the project's site access plan, driveway dimensions and location, internal circulation elements, dedication and widening, etc. These items require separate review and approval by LADOT.

### SPECIAL REQUIREMENTS

When submitting this referral form to LADOT, include the completed documents listed below.

- Copy of Department of City Planning Application (CP-7771.1).
- Copy of a fully dimensioned site plan showing all existing and proposed structures, parking and loading areas, driveways, as well as on-site and off-site circulation.
- If filing for purposes of Site Plan Review, a copy of the Site Plan Review Supplemental Application.
- Copy of project-specific VMT Calculator<sup>1</sup> analysis results.

**TO BE VERIFIED BY PLANNING STAFF PRIOR TO LADOT REVIEW**

**LADOT DEVELOPMENT SERVICES DIVISION OFFICES:** Please route this form for processing to the appropriate LADOT Development Review Office as follows (see [this map](#) for geographical reference):

**Metro**  
213-972-8482  
100 S. Main St, 9<sup>th</sup> Floor  
Los Angeles, CA 90012

**West LA**  
213-485-1062  
7166 W. Manchester Blvd  
Los Angeles, CA 90045

**Valley**  
818-374-4699  
6262 Van Nuys Blvd, 3<sup>rd</sup> Floor  
Van Nuys, CA 91401

**1. PROJECT INFORMATION**

Case Number: DOR-2022-6249-DB-CDO-SPR-HCA, ENV-2022-6250-EAF

Address: 11905 Wilshire Blvd Los Angeles CA 90025/ WLA22-114080

Project Description: Rmv 6,040 sf restaurant build 72 multi-family +9 affordable, 1k rstmnt, 3k retail

Seeking Existing Use Credit (will be calculated by LADOT): Yes  No  Not sure

Applicant Name: Radha MFH CCAL, LLC; Liz Fleming, Overland Traffic Consultants

Applicant E-mail: liz@overlandtraffic.com Applicant Phone: (310) 545-1235

Planning Staff Initials: \_\_\_\_\_ Date: \_\_\_\_\_

**2. PROJECT REFERRAL TABLE**

	Land Use (list all)	Size / Unit	Daily Trips <sup>1</sup>
Proposed <sup>1</sup>	Multifamily Housing	72 units	
	Affordable Housing	9 units	+586
	Hi-TU Restaurant(1,000 sf)& Gen.Retail (3,000 sf)	4,000 sf	
	<i>Total trips<sup>1</sup>:</i>		
<p><b>a.</b> Does the proposed project involve a discretionary action? <span style="float: right;">Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></span></p> <p><b>b.</b> Would the proposed project generate 250 or more daily vehicle trips<sup>2</sup>? <span style="float: right;">Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></span></p> <p><b>c.</b> If the project is replacing an existing number of residential units with a smaller number of residential units, is the proposed project located within one-half mile of a heavy rail, light rail, or bus rapid transit station<sup>3</sup>? <span style="float: right;">Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></span></p> <p>If <b>YES</b> to <b>a.</b> and <b>b.</b> or <b>c.</b>, or to <b>all</b> of the above, the Project <u>must</u> be referred to LADOT for further assessment.</p> <p>Verified by: Planning Staff Name: _____ Phone: _____</p> <p style="text-align: center;">Signature: _____ Date: _____</p>			

<sup>1</sup> Qualifying Existing Use to be determined by LADOT staff on following page, per LADOT's Transportation Assessment Guidelines.

<sup>2</sup>To calculate the project's total daily trips, use the VMT Calculator. Under 'Project Information', enter the project address, land use type, and intensity of all proposed land uses. Select the '+' icon to enter each land use. After you enter the information, copy the 'Daily Vehicle Trips' number into the total trips in this table. Do not consider any existing use information for screening purposes. For additional questions, consult LADOT's [VMT Calculator User Guide](#) and the LADOT Transportation Assessment Guidelines (available on the LADOT website).

<sup>3</sup> Relevant transit lines include: Metro Red, Purple, Blue, Green, Gold, Expo, Orange, and Silver line stations; and Metrolink stations.

**TO BE COMPLETED BY LADOT**

**3. PROJECT INFORMATION**

	Land Use (list all)	Size / Unit	Daily Trips
Proposed	Multi-Family Apartments	72 DU	+ 586
	Affordable Housing-Apartments	9 DU	
	Hi-Turnover Restaurant (1 KSF)&Gen. Retail( 3 KSF)	4 KSF	
	<i>Total new trips:</i>		586
Existing	Hi-Turnover Restaurant (Lazy Daisy Cafe)	3.020 KSF	-617
	Hi-Turnover Restaurant (Pho Kitchen)	3.020 KSF	
	<i>Total existing trips:</i>		617
	<i>Net Increase / Decrease (+ or -)</i>		-31

- a. Is the project a single retail use that is less than 50,000 square feet? Yes  No
- b. Would the project generate a net increase of 250 or more daily vehicle trips? Yes  No
- c. Would the project generate a net increase of 500 or more daily vehicle trips? Yes  No
- d. Would the project result in a net increase in daily VMT? Yes  No
- e. If the project is replacing an existing number of residential units with a smaller number of residential units, is the proposed project located within one-half mile of a heavy rail, light rail, or bus rapid transit station? Yes  No
- f. Does the project trigger Site Plan Review (LAMC 16.05)? Yes  No
- g. Project size:
  - i. Would the project generate a net increase of 1,000 or more daily vehicle trips? Yes  No
  - ii. Is the project's frontage 250 linear feet or more along a street classified as an Avenue or Boulevard per the City's General Plan? Yes  No
  - iii. Is the project's building frontage encompassing an entire block along a street classified as an Avenue or Boulevard per the City's General Plan? Yes  No

**VMT Analysis (CEQA Review)**

If **YES** to a. and **NO** to e. a VMT analysis is **NOT** required.  
 If **YES** to both b. and d.; or to e. a VMT analysis **is** required.

**Access, Safety, and Circulation Assessment (Corrective Conditions)**

If **YES** to c., a project access, safety, and circulation evaluation may be required.  
 If **YES** to f. and either g.i., g.ii., or g.iii., an access assessment may be required.

**LADOT Comments:**

Please contact LABOE for any potential street Right-of-way dedication and/or improvement requirements for the project.  
Also, submit dimensioned site/driveway/parking plans (1" =40") to the Westchester Development Review office for final driveway review and recommendation.

Please note that this form is not intended to address the project's site access plan, driveway dimensions and location, internal circulation elements, dedication and widening, and other issues. These items require separate review and approval by LADOT. Qualifying Existing Use to be determined per LADOT's Transportation Assessment Guidelines.

4. Specific Plan with Trip Fee or TDM Requirements: Yes  No

Fee Calculation Estimate: N/A (Negative trip generator)

VMT Analysis Required (Question b. satisfied): Yes  No

Access, Safety, and Circulation Evaluation Required (Question b. satisfied): Yes  No

Access Assessment Required (Question b., f., and either g.i., g.ii. or g.iii satisfied): Yes  No

Prepared by DOT Staff Name: Valeria Ceja Phone: (213) 485-1062

Signature:  Date: 10/06/22

Transportation Evaluation  
11905 Wilshire Mixed-Use Project at  
11905 Wilshire Boulevard

**Project Location:** 11905 Wilshire Boulevard in Brentwood-Pacific Palisades Community of the City of Los Angeles. The Project is located on the northwest corner of Wilshire Boulevard and Westgate Avenue. A public alley provides the northern boundary of the site.

**Project Description:**

**Prior Use:** Two restaurants were previously operating on the site. The 3,020 square foot Lazy Daisy Café closed August 31, 2021 and the 3,020 square foot Pho Kitchen closed on July 15, 2021. Both operating for a consecutive 6 months prior to closing. A copy of the lease agreements is provided in Appendix A. Additional square footage was previously leased to dry cleaning operations but has been closed for over two years.

**Proposed:** A 7-story building over one subterranean level is proposed. The Project will include 81 residential units (including 9 affordable units), 1,000 square foot restaurant and 3,000 square feet of retail. A copy of the site plan is attached (Attachment B).

**Transit:** The Project is located on Wilshire Boulevard. Metro Rapid Route 720 operates along Wilshire Boulevard in the Project area. There is a stop on Wilshire Boulevard 1,300 feet east of the site at Barrington Avenue and 1,500 feet west of the site at Bundy Drive. In the future, the extension of the D Line (previously Purple Line) will extend to a Westwood/VA Hospital Station approximately 4,000 feet east of the site. This is currently forecast by Metro to open in 2027.

**Vehicle Parking:** Vehicle parking will be provided on one subterranean level, ground floor level and one above ground floor level. A total of 102 vehicle parking spaces are proposed (14 commercial and 88 residential) using permissible vehicle parking reduction from 135 parking spaces by providing bicycle parking at a rate of 4 bicycle spaces per replaced vehicle parking space. Parking will be accessed from the alley along the north side of the site for residents only and from Westgate Avenue near the northern boundary of the site for both commercial guests/employees and residents.

**Bike Parking:** A total of 160 bicycle parking spaces (16 for commercial uses and 144 for residential uses) will be provided by the Project to meet City code requirements and provide additional spaces for permissible vehicle parking reduction.

Street Classification along Frontage

Wilshire Boulevard is designated as a Boulevard II in the City of Los Angeles Mobility Plan 2035 (Mobility Plan) along the Project frontage. A 110-foot right-of-way and 80-foot roadway are required. The current right-of-way is 100 feet. A 5-foot half street right-of-way dedication will be required and provided. Westgate Avenue is designated as a Local Street in the Mobility Plan along the Project frontage. A 60-foot right-of-way and 36-foot roadway are required. The current right-of-way is 60 feet along the Project frontage and no further dedication will be required. The east-west alley along the northern boundary of the site is not fully dedicated along the Project frontage. The City of Los Angeles requires 20 feet of right-of-way along alleys. The current right-of-way is 15 to 17½. Based on where dedications are provided, the Project will dedicate and widen 2 ½ feet along the southern portion of the alley along the Project frontage.

**Daily Trips Per Vehicle Miles Traveled (VMT) Calculation Version 1.3:**

Project is within the West Los Angeles Area Planning Commission (APC)

APC Significant VMT Impact Thresholds: Household = above 7.4 VMT per Capita &  
Work = above 11.1 VMT per Employee

Project Evaluation:

The proposed Project will replace two restaurants that were vacated within the past two years. Both restaurants were active for a consecutive 6 months within the past two years. The proposed project will create fewer daily trips and VMT than was previously generated by the two restaurants.

VMT Worksheet Summary & Findings (without credits for Project featured TDM measures):

Project Daily Trips:	586 daily trips
Prior Use Daily Trips:	617 daily trips
Net Daily Trips (Project – Prior):	- 31 daily trips
Net Daily VMT (Project –Prior):	- 982 daily VMT
Household VMT Impact =	Not Applicable, less than 250 daily trips
Work VMT Impact =	Not Applicable, less than 250 daily trips

**Household VMT per capita impact is not significant.**  
**Work VMT per employee impact is not significant**

The Project will not have any household or work significant impacts as shown on attached VMT main calculator page (Attachment C). Although not required, the Project will provide reduced parking and bike parking per Los Angeles Municipal Code (LAMC) to further reduce VMT.



## Attachment A

### Prior Restaurant Uses Leases

1. Lazy Daisy (LD) Lease Dated 11-30-2009
2. Assignment of Lease LD 1-19-2010
3. LD Assignment of Lease 10-20-2011
4. LD First Amendment 12-1-2020
5. LD Second Amendment 6-13-2014
6. LD Third Amendment 4-24-2017
7. LD Fourth Amendment 11-16-2018
8. LD Fifth Amendment 3-10-2020
9. JV Noodles Lease
  - A. LD Termination Agreement Received 6-7-2021
  - B. JV Noodles Lease Termination Agreement Received 6-15-21



# AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD RETAIL/MULTI-TENANT LEASE - NET

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only November 30, 2009, is made by and between Creative Concepts Group, Inc., A California Corporation

\_\_\_\_\_ ("Lessor")  
and Yongmi Kim and Zong Eun Kim, Husband & Wife, Jointly and Severally dba Lazy Daisy Cafe

\_\_\_\_\_ ("Lessee")  
(collectively the "Parties", or individually a "Party").

1.2 **Premises:** That certain portion of the Shopping Center (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 11913 Wilshire Blvd., located in the City of Los Angeles, County of Los Angeles, State of California, with zip code 90025, as outlined on Exhibit \_\_\_\_\_ attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): Single story retail shopping center

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, exterior walls or utility raceways of the building containing the Premises ("Building") or to any other buildings in the Shopping Center. The Premises and the Building are situated within the Shopping Center known as N/A. The Premises, the Building, the Common Areas and all other buildings and improvements within said Shopping Center, together with the land upon which they are located, are herein collectively referred to as the "Shopping Center." (See also Paragraph 2)

1.3 **Term:** Five (5) years and Zero (0) months ("Original Term") commencing December 1, 2009 ("Commencement Date") and ending November 30, 2014 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$4,725.00 per month ("Base Rent"), payable on the First (1st) day of each month commencing December 1, 2009. (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted.

1.6 **Percentage Rent Rate:** N/A percent (\_\_\_\_%) of Gross Sales. Percentage Rent shall be due and payable in accordance with the provisions of the Percentage Rent Addendum, if any, attached hereto and made a part hereof, and Paragraph 4 hereof.

1.7 **Lessee's Share of Common Area Operating Expenses:** Twenty Five point Five One percent (25.51%) ("Lessee's Share").

1.8 **Merchants' Association Annual Dues:** \$ N/A per year ("Merchants' Association Dues"). Lessee shall pay Merchants' Association Dues and/or become a member of the Merchants' Association in accordance with the provisions of the Merchants' Association Addendum, if any, attached hereto.

- 1.9 **Base Rent and Other Monies Paid Upon Execution:**
- (a) **Base Rent:** \$ 4,725.00 for the period December 2009
  - (b) **Common Area Operating Expenses:** \$ 850.00 for the period December 2009
  - (c) **Security Deposit:** \$ 5,670.00 (Transferred) ("Security Deposit"). (See also Paragraph 5)
  - (d) **Merchants' Association Dues:** \$ N/A for the period N/A
  - (e) **Other:** \$ N/A for N/A
  - (f) **Total Due Upon Execution of this Lease:** \$ 5,575.00

1.10 **Agreed Use:** Operation of restaurant specializing in sale of sandwiches, salads, soups, and related food items. Sale of burritos or fish tacos is prohibited. Sale of beer and wine upon ABC approval. (See also Paragraph 6)

1.11 **Agreed Trade Name:** Lazy Daisy Cafe (See also Paragraph 8)

1.12 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.13 **Real Estate Brokers:** (See also Paragraph 15)

YK  
ZK  
INITIALS

[Signature]  
INITIALS

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- \_\_\_\_\_ represents Lessor exclusively ("Lessor's Broker");
- \_\_\_\_\_ represents Lessee exclusively ("Lessee's Broker"); or
- Paul Kaplan, Property Management Associates, Inc. represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total Base Rent) for the brokerage services rendered by the Brokers. *Per separate agreement.*

1.14 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.15 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- an addendum consisting of Paragraphs 52 through 52
- a site plan marked Exhibit \_\_\_\_\_, depicting the Premises;
- a site plan marked Exhibit \_\_\_\_\_, depicting the Shopping Center;
- a current set of Rules and Regulations for the Shopping Center;
- a current set of the Sign Criteria for the Shopping Center;
- a work letter;
- other (specify): \_\_\_\_\_

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within 30 days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Premises. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls).

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date that on which the Base Rent is due, an amount equal to 144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its

Capital Expenditure  
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share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** Lessee shall not use and shall not permit its employees to use any parking spaces in the Shopping Center except for parking by vehicles that are no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles.**" Lessee shall permit its employees to only occupy those parking spaces, if any, as depicted as employee parking spaces on the Shopping Center site plan. Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
- (b) Lessee shall not service or store any vehicles in the Common Areas.
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "**Common Areas**" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Shopping Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, nor the right to display merchandise or conduct sales in the Common Areas. Any such storage, display or sales shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, as exercised in Lessor's sole discretion, which consent may be revoked at any time. In the event that any unauthorized storage or displays shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Shopping Center and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes or additions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, elevations, landscaped areas, signage, walkways and utility raceways;
- (b) To use and close temporarily any of the Common Areas for the purpose of maintaining, repairing and altering the Shopping Center, so long as reasonable access to the Premises remains available, and to close temporarily any of the Common Areas to whatever extent is required in the opinion of Lessor's counsel to prevent a dedication of or the accrual of any rights of any persons or of the public to any of the Common Areas;
- (c) To designate other land outside the boundaries of the Shopping Center to be a part of the Common Areas or to be entitled to use the Common Areas on a reciprocal basis;
- (d) To add additional buildings and improvements to the Common Areas; and
- (e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Shopping Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

2.11 **Common Areas - Promotional Events; Sidewalk Sales.** Lessor reserves the right, from time to time, in Lessor's sole discretion, to utilize portions of the Common Areas for promotional events, which may include but shall not be limited to entertainment. Lessor further reserves the right, in Lessor's sole discretion, to permit any one or more tenants of the Shopping Center to conduct the display and/or sale of merchandise from the sidewalks immediately adjacent to such tenants' respective premises.

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1.2 **Common Areas - Remodeling.** At any time during the Term, Lessor may remodel or expand, in any manner, the existing Shopping Center, which work may include, without limitation, the addition of shops and/or new buildings to the Shopping Center (collectively, "Remodeled Center"). If Lessor deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Lessor shall give Lessee no less than 60 days prior notice and Lessee shall allow such entry. Lessor shall use reasonable efforts to complete any work affecting the Premises in an efficient manner so as not to interfere unreasonably with Lessee's business. Lessee shall not be entitled to any damages for any inconvenience or any disruption to Lessee's business caused by such work; provided, however, the Base Rent paid by Lessee for the period of the inconvenience shall be abated in proportion to the degree that Lessee's use of the Premises is impaired. Lessor shall have the right to use portions of the Premises to accommodate any structures required for the Remodeled Center, provided that if as a result thereof there is a permanent decrease in the floor area of the Premises of 3% or more, there shall be a proportionate downward adjustment of Base Rent and Lessee's Share.

3. **Term.**

3.1 **Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 **Early Possession.** If an Early Possession Date has been specified in Paragraph 1.4, the Parties intend that Lessee shall have access to the Premises as of the Early Possession Date for purposes of preparing and fixturing the Premises for the conduct of Lessee's business. If Lessee totally or partially occupies the Premises prior to the Commencement Date for any reason (and for purposes hereof, "occupancy" shall include, without limitation, Lessee's entry onto the Premises for purposes of preparing and fixturing the Premises for business), the obligation to pay Base Rent and Percentage Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to Lessee's obligations to carry insurance and to maintain the Premises) shall be in effect during such period, except that Lessee's obligation to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums shall only be in effect prior to the Commencement Date if Lessee has opened for business in the Premises prior to the Commencement Date. Any such early possession shall not affect the Expiration Date.

3.3 **Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Start Date. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of the delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. Except as otherwise provided, if possession is not tendered to Lessee by the Commencement Date and Lessee does not terminate this Lease, as aforesaid, any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession of the Premises is not delivered within 4 months after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. **Rent.**

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent and, if applicable, Percentage Rent, Lessee's Share (as specified in Paragraph 1.7) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs incurred by Lessor relating to the ownership and operation of the Shopping Center, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and replacement as reasonably necessary, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, parking lot striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(dd) Common electrical, plumbing and other utilities servicing any building in the Shopping Center and/or

the Common Areas.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management (including, but not be limited to, a property management fee to Lessor equal to 5% of Base Rent and Percentage Rent, security services, and the costs of any environmental inspections.

(iv) Reserves set aside for equipment, maintenance, repair and replacement of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation of the Shopping Center.

(ix) The cost of any capital improvement to the Building or the Shopping Center not covered under the provisions of Paragraph 2.3; provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) If Lessor determines that the method of proration of any item included within Common Area Operating Expenses is

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inequitable, Lessor may prorate such item on the basis of usage or other equitable considerations. Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises, the Building or to any other premises or building in the Shopping Center or to the operation, repair and maintenance thereof shall be allocated entirely to such premises or building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to any premises or building or to the operation, repair and maintenance thereof shall be equitably allocated by Lessor to all buildings in the Shopping Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Shopping Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses incurred during the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) If there are one or more Major Tenants (as hereinafter defined) within the Shopping Center, then at Lessor's sole option, the amount to be reimbursed by such Major Tenants to Lessor for all or a portion of the Common Area Operating Expenses may be determined by alternative equitable methods (e.g., a Major Tenant may pay directly for its own security), and the actual amount paid by such Major Tenants shall be credited against the Common Area Operating Expenses allocated to other tenants of the Shopping Center; provided, however, that in such event the rentable area of the buildings leased to such Major Tenants shall be excluded from the rentable area of the Shopping Center for purposes of determining Lessee's Share of Common Area Operating Expenses for those specific items, notwithstanding the percentage set forth in Paragraph 1.7. As used herein, the term "Major Tenant" shall mean a tenant leasing at least 15,000 square feet of rentable area within the Shopping Center.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.**

(a) **Agreed Use; Agreed Trade Name.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose, and Lessee shall operate at the Premises only under the Agreed Trade Name and under no other trade name. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvement on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises, and/or is not in conflict with or incompatible with the existing or proposed uses (whether or not exclusive) of other occupants of the Shopping Center. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Trade Name, so long as the same is not in conflict with or incompatible with the nature and character of the Shopping Center or other existing or proposed uses of other occupants of the Shopping Center. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use and/or Agreed Trade Name.

(b) **Continuous Operation.** Lessee shall continuously (i) operate and conduct the Agreed Use under the Agreed Trade Name within the entire Premises in a reputable manner and in conformity with industry standards of practice prevailing in the field of business among merchants engaged in the same or similar business in the city in which the Premises are located, (ii) staff the Premises with sufficient sales personnel, stock the Premises with adequate merchandise and exercise sound business practices so as to maximize Gross Sales for the benefit of Lessor. At a minimum, Lessee shall keep the Premises continuously open for business Monday through Friday from 9:00 a.m. to 6:00 p.m., Saturday from 8:00 a.m.

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to 6:00 p.m., and Sunday from 10:00 a.m. to 6:00 p.m. If Lessee fails to comply with the requirements of this Paragraph 6.1(b), then in addition to any and all other rights and remedies of Lessor, Lessee shall pay to Lessor an amount equal to 1/15th of the Base Rent for each day or portion thereof that Lessee fails to so comply. Such sum shall be in addition to, and not a part of, the Base Rent otherwise due under this Lease.

(c) **Violations of Exclusive Use Rights.** Lessee acknowledges that Lessor may grant, or may have previously granted, exclusive use rights to other tenants of the Shopping Center and agrees that a material consideration to Lessor in entering into this Lease is Lessee's covenant to limit its use of the Premises to the Agreed Use under the Agreed Trade Name as set forth above. Lessee's violation of exclusive use rights granted to other tenants of the Shopping Center will result in Lessor suffering irreparable harm and, therefore, in addition to all other rights and remedies available to Lessor, Lessor may seek to enjoin Lessee's breach of such covenant and Lessee shall be liable for any damages incurred or sustained by Lessor to such other tenants whose exclusive use rights are breached by Lessee. In no event shall Lessor be liable to Lessee for any failure of any other tenants of the Shopping Center to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties.

(d) **Other Tenancies.** Lessor, at its sole discretion, reserves the absolute right to establish procedures to control other tenancies in the Shopping Center. Regardless of whether any specific tenants are shown on any site plan attached hereto, Lessee does not rely on that fact, nor does Lessor represent that any specific tenant or number or type of tenants shall or shall not during the Term occupy any portion of the Shopping Center, nor does Lessee rely on any other tenant operating its business in the Shopping Center at any particular time or times. Further, no conduct by any tenant, subtenant or other occupant of, or any customer of, or any supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Lessee from the Premises, and Lessee hereby waives any and all claims that it might otherwise have against Lessor by reason thereof.

## 6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

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

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

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Shopping Center not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible

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at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

**6.3 Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

**6.4 Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

**7. Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

**7.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

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

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

**7.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

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(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

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

**7.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per Paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee Owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises), even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

**8. Insurance; Indemnity.**

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

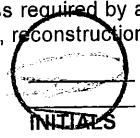
**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

**8.3 Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee under Paragraph 8.4. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction



or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$1,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("**Rental Value Insurance**"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

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

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

**8.4 Lessee's Property; Business Interruption Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

**8.5 Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

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

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

**8.8 Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Shopping Center, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

**8.9 Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

**9. Damage or Destruction.**

**9.1 Definitions.**

(a) "**Premises Partial Damage**" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 1.

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(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 6.2(a), in, on, or under the Premises or Common Areas which requires repair, remediation, or restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total Replacement Cost of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full Replacement Cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Damage to Shopping Center.** In the event of any damage or destruction to other portions of the Building or to any other buildings in the Shopping Center, whether insured or uninsured (and whether or not there is also damage or destruction to the Premises), which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction, Lessor may either (i) repair such damage or destruction as soon as reasonably possible without expense to Lessee, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage or destruction. Such termination shall be effective 60 days following the date of such notice.

9.7 **Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Base Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

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9.8 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes.**

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Shopping Center, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Shopping Center address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Shopping Center is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Shopping Center, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Shopping Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request, or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

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

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

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. To the extent any such utilities and/or services are not separately metered, Lessee shall pay Lessee's Share thereof in accordance with Paragraph 4.2. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

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

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent and Percentage Rent Rate to 110% of the Base Rent and Percentage Rent Rate then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

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

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting

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12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

- (a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.
- (b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.
- (c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.
- (d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.
- (e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)
- (f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.
- (g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

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

- (a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.
- (b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.
- (c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.
- (d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.
- (e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

- (a) The vacating or abandonment of the Premises. Lessee shall be deemed to have vacated the Premises if Lessee ceases to continuously operate its business in the Premises for a period of 5 consecutive days.
- (b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee.
- (c) The commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.
- (d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.
- (e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other

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judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

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

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

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

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

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

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent and Percentage Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

**13.6 Breach by Lessor.**

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

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30

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days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the parking spaces situated within the parking area, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.13 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.13, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrances may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. **Notices.**

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

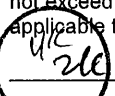
(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

  
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(c) Buyer and Seller agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent and Percentage Rent Rate shall be increased to 150% of the Base Rent and Percentage Rent Rate applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

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

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

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "**Security Device**"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "**Lender**") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "**Non-Disturbance Agreement**") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion.

34. **Signs.** Lessor may place on the Premises ordinary "**For Sale**" signs at any time and ordinary "**For Lease**" signs during the last 6 months of the term hereof. All signs must comply with all Applicable Requirements. Lessee shall not place, construct, or maintain on the glass panes or supports of the show windows of the Premises, the doors, exterior walls or the roof of the Building, or anywhere else within the Shopping Center outside of the

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Premises, or on any interior portions of the Premises that are visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material or any other items without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion. Lessor shall designate the size, shape, color, design, and location of all exterior sign(s) to be installed by Lessee, and Lessee shall, at Lessee's sole cost and expense, fabricate, construct and install all such sign(s) in full compliance with Lessor's designation and in accordance with the Sign Criteria for the Shopping Center attached hereto, if any. Lessee agrees to submit plans and specifications for Lessee's sign(s) for Lessor's written approval within 30 days after the full execution hereof and to install such sign(s) prior to opening for business at the Premises. Lessor, at Lessee's cost, may remove any item placed, constructed or maintained in, upon or about the Premises or Shopping Center which does not comply with this paragraph. In the event there is a pole, pylon or monument sign for the Shopping Center, Lessor shall have the right, but not the obligation, to install lettering designating Lessee's business on such sign, at Lessee's expense, with Lessor's approval of location, size, style and color. All signs that are permanently attached to the Premises or Building shall become the property of Lessor at the expiration or earlier termination hereof; provided, however, that Lessee shall promptly remove all such signs if Lessor so elects, and Lessee shall promptly repair all damage caused by such removal. Lessee shall not place, construct or maintain in, upon or about the Premises any search lights, flashing lights, loudspeakers, phonographs or other visual or audio media.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

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

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.

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

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend the term of or renew this Lease or to extend or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

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

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

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. While Lessor does not assume any responsibility to provide any security measures or any liability for failure to provide security measures or for any inadequacy thereof, Lessor shall have the authority to institute or continue such security measures as Lessor in its sole discretion deems necessary or appropriate from time to time, the cost and expenses of which shall be considered Common Area Operating Expenses. To the degree directed by Lessor, Lessee shall coordinate its security measures at

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the Premises with the security measures instituted by Lessor, if any.

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

42. **Building Planning.** Lessor shall have the right at any time or times, upon giving Lessee not less than 60 days prior written notice, to provide and furnish Lessee with space of comparable visibility located elsewhere within any of the buildings within the Shopping Center and to move Lessee into such new space, provided that the usable area of such new space is not less than the usable area of the Premises and provided that all of Lessee's reasonable out-of-pocket moving expenses (including but not limited to the cost of moving Lessee's personal property, the cost of reprinting Lessee's stationery or other business materials with the new address, and the cost to relocate and reinstall tenant improvements and Lessee's telecommunications and computer equipment) shall be paid by Lessor, and provided further that Lessor shall construct at Lessor's expense such improvements to such new space as shall be necessary to place it in a condition that is substantially comparable to the Premises. Except as provided in the immediately preceding sentence, Lessor shall have no obligation to improve such space or pay any other expenses incurred by Lessee as a result of such relocation. On such relocation, the terms and conditions of this Lease shall remain in full force and effect, including but not limited to the Base Rent payable hereunder and Lessee's Share (even if the usable area of such relocated Premises is in excess of the usable area of the Premises), except that the Premises shall be in such new location. Upon Lessor's request, the Parties shall execute an amendment to this Lease in form required by Lessor confirming the relocation of the Premises to such new location. If the new space does not meet with Lessee's approval, which approval Lessee shall give or withhold in accordance with Paragraph 36, Lessee shall have the right to cancel this Lease by giving Lessor written notice thereof within 15 days of receipt of Lessor's notification of its intent to relocate Lessee. Lessee's failure to give such notice within such 15 day period shall be deemed Lessee's approval of the new space. If timely notice is given by Lessee, then this Lease shall terminate unless Lessor rescinds Lessor's prior notice of its intent to relocate Lessee within 10 days after Lessor's receipt of Lessee's notice of cancellation.

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

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

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

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

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

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease  is  is not attached to this Lease.

50. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

51. This Lease and all terms thereof is contingent upon the timely and successful execution of Settlement and Termination Agreement for the current operator, Mary Kyung Sung and Nak Bum Sung. Should said Settlement and Termination Agreement not be timely executed, this Lease and all terms thereof shall be null and void.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

  
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ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

- 1. SEE ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.
Executed at: Los Angeles, CA Executed at: Los Angeles, CA
On: On:

By LESSOR:
Creative Concepts Group, Inc.
By: Property Management Associates, Inc.
Authorized Agent for Owner
By:
Name Printed: Thomas Spear
Title: Authorized Agent for Owner
By:
Name Printed:
Title:
Address:
Telephone: ( )
Facsimile: ( )
Federal ID No.

By LESSEE:
Yongmi Kim and Zong Eun Kim, Husband & Wife,
Individually & Collectively
By:
Name Printed: Yongmi Kim
Title:
By:
Name Printed: Zong Eun Kim
Title:
Address:
Telephone: ( )
Facsimile: ( )
Federal ID No.

BROKER:
Attn:
Title:
Address:
Telephone: ( )
Facsimile: ( )
Email:
Federal ID No.:

BROKER:
Attn:
Title:
Address:
Telephone: ( )
Facsimile: ( )
Email:
Federal ID No.:

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

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# RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated November 30, 2009

By and Between (Lessor) Creative Concepts Group, Inc.

(Lessee) Yongmi Kim and Zong Eun Kim, Husband & Wife,  
Individually and Collectively

Address of Premises: 11913 Wilshire Blvd., Los Angeles, CA 90025

Paragraph 52

**A. RENT ADJUSTMENTS:**

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): \_\_\_\_\_

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one):  CPI W (Urban Wage Earners and Clerical Workers) or  CPI U (All Urban Consumers), for (Fill in Urban Area): \_\_\_\_\_

\_\_\_\_\_, All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the  first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or  (Fill in Other "Base Month"): \_\_\_\_\_. The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

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II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s): \_\_\_\_\_)

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an  appraiser or  broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

- 1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
- 2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:


On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
<u>December 1, 2012</u>	<u>\$4,866.75</u>
<u>December 1, 2013</u>	<u>\$5,012.75</u>
<u>December 1, 2014</u>	<u>\$5,163.13</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

B. NOTICE: Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE: The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

  
INITIALS

  
INITIALS

**ASSIGNMENT OF LEASE**

The undersigned Yongmi Kim and Zong Eun Kim, present Lessees in that certain Lease dated November 30, 2009 which was executed by and between Yongmi Kim and Zong Eun Kim, Husband and Wife, jointly and severally as LESSEES, and Creative Concepts Group, Inc., as LESSOR, covering the premises known as 11913 Wilshire Blvd., Los Angeles, CA 90025, do hereby sell, assign and transfer all of our right, title and interest of the said lease to Sung Jin Hwang, An Individual and J&Y Pastry, Inc., a California Corporation, both jointly and severally.

Dated: 11/18/2010 By: [Signature]  
Yongmi Kim  
Dated: 11/18/2010 By: [Signature]  
Zong Eun Kim

**ASSUMPTION OF LEASE**

In consideration of the above Assignment by the Lessees, and written consent of the Lessor(s) thereto, the undersigned hereby assume and agree to be bound by of all the terms and conditions of the said lease which the Lessee therein agreed to be made and performed and to pay the rental therein provided.

Dated: 11/19/10 By: [Signature]  
Sung Jin Hwang  
Dated: 11/19/10 By: [Signature]  
J&Y Pastry, Inc.  
By: Jee Won Hwang, Corporate Officer

**CONSENT TO ASSIGNMENT**

In consideration of the assumption of the Lease referred to heretofore by the above prior named assigned of said Lease, the undersigned Lessor hereby consents to the above assignment, but does not hereby waive any of his rights under said Lease or any extensions thereof, as to the Lessee, or as to any assignee.

**LESSOR:**  
**Creative Concepts Group, Inc.**

**Inc.**

**By: Property Management Associates,**  
**As Authorized Agent for Lessor**

Dated: 11/30/2010

By: [Signature]  
Patrick Lacey, Chief Operating Officer

**Assignor's Notice Address:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Assignee's Notice Address:**  
915 S. Mariposa Ave.  
Los Angeles, CA 90006

SUNG JIN HWANG  
915 S MARIPOSA AVE  
LOS ANGELES, CA 90006

REC'D NOV 24 2010

A01/11913

16-3939/1220  
200636856

221

DATE 11/19/10

© DELUXE WALLET OR DUPLICATE

PAY TO  
THE ORDER OF

*Prop Management Assoc.*

\$ 5,670<sup>00</sup>/<sub>100</sub>

*Five thousand six hundred seventy and no/100*

DOLLARS

Commitment of Excellence

**HANMI BANK**  
VERMONT OFFICE 026  
933 SOUTH VERMONT AVENUE  
LOS ANGELES, CALIFORNIA 90006  
TELEBANC (213) 387-8500

MEMO *Salary Deposit*

*Sung Jin Hwang* MP

⑆ 22039399⑆ 0221 200636856 ⑆

SPECIALTY INK



**ASSIGNMENT OF LEASE**

The undersigned Sung Jin Hwang and Y&S Pastry, Inc., present Assignees to that certain Lease dated November 30, 2009 which was executed by and between Yongmi Kim and Zong Eun Kim, Husband and Wife, jointly and severally as LESSEES, and Creative Concepts Group, Inc., as LESSOR, covering the premises known as 11913 Wilshire Blvd., Los Angeles, CA 90025, do hereby sell, assign and transfer all of our right, title and interest of the said lease to Pedro Barragan, An Individual.

Dated: 09/23/11

By: Sung Jin Hwang  
Sung Jin Hwang, An Individual

Dated: 09/23/2011

By: Jee Won Hwang  
Y&S Pastry, Inc.  
By: Jee Won Hwang, Corporate Officer

**ASSUMPTION OF LEASE**

In consideration of the above Assignment by the Lessees, and written consent of the Lessor(s) thereto, the undersigned hereby assume and agree to be bound by of all the terms and conditions of the said lease which the Lessee therein agreed to be made and performed and to pay the rental therein provided.

Dated: 9/23/11

By: Pedro Barragan M.  
Pedro Barragan, An Individual

**CONSENT TO ASSIGNMENT**

In consideration of the assumption of the Lease referred to heretofore by the above prior named assigned of said Lease, the undersigned Lessor hereby consents to the above assignment, but does not hereby waive any of his rights under said Lease or any extensions thereof, as to the Lessee, or as to any assignee.

**LESSOR:**  
*Creative Concepts Group, Inc.*

*By: Property Management Associates, Inc.  
As Authorized Agent for Lessor*

Dated: 9/26/11

By: Patrick Lacey  
Patrick Lacey, Chief Operating Officer

**Assignor's Notice Address:**  
915 S. Mariposa Avenue  
Los Angeles, CA 90006

**Assignee's Notice Address:**  
2908 Vineyard Avenue  
Los Angeles, CA 90016

**First Amendment to Lease**

**This First Amendment ("Amendment") to Lease dated November 30, 2009, by and between Creative Concepts Group, Inc., A California Corporation ("LANDLORD") and Sung Jin Hwang, As Successor-in-interest to Yongmi Kim and Zong Eun Kim, Husband and Wife, Jointly and Severally ("TENANT") is made as of November 8, 2010.**

**Recitals**

- A. Lessor and Lessee are parties to that certain Lease dated November 30, 2009 ("Lease") for rental of the Premises located at 11913 Wilshire Boulevard, Los Angeles, California ("Premises")
- B. Lessor and Lessee have accepted Assignee, Sung Jin Hwang as successor-in-interest to Yongmi Kim and Zong Eun Kim and await fully executed documentation to complete assignment transaction.
- C. Lessor and Successor-in-interest to Lessee desire by this Amendment to amend the Lease as hereinafter set forth. Unless otherwise specified or required from context, all terms used herein shall have the same meaning as in the Lease.

**Terms**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Lessor and Lessee hereby agree as follows:

- 1. **Option to Renew.** Tenant shall have One (1) Option to Renew the term of this Lease for an additional period of Five (5) years ("Option Term") Tenant must notify Landlord of its intent to exercise the Option no more than one hundred eighty (180) days, but no less than ninety (90) days, prior to the expiration of the Lease Term. The Base Rent for the Option Term shall be the then prevailing Market Value Rents to be determined at Landlord's sole discretion. The Base Rent for Option Period does not need to be higher than the last month of the term.
- 2. **Terms and Conditions.** Except as specifically amended herein, all terms and conditions of said Lease and its Exhibits shall remain in full force and effect.

**UNLESS OTHERWISE PROVIDED FOR IN THIS AMENDMENT, ALL OTHER TERMS AND CONDITIONS OF THE LEASE SHALL REMAIN THE SAME, AND IN FULL FORCE AND EFFECT.**

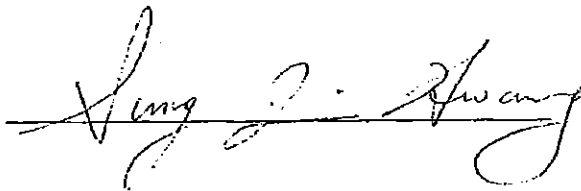
**Agreed and Approved By:**

**Lessor:  
CREATIVE CONCEPTS GROUP, INC.**

**Lessee:  
Sung Jin Hwang, An individual (As Successor-in-interest to Yongmi Kim & Zong Eun Kim):**

**By: Property Management Associates  
Authorized Agent for Owner**

By  \_\_\_\_\_  
Patrick Lacey

By  \_\_\_\_\_

Its Chief Operating Officer

Its \_\_\_\_\_

Date: December 1, 2010

Date: November 30, 2010

Property  
Management  
Associates

---

July 1, 2014

Mr. Pedro Barragan  
11913 Wilshire Blvd.  
Los Angeles, CA 90025

RE: 11913 Wilshire Blvd.  
Los Angeles, CA 90025  
Second Amendment to Lease

Dear Pedro,

Please find the enclosed fully-executed Second Amendment to Lease for the above Premises for your files.

We value your tenancy and encourage you to contact our office with any questions or concerns at 323-295-2000.

Sincerely,



Michele Tsai  
Administrative Assistant

cc: Jason LaPoint, Portfolio Manager

Enc: a/s

SECOND AMENDMENT TO LEASE AGREEMENT

This Second Amendment ("Second Amendment") to that certain Lease dated November 30, 2009, by and between Creative Concepts Group, Inc., a California Corporation ("Lessor") and Pedro Barragan ("Lessee"), successor in interest to Youngmi Kim and Zong Eun Kim is made as of June 13, 2014.

Recitals

A. Lessor and Lessee are parties to that certain Lease dated November 30, 2009 ("Lease") for rental of the Premises located at 11913 Wilshire Boulevard, Los Angeles, California ("Premises").

B. Lessor and Lessee are parties to that certain First Amendment to Lease dated November 8, 2010 ("First Amendment").

C. Lessor and Lessee desire by this Second Amendment to amend the Lease as hereinafter set forth. Unless otherwise specified or required from context, all terms used herein shall have the same meaning as in the Lease.

Terms

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

- 1. Term Extension. Lessee has exercised Lessee's Option to Renew. The Lease Term is extended for one (1) additional five (5) year period ("Term Extension"). The Term Extension shall commence effective December 1, 2014 and shall expire on November 30, 2019. Lessee has no more renewal options.
2. Accessibility; Americans with Disabilities Act: (a) The Premises have not undergone an inspection by a Certified Access Specialist (CASP). (b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.
3. Base Rent Schedule. Base Rent for the Extension Term shall be as follows:
Table with 2 columns: Period (inclusive), Monthly Base Rent. Rows: December 1, 2014 - November 30, 2015 (\$5,481.00), December 1, 2015 - November 30, 2016 (\$5,953.50), December 1, 2016 - November 30, 2017 (\$6,331.50), December 1, 2017 - November 30, 2018 (\$6,615.00), December 1, 2018 - November 30, 2019 (\$6,993.00)
4. Energy Data: Tenant to provide energy usage data for the Premises to the Landlord upon request. If Tenant is unable to provide the requested energy data within 10 days, Landlord may obtain such information directly from the utility company on the Tenant's behalf. This includes the Landlord signing for the Tenant on any utility authorization forms that may be needed to obtain the requested energy data.
5. Options: This amendment exercises tenant's remaining 5 year option to renew. Tenant has no remaining options to extend the Lease.
6. Conflict. In the event of a conflict between the terms and provisions of this Second Amendment and the terms and provisions of the Lease or the First Amendment, the terms and provisions of the Second Amendment shall control.
7. No Other Amendments. Except as expressly set forth herein, all terms and conditions of the Lease are not modified and shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor, and Lessee have executed this Agreement as of the date first set forth above.

LESSOR: CREATIVE CONCEPTS GROUP, INC. a California Corporation

LESSEE: PEDRO BARRAGAN an individual

Property Management Associates, Inc., a California corporation Its Authorized Representative

By: Pedro Barragan M.

By: [Signature]

Its: Lazy Daisy Cafe

Date: 6-30-14

Date: 6/18/14

THIRD AMENDMENT TO LEASE AGREEMENT

This Third Amendment ("Third Amendment") to that certain Lease dated November 30, 2009, by and between Creative Concepts Group, Inc., a California Corporation ("Lessor") and Pedro Barragan ("Lessee"), successor in interest to Yongmi Kim and Zong Eun Kim is made as of April 24, 2017.

Recitals

- A. Lessor and Lessee are parties to that certain Lease dated November 30, 2009 ("Lease") for rental of the Premises located at 11913 Wilshire Boulevard, Los Angeles, California ("Premises").
- B. Lessor and Lessee are parties to that certain First Amendment to Lease dated November 8, 2010 ("First Amendment").
- C. Lessor and Lessee are parties to that certain Second Amendment to Lease dated November 8, 2010 ("Second Amendment").
- D. Lessor and Lessee desire by this Third Amendment to amend the Lease as hereinafter set forth. Unless otherwise specified or required from context, all terms used herein shall have the same meaning as in the Lease.

Terms

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

- 1. Amortized Rent. Lessee has an outstanding balance of \$4,496.63. Tenant will make monthly payments of \$500.00 towards this outstanding balance until the balance is paid off.
- 2. Conflict. In the event of a conflict between the terms and provisions of this Third Amendment and the terms and provisions of the Lease or the Second Amendment, the terms and provisions of the Third Amendment shall control.
- 3. No Other Amendments. Except as expressly set forth herein, all terms and conditions of the Lease are not modified and shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor, and Lessee have executed this Agreement as of the date first set forth above.

LESSOR:  
CREATIVE CONCEPTS GROUP, INC.  
a California Corporation

LESSEE:  
PEDRO BARRAGAN  
an individual

Property Management Associates, Inc.,  
a California corporation  
Its Authorized Representative

By: Pedro Barragan

By: 

Its: Owner

Date: 9-11-17

Date: 9/11/2017

## FOURTH AMENDMENT TO LEASE AGREEMENT

This Fourth Amendment ("Fourth Amendment") to that certain Lease dated November 30, 2009, by and between Creative Concepts Group, Inc., a California Corporation ("Lessor") and Pedro Barragan ("Lessee"), is made as of November 16, 2018.

## Recitals

- A. Lessor and Lessee are parties to that certain Lease dated November 30, 2009 ("Lease"); First Amendment to Lease dated November 8, 2010 ("First Amendment"); Second Amendment to Lease dated June 13, 2014 ("Second Amendment") and Third Amendment to Lease dated April 24, 2017 ("Third Amendment") for the rental of the Premises located at 11913 Wilshire Boulevard, Los Angeles, California ("Premises").
- B. Lessor and Lessee desire by this Fourth Amendment to amend the Lease as hereinafter set forth. Unless otherwise specified or required from context, all terms used herein shall have the same meaning as in the Lease.

## Terms

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

- Term Extension. The Lease Term is extended for one (1) additional five (5) year period ("Term Extension"). The Term Extension shall commence effective December 1, 2019 and shall expire on November 30, 2024. Tenant has no more renewal options.
- Base Rent Schedule. Base Rent for the Extension Term shall be as follows:
 

<u>Period (Inclusive)</u>	<u>Monthly Base Rent</u>
December 1, 2019 – November 31, 2020	\$8,505.00
December 1, 2020 – November 31, 2021	\$8,760.15
December 1, 2021 – November 31, 2022	\$9,022.95
December 1, 2022 – November 31, 2023	\$9,293.64
December 1, 2023 – November 31, 2024	\$9,572.45
- Rent Abatement. Base rent for December 1, 2019 and January 1, 2020 shall be abated.
- Security Deposit. The Security Deposit required on this term is \$8,505.00. The Tenant is hereby required to add \$2,835.00 to the current Security Deposit of \$5,670.00.
- Conflict. In the event of a conflict between the terms and provisions of this Fourth Amendment and the terms and provisions of the Lease or the Second Amendment, the terms and provisions of the Fourth Amendment shall control.
- No Other Amendments. Except as expressly set forth herein, all terms and conditions of the Lease are not modified and shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor, and Lessee have executed this Agreement as of the date first set forth above.

LESSOR:  
CREATIVE CONCEPTS GROUP, INC.  
a California Corporation

Property Management Associates, Inc.,  
a California corporation  
Its Authorized Representative

By: 

Date: 12/13/18

LESSEE:  
PEDRO BARRAGAN  
an individual

By: Pedro Barragan

Its: owner

Date: 11/27/18

**FIFTH AMENDMENT TO LEASE AGREEMENT**

This Fifth Amendment ("Fifth Amendment") to that certain Lease dated November 30, 2009, by and between Creative Concepts Group, Inc., a California Corporation ("Lessor") and Pedro Barragan ("Lessee"), is made as of January 27, 2020.

**Recitals**

- A. Lessor and Lessee are parties to that certain Lease dated November 30, 2009 ("Lease"); First Amendment to Lease dated November 8, 2010 ("First Amendment"); Second Amendment to Lease dated June 13, 2014 ("Second Amendment"); Third Amendment to Lease dated April 24, 2017 ("Third Amendment") and Fourth Amendment to Lease dated November 16, 2018 for the rental of the Premises located at 11913 Wilshire Boulevard, Los Angeles, California ("Premises").
- B. Lessor and Lessee desire by this Fifth Amendment to amend the Lease as hereinafter set forth. Unless otherwise specified or required from context, all terms used herein shall have the same meaning as in the Lease.

**Terms**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. Option. Lessee shall grant to Lessor One (1), Five (5) year options to renew. The option is granted upon the following terms and conditions;
  - a. Lessor shall exercise the Option by delivering written notice to Lessee of such exercise not later than Six (6) months prior to the expiration of the Term.
  - b. Lessor shall not be in default of the Lease on the date the Option is exercised and Lessor shall not be in default of the Lease on the commencement date of the Extended Term.
  - c. At no time during the Term of the Lease shall the Lessor have been delinquent in the payment of any amount(s) due Lessee under the Lease.
  - d. In the event any aforesaid condition is not satisfied by Lessor, Lessor shall forfeit said Option.
  - e. Base rent at option period shall be the Fair Market Value not less than the last month rent of the term.
2. Conflict. In the event of a conflict between the terms and provisions of this Fifth Amendment and the terms and provisions of the Lease or the Second Amendment, the terms and provisions of the Fifth Amendment shall control.
3. No Other Amendments. Except as expressly set forth herein, all terms and conditions of the Lease are not modified and shall remain in full force and effect.

IN WITNESS WHEREOF, Lessor, and Lessee have executed this Agreement as of the date first set forth above.

LESSOR:  
CREATIVE CONCEPTS GROUP, INC.  
a California Corporation

Property Management Associates, Inc.,  
a California corporation  
Its Authorized Representative

By: 

Date: 3-11-2020

LESSEE:  
PEDRO BARRAGAN  
an individual

By: Pedro Barragan M

Its: President

Date: 3/10/2020

# AIRCRE

## STANDARD MULTI-TENANT SHOPPING CENTER LEASE - NET

### 1. Basic Provisions ("Basic Provisions").

1.1 **Parties.** This Lease ("Lease"), dated for reference purposes only October 23, 2019, is made by and between Creative Concepts Group, Inc. ("Lessor") and JV Noodles LLC ("Lessee") (collectively the "Parties", or individually a "Party").

1.2 **Premises:** That certain portion of the Shopping Center (as defined below), including all Improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state): 11911 Wilshire Blvd., Los Angeles, CA 90025 ("Premises"). The Premises are located in the County of Los Angeles and generally described as (describe briefly the nature of the Premises): approximately 3,020 SQ FT of commercial space. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Shopping Center. The Premises and the Building are situated within the Shopping Center known as                     . The Premises, the Building, the Common Areas, and all other buildings and Improvements within said Shopping Center, together with the land upon which they are located, are herein collectively referred to as the "Shopping Center." (See also Paragraph 2)

1.3 **Term:** ten (10) years and three (3) months ("Original Term") commencing November 1, 2019 ("Commencement Date") and ending ten (10) years and three (3) months thereafter ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing                      ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** \$16,610 per month ("Base Rent"), payable on the first day of each month commencing February 1, 2020 ("Rent Commencement Date"). (See also Paragraph 4)

If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51.

1.6 **Percentage Rent Rate:** None percent (                    %) of Gross Sales. Percentage Rent shall be due and payable in accordance with the provisions of the Percentage Rent Addendum, if any, attached hereto and made a part hereof, and Paragraph 4 hereof.

1.7 **Lessee's Share of Common Area Operating Expenses:** Forty point Seventy-six percent (40.76%) ("Lessee's Share"). In the event that that size of the Premises and/or the Shopping Center are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.8 **Merchants' Association Annual Dues:** None per year ("Merchants' Association Dues"). Lessee shall pay Merchants' Association Dues and/or become a member of the Merchants' Association in accordance with the provisions of the Merchants' Association Addendum, if any, attached hereto.

#### 1.9 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$16,610 for the period 2/1/2020-2/29/2020.
- (b) Common Area Operating Expenses: \$3,611 for the period 2/1/2020-2/29/2020.
- (c) Security Deposit: \$24,994.28 ("Security Deposit"). (See also Paragraph 5)
- (d) Merchants' Association Dues: N/A for the period N/A.
- (e) Other: N/A for N/A.
- (f) Total Due Upon Execution of this Lease: \$45,215.28.

1.10 **Agreed Use:** Lessee shall use the Premises for the operation of a restaurant selling pho and other incidental Asian food, for on and off Premises consumption, catering and delivery services, including the sale of promotional items. (See also Paragraph 6)

1.11 **Agreed Trade Name:** Unknown Kitchen. (See also Paragraph 6)

1.12 **Insuring Party.** Lessor is the "Insuring Party". (See also Paragraph 8)

1.13 **Real Estate Brokers.** (See also Paragraph 15 and 25)

(a) **Representation:** Each Party acknowledges receiving a Disclosure Regarding Real Estate Agency Relationship, confirms and consents to the following agency relationships in this Lease with the following real estate brokers ("Broker(s)") and/or their agents ("Agent(s)");

Lessor's Brokerage Firm Matthews Retail Group, Inc. License No. 1972189 Is the broker of (check one):  the Lessor; or  both the Lessee and Lessor (dual agent).

Lessor's Agent Josh Cordray/Michael Pakravan License No. 02039302/01706065 Is (check one):  the Lessor's Agent (salesperson or broker associate); or  both the Lessee's Agent and the Lessor's Agent (dual agent).

Lessee's Brokerage Firm Newmark Knight Frank License No.                      Is the broker of (check one):  the Lessee; or  both the Lessee and Lessor (dual agent).

Lessee's Agent Bryan Norcott License No.                      Is (check one):  the Lessee's Agent (salesperson or broker associate); or  both the Lessee's Agent and the Lessor's Agent (dual agent).

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (~~or if there is no such agreement, the sum of                      or                     % of the total Base Rent~~) for the brokerage services rendered by the Brokers.

1.14 **Guarantor.** The obligations of the Lessee under this Lease shall be guaranteed by Hua Gui Liang, an individual ("Guarantor").

                      
INITIALS

H.G.L.  
INITIALS



(See also Paragraph 37)

1.15 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- an Addendum consisting of Paragraphs 51 through 53;
- a site plan marked Exhibit A depicting the Premises;
- a site plan marked Exhibit A depicting the Shopping Center;
- a current set of the Rules and Regulations for the Shopping Center;
- a current set of the Sign Criteria for the Shopping Center;
- a Work Letter;
- other (specify): Addendum consisting of Paragraphs 2.10, 4.2(d), 4.2(f), 4.4, 6.1(a), 6.1(b), 6.1(e), 6.2(e), 7.3(d), 8.7, 9.5, 9.9, 9.10, 10.1, 11, 12.4, 12.5, 13.7, 14, 23.1, 30.5, 30.6, 34, 41, 50, 55, 56, 57, Lazy Daisy Cafe Brentwood Menu.

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.


2.2 Condition. Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"). ~~and so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within 30 days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Premises. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler system, roof, foundations, and/or bearing walls). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises. As is, where is.~~

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications to the Premises which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's Intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 36 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new

  
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Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) It has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

~~2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

2.6 **Vehicle Parking.** Lessee shall not use and shall not permit its employees to use any parking spaces in the Shopping Center, ~~except for parking by vehicles that are no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessee shall permit its employees to only occupy those parking spaces, if any, as depicted as employee parking spaces on the Shopping Center site plan.~~ Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) **Exclusive of United Parcel Service, Federal Express, U.S. Postal Service, and similar courier services,** Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities. **Provided that Lessee's deliveries do not materially interfere with business operations of the other tenants in the Shopping Center, Lessee shall have the right to receive deliveries during business hours.**

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Shopping Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, nor the right to display merchandise or conduct sales in the Common Areas. Any such storage, display or sales shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, as exercised in Lessor's sole discretion, which consent may be revoked at any time. In the event that any unauthorized storage or displays shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Shopping Center and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations of which Lessee has prior written notice, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Shopping Center. **In the event of a conflict between the Rules and Regulations and the provisions of this Lease, the provisions of this Lease shall control.**

2.10 **Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes or additions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, elevations, landscaped areas, signage, walkways and utility raceways;

(b) To use and close temporarily any of the Common Areas for the purpose of maintaining, repairing and altering the Shopping Center, so long as reasonable access to the Premises remains available, and to close temporarily any of the Common Areas to whatever extent is required in the opinion of Lessor's counsel to prevent a dedication of or the accrual of any rights of any persons or of the public to any of the Common Areas;


(c) To designate other land outside the boundaries of the Shopping Center to be a part of the Common Areas or to be entitled to use the Common Areas on a reciprocal basis;

(d) To add additional buildings and improvements to the Common Areas (but not buildings); and

(e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Shopping Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

2.11 **Common Areas - Promotional Events; Sidewalk Sales.** Lessor reserves the right, from time to time, in Lessor's sole discretion, to utilize portions of the Common Areas for promotional events, which may include but shall not be limited to entertainment. Lessor further reserves the right, in Lessor's sole discretion, to permit any one or more tenants of the Shopping Center to conduct the display and/or sale of merchandise from the sidewalks immediately adjacent to such tenants' respective premises.

2.12 **Common Areas - Remodeling.** At any time during the Term, Lessor may remodel or expand, in any manner, the existing Shopping Center, which work may include, without limitation, the addition of shops and/or new buildings to the Shopping Center (collectively, "Remodeled Center"). If Lessor deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Lessor shall give Lessee no less than 60 days prior notice and Lessee shall

  
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allow such entry. Lessor shall use reasonable efforts to complete any work affecting the Premises in an efficient manner so as not to interfere unreasonably with Lessee's business. Lessee shall not be entitled to any damages for any inconvenience or any disruption to Lessee's business caused by such work; provided, however, the Base Rent paid by Lessee for the period of the inconvenience shall be abated in proportion to the degree that Lessee's use of the Premises is impaired. Lessor shall have the right to use portions of the Premises to accommodate any structures required for the Remodeled Center, provided that if as a result thereof there is a permanent decrease in the floor area of the Premises of 3% or more, there shall be a proportionate downward adjustment of Base Rent and Lessee's Share.

### 3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If an Early Possession Date has been specified in Paragraph 1.4, the Parties intend that Lessee shall have access to the Premises as of the Early Possession Date for purposes of preparing and fixturing the Premises for the conduct of Lessee's business. If Lessee totally or partially occupies the Premises prior to the Commencement Date for any reason (and for purposes hereof, "occupancy" shall include, without limitation, Lessee's entry onto the Premises for purposes of preparing and fixturing the Premises for business), the obligation to pay Base Rent and Percentage Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to Lessee's obligations to carry insurance and to maintain the Premises) shall be in effect during such period, except that Lessee's obligation to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and Insurance premiums shall only be in effect prior to the Commencement Date if Lessee has opened for business in the Premises prior to the Commencement Date. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. **Lessee shall not be obligated to accept possession of the Premises earlier than the Commencement Date.** If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, **excluding** the payment of Rent, **which commences on the Rent Commencement Date**, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

### 4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Common Area Operating Expenses. Lessee shall pay to Lessor during the term hereof **following the Rent Commencement Date**, in addition to the Base Rent and, if applicable, Percentage Rent, Lessee's Share (as specified in Paragraph 1.7) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Shopping Center, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and replacement as reasonably necessary, of the following:  
(aa) The Common Areas and Common Area Improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, parking lot striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) **Exterior Common exterior** signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(dd) Common electrical, plumbing and other utilities servicing any building in the Shopping Center and/or the Common Areas.

(ee) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal (**trash disposal part of CAMs**), pest control services, property management (including, but not be limited to, a property management fee to Lessor equal to 5% of Base Rent and Percentage Rent), security services, ~~and the costs of any environmental inspections.~~

(iv) Reserves set aside for equipment, maintenance, repair and replacement of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) **Customary and reasonable** Auditors', accountants' and attorneys' fees and costs related to the operation of the Shopping Center.

(ix) The cost of any capital improvement to the Building or the Shopping Center not covered under the provisions of Paragraph 2.3; provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) If Lessor determines that the method of proration of any item included within Common Area Operating Expenses is inequitable, Lessor may prorate such item on the basis of usage or other equitable considerations. Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises, the Building or to any other premises or building in the Shopping Center or to the operation, repair and maintenance thereof shall be allocated entirely to such premises or building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to any premises or building or to the operation, repair and maintenance thereof shall be equitably allocated by Lessor to all buildings in the Shopping Center.

  
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(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said Improvements or facilities or to provide those services unless the Shopping Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within ~~150~~ **45** days after ~~the end of each calendar year~~ **written request (but not more than once each year)** Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments **(except any over-payment in the final year of the term of this Lease shall be refunded to Lessee within 45 days following the expiration of the term of this Lease)**. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within ~~30~~ **10** days after delivery by Lessor to Lessee of the statement.

(e) If there are one or more Major Tenants (as hereinafter defined) within the Shopping Center, then at Lessor's sole option, the amount to be reimbursed by such Major Tenants to Lessor for all or a portion of the Common Area Operating Expenses may be determined by alternative equitable methods (e.g., a Major Tenant may pay directly for its own security), and the actual amount paid by such Major Tenants shall be credited against the Common Area Operating Expenses allocated to other tenants of the Shopping Center; provided, however, that in such event the rentable area of the buildings leased to such Major Tenants shall be excluded from the rentable area of the Shopping Center for purposes of determining Lessee's Share of Common Area Operating Expenses for those specific Items, notwithstanding the percentage set forth in Paragraph 1.7. As used herein, the term "Major Tenant" shall mean a tenant leasing at least 15,000 square feet of rentable area within the Shopping Center.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

**4.3 Payment. Commencing on the Rent Commencement Date** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. ~~All monetary amounts shall be rounded to the nearest whole dollar.~~ In the event that any Invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

**5. Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. ~~If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition.~~ Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within ~~30~~ **90** days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

## 6. Use.

### 6.1 Use.

(a) **Agreed Use; Agreed Trade Name.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose, and Lessee shall operate at the Premises only under the Agreed Trade Name and under no other trade name. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Improvement on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises, and/or is not in conflict with or incompatible with the existing or proposed uses (whether or not exclusive) of other occupants of the Shopping Center. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Trade Name, so long as the same is not in conflict with or incompatible with the nature and character of the Shopping Center or other existing or proposed uses of other occupants of the Shopping Center. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use and/or Agreed Trade Name.

(b) **Continuous Operation.** Lessee shall continuously (i) operate and conduct the Agreed Use under the Agreed Trade Name within the entire Premises in a reputable manner and in conformity with industry standards of practice prevailing in the field of business among merchants engaged in the same or similar business in the city in which the Premises are located, (ii) staff the Premises with sufficient sales personnel, stock the Premises with adequate merchandise and exercise sound business practices so as to maximize Gross Sales for the benefit of Lessor. ~~At a minimum, Lessee shall keep the Premises continuously open for business Monday through Friday from 9:00 a.m. to 6:00 p.m., Saturday from 9:00 a.m. to 6:00 p.m., and Sunday from 10:00 a.m. to 6:00 p.m. If Lessee fails to comply with the requirements of this Paragraph 6.1(b), then in addition to any and all other rights and remedies of Lessor, Lessee shall pay to Lessor an amount equal to 1/15th of the Base Rent for each day or portion thereof that Lessee fails to so comply. Such sum shall be in addition to, and not a part of, the Base Rent otherwise due under this Lease.~~

(c) **Violations of Exclusive Use Rights.** Lessee acknowledges that Lessor may grant, or may have previously granted, exclusive use rights to other tenants

  
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of the Shopping Center and agrees that a material consideration to Lessor in entering into this Lease is Lessee's covenant to limit its use of the Premises to the Agreed Use under the Agreed Trade Name as set forth above. Lessee's violation of exclusive use rights granted to other tenants of the Shopping Center will result in Lessor suffering irreparable harm and, therefore, in addition to all other rights and remedies available to Lessor, Lessor may seek to enjoin Lessee's breach of such covenant and Lessee shall be liable for any damages incurred or sustained by Lessor to such other tenants whose exclusive use rights are breached by Lessee **provided however, that Lessor shall be required to give Lessee prior written notice of the exclusive use rights of such other tenants.** In no event shall Lessor be liable to Lessee for any failure of any other tenants of the Shopping Center to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties **except as expressly set forth in this Lease.**

(d) **Other Tenancies. Subject to Lessee's Exclusive Use,** Lessor, at its sole discretion, reserves the absolute right to establish procedures to control other tenancies in the Shopping Center. Regardless of whether any specific tenants are shown on any site plan attached hereto, Lessee does not rely on that fact, nor does Lessor represent that any specific tenant or number or type of tenants shall or shall not during the Term occupy any portion of the Shopping Center, nor does Lessee rely on any other tenant operating its business in the Shopping Center at any particular time or times. Further, no conduct by any tenant, subtenant or other occupant of, or any customer of, or any supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Lessee from the Premises, and Lessee hereby waives any and all claims that it might otherwise have against Lessor by reason thereof.

~~(e) **Lessee Exclusive Use. Lessor shall not lease any other space in the Shopping Center to a future tenant whose primary use is a Vietnamese restaurant. Primary use shall be defined as greater than 20% of gross sales.**~~

## 6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

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

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

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees **to the extent** arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party **employed by or acting on behalf of Lessee** (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Shopping Center not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment **to the extent** created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$450,000, whichever is greater, give written notice to Lessee, within

  
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30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 Lessee's Compliance with Applicable Requirements. Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises **in each instance when such condition becomes actually known to Lessee.**

6.4 Inspection; Compliance. Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after **no less than 48 hours notice** ~~reasonable notice~~, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant **and reasonably requested** material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor. ~~Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder. Lessor shall use good faith efforts to coordinate any entry into the Premises with Lessee's on-site management so as to minimize interference with Lessee's business operations.~~

## 7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

### 7.1 Lessee's Obligations.

(a) In General. Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities **exclusively serving the Premises**, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) Service Contracts. Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof, **provided such cost is consistent with market rates.**

(c) Failure to Perform. If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) Replacement. Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 Lessor's Obligations. Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, **structural floor**, structural condition of interior bearing walls, exterior roof, **the structural portions of the roof, the roof membrane**, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs, **Utility Installations up to the point of connection with the Premises and Utility Installations within the Premises that do not exclusively serve the Premises**, and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises.

### 7.3 Utility Installations; Trade Fixtures; Alterations.

(a) Definitions. The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade

  
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Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent **which shall not be unreasonably withheld, conditioned or delayed.** Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed ~~\$50,000, a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year.~~ Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor **which shall not be unreasonably withheld, conditioned or delayed.** Lessor may, as a precondition to granting such approval, **require Lessee to utilize a contractor chosen (if work involved the roof) or reasonably approved (if work does not involve the roof) by Lessor.** ~~Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor.~~ Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. ~~For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.~~

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

#### 7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations, **other than the initial improvements made to the Premises and approved by Lessor pursuant to Section 7.3(b),** be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear **or any damage by casualty or condemnation** excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing and the provisions of Paragraph 7.1(a), if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee Owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party **other than Lessor, other tenants at the Shopping Center, and their respective agents, employees, and contractors** (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

#### 8. Insurance; Indemnity.

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

#### 8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

#### 8.3 Property Insurance - Building, Improvements and Rental Value.

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(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

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

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

#### 8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$10,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

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

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

8.8 **Exemption of Lessor and Its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents (**excluding, however, any gross negligence**), neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Shopping Center, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** **If Lessee fails to procure any such policy of insurance, or to deliver any such policy or certificate, Lessor may, at its option, procure such policy(ies) for the account of Lessee. In such event, Lessee shall have a one (1) time cure period to pay to Lessor an amount equal to 110% of the costs and expenses incurred by Lessor in procuring such insurance as additional Rent within ten(10) days after delivery to Lessee of invoice thereafter. If this occurrence happens again, the penalty will then revert to the AIR language defined below.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the

  
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then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

## 9. Damage or Destruction.

### 9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 63 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent calculated on a "going forward" basis. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "Premises Total Destruction" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 63 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 126 month's Base Rent calculated on a "going forward" basis. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises or Common Areas which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total Replacement Cost of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full Replacement Cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

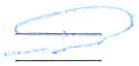
9.4 **Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 **Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 **Damage to Shopping Center.** In the event of any damage or destruction to other portions of the Building or to any other buildings in the Shopping Center, whether insured or uninsured (and whether or not there is also damage or destruction to the Premises), which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction, Lessor may either (i) repair such damage or destruction as soon as reasonably possible without expense to Lessee, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage or destruction. Such termination shall be effective 60 days following the date of such notice.

### 9.7 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not

  
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responsible under this Lease, the Base Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days **and diligently pursued to completion**, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.8 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

## 10. Real Property Taxes.

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Shopping Center, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Shopping Center address. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Shopping Center (**but excluding the transfer taxes imposed on any sale or transfer of any interest in the property**), (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3 **following the Rent Commencement Date**, Lessor shall pay the Real Property Taxes applicable to the Shopping Center, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Shopping Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request, or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

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

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

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. To the extent any such utilities and/or services are not separately metered, Lessee shall pay Lessee's Share thereof in accordance with Paragraph 4.2. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may **charge Lessee an equitable amount for increase Lessee's Base Rent by an amount equal to such increased costs. Except as provided below**. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

Within fifteen days of Lessor's written request, Lessee agrees to deliver to Lessor such information, documents and/or authorization as Lessor needs in order for Lessor to comply with new or existing Applicable Requirements relating to commercial building energy usage, ratings, and/or the reporting thereof.

## 12. Assignment and Subletting.

### 12.1 Lessor's Consent Required.

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

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of **25.49%** or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than **25.49%** of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee



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(excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent and Percentage Rent Rate to 110% of the Base Rent and Percentage Rent Rate then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or Injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

#### 12.2 Terms and Conditions Applicable to Assignment and Subletting.

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

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

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

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) **Except for Permitted Transfers**, Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

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

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary. **Notwithstanding any other provision contained in this Lease, Lessor shall not be entitled to any consideration received by Lessee for the sale or transfer of the business operated in the Premises.**

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

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

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

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

### 13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The vacating or abandonment of the Premises **except for closure due to permitted alterations, events of casualty, condemnation, and force majeure, and the exercise of Lessee's "go dark" rights set forth in Paragraph 6.1(b)**. Lessee shall be deemed to have vacated the Premises if Lessee ceases to continuously operate its business in the Premises for a period of 5 consecutive days.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due **where such failure continues for three (3) days after such payment is due, or Lessee's failure on two (2) occasions during any twelve (12) month period to timely pay Rent on or before the due date as provided for herein (even though subsequently cured)**, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the

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event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

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

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within ~~60~~ days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within ~~60~~ days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

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

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice **or such longer time period as expressly set forth in this Lease** (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession. **In no event shall Tenant be liable to Landlord for special, consequential or punitive damages, except that Tenant shall remain liable for consequential damages resulting from holding over in the Premises or resulting from Tenant's breach or default under Section 6.2 of this Lease.**

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

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

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the



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exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The Interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

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

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. **Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or so much of the Common Areas so as to materially restrict ingress and egress and parking for the Premises as reasonably determined by Lessee or more than 25% of the parking spaces situated within the parking area, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

~~15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.12 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Shopping Center, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.~~

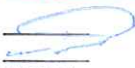
~~15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.12, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.~~

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker, agent or finder (other than the Brokers and Agents ~~which Lessor shall pay pursuant to a separate agreement with the Brokers~~), if any, in connection with this Lease, and that no one other than said named Brokers and Agents is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 **business** days after written notice from the other Party (the "Requesting Party") **but not more than once per year unless in connection with a sale or refinancing of the Premises** execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published BY AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 **business** day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. ~~If Lessee does not execute and deliver an Estoppel Certificate within such time period, then Lessee shall pay to Lessor the sum of \$200 per day as liquidated damages until Lessee delivers to Lessor such Estoppel Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base~~

  
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~~Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.~~

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 **business** days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

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

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

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

**20. Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

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

**22. No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

**23. Notices.**

**23.1 Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by ~~regular~~, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, ~~or by facsimile transmission, or by email~~, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, ~~except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice~~. A copy of all notices to Lessor and Lessee shall be concurrently transmitted to such party or parties at such addresses as Lessor and Lessee may from time to time hereafter designate in writing.

**23.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. ~~If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid.~~ Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given **upon receipt by the receiving party 24 hours after delivery of the same to the Postal Service or courier**. Notices delivered by hand, ~~or transmitted by facsimile transmission or by email~~ shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**23.3 Options.** Notwithstanding the foregoing, in order to exercise any Options (see paragraph 39), the Notice must be sent by Certified Mail (return receipt requested), Express Mail (signature required), courier (signature required) or some other methodology that provides a receipt establishing the date the notice was received by the Lessor.

**24. Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) **THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.**

**25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: **To the Lessor:** A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. **To the Lessee and the Lessor:** (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following

  
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affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (I) or (II). In representing both Lessor and Lessee, the agent may not, without the express permission of the respective Party, disclose to the other Party confidential information, including, but not limited to, facts relating to either Lessee's or Lessor's financial position, motivations, bargaining position, or other personal information that may impact rent, including Lessor's willingness to accept a rent less than the listing rent or Lessee's willingness to pay rent greater than the rent offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. Both Lessor and Lessee should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

**26. No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent and Percentage Rent Rate shall be increased to 150% of the Base Rent and Percentage Rent Rate applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

**27. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

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

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

**30. Subordination; Attornment; Non-Disturbance.**

**30.1 Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

**30.2 Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) unless provided for in this Lease, be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) unless provided for in this Lease, be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

**30.3 Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

**30.4 Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

**31. Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing

  
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Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice, **subject to the requirements set forth in Paragraph 6.4**, for the purpose of showing the same to prospective purchasers, lenders, or tenants **during the last 9 months of the Lease Term only**, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion.

34. **Signs.** Lessor may place **in the Common Areas on the Premises** ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. All signs must comply with all Applicable Requirements. Lessee shall not place, construct, or maintain on the glass panes or supports of the show windows of the Premises, the doors, exterior walls or the roof of the Building, or anywhere else within the Shopping Center outside of the Premises, or on any interior portions of the Premises that are visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material or any other items without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion. Lessor shall designate the size, shape, color, design, and location of all exterior sign(s) to be installed by Lessee, and Lessee shall, at Lessee's sole cost and expense, fabricate, construct and install all such sign(s) in full compliance with Lessor's designation and in accordance with the Sign Criteria for the Shopping Center attached hereto, if any. Lessee agrees to submit plans and specifications for Lessee's sign(s) for Lessor's written approval within 30 days after the full execution hereof and to install such sign(s) prior to opening for business at the Premises. Lessor, at Lessee's cost, may remove any item placed, constructed or maintained in, upon or about the Premises or Shopping Center which does not comply with this paragraph. In the event there is a pole, pylon or monument sign for the Shopping Center, Lessor shall have the right, but not the obligation, to install lettering designating Lessee's business on such sign, at Lessee's expense, with Lessor's approval of location, size, style and color. All signs that are permanently attached to the Premises or Building shall become the property of Lessor at the expiration or earlier termination hereof; provided, however, that Lessee shall promptly remove all such signs if Lessor so elects, and Lessee shall promptly repair all damage caused by such removal. Lessee shall not place, construct or maintain in, upon or about the Premises any search lights, flashing lights, loudspeakers, phonographs or other visual or audio media.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

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

37. **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

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

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

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

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

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of

  
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this Lease, or (iv) In the event that Lessee has been given 3 or more notices of separate Default (**provided such Defaults are either monetary Defaults or material non-monetary Defaults**), whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

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

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. While Lessor does not assume any responsibility to provide any security measures or any liability for failure to provide security measures or for any inadequacy thereof, Lessor shall have the authority to institute or continue such security measures as Lessor in its sole discretion deems necessary or appropriate from time to time, the cost and expenses of which shall be considered Common Area Operating Expenses. To the degree directed by Lessor, Lessee shall coordinate its security measures at the Premises with the security measures instituted by Lessor, if any.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee **or materially increase the obligations of Lessee under the Lease**. Lessee agrees to sign any **commercially reasonable** documents reasonably requested by Lessor to effectuate such rights.

~~42. **Building Planning.** Lessor shall have the right at any time or times, upon giving Lessee not less than 60 days prior written notice, to provide and furnish Lessee with space of comparable visibility located elsewhere within any of the buildings within the Shopping Center and to move Lessee into such new space, provided that the usable area of such new space is not less than the usable area of the Premises and provided that all of Lessee's reasonable out-of-pocket moving expenses (including but not limited to the cost of moving Lessee's personal property, the cost of reprinting Lessee's stationary or other business materials with the new address, and the cost to relocate and reinstall tenant improvements and Lessee's telecommunications and computer equipment) shall be paid by Lessor, and provided further that Lessor shall construct at Lessor's expense such improvements to such new space as shall be necessary to place it in a condition that is substantially comparable to the Premises. Except as provided in the immediately preceding sentence, Lessor shall have no obligation to improve such space or pay any other expenses incurred by Lessee as a result of such relocation. On such relocation, the terms and conditions of this Lease shall remain in full force and effect, including but not limited to the Base Rent payable hereunder and Lessee's Share (even if the usable area of such relocated Premises is in excess of the usable area of the Premises), except that the Premises shall be in such new location. Upon Lessor's request, the Parties shall execute an amendment to this Lease in form required by Lessor confirming the relocation of the Premises to such new location. If the new space does not meet with Lessee's approval, which approval Lessee shall give or withhold in accordance with Paragraph 36, Lessee shall have the right to cancel this Lease by giving Lessor written notice thereof within 15 days of receipt of Lessor's notification of its intent to relocate Lessee. Lessee's failure to give such notice within such 15 day period shall be deemed Lessee's approval of the new space. If timely notice is given by Lessee, then this Lease shall terminate unless Lessor rescinds Lessor's prior notice of its intent to relocate Lessee within 10 days after Lessor's receipt of Lessee's notice of cancellation.~~

43. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not institute suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

44. **Authority; Multiple Parties; Execution.**

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

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten **or handwritten** provisions shall be controlled by the typewritten **or handwritten** provisions.

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

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

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease  is  is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**

  
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(a) The Premises:

have not undergone an Inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.

have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: \_\_\_\_\_  
On: \_\_\_\_\_

By LESSOR:  
Creative Concepts Group, Inc.

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Address: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

BROKER



INITIALS

Executed at: 21700 Lopley Dr B320, Diamond Bar, CA 91765  
On: 10/25/19

By LESSEE:  
JV Noodles LLC

By: Joe Guadagnoli  
Name Printed: Joe Guadagnoli  
Title: Member  
Phone: (626) 888-6728  
Fax: \_\_\_\_\_  
Email: joe@orchestrationshops.com

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Address: \_\_\_\_\_  
Federal ID No.: \_\_\_\_\_

BROKER



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Matthews Retail Group, Inc.

Attn: Josh Cordray/Michael Pakravan

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

Broker/AGENT DRE License #: 1972189

Newmark Knight Frank

Attn: Bryan Norcott

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

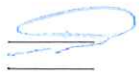
Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Federal ID No.: \_\_\_\_\_

Broker/AGENT DRE License #: \_\_\_\_\_

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## RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated: October 23, 2019

By and Between

Lessor: Creative Concepts Group, Inc.

Lessee: JV Noodles LLC

Property Address: 11911 Wilshire Blvd., Los Angeles, CA 90025  
(street address, city, state, zip)

Paragraph: 51

### A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:  
(Check Method(s) to be Used and Fill In Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): \_\_\_\_\_ the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one):  CPI W (Urban Wage Earners and Clerical Workers) or  CPI U (All Urban Consumers), for (Fill in Urban Area): \_\_\_\_\_, All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the  first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or  (Fill in Other "Base Month"): \_\_\_\_\_. The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the Base Rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)): \_\_\_\_\_ the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party  appraiser or  broker ("Consultant" - check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent

  
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adjustment.

b. Upon the establishment of each New Market Rental Value:

- 1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
- 2) the first month of each Market Rental Value term shall become the new 'Base Month' for the purpose of calculating any further Adjustments.



III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New <b>Monthly</b> Base Rent shall be:
<u>First Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$17,108.30</u>
<u>Second Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$17,621.55</u>
<u>Third Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$18,150.20</u>
<u>Fourth Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$18,694.70</u>
<u>Fifth Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$19,255.54</u>
<u>Sixth Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$19,833.21</u>
<u>Seventh Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$20,428.20</u>
<u>Eighth Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$21,041.05</u>
<u>Ninth Anniversary of the Rent</u> <u>Commencement Date</u>	<u>\$21,672.28</u>

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## OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated: October 23, 2019

By and Between

Lessor: Creative Concepts Group, Inc.

Lessee: JV Noodles LLC

Property Address: 11911 Wilshire Blvd., Los Angeles, CA 90025  
(street address, city, state, zip)

Paragraph: 52

**A. OPTION(S) TO EXTEND:**

Lessor hereby grants to Lessee the option to extend the term of this Lease for one (1) additional sixty (60) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least one hundred eighty (180) days but not more than four hundred fifty (450) days ~~months~~ prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) **Except for Permitted Transfers**, This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below:

(Check Method(s) to be Used and Fill In Appropriately)

I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): \_\_\_\_\_ the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one):  CPI W (Urban Wage Earners and Clerical Workers) or  CPI U (All Urban Consumers), for (Fill in Urban Area): \_\_\_\_\_. All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one):  the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or  (Fill in Other "Base Month"): \_\_\_\_\_. The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)) the first day of the Option Term the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

**Option Rent Adjustment shall be capped at a maximum increase of 10% the previous year's Base Rent and shall increase at 3% annually thereafter.**

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or



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(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party  appraiser or  broker ("Consultant" - check one) of their choice to act as an arbitrator (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, ie. the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, abated rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than 103% the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

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

The New Base Rent shall be:

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

IV. Initial Term Adjustments

The formula used to calculate adjustments to the Base Rate during the original Term of the Lease shall continue to be used during the extended term.

**B. NOTICE:**

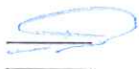
Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

~~C. BROKER'S FEE:~~

~~The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease or if applicable, paragraph 9 of the Sublease.~~

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## ARBITRATION AGREEMENT STANDARD LEASE ADDENDUM

Dated: October 23, 2019

By and Between

Lessor: Creative Concepts Group, Inc.

Lessee: JV Noodles LLC

Property Address: 11911 Wilshire Blvd., Los Angeles, CA 90025  
(street address, city, state, zip)

Paragraph: 53

### A. ARBITRATION OF DISPUTES:

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

### B. DISPUTES EXCLUDED FROM ARBITRATION:

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law 4. Any claim or dispute that is within the jurisdiction of the Small Claims Court and 5. All claims arising under Paragraph 39 of this Lease.

### C. APPOINTMENT OF AN ARBITRATOR:

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before:  a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of California) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"),  the American Arbitration Association ("AAA") under its commercial arbitration rules,  \_\_\_\_\_, or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). In the event that the parties elect to use an arbitrator other than one affiliated with JAMS or AAA then such arbitrator shall be obligated to comply with the Code of Ethics for Arbitrators in Commercial Disputes (see: [http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG\\_003867](http://www.adr.org/aaa/ShowProperty?nodeId=/UCM/ADRSTG_003867)). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate court for the appointment of a qualified retired judge to act as the Arbitrator.

### D. ARBITRATION PROCEDURE:

1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1282.6).

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law (e.g., in California Code of Civil Procedure Section 1286.2). The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The

  
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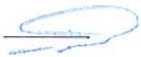
Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, **reasonable** attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

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# AIRCRE

## GUARANTY OF LEASE

WHEREAS, Creative Concepts Group, Inc., hereinafter "Lessor", and JV Noodles LLC, hereinafter "Lessee", are about to execute a document entitled "Lease" dated October 23, 2019 concerning the premises commonly known as (street address, city, state, zip) 11911 Wilshire Blvd., Los Angeles, CA 90025 wherein Lessor will lease the premises to Lessee, and

WHEREAS, Hua Gui Liang, an individual hereinafter "Guarantors" have a financial interest in Lessee, and

WHEREAS, Lessor would not execute the Lease if Guarantors did not execute and deliver to Lessor this Guaranty of Lease.

NOW THEREFORE, in consideration of the execution of said Lease by Lessor and as a material inducement to Lessor to execute said Lease, Guarantors hereby jointly, severally, unconditionally and irrevocably guarantee the prompt payment by Lessee of all rents and all other sums payable by Lessee under said Lease and the faithful and prompt performance by Lessee of each and every one of the terms, conditions and covenants of said Lease to be kept and performed by Lessee.

It is specifically agreed by Lessor and Guarantors that: (i) the terms of the foregoing Lease may be modified by **written** agreement between Lessor and Lessee, or by a course of conduct, and (ii) said Lease may be assigned by Lessor or any assignee of Lessor without the consent of or notice to Guarantors and that this Guaranty shall guarantee the performance of said Lease as so modified.

This Guaranty shall not be released, modified or affected by the failure or delay on the part of Lessor to enforce any of the rights or remedies of the Lessor under said Lease.

No notice of default by Lessee under the Lease need be given by Lessor to Guarantors, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which Lessor may proceed immediately against Lessee and/or against Guarantors following any breach or default by Lessee or for the enforcement of any rights which Lessor may have as against Lessee under the terms of the Lease or at law or in equity.

Lessor shall have the right to proceed against Guarantors following any breach or default by Lessee under the Lease without first proceeding against Lessee and without previous notice to or demand upon either Lessee or Guarantors.

Guarantors hereby waive (a) notice of acceptance of this Guaranty, (b) demand of payment, presentation and protest, ~~(c) all right to assert or plead any statute of limitations relating to this Guaranty or the Lease,~~ (d) any right to require the Lessor to proceed against the Lessee or any other Guarantor or any other person or entity liable to Lessor, (e) any right to require Lessor to apply to any default any security deposit or other security it may hold under the Lease, (f) any right to require Lessor to proceed under any other remedy Lessor may have before proceeding against Guarantors, (g) any right of subrogation that Guarantors may have against Lessee.

Guarantors do hereby subordinate all existing or future indebtedness of Lessee to Guarantors to the obligations owed to Lessor under the Lease and this Guaranty.

If a Guarantor is married, such Guarantor expressly agrees that recourse may be had against his or her separate property for all of the obligations hereunder.

The obligations of Lessee under the Lease to execute and deliver estoppel statements and financial statements, as therein provided, shall be deemed to also require the Guarantors to provide estoppel statements and financial statements to Lessor. The failure of the Guarantors to provide the same to Lessor shall constitute a default under the Lease.

The term "Lessor" refers to and means the Lessor named in the Lease and also Lessor's successors and assigns. So long as Lessor's interest in the Lease, the leased premises or the rents, issues and profits therefrom, are subject to any mortgage or deed of trust or assignment for security, no acquisition by Guarantors of the Lessor's interest shall affect the continuing obligation of Guarantors under this Guaranty which shall nevertheless continue in full force and effect for the benefit of the mortgagee, beneficiary, trustee or assignee under such mortgage, deed of trust or assignment and their successors and assigns.

The term "Lessee" refers to and means the Lessee named in the Lease and also Lessee's successors and assigns.

Any recovery by Lessor from any other guarantor or insurer shall first be credited to the portion of Lessee's indebtedness to Lessor which exceeds the maximum liability of Guarantors under this Guaranty.

No provision of this Guaranty or right of the Lessor can be waived, nor can the Guarantors be released from their obligations except in writing signed by the Lessor.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in the county in which the leased premises are located and the Guarantors consent to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State in which the leased premises are located and for the purposes of any rules regarding conflicts of law the parties shall be treated as if they were all residents or domiciles of such State.

In the event any action be brought by said Lessor against Guarantors hereunder to enforce the obligation of Guarantors hereunder, the unsuccessful party in such action shall pay to the prevailing party therein a reasonable attorney's fee. The attorney's fee award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity.

If this Form has been filled in, it has been prepared for submission to your attorney for his approval. No representation or recommendation is made BY AIR CRE, the real estate broker or its agents or employees as to the legal sufficiency, legal effect, or tax consequences of this Form or the transaction relating thereto.

  
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GUARANTORS

Hua Gui Liang, an individual

Executed At: 21700 Copley Dr. #320, Diamond Bar CA 91765  
On: 10/29/19

By: Hua Gui Liang  
Name Printed: Hua Gui Liang  
Title: an individual  
Address: 21700 Copley Dr. Ste 320  
Diamond Bar, CA 91765

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

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**Addendum to Standard Multi-Tenant Shopping Center Lease – Net**

This Addendum to Standard Multi-Tenant Shopping Center Lease – Net (this "Addendum") is made and entered into by and between CREATIVE CONCEPTS GROUP, INC., a California corporation ("Lessor") and JV NOODLES LLC, a California limited liability company ("Lessee"), and is dated as of the date set forth on the first page of the Standard Multi-Tenant Shopping Center Lease – Net between Lessor and Lessee ("Base Lease") to which this Addendum is attached. The Base Lease covers certain improved real property located at 11911 Wilshire Blvd., Los Angeles, California 90025 (the "Premises"). The promises, covenants, agreements and declarations made and set forth herein are intended to and shall have the same force and effect as if set forth at length in the body of the Base Lease. To the extent that the provisions of this Addendum are inconsistent with the terms and conditions of the Base Lease, the terms and conditions of this Addendum shall control. Capitalized terms used herein and not otherwise defined shall have the meanings given those terms in the Base Lease. As used in this Addendum, the term "Lease" means the Base Lease as modified by this Addendum.

2.10 (continued) **Common Areas – Changes**. Notwithstanding anything to the contrary in this Lease, Lessor shall make no changes to the Shopping Center that will materially and adversely limit, restrict or impair (1) Lessee's use and occupancy of the Premises, (2) access to and from the Premises, (3) visibility of the Premises, or (4) parking for the Premises. Further, Lessor shall use reasonable efforts to minimize interference with Lessee's business as a result of any such changes to the Shopping Center.

4.2(d) (continued) **Common Area Operating Expenses**. All controllable Common Area Operating Expenses (which shall consist of all Common Area Operating Expenses excluding taxes, insurance, utilities, security services, and resurfacing of the Common Area parking lots no more than once every 5 years) shall not increase by more than five percent (5%) per annum on a non-cumulative basis.

4.2(f) (continued) **Common Area Operating Expenses**. In addition, and notwithstanding anything to the contrary in this Lease, Common Area Operating Expenses shall not include: (i) expenses for which the Lessor is or will be reimbursed by another source, (ii) costs incurred to benefit (or as a result of) a specific tenant or items and services selectively supplied to any specific tenant, (iii) expenses for the defense of the Lessor's title to the Shopping Center, (iv) structural repairs and replacements, (v) financing costs, including interest and principal amortization of debts, (vi) charitable, lobbying, special interest or political contributions, (vii) costs of improving or renovating space for a tenant or space vacated by a tenant, (viii) expenses paid directly by any tenant for any reason (such as excessive utility use), (ix) leasing commissions, advertising expenses and other costs incurred in leasing or procuring new tenants, (x) rental on ground leases or other underlying leases, (xi) amounts which are duplicative or do not represent costs incurred for actual services, (xii) any repairs, restoration or other work occasioned by fire, wind, the elements or other casualty; (xiii) income and franchise taxes of Lessor; (xiv) compensation paid to any employee of Lessor or its affiliates or agents above the grade of property manager; (xv) any depreciation allowance or expense; (xvi) any overhead, interest or profit to the Lessor or one of its affiliates; (xvii) capital expenses except to the extent permitted under Paragraphs 2.3 and 4.2(a)(ix); (xviii) any costs or expenses which are the responsibility of any

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particular tenant; (xix) any costs or legal fees incurred in connection with any particular tenant; (xx) any costs incurred as a result of any violation by Lessor of any law or the terms of any lease or mortgage; (xxi) any costs or expenses incurred for the removal or remediation of pollutants, contaminants or hazardous materials as such terms are defined by governmental authorities; (xxii) any expense resulting from the negligence or willful misconduct of the Lessor, its agents, employees or contractors; (xxiii) the cost of any repair to remedy damage directly caused by or directly resulting from the negligence of any other tenants; (xxiv); (xxv) all interest and penalties incurred as a result of Lessor's negligently failing to pay any bill as the same shall become due; (xxvi) costs of purchasing sculptures, paintings or other art works; (xxvii) any costs or expenses for marketing, advertising or promotion of the Shopping Center or any event or entertainment thereon (including, without limitation, any costs or expenses associated with any merchant's association or similar association, except as otherwise expressly provided in this Lease); (xxviii) any costs or expenses associated with any kiosk, childcare center, postal or packaging services facility or governmental offices located on the Shopping Center; (xxix) any costs or expenses associated with any undeveloped portion of the Shopping Center; (xxx) any costs or expenses associated with the operation of any valet parking service; (xxxii) the amount by which the sum of all property management, administrative, and similar fees, costs and expenses (whether paid to Lessor or a third-party) exceeds five percent (5%) of Base Rent; (xxxii) any costs or expenses associated with any space occupied exclusively by Lessor or any of its affiliates or agents; or (xxxiii) any costs and expenses paid by any tenant whose floor area is not included in the denominator in calculating Lessee's pro rata share of Common Area Operating Expenses.

4.4 **Lessee's Audit Right.** Lessor shall maintain books and records of Common Area Operating Expenses and Real Property Taxes for a period of three (3) years following the end of each calendar or fiscal year, as applicable. Within three (3) years following Lessee's receipt of an annual statement of Common Area Operating Expenses and upon ten (10) days' prior written notice, Lessee or Lessee's accountant shall have the right to audit Lessor's books and records relating to the prior year's Common Area Operating Expenses at Lessor's local office (or property manager's office), if one exists, or if none exists, at Lessor's main offices. In addition, Lessor shall provide Lessee with such records in electronic format if requested by Lessee. If the audit discloses that the total amount invoiced to Lessee exceeds the actual Common Area Operating Expenses, Lessor, at Lessee's option, shall either credit the amount of overpayment towards Lessee's next due payment of Base Rent or any other amounts due under this Lease, or refund the same to Lessee within ten (10) days after written demand therefor. If such audit discloses that the total amount invoiced to Lessee is less than Lessee's Share of Common Area Operating Expenses, Lessee shall promptly pay the difference to Lessor. Lessor's and Lessee's obligations under this paragraph shall survive the expiration or sooner termination of this Lease.

6.1(a) **Agreed Use; Agreed Trade Name.** Notwithstanding anything to the contrary in this Lease, Lessee may, without seeking Lessor's prior written consent (but with prior written notice to Lessor), change the Agreed Trade Name to any trade name to which all or substantially all of the other locations in California previously operating under the original Agreed Trade Name are changed. Sounds and odors emanating from the Premises which are consistent with the Permitted Use shall not be deemed a nuisance.

Lessor Initials: \_\_\_\_\_

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Lessee Initials:           H.G.L

6.1(b) **Operation.** Lessee shall have the right to operate and conduct the Agreed Use under the Agreed Trade Name within the Premises during those hours customary for an Uncharted Vietnamese Fusion located in the Los Angeles area, which in no event shall be less than 11:30 a.m. to 8:30 p.m., Monday through Saturday, and 12:00 p.m. to 5:00 p.m. on Sundays. Lessee shall be permitted to close on any nationally-recognized holiday and up to five (5) days per calendar year, selected by Lessee at Lessee's sole discretion, for (i) the purpose of conducting companywide training(s) and (ii) companywide holiday(s).

6.1(e) **Exclusive Use Rights.**

(i) Lessor agrees not to sell, lease, let lease, or permit to be used any other premises or space within the Shopping Center at any time during the Lease or any Lease extension to any other tenant, person or entity selling pho or Vietnamese food ("Lessee's Exclusive Use").

(ii) If there is a violation of Lessee's Exclusive Use and such violation continues for more than sixty (60) days after Lessee has given Lessor notice of such violation, Lessee shall be allowed to reduce Base Rent to 50% of the Base Rent due ("Alternative Rent") until such violation is cured. Should the violation continue for twelve (12) consecutive, full calendar months after the date that Lessee commences paying Alternative Rent, then Lessee may terminate the Lease upon thirty (30) days prior notice to Lessor or begin to pay full Base Rent. Notwithstanding the foregoing, Lessor shall not be considered to be in violation of this provision if a tenant in the Shopping Center acts as a "Rogue Lessee" (which is defined as another tenant within the Shopping Center who violates Lessee's Exclusive Use and such tenant's lease would not allow such violation without Lessor's consent). In such event, Lessor agrees to pursue commercially reasonable efforts to stop the Rogue Lessee's continued operation in violation of Lessee's Exclusive Use. Such efforts shall include but not be limited to (i) filing of pleadings in a court of competent jurisdiction and diligently pursuing such litigation to conclusion (however, Lessor shall not be obligated to pursue an appeal of a final decision of the court); and (ii) filing for temporary or permanent injunctive relief asking the court to stop the Rogue Lessee from violating Lessee's Exclusive. In the event of such violation as provided above, Lessee shall remain at full Base Rent for four (4) months beginning after the violation occurs. If the violation has not been cured after said four (4) months, Lessee shall begin paying Alternative Rent, and, upon written request from Lessee, Lessor shall assign to Lessee the right for Lessee to enforce Lessee's exclusive rights directly against such Rogue Lessee. However, if the violation has not been cured after twelve (12) months, Lessee shall have the option to terminate this Lease or resume paying full Base Rent.

(iii) So long as Lazy Daisy is a tenant in the Shopping Center, Tenant agrees that Lazy Daisy's current menu, attached hereto as Schedule 6.1(e)(iii), does not violate Lessee's Exclusive Use.

6.2(e) (continued) **Lessor Indemnification.** Prior to the date possession of the Premises is delivered to Lessee, Lessor shall remove all Hazardous Substances, if any, located in or on the Premises.

7.3(d) **Tables and Chairs.** Lessor agrees that Lessee shall have the right to secure or bolt its tables to the floor using a method reasonably approved by Lessor.

Lessor Initials: \_\_\_\_\_

Lease Addendum

Lessee Initials: \_\_\_\_\_

8.7 (continued) **Indemnity.** Lessor agrees to indemnify and hold harmless Lessee and Lessee's successors, assigns, and agents from and against, all claims, demands, damages, costs and liabilities, including reasonable attorneys' fees and costs, to the extent arising out of, in connection with or resulting from (i) personal injury or property damage to the extent caused by the negligent acts or omissions of Lessor in or about the Shopping Center, (ii) from the initial design or construction of any portion of the Shopping Center or of any repairs, alteration or maintenance thereof or from any defect in the Premises, (iii) from any and all personal injuries occurring in the Common Areas or (iii) any breach or default in the performance of any obligation to be performed by Lessor under this Lease; provided, however, Lessor shall not be liable for such damage or injury to the extent and in the proportion that the same is ultimately determined to be attributable to the negligence or misconduct of Lessee.

9.5 (continued) **Damage Near End of Term.** Notwithstanding the foregoing, if Lessee has a valid, unexercised option to extend the term of this Lease, then Lessor's rights to terminate this Lease shall be null and void if Lessee gives Lessor notice of Lessee's intent to exercise its option to extend the term of this Lease within thirty (30) days after receiving notice from Lessor that Lessor is terminating this Lease pursuant to this Paragraph, and Lessor shall repair or replace the Premises or building of which they are a part as otherwise provided in this Article 9.

9.9 **Lessee's Termination Right.** Within thirty (30) days after the occurrence of a casualty, Lessor shall give written notice to Lessee of Lessor's election to either terminate this Lease or proceed with the reconstruction and restoration of the Premises and/or the Shopping Center pursuant to Lessor's rights set forth in this Article, along with the estimated timeline for such reconstruction and restoration. Notwithstanding anything to the contrary in this Lease, Lessee shall have the right to terminate this Lease upon written notice to the Lessor within thirty (30) days after receipt of Lessor's notice if (i) the necessary reconstruction or restoration required to be performed by Lessor and the necessary reconstruction or restoration of the Common Areas necessary for the efficient operation of Lessee's business at the Premises cannot reasonably be completed within 180 days from the date of such casualty in the event of non-substantial damage to the Premises or Shopping Center or within 270 days from the date of such casualty in the event of substantial damage to the Premises or Shopping Center, or (ii) the square footage of the Premises following reconstruction would be less than 90% of the square footage of the Premises set forth in Paragraph 1.2. Further, if Lessor undertakes such reconstruction but fails to complete the same within 180 days or 270 days, as applicable, after the date of the casualty, Lessee shall have the right to terminate this Lease upon written notice to Lessor at any time prior to completion of such restoration. In the event this Lease is terminated as a result of a casualty, then Lessee shall be entitled to its insurance proceeds, if any, recovered as a result of such casualty for Lessee's Work, Lessee's leasehold improvements, trade fixtures, merchandise, signs and other personal property.

9.10 **Lessee's Insurance Proceeds.** Upon termination of this Lease pursuant to this Article 9, Lessee shall be entitled to its insurance proceeds, if any, recovered as a result of such casualty for its personal property and initial improvements.

10.1 (continued) **Definition.** Notwithstanding anything to the contrary in this Lease, Real Property Taxes shall not include the following: (i) any local, state or federal income tax imposed

Lessor Initials: \_\_\_\_\_

Lease Addendum  
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Lessee Initials: \_\_\_\_\_

*M.G.L.*

on Lessor, (ii) any estate or death tax imposed on Lessor or with respect to the Shopping Center as a result of the death of Lessor or its partners, (iii) any transfer taxes, or (iv) any franchise taxes.

11 (continued) **Utilities and Services.** Notwithstanding the foregoing provisions of this Paragraph, if (i) there is an interruption in any of the utility services provided to the Premises due to the negligence or willful misconduct of Lessor or Lessor's agents or employees ("Utility Interruption") and (ii) the Utility Interruption materially, adversely interferes with Lessee's use and occupancy of the Premises such that Lessee cannot reasonably conduct business upon the Premises and (iii) Lessee does not use the Premises during the period of the Utility Interruption and (iv) Lessee has notified Lessor in writing of the Utility Interruption ("Utility Interruption Notice"), then if the Utility Interruption continues for three (3) consecutive days following the date Lessor receives the Utility Interruption Notice, Base Rent and additional rent shall be abated commencing on the fourth (4th) consecutive day following the date Lessor receives the Utility Interruption Notice and continuing until the earlier of the date the Utility Interruption ceases or Lessee conducts any business upon the Premises.

12.4 **Permitted Transfers.** Notwithstanding anything in this Lease to the contrary, Lessee shall, without Lessor's consent, be able to sublet the Premises or assign this Lease to (i) a subsidiary, affiliate, division or corporation controlling, controlled by or under common control with Lessee or the principal of Lessee; (ii) a successor entity related to Lessee by merger, consolidation, non-bankruptcy reorganization, or government action; and/or (iii) a purchaser of substantially all of Lessee's assets that are located in the Premises (each a "Permitted Transfer" and collectively "Permitted Transfers"). Additionally, the sale of Lessee's capital stock through any public exchange, or issuances for purposes of raising financing, shall not be deemed an assignment, subletting, or any other transfer of this Lease or the Premises.

12.5 **Release of Lessee.** Notwithstanding anything to the contrary in this Lease, following Permitted Transfer, Lessee shall be released of all liability hereunder arising after the date of such assignment. Further, following an assignment consented to by Lessor pursuant to this Article 12, Lessee shall be released of all liability hereunder arising after the expiration of the then-current term.

13.7 **Mitigation of Damages.** Lessor agrees that in the event Lessee defaults under this Lease and Lessor elects to dispossess Lessee from the Premises and/or terminate this Lease, Lessor shall use its reasonable efforts to release the Premises and mitigate monetary damages arising out of Lessee's default or breach of this Lease. In no event shall Lessee be liable to Lessor for special, consequential or punitive damages, except that Lessee shall remain liable for consequential damages resulting from holding over in the Premises commencing thirty (30) days after the expiration or earlier termination of this Lease and Lessee's receipt of written notice from Lessor to vacate.

14 (continued) **Condemnation.** In the event of a Condemnation and this Lease is not terminated, Rent payable hereunder shall be abated proportionately with the degree to which Lessee's use of the Premises is impaired following the Condemnation and during such reconstruction.

Lessor Initials: \_\_\_\_\_

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Lessee Initials: \_\_\_\_\_

*MGL*





Agreed Use at the Premises in accordance with the terms of this Lease to the extent Lessor may withhold its consent to such modifications (or refuse to execute new CC&Rs) without breaching any agreement in place as of the date of this Lease.

50 (continued). **Accessibility; Americans with Disabilities Act.** Lessor represents and warrants to Lessee that as of the Term Commencement Date, the Common Areas shall comply with applicable laws, including but not limited to the Americans with Disabilities Act. Lessor shall indemnify, defend, hold harmless and reimburse Lessee from and against any and all claims, actions, causes of action, damages, demands, liabilities, obligations, losses or expenses (specifically including, but not limited to reasonable attorneys' fees, court costs, and expert witness fees), proceedings, suits, debts, or any claimed indebtedness alleged against Lessee, its agents and assigns, to the extent arising out of or in connection with Lessor's failure to maintain the Common Areas in compliance with the Americans with Disabilities Act and/or other Applicable Requirements.

55. **No Recording.** Neither party will record this Lease or any memorandum of this Lease.

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

57. **Counterparts.** The Lease and this Addendum may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be deemed one and the same instrument. Delivery of an executed counterpart of each of the Lease and this Addendum electronically shall be equally as effective as delivery of an original executed counterpart.

[SIGNATURE PAGE FOLLOWS]

Lessor Initials: \_\_\_\_\_

Lease Addendum  
Page 7 of 9

Lessee Initials:           D.G.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the date first set forth above.

**Lessor:**

CREATIVE CONCEPTS GROUP, INC.,  
a California corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Lessee:**

JV NOODLES LLC, a  
California limited liability company

By: Hera Gui Liang  
Name: Hera Gui Liang  
Its: Member

Lessor Initials: \_\_\_\_\_

Lessee Initials: HGL

SCHEDULE 6.1(E)(III)  
Lazy Daisy's Current Menu

[See attached]

Lessor Initials: \_\_\_\_\_

Lessee Initials: W.G.

## BREAKFAST

### Staples

<p><b>Buttermilk Pancakes</b> 10.00  <i>Available choices: Plain with strawberries and banana on top, Banana walnut, Blueberry, or Chocolate chip choices</i>  <i>Available buckwheat pancakes: +\$1</i></p>	<p><b>Crispy Belgian Waffle</b> 10.00  <i>Served with fresh strawberries on top</i>  <i>Available buckwheat waffle: +1</i></p>
<p><b>French Toast</b> 10.00  <i>Served with fresh strawberries and banana on top</i></p>	<p><b>Lazy Daisy Breakfast</b> 12.50  <i>Two eggs your way, your choice of pancakes, waffle, or french toast with strawberry on top and your choice of bacon, turkey bacon, sausage, or turkey sausage choices</i>  <i>Available buckwheat pancakes or waffle +1</i></p>

### Healthy and Lowfat

<p><b>Fresh Fruit Bowl</b> 8.00</p>	<p><b>Organic Granola Bowl</b> 8.50  <i>Served with your choice of milk or yogurt (plain or vanilla)</i>  <i>Add fruit strawberries, bananas, and blueberries +3.00</i>  <i>Soy Milk: +1</i>  <i>Almond Milk: +1.25</i></p>
<p><b>Fruit + Yogurt Special</b> 11.00  <i>Served with fruit on the bottom, plain or vanilla yogurt, and delicious organic granola on top</i></p>	<p><b>Fresh Daily Pastries</b> 3.50  <i>Muffin, croissant, and bagels (plain, poppy, sesame, or everything)</i></p>
<p><b>Hearty Oatmeal</b> 8.50  <i>Served with walnuts, raisins, and brown sugar</i>  <i>Add fruit strawberries, bananas, and blueberries: +3.00</i></p>	

### Eggs

*Served with fresh fruit, roasted potatoes and toast (Sourdough, wheat, poppy seed, rye, rosemary, or olive) (Egg whites only +2.00)*

<p><b>Two Eggs Any Style</b> 10.00</p>	<p><b>Green Eggs and Ham</b> 11.00  <i>Thick sliced canadian bacon accompanied by farm fresh eggs, scrambled with a garlic basil pesto.</i></p>
<p><b>Two Eggs Any Style with Meat</b> 11.00  <i>Your choice of bacon, turkey bacon, sausage, or turkey sausage</i></p>	<p><b>Green Eggs and Sam</b> 14.00  <i>Delicious grilled salmon fillet served with farm fresh eggs, scrambled with a garlic basil pesto</i></p>
<p><b>Egg Whites w/ Tomato and Basil</b> 12.00  <i>Sautéed with olive oil and garlic, over egg whites. Served with toast and fresh fruit only.</i></p>	<p><b>Eggs OR Tofu Bruschetta</b> 11.00  <i>Roma tomatoes, fresh basil, garlic, and olive oil. Served with toast and fried eggs or tofu.</i></p>
<p><b>Greek Scrambled</b> 11.00  <i>Spinach, red onions, feta cheese, and scrambled eggs.</i></p>	

*H.G.L*

<p><b>Egg in a Hole</b> Comes with two slices of toasted, buttered wheat bread with a fried egg in the middle. Served with your choice of bacon, turkey bacon, sausage, or turkey sausage.</p>	<p>11.00</p>	<p><b>Eggs Florentine</b> An english muffin, poached eggs, spinach, sliced tomato, and creamy hollandaise sauce.</p>	<p>11.00</p>
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<p><b>Eggs Benedict</b> An english muffin, poached eggs, canadian bacon, sliced tomato, and creamy hollandaise sauce. choose: Add Salmon: +3</p>	<p>12.00</p>	<p><b>Eggs in New York</b> Scrambled eggs with lox, cream cheese, and green onions.</p>	<p>12.50</p>
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**Our Famous Omelets**

*Served with fresh fruit, roasted potatoes, and toast (Sourdough, wheat, poppy seed, rye, rosemary, or olive) (Egg whites only +2.00)*

<p><b>White Daisy Omelet</b> Served with egg whites only, tomato, avocado, mushrooms, bitocchi, and jack cheese. Yum!</p>	<p>13.00</p>	<p><b>Santa Fe Omelet</b> Mexican chorizo sausage, homemade pico de gallo salsa, corn, black beans, and jack cheese.</p>	<p>12.00</p>
<p><b>California Omelet</b> Spinach, mushrooms, onions, tomatoes, sueshini, and swiss cheese.</p>	<p>12.00</p>	<p><b>Denver Omelet</b> Canadian bacon, red bell peppers, and cheddar cheese.</p>	<p>12.00</p>
<p><b>The Lazy Omelet</b> Chicken, avocado, mushrooms, and jack cheese.</p>	<p>12.00</p>	<p><b>Omelet Your Way</b> Comes with three eggs and your choice of three of the following: tomatoes, onions, mushrooms, spinach, broccoli, bacon, turkey bacon, ham, turkey sausage, sausage, carrots, tofu, sueshini, bell peppers, avocado, kalamata olives, cheese (feta, mozzarella, cheddar, jack, goat, or blue cheese) Add 1 item: +1 Add chicken: +2 Add smoked salmon: +3</p>	<p>12.00</p>
<p><b>Oven-roasted Sundried Tomato</b> Sun-dried tomatoes, basil, spinach, and goat cheese.</p>	<p>12.00</p>		
<p><b>Smoked Salmon and Spinach</b></p>	<p>13.00</p>		

**Cafe Specials**

<p><b>Huevos Rancheros</b> Two fried eggs served on corn tortillas, spanish or brown rice, black beans, guacamole, pico de gallo, sour cream, and feta cheese.</p>	<p>12.00</p>	<p><b>Breakfast Burrito</b> Three scrambled eggs with black beans, guacamole, pico de gallo, jack cheese, and your choice of mexican chorizo sausage, bacon, turkey bacon, sausage, turkey sausage, or ham in a flour or wheat tortilla. Served with fresh fruit and roasted potatoes.</p>	<p>12.00</p>
<p><b>Breakfast Egg Sandwich</b> Fried or scrambled eggs, on your choice of english muffin, bagel, or toast along with cheddar cheese and your choice of bacon or turkey bacon. Served with fresh fruit and roasted potatoes.</p>	<p>12.00</p>	<p><b>Breakfast Quesadilla</b> Scrambled eggs, jack and cheddar cheese, pico de gallo, guacamole, mushrooms, and your choice of bacon, turkey bacon, sausage, turkey sausage, or ham in a flour tortilla. Served with fresh fruit and roasted potatoes.</p>	<p>12.00</p>
<p><b>Sunrise Sandwich</b> A croissant stuffed with bacon or turkey bacon, scrambled eggs, cheddar cheese, lettuce, tomato, and avocado. Served with fresh fruit and roasted potatoes.</p>	<p>12.50</p>	<p><b>Avocado Toast</b> Grilled artisan bread topped with fresh avocado, radish, microgreens, crushed red pepper, lemon, salt, and pepper. Add 2 eggs any style: +\$3</p>	<p>11.00</p>
<p><b>Monte Cristo</b> Turkey, ham, swiss and jack cheese on sourdough bread, grilled until golden. Served with fresh fruit and roasted potatoes.</p>	<p>12.50</p>		

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**Chilaquiles**  
Served with corn tortilla chips and green tomatillo sauce, topped with feta cheese, sour cream, guacamole, and sour cream. Served with black beans and scrambled eggs.

12.00

**Smoked Salmon Wrap** 13.95  
Smoked salmon, eggs, cream cheese, and red onions wrapped in a flour tortilla. Served with fresh fruit and roasted potatoes.

**Smoked Salmon Plate**  
Served with a bagel, red onions, tomatoes, capers, and cream cheese.

13.95

**Smoked Salmon Sandwich** 13.95  
Served on a bagel with red onions, tomatoes, capers, and cream cheese. Served with fresh fruit and roasted potatoes.

## Protein and Fitness Specials

*Add a description about this category*

**Balance Plate**  
Fresh grilled salmon filet (wild) topped with bruschetta sauce with asparagus spears and grilled vegetables. Served with your choice of spanish or brown rice.

14.50

**Lean Plate** 13.00  
Scrambled egg whites with sliced tomatoes, steamed spinach or broccoli, and your choice of grilled premium chicken breast, rosemary turkey patty, or lean beef patty. (Fresh grilled Salmon is available for additional \$3).

**Steel Burrito** 13.00  
Grilled chicken breast, steamed spinach, scrambled egg whites, and spanish or brown rice. With your choice of flour or wheat tortilla.

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H.G.L

## LUNCH

### Hot & Grilled Sandwiches

*All hot & grilled sandwiches served with a baby mixed greens salad and roasted potatoes.*

<b>Lazy Chicken Sandwich</b> Served with eggplant, arugula, mayo, and roasted pepper.	12.00	<b>Turkey Club</b> Fresh oven-roasted turkey breast with bacon or turkey bacon, lettuce, tomato, and mayo.	12.00
<b>Grilled Tuna Melt</b> Served with cheddar cheese.	12.00	<b>Chipotle Chicken Wrap</b> Special chipotle sauce, lettuce, tomato, cheddar cheese, and grilled chicken.	12.00
<b>Caprese Panini</b> Fresh mozzarella, basil, tomatoes, roasted red bell peppers, basil pesto, mixed greens, and balsamic vinegar.	12.00	<b>Turkey Club Panini</b> Ciabatta bread, basil pesto, oven-roasted turkey breast, turkey bacon, tomato, lettuce, and avocado.	12.50
<b>Dijon Chicken Sandwich</b> Grilled chicken breast, bacon or turkey bacon, lettuce, tomatoes, avocado, and swiss cheese on sourdough.	12.50	<b>Chicken Breast Panini</b> Ciabatta bread, lettuce, tomato, avocado, grilled onions, and sun-dried tomato pesto.	12.50
<b>Goat Cheese and Eggplant Melt</b> Grilled onions, spinach, eggplant, melted goat cheese, shredded carrot, and sun-dried tomato pesto spread.	12.00	<b>Turkey Wrap</b> Fresh turkey breast, avocado, lettuce, tomato, jack cheese, and chipotle mayo.	12.00

### Cold Sandwiches

*All cold sandwiches served with a baby mixed greens salad.*

<b>Turkey Sandwich</b> Fresh oven-roasted turkey breast, lettuce tomato, and mayo.	11.00	<b>Egg Salad Sandwich</b> Egg salad, lettuce, and tomato.	11.00
<b>Tuna Salad Sandwich</b> Tuna albacore salad, lettuce, and tomato.	11.00	<b>Vegetarian Sandwich</b> Lettuce, tomato, avocado, shredded carrot, sprouts, red onions, sun-dried tomato pesto spread, and jack cheese.	11.00
<b>Chicken Salad Sandwich</b> Chicken salad, lettuce, and tomato.	11.00		

### Tacos & Quesadillas

<b>Seasonal Veggies Quesadilla</b> On a flour tortilla with melted jack and cheddar cheese, pico de gallo, and vegetables.	11.00	<b>Tuna Melt Quesadilla</b> Comes with spinach, jack and cheddar cheese, guacamole, and shredded carrots.	12.00
		<b>Barbeque Chicken Quesadilla</b> Comes with goat cheese and spinach.	12.00

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<b>Chicken Quesadilla</b>	12.00	<b>Grilled Salmon or Ahi Soft Tacos</b>	13.50
Grilled onions, jack and cheddar cheese, pico de gallo, and guacamole.		Two soft tacos filled with delicious seared ahi tuna cuts or fresh grilled salmon, our homemade special spicy chipotle sauce, pico de gallo, and guacamole.	
<b>Salmon &amp; Goat Ch. Quesadilla</b>	12.50	<b>Grilled Chicken Tacos</b>	12.00
Grilled salmon (wild), goat cheese, and spinach.		Served with our special spicy chipotle sauce, pico de gallo, and guacamole.	

### Fresh Gourmet Burgers

*Burgers come with mayo, djon, lettuce, tomatoes, pickles, and grilled onions Served on a whole wheat, golden, or onion bun Add avocado, bacon or cheese (cheddar, jack, or swiss) +1.50*

<b>Ground Sirloin Burger</b>	11.50	<b>Grilled Chicken Breast Burger</b>	11.50
		Roasted bell pepper and cognac mayo.	
<b>French Onion Burger</b>	12.50	<b>Portabello Mushroom Burger</b>	11.50
Grilled mushrooms, swiss cheese.		Avocado, lettuce, tomato, cheddar, djon mustard, and mayo.	
<b>Rosemary Turkey Burger</b>	11.50		

### Soup + Sandwich or Salad Combo

<b>Small Soup (12 oz)</b>	5.50	<b>Large Soup (16oz)</b>	6.50
<b>1/2 Hot Sandwich + Soup</b>	13.00	<b>1/2 Cold Sandwich + Soup</b>	12.00
Served with roasted potatoes and baby mixed greens salad.		Served with a baby mixed greens salad.	
<b>1/2 Salad + Soup</b>	12.00		
Choose: Mixed green Salad, greek salad, or caesar salad.			

### Salads

*All our dressings are homemade daily!*

<b>Organic Mixed Green Salad</b>	9.50	<b>Greek Salad</b>	11.50
Served with balsamic vinaigrette. Add chicken breast, turkey or beef patty, tuna salad, or grilled tofu. +4.00		Romaine lettuce, tomatoes, red onions, kalamata olives, marinated feta cheese, and cucumbers. Served with balsamic vinaigrette.	
<b>Caesar Salad</b>	10.00	<b>Sesame-Crusted Salmon Salad</b>	14.00
Served with avocado. Add Chicken +4 Add Grilled Salmon: +6		Fresh kale, sliced almonds, feta cheese, dates, mango, and strawberries. Served with mango dressing.	
<b>Goat Cheese and Crouton Salad</b>	12.00	<b>Chinese Chicken Salad</b>	12.00
Mixed greens with warm marinated goat cheese log with basil pesto, pumpkin seeds, and sautéed vegetables. Served with balsamic vinaigrette.		Napa cabbage, red cabbage, baby mixed greens, mandarin oranges, and fried wontons. Served with our special homemade ginger sesame dressing.	

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<b>High Protein Salad</b>	12.50	<b>Salmon or Ahi Tuna Salad</b>	14.00
Scoop of all white meat albacore tuna salad, one hard boiled egg, tomato, and your choice of premium grilled chicken breast or fresh oven roasted turkey breast over mixed greens. Served with balsamic vinaigrette.		(Sushi grade) Over bed of mixed greens topped with salsa fresca. Served with balsamic vinaigrette.	
<b>Apple Walnut Chicken Salad</b>	12.50	<b>Mango Chicken Salad</b>	12.50
Mixed greens, red onions, candied walnuts, and goat cheese. Served with our homemade mango dressing.		Mixed greens, wontons, candied walnuts, fresh cut mango, and premium grilled chicken breast. Served with our homemade sesame peanut dressing.	
<b>Chicken Cobb Salad</b>	13.00	<b>Chopped Salad</b>	13.00
Romaine lettuce, premium grilled chicken breast, bacon, aged blue cheese, hard boiled egg, avocado, and tomatoes. Served with our homemade blue cheese dressing.		Chopped romaine lettuce, turkey bacon, avocado, premium grilled chicken breast, diced tomatoes, garbanzo beans, beets, and gorgonzola cheese. Served with balsamic vinaigrette.	
		<b>Blackened Salmon Salad</b>	14.00
		Fresh arugula, goat cheese, cranberries, beets, candied walnuts, and green apples. Served with balsamic vinaigrette.	

### Pastas

<b>Carbonara</b>	12.00	<b>Amatriciana</b>	12.00
Garlic, bacon, parmesan cheese with cream sauce.		Bacon, marinara sauce, onions, and parmesan cheese.	
<b>Vegetali</b>	12.00	<b>Penne Special</b>	12.00
Sautéed vegetables with marinara sauce and parmesan cheese.		Grilled chicken, sun-dried tomatoes, broccoli, marinara sauce, and parmesan cheese.	

### Sides

<b>Fresh Fruit</b>	3.50	<b>Toast</b>	2.50
		Two slices of wheat-poppy seed, sourdough, rosemary, olive, or rye.	
<b>Roasted Potatoes</b>	3.50	<b>Two Eggs Any Style</b>	3.50
<b>Meat</b>	4.00	<b>Avocado or Guacamole</b>	2.00
Bacon, Turkey Bacon, Sausage, Turkey Sausage, Ham, Turkey or Beef Patty, or Chicken Breast			
<b>Grilled Salmon or Ahi Tuna</b>	8.50	<b>Veggies</b>	3.50
		Broccoli, Spinach, or Mix Vegetables.	
<b>Cottage Cheese</b>	3.50		

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## DRINKS

### Cold Beverages

Fresh Squeezed Orange Juice	5.00	Organic Soy Milk	3.00
Carrot Juice	5.00	Bottled Drinks	2.50
Lemonade	3.50	Snapple, Orangina, Apple Juice, Perrier, Gatorade	
Soda	2.50	Bottled Water	3.50-4.50
Coke, Diet Coke, Sprite (canned)		Medium Fiji: 3.50	
Cold Milk	2.50	Large Fiji: 4.50	
		Pelegino	3.50-4.50
		Medium: 3.50	
		Large: 4.50	

### Fresh Fruit Smoothies

*Add protein for +2.50*

Strawberry & Banana	6.00	Blueberry & Banana	6.00
Strawberry, Banana, & Pineapple	6.00	Mixed Berry & Banana	6.00
Strawberry & Mango	6.00	Carrot, Banana, & Honey	6.00
Strawberry & Pineapple	6.00	Green Smoothie	8.00
Blonde	6.00	Kale, spinach, avocado, banana, mango, protein, almond milk	
Banana, Pineapple, & Mango			

### Fresh Juices (20oz)

Sunrise	6.00	Cleanser	6.00
1 Apple, 0.5oz ginger, rest carrot		6oz cucumber, 3oz beet, rest carrot	
Green Goddess	6.00	Fruit Ginger	6.00
9oz cucumber, handful of spinach, 3 stems parsley, rest celery		0.5oz ginger, 1 apple, rest orange juice	

*Handwritten signature or initials*

Bloody Cocktail  
3oz beets, rest carrot & celery

6.00

Super Detox  
Carrot, beet, celery, rest orange juice

6.00

Six Pack  
3oz cucumber, 3oz beet, 1/2 apple, 0.5oz ginger,  
rest celery & carrot

6.00

## Organic Loose Leaf Tea

16oz: \$2.25 / 20oz: \$3.50

Jasmine Green Tea

English Breakfast (Black Tea)

Moroccan Mint (Green Tea)

Chamomile (Herbal Tea)

Genmai Chai (Green Tea)

Peppermint (Herbal Tea)

Earl Grey (Black Tea)

## Organic Coffee

House Blend

Regular or Decaf  
16oz: 3.25  
20oz: 3.50

Iced Coffee

Large (20oz): 3.25  
Add syrup: +0.50  
(vanilla, sugar-free vanilla, caramel, hazelnut)

Café Au Lait

Coffee and steamed milk.  
16oz: 3.25  
20oz: 3.50

## Chocolate

Hot Chocolate

16oz: 3.00  
20oz: 3.50

Hot White Chocolate

16oz: 3.00  
20oz: 3.50

## Organic Espresso

Espresso

Double: 3.00

Caramel Macchiato

Espresso, caramel, and a spoonful of foam.  
Double: 3.25

Café Macchiato

Espresso and a spoonful of foam.  
Double: 3.25

## Organic Espresso Classics

Choose: whole, low-fat (2%), or nonfat milk. | Soy Milk +1.00 or Almond Milk +1.25

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### Café Americano

Espresso and water  
16oz: 3.25  
20oz: 3.50

### Red Eye

Espresso and coffee  
16oz: 3.50  
20oz: 3.75

### Cappuccino

Espresso, steamed milk, and a lot of foam.  
16oz: 4.50  
20oz: 4.75

### Café Latte

Espresso, steamed milk, and a little foam.  
16oz: 4.50  
20oz: 4.75

### Café Mocha

16oz: 4.50  
20oz: 4.75

### White Chocolate Mocha

16oz: 4.50  
20oz: 4.75

### Vanilla Latte

16oz: 4.50  
20oz: 4.75

### Hazelnut Latte

16oz: 4.50  
20oz: 4.75

### Caramel Latte

16oz: 4.50  
20oz: 4.75

### Honey Latte

16oz: 4.50  
20oz: 4.75

## Organic Iced Espresso

*One Size Only (20oz)*

Iced Americano	3.25	Iced Vanilla Latte	4.75
Iced Cappuccino	4.50	Iced Hazelnut Latte	4.75
Iced Café Latte	4.50	Iced Caramel Latte	4.75
Iced Café Mocha	4.75	Iced Honey Latte	4.75
Iced White Chocolate Mocha	4.75		

## Organic Tea (with Milk)

*Choose: whole, low-fat (2%), or nonfat milk. / Soy Milk +1.00 or Almond Milk +1.25*

### Vanilla Chai

A sweet & spicy, smooth & creamy blend of pure Indian tea, milk, honey, herbs, and spices.  
16oz: 4.50  
20oz: 4.75

### Green Matcha Chai

Spice blend cinnamon, cloves, saute, cardamom, and ginger natural flavor, bourbon vanilla extract.  
16oz: 4.50  
20oz: 4.75

### Tiger Spicy Chai

A hot route spice.  
16oz: 4.50  
20oz: 4.75

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### Iced Tea

Iced Tea	3.00	Iced Green Matcha Chai	4.75
Arnold Palmer	3.50	Iced Tiger Spicy Chai	4.75
Iced Vanilla Chai	4.75		

### Organic Iced Blended

Iced Blended Mocha	4.75	Iced Blended Vanilla Chai	4.75
Iced Blended White Mocha	4.75	Iced Blended Green Tea Chai	4.75
Iced Blended Vanilla Latte	4.75	Iced Blended Tiger Spicy Chai	4.75
Iced Blended Caramel Latte	4.75		

### Coffee Extras

Espresso	+1.00	Organic Soy Milk	+1.00
Shot of Syrup	+0.50	Organic Almond Milk	1.25

LAZY DAISY CAFE BRENTWOOD

M.G.L

EXHIBIT "B"

RULES AND REGULATIONS

**Thoroughfares**

1. No person shall use any roadway or walkway located in the Shopping Center except as a means of egress from or ingress to the Commercial Areas and Parking Areas within the Shopping Center or adjacent public streets. Roadways and walkways shall be used in an orderly manner and in accordance with directional or other signs or guides. The speed limit for automobiles on the roadways shall not exceed posted rates. Parking or stopping on roadways is prohibited except for the immediate loading or unloading of passengers. Walkways are limited to pedestrian use.

**Parking Areas**

2. Parking in the Parking Areas of the Shopping Center is limited to those persons using the Shopping Center, and shall be permitted only for the period during which the person is patronizing, conducting business related to, or otherwise using the Shopping Center. All automobiles shall be parked in an orderly manner within the painted lines defining the individual parking spaces. Parking may be limited by length of time in designated portions of the Parking Areas. Only automobiles, vans, and trucks not exceeding three quarters of a ton may park in the Parking Areas.

**Employee Parking**

3. Every tenant or other occupant of the Shopping Center ("Occupant") or the employee of any Occupant shall park his or her automobile only in the portions of the Common Areas, if any, designated as "Employee Parking". The location of employee parking may be changed from time to time by written notice given to Tenant by Landlord.

**Delivery Areas**

4. Delivery areas, loading docks, and service roads shall be used only for making deliveries or providing other services (including management and security services) to the retail establishments in the Shopping Center. Except for deliveries made when the Shopping Center is not open for business, all deliveries made to retail establishments in the Shopping Center shall be made through the delivery areas located at the rear of the buildings in the Commercial Areas of the Shopping Center and designated for Occupants' use.

**Business Hours**

5. All retail establishments shall be open for business during all usual business hours and on all such days as comparable businesses of like nature in the area are open for business. All Occupants shall illuminate their window displays, exterior signs, and exterior advertising displays during all hours they are required to be open for business.

**Exterior of Buildings**

6. The exterior of buildings, including all entrances, doors, storefront windows, plate glass, and fixtures, shall at all times be maintained in a safe, neat, and clean condition.

**Plumbing**

7. Plumbing facilities shall not be used for any purpose other than that for which they are constructed.

**Removal of Trash and Litter**

8. All trash, refuse, and waste materials shall be regularly removed from the Premises by its Occupant. Until removed, the foregoing materials shall be stored in adequate containers and placed where customers of the Shopping Center, in a manner that will not constitute a health or fire hazard or nuisance to any Occupant or user of the Shopping Center cannot see them. Burning of trash, refuse, or waste materials is strictly prohibited.

**Residential Uses**

9. No portion of the Shopping Center shall be used for any residential or lodging purposes.

**Industrial and Manufacturing Uses**

10. No portion of the Shopping Center shall be used for any industrial or manufacturing purpose. Warehousing uses shall not be permitted except as otherwise provided in Occupant's lease.

**Displays on Common Areas**

11. The Common Areas (including the sidewalks and walkways of the Common Areas) may not be used by any Occupant to display, sell, store, or place any merchandise, equipment, or other items. No merchandise or other items may be placed outside the exterior walls of the Premises for purposes of sale, display, or otherwise.

**Promotional Events**

12. Nowithstanding any provision in Section I, to the contrary, portions of the Common Areas may be used for special promotional events, but only if the specific event is first approved in writing by the Landlord.

**Advertising**

13. No form of advertising medium (including flashing light, searchlight, loudspeaker, phonograph, radio, or television) shall be maintained on the Common Areas. No sound or light may be transmitted beyond the boundaries of the Premises.

**Close-Out Promotions**

14. No auction, fire, bankruptcy, or going-out-of-business sale shall be conducted in, at, on, or about the Shopping Center or the Premises.

**Unlawful Uses**

15. Neither the Shopping Center nor the Premises shall be used for any purpose that violates any law, ordinance, or regulation or that constitutes a nuisance.

**Hazardous Substances**

16. Hazardous substances shall not be used or stored on the Premises or any other portion of the Shopping Center.

**Other Unauthorized Activities**

17. (a) Subject to Subsection (b) below, no person shall do any of the following in or on any part of the Common Areas:
- (1) Sell, distribute, or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet, or other matter.
  - (2) Exhibit any sign placard, banner, notice, or other written material.
  - (3) Distribute any circular, booklet, handbill, placard, or other material.

Exhibit "B"

*H.G.L.*

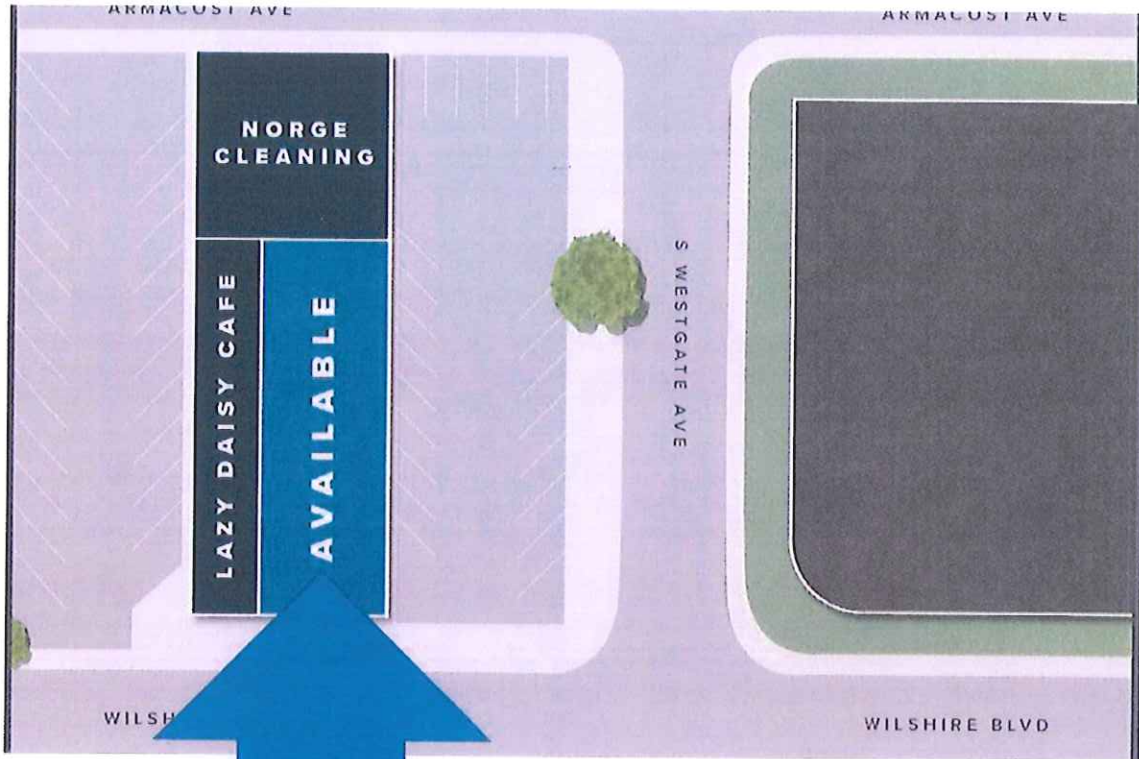
- (4) Solicit membership in any organization, group, or association or a contribution for any purpose.
- (5) Parade, patrol, picket, demonstrate, rally, or engage in any conduct that might tend to (i) interfere with or impede the use of any of the Common Areas by any user of the Shopping Center, (ii) create a disturbance, (iii) attract attention, or (iv) harass, annoy, disparage, or be detrimental to the interest of any of the retail establishments within the Shopping Center.
- (6) Use any Common Area for any purpose at a time when no retail establishment in the Shopping Center is open for business or employment.
- (7) Throw, discard, or deposit any paper, glass, or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.
- (8) Use any sound-making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to Occupants or users of the Shopping Center.
- (9) Deface, damage, or demolish any sign, light standard, fixture, landscaping material, or other improvement within the Center or the property of any Occupant or user located in the Shopping Center.
- (b) Subsections (a)(1) through (5) of this Section 17 shall not apply (and shall not be interpreted or construed) to (1) prevent any access to the Common Areas by any person when the access is required or permitted by law, or (2) prohibit the conduct of any activity that is permitted by law. However, Landlord shall have the right to take reasonable measures permitted by law to minimize any disruption or interference with the business of the Shopping Center caused by the access or conduct.

D.G.L



Exhibit A

11911 Wilshire Blvd., Los Angeles, CA 90025 – Site Plan



*[Handwritten mark]*

*[Handwritten signature]*



## DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP

(As required by the Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

### SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

### BUYER'S AGENT

A Buyer's agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer: A fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- (a) Diligent exercise of reasonable skill and care in performance of the agent's duties.
- (b) A duty of honest and fair dealing and good faith.
- (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

### AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more salesperson and broker associates, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer.

In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- (b) Other duties to the Seller and the Buyer as stated above in their respective sections.

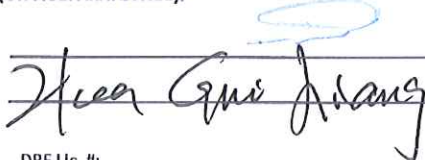
In representing both Seller and Buyer, a dual agent may not, without the express permission of the respective party, disclose to the other party confidential information, including, but not limited to, facts relating to either the Buyer's or Seller's financial position, motivations, bargaining position, or other personal information that may impact price, including the Seller's willingness to accept a price less than the listing price or the Buyer's willingness to pay a price greater than the price offered.

### SELLER AND BUYER RESPONSIBILITIES

Either the purchase agreement or a separate document will contain a confirmation of which agent is representing you and whether that agent is representing you exclusively in the transaction or acting as a dual agent. Please pay attention to that confirmation to make sure it accurately reflects your understanding of your agent's role. The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional. If you are a Buyer, you have the duty to exercise reasonable care to protect yourself, including as to those facts about the property which are known to you or within your diligent attention and observation. Both Sellers and Buyers should strongly consider obtaining tax advice from a competent professional because the federal and state tax consequences of a transaction can be complex and subject to change.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction. This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on page 2. Read it carefully. I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CIVIL CODE PRINTED ON THE BACK (OR A SEPARATE PAGE).

Buyer     Seller     Lessor     Lessee  
 Buyer     Seller     Lessor     Lessee

  
 Date: 10/25/19

Agent: Matthews Retail Group, Inc DRE Lic. #: \_\_\_\_\_  
Real Estate Broker (Firm)

By: \_\_\_\_\_ DRE Lic. #: \_\_\_\_\_ Date: \_\_\_\_\_  
(Salesperson or Broker-Associate)

  
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THIS FORM HAS BEEN PREPARED BY AIR CRE. NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF THIS FORM FOR ANY SPECIFIC TRANSACTION. PLEASE SEEK LEGAL COUNSEL AS TO THE APPROPRIATENESS OF THIS FORM.



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**DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP  
CIVIL CODE SECTIONS 2079.13 THROUGH 2079.24 (2079.16 APPEARS ON THE FRONT)**

**2079.13.** As used in Sections 2079.7 and 2079.14 to 2079.24, inclusive, the following terms have the following meanings:

(a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. The agent in the real property transaction bears responsibility for that agent's salespersons or broker associates who perform as agents of the agent. When a salesperson or broker associate owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the salesperson or broker associate functions. (b) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee of real property. (c) "Commercial real property" means all real property in the state, except (1) single-family residential real property, (2) dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, (3) a mobilehome, as defined in Section 798.3, (4) vacant land, or (5) a recreational vehicle, as defined in Section 799.29. (d) "Dual agent" means an agent acting, either directly or through a salesperson or broker associate, as agent for both the seller and the buyer in a real property transaction. (e) "Listing agreement" means a written contract between a seller of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer, including rendering other services for which a real estate license is required to the seller pursuant to the terms of the agreement. (f) "Seller's agent" means a person who has obtained a listing of real property to act as an agent for compensation. (g) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the seller's agent. (h) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (i) "Offer to purchase" means a written contract executed by a buyer acting through a buyer's agent that becomes the contract for the sale of the real property upon acceptance by the seller. (j) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property, and includes (1) single-family residential property, (2) multiunit residential property with more than four dwelling units, (3) commercial real property, (4) vacant land, (5) a ground lease coupled with improvements, or (6) a manufactured home as defined in Section 18007 of the Health and Safety Code, or a mobilehome as defined in Section 18008 of the Health and Safety Code, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (k) "Real property transaction" means a transaction for the sale of real property in which an agent is retained by a buyer, seller, or both a buyer and seller to act in that transaction, and includes a listing or an offer to purchase. (l) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (m) "Seller" means the transferor in a real property transaction and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor of real property. (n) "Buyer's agent" means an agent who represents a buyer in a real property transaction.

**2079.14.** A seller's agent and buyer's agent shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and shall obtain a signed acknowledgment of receipt from that seller and buyer, except as provided in Section 2079.15, as follows: (a) The seller's agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The buyer's agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase. If the offer to purchase is not prepared by the buyer's agent, the buyer's agent shall present the disclosure form to the buyer not later than the next business day after receiving the offer to purchase from the buyer.

**2079.15.** In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent shall set forth, sign, and date a written declaration of the facts of the refusal.

**2079.16** Reproduced on Page 1 of this AD form.

**2079.17(a)** As soon as practicable, the buyer's agent shall disclose to the buyer and seller whether the agent is acting in the real property transaction as the buyer's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the buyer's agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the seller's agent shall disclose to the seller whether the seller's agent is acting in the real property transaction as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the seller's agent prior to or coincident with the execution of that contract by the seller.

(c) **CONFIRMATION:** The following agency relationships are confirmed for this transaction.

Seller's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_

Is the broker of (check one):  the seller; or  both the buyer and seller. (dual agent)

Seller's Agent DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_

Is (check one):  the Seller's Agent. (salesperson or broker associate); or  both the Buyer's Agent and the Seller's Agent. (dual agent)

Buyer's Brokerage Firm DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_

Is the broker of (check one):  the buyer; or  both the buyer and seller. (dual agent)

Buyer's Agent DO NOT COMPLETE, SAMPLE ONLY License Number \_\_\_\_\_

Is (check one):  the Buyer's Agent. (salesperson or broker associate); or  both the Buyer's Agent and the Seller's Agent. (dual agent)

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14. An agent's duty to provide disclosure and confirmation of representation in this section may be performed by a real estate salesperson or broker associate affiliated with that broker.

**2079.18** (Repealed pursuant to AB-1289, 2017-18 California Legislative session)

**2079.19** The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

**2079.20** Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically

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prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

**2079.21** (a) A dual agent may not, without the express permission of the seller, disclose to the buyer any confidential information obtained from the seller. (b) A dual agent may not, without the express permission of the buyer, disclose to the seller any confidential information obtained from the buyer. (c) "Confidential information" means facts relating to the client's financial position, motivations, bargaining position, or other personal information that may impact price, such as the seller is willing to accept a price less than the listing price or the buyer is willing to pay a price greater than the price offered. (d) This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

**2079.22** Nothing in this article precludes a seller's agent from also being a buyer's agent. If a seller or buyer in a transaction chooses to not be represented by an agent, that does not, of itself, make that agent a dual agent.

**2079.23** (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

**2079.24** Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

AIR CRE, 500 North Brand Blvd, Suite 900, Glendale, CA 91203, Tel 213-687-8777, Email [contracts@aircre.com](mailto:contracts@aircre.com)

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*H.G.L.*  
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JV NOODLES LLC  
11911 WILSHIRE BLVD  
LOS ANGELES, CA 90025

16-4503/1220

5

10/25/2019

DATE

PAY TO THE  
ORDER OF

Creative Concepts Group, Inc.

\$ 45,215.<sup>00/100</sup>

ROYAL

Fifty Five thousand two hundred fifteen and 28/100

DOLLARS

Security  
Features  
Details on  
Back



皇佳商業銀行  
ROYAL BUSINESS BANK

FOR

Security Deposit 2 Feb 200 Base Part 3 CAM

*[Signature]*

⑆ 22045037⑆

53018228⑆0005

## LEASE TERMINATION AGREEMENT

This Lease Termination Agreement ("**Agreement**") is made as of May 20, 2021, by and between Creative Concepts Group, LLC, a California limited liability company ("**Landlord**"), and Pedro Barragan and Lazy Daisy Cafe, Inc. (collectively "**Tenant**").

A. Landlord (as successor in interest to Creative Concept Group, Inc.) and Tenant (as successor in interest to Yongmi Kim and Zong Eun Kim) are parties to that certain Standard Multi-Tenant Shopping Center Lease – Net, dated November 30, 2009, as amended by that certain First Amendment to Lease dated November 8, 2010; as assigned pursuant to that certain Assignment of Lease dated on or about November 30, 2010; as assigned pursuant to that certain Assignment of Lease dated on or about September 26, 2011; as further amended by that certain Second Amendment to Lease dated June 13, 2014; as further amended by that certain Third Amendment to Lease Agreement dated April 24, 2017; as further amended by that certain Fourth Amendment to Lease Agreement dated November 16, 2018; as further amended by that certain Fifth Amendment to Lease Agreement dated January 27, 2020 (collectively, the "**Lease**") for that certain premises consisting of approximately 3,020 rentable square feet of space located at 11913 Wilshire Blvd., Los Angeles, CA 90025 (the "**Premises**"), as more particularly described in the Lease.

B. The parties desire to terminate the Lease prior to the current Lease Expiration Date, on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and upon the conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Termination of Lease. The parties agree that the Lease shall terminate on August 31, 2021 ("**Termination Date**"), and the Termination Date shall be deemed the "Expiration Date". Tenant shall surrender the Premises and shall remove all personal property, furniture, fixtures, and equipment from the Premises prior to the Termination Date.

2. Consideration. As consideration for the termination of the Lease and provided no material Default then exists under the terms of the Lease:

a. **Free Rent.** Landlord shall abate all Rent, in full, including any and all CAM charges/Additional Rent, for the months of June, July and August, 2021.

b. **Termination Payment.** In the event the Tenant has surrendered the Premises in accordance with this Agreement and the Lease on or prior to the Termination Date, Landlord shall pay to Tenant, a one-time, termination fee in the amount of \$300,000.00 ("**Termination Payment**") no later than June 30, 2021. Such amount, if elected by Landlord may be deposited in Tenant's attorney's client trust account, for distribution on August 31, 2021, or Landlord may use a commercial escrow company for such disbursement. Costs for escrow or trust account usage shall be borne by the Parties equally. Additionally, Tenant's security deposit of \$8,505.00, shall be returned in full to Tenant, on the day of final move-out.

DS

AMB

PBM

DS

JV

c. Landlord and Tenant shall conduct a physical inspection of the Premises approximately 5 days prior to Tenant's final move-out. Both parties shall complete and sign a physical inspection report form which shall address any deficiencies or concerns with the Premises.

3. Release of Landlord. Upon receipt of the Termination Payment, Tenant agrees that Landlord and its owners, agents and employees shall be fully released and discharged from any and all obligations that may have theretofore arisen or may thereafter arise under or with respect to the Lease, this Agreement, or the Premises.

4. Release of Tenant. Landlord agrees that upon termination of the Lease as set forth in this Agreement, Tenant and its owner, agents and employees shall be fully released and discharged from any and all obligations that may have theretofore arisen or may thereafter arise under or with respect to the Lease or the Premises.

<sup>DS</sup>  
AMB

PBM



5. Miscellaneous. If either party hereto commences an action against the other to enforce any of the terms hereof, or to obtain damages for any alleged breach of any of the terms hereof, or for a declaration of rights hereunder, the losing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the prosecution of such action, whether or not such action proceeds to trial or appeal. Any and all dispute resolution including litigation shall take place in the County of Los Angeles. The internal laws of California shall apply to all litigation. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective legal representatives, successors and assigns. Time is of the essence of this Agreement and the provisions contained herein. The parties have read this Agreement and mutual release as contained herein, and on the advice of counsel they have freely and voluntarily entered into this Agreement. All of the foregoing recitals are incorporated herein as though set forth at length. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Lease. This Agreement may be executed in counterparts, each of which shall be deemed an original part and all of which together shall constitute a single agreement.

6. Authority. All parties signing this Agreement attest to the fact they he/she has the proper corporate authority to enter into this Agreement and bind the entity in which he/she is signing on behalf of.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first set forth above.

**LANDLORD:**

CREATIVE CONCEPTS GROUP, LLC  
a California limited liability company

DocuSigned by:  
*Anne Marie Bachmann*  
By: 724B381C766F450...  
*Anne Marie Bachman*, Trustee of the  
Second Amended And Restated John  
J. Vinciguerra Trust dated  
June 6, 2017  
Manager

DocuSigned by:  
*John J Vinciguerra III, Trustee*  
By: 2A97D8394D844E2  
*John J. Vinciguerra, III*, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017  
Manager

**TENANT:**

LAZY DAISY CAFÉ, INC.

By: *Pedro Barragan III*  
PEDRO BARRAGAN

## LEASE TERMINATION AGREEMENT

THIS LEASE TERMINATION AGREEMENT ("Agreement") is made and entered into as of June 15, 2021, by and between CREATIVE CONCEPTS GROUP, LLC, a California limited liability company ("Landlord"), JV NOODLES LLC, a California limited liability company ("Tenant"), and HUA GUI LIANG, an individual ("Guarantor").

A. Landlord (as successor in interest to Creative Concepts Group, Inc.) and Tenant are parties to that certain Standard Multi-Tenant Shopping Center Lease – Net, October 23, 2019 (the "Lease") for that certain premises consisting of approximately 3,020 rentable square feet of space located at 11911 Wilshire Blvd., Los Angeles, CA 90025 (the "Premises"), as more particularly described in the Lease

B. Guarantor executed that certain Guaranty of Lease on October 25, 2019 ("Guaranty"), in favor of Landlord in connection with the obligations of Tenant under the Lease.

C. The parties desire to terminate the Lease on the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and upon the conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord, Tenant, and Guarantor hereby agree as follows:

1. Recitals; Capitalized Terms. All of the foregoing recitals are incorporated herein as though set forth at length. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Lease.

2. Surrender of Premises and Termination of Lease and Guaranty. The Tenant agrees to and shall surrender the Premises and all of Tenant's right, title and interest in and to the Premises on or before thirty (30) days following the date of this Agreement ("Termination Date"), and shall comply with all terms and conditions of this Agreement relating to the return of the Premises to Landlord upon the Termination Date. Notwithstanding anything to the contrary in the Lease, Tenant shall have the right to remove all of its personal property, including without limitation Tenant's trade fixtures and equipment, furniture, furnishings, and fixtures including without limit the following: walk-in coolers, walk-in freezers, exhaust hood systems, griddle, stoves, ovens, broilers, grills, rice cookers, fryers, refrigerators, freezers, prep and work tables, prep and work counters, soda machines and fountains, ice making machines, dining chairs, dining tables, wall decorations, and any trade fixtures or signs bearing Tenant's trademark, trade name, trade dress, or logo. Further notwithstanding anything to the contrary in the Lease, Tenant shall use commercially reasonable efforts to minimize damage caused by the removal of any such items but shall not be obligated to repair any damage caused by such removal. The Lease shall terminate as of the Termination Date. The Termination Date shall be deemed the "Expiration Date". Upon the Expiration Date, the Lease and Guaranty shall each be rendered of no further force or effect, and Landlord's and Tenant's respective obligations and liabilities arising under and related to the Lease and Guarantor's obligations and liabilities arising under and related to the Guaranty, shall cease. Notwithstanding anything to the contrary in the Lease or the Guaranty, no obligations of Landlord, Tenant, or Guarantor under the Lease or the Guaranty shall survive the Expiration Date.

3. Consideration. As consideration for the termination of the Lease and provided no Breach then exists under the terms of the Lease, Landlord hereby agrees to pay to Tenant the sum of \$400,000 ("Termination Fee"), and release any claims to any delinquent or deferred rent under the terms of the Lease. The Termination Fee which shall be payable in accordance with the terms of that certain Promissory Note in the form attached hereto as Exhibit A ("Promissory Note") and that certain Deed of Trust in the form attached hereto as Exhibit B ("Deed of Trust").

4. Contingency. This Agreement is contingent upon satisfaction of the following conditions, which the parties agree to perform on the Termination Date: (a) Landlord's delivery to Tenant of the fully executed Promissory Note, (b) Landlord's delivery to Tenant of a fully executed Deed of Trust recorded in the public records of Los Angeles County, California, (c) Landlord's return to Tenant of the \$24,994.28 security deposit currently held by Landlord under the Lease, and (d) Tenant's delivery of possession of the Premises to Landlord in accordance with the provisions of this Agreement.

5. Release by Tenant. Effective on the Termination Date, Tenant, on behalf of itself and its predecessors, successors, affiliates and assigns, and all other persons, firms and corporations claiming through Tenant, and each of them (collectively, the "Tenant Releasing Parties"), does hereby release Landlord and its predecessors, successors, affiliates and assigns, and their respective partners, officers, shareholders, agents, contractors, representatives, members, employees and attorneys (collectively the "Landlord Released Parties"), of and from any and all claims, demands, disputes, damages, liabilities, obligations, controversies, debts, costs, expenses, lawsuits, actions, causes of action and other rights to relief, both legal and equitable, of every kind and nature, whether now known or unknown, suspected or unsuspected, past or present, contingent or fixed, which the Tenant Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Landlord Released Parties, or any of them, arising out of or in connection with the Lease, the Premises, or any dealings between the Landlord Released Parties, or any of them, on the one hand, and the Tenant Releasing Parties, or any of them, on the other hand. In connection therewith, Tenant hereby expressly waives all rights which it has, or may hereafter claim to have, that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this Agreement, and hereby expressly waives all rights it may have, or claim to have, under the provisions of California Civil Code Section 1542, or equivalent law of any jurisdiction, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

VD  
Tenant's Initials

6. Release by Guarantor. Effective on the Termination Date, Guarantor, on behalf of itself and its predecessors, successors, affiliates and assigns, and all other persons, firms and corporations claiming through Guarantor, and each of them (collectively, the "Guarantor Releasing Parties"), does hereby release the Landlord Released Parties, of and from any and all claims, demands, disputes, damages, liabilities, obligations, controversies, debts, costs, expenses, lawsuits, actions, causes of action and other rights to relief, both legal and equitable, of every kind and nature, whether now known or unknown, suspected or unsuspected, past or present, contingent or fixed, which the Guarantor Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Landlord Released Parties, or any of them, arising out of or in connection with the Lease, the Premises, or any dealings between the Landlord Released Parties, or any of them, on the one hand, and the Guarantor Releasing Parties, or any of them, on the other hand. In connection therewith, Guarantor hereby expressly waives all rights which it has, or may hereafter claim to have, that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this Agreement, and hereby expressly waives all rights it may have, or claim to have, under the provisions of California Civil Code Section 1542, or equivalent law of any jurisdiction, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

**Guarantor Initials**

7. Release by Landlord. Effective on the Termination Date, Landlord, on behalf of itself and its predecessors, successors, affiliates and assigns, and all other persons, firms and corporations claiming through Landlord, and each of them (collectively, the “**Landlord Releasing Parties**”), does hereby release Tenant, Guarantor and their predecessors, successors, affiliates and assigns, and their respective partners, officers, shareholders, agents, contractors, representatives, members, employees and attorneys (collectively the “**Tenant Released Parties**”), of and from any and all claims, demands, disputes, damages, liabilities, obligations, controversies, debts, costs, expenses, lawsuits, actions, causes of action and other rights to relief, both legal and equitable, of every kind and nature, whether now known or unknown, suspected or unsuspected, past or present, contingent or fixed, which the Landlord Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Tenant Released Parties, or any of them, arising out of or in connection with the Lease, the Premises, or any dealings between the Tenant Released Parties, or any of them, on the one hand, and the Landlord Releasing Parties, or any of them, on the other hand. In connection therewith, Landlord hereby expressly waives all rights which it has, or may hereafter claim to have, that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this Agreement, and hereby expressly waives all rights it may have, or claim to have, under the provisions of California Civil Code Section 1542, or equivalent law of any jurisdiction, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

           
JV      AMB  
**Landlord Initials**

8. Representations and Warranties.

a. By Tenant. Tenant represents and warrants that: (1) Tenant is the rightful owner of all of the Tenant's interest in the Lease; (2) Tenant has not assigned, transferred or conveyed, and agrees not to assign, transfer or convey its interest in the Premises, the Lease, or any claims or potential claims it may have against Landlord or any of the Landlord Released Parties; (3) Tenant has the full power, authority and legal right to enter into and to perform and observe the provisions of this Agreement without the authorization and consent of any other party or entity; (4) Tenant has no current, actual knowledge of any fact or circumstance which would give rise to any claim, demand, obligation, liability, action or cause of action arising out of or in connection with Tenant's occupancy of the Premises; (5) to Tenant's current, actual knowledge, Landlord is not in default under the Lease (nor does Tenant have any defenses or offsets to the timely performance of Tenant's obligations under the Lease or this Agreement); and (6) there are no outstanding contracts for the supply of labor or material and no work has been done or is being done in, to or about the Premises which has not been fully paid for and for which appropriate waivers of mechanic's liens have not been obtained.

b. By Guarantor. Guarantor represents and warrants that: (1) Guarantor has not assigned, transferred or conveyed, and agrees not to assign, transfer or convey its interest in the Premises, the Lease, the Guaranty, or any claims or potential claims it may have against Landlord or any of the

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

*J. Carl*  
Guarantor Initials

7. Release by Landlord. Effective on the Termination Date, Landlord, on behalf of itself and its predecessors, successors, affiliates and assigns, and all other persons, firms and corporations claiming through Landlord, and each of them (collectively, the "Landlord Releasing Parties"), does hereby release Tenant, Guarantor and their predecessors, successors, affiliates and assigns, and their respective partners, officers, shareholders, agents, contractors, representatives, members, employees and attorneys (collectively the "Tenant Released Parties"), of and from any and all claims, demands, disputes, damages, liabilities, obligations, controversies, debts, costs, expenses, lawsuits, actions, causes of action and other rights to relief, both legal and equitable, of every kind and nature, whether now known or unknown, suspected or unsuspected, past or present, contingent or fixed, which the Landlord Releasing Parties, or any of them, now have, had, or at any time hereafter may have, against the Tenant Released Parties, or any of them, arising out of or in connection with the Lease, the Premises, or any dealings between the Tenant Released Parties, or any of them, on the one hand, and the Landlord Releasing Parties, or any of them, on the other hand. In connection therewith, Landlord hereby expressly waives all rights which it has, or may hereafter claim to have, that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this Agreement, and hereby expressly waives all rights it may have, or claim to have, under the provisions of California Civil Code Section 1542, or equivalent law of any jurisdiction, which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

*J*      *AMB*  
Landlord Initials

8. Representations and Warranties.

a. By Tenant. Tenant represents and warrants that: (1) Tenant is the rightful owner of all of the Tenant's interest in the Lease; (2) Tenant has not assigned, transferred or conveyed, and agrees not to assign, transfer or convey its interest in the Premises, the Lease, or any claims or potential claims it may have against Landlord or any of the Landlord Released Parties; (3) Tenant has the full power, authority and legal right to enter into and to perform and observe the provisions of this Agreement without the authorization and consent of any other party or entity; (4) Tenant has no current, actual knowledge of any fact or circumstance which would give rise to any claim, demand, obligation, liability, action or cause of action arising out of or in connection with Tenant's occupancy of the Premises; (5) to Tenant's current, actual knowledge, Landlord is not in default under the Lease (nor does Tenant have any defenses or offsets to the timely performance of Tenant's obligations under the Lease or this Agreement); and (6) there are no outstanding contracts for the supply of labor or material and no work has been done or is being done in, to or about the Premises which has not been fully paid for and for which appropriate waivers of mechanic's liens have not been obtained.

b. By Guarantor. Guarantor represents and warrants that: (1) Guarantor has not assigned, transferred or conveyed, and agrees not to assign, transfer or convey its interest in the Premises, the Lease, the Guaranty, or any claims or potential claims it may have against Landlord or any of the

Landlord Released Parties; (2) Guarantor has the full power, authority and legal right to enter into and to perform and observe the provisions of this Agreement without the authorization and consent of any other party or entity; (3) Guarantor has no current, actual knowledge of any fact or circumstance which would give rise to any claim, demand, obligation, liability, action or cause of action arising out of or in connection with Tenant's occupancy of the Premises; and (4) to Guarantor's current, actual knowledge, Landlord is not in default under the Lease or Guaranty (nor does Guarantor have any defenses or offsets to the timely performance of Guarantor's obligations under the Lease, the Guaranty or this Agreement).

c. By Landlord. Landlord represents and warrants that: (1) Landlord is the rightful owner of all of the Landlord's interest in the Lease and that Landlord owns fee title to the Premises; (2) Landlord has not assigned, transferred or conveyed, and agrees not to assign, transfer or convey its interest in the Premises, the Lease, or any claims or potential claims it may have against Tenant or any of the Tenant Released Parties; (3) Landlord has the full power, authority and legal right to enter into and to perform and observe the provisions of this Agreement without the authorization and consent of any other party or entity; and (4) to Landlord's current, actual knowledge, excluding, however, any delinquent rent as referenced in Section 3 above, Tenant is not in default under the Lease.

9. Miscellaneous.

a. Invalidity of Provisions. If any provision of this Agreement is found to be invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of any such provision shall not affect the validity and enforceability of the remaining provisions hereof.

b. Attorneys' Fees. If either party hereto commences an action against the other to enforce any of the terms hereof, or to obtain damages for any alleged breach of any of the terms hereof, or for a declaration of rights hereunder, the losing party shall pay to the prevailing party the prevailing party's reasonable attorneys' fees and costs incurred in connection with the prosecution of such action, whether or not such action proceeds to trial or appeal.

c. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

d. Authorization. Each individual and entity executing this Agreement on behalf of a party hereby represents and warrants that it has the capacity set forth on the signature page hereof with full power and authority to bind such party.

e. Binding Effect. This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective legal representatives, successors and assigns.

f. Time of the Essence. Time is of the essence of this Agreement and the provisions contained herein.

g. Voluntary Agreement. The parties have read this Agreement and mutual release as contained herein, and on the advice of counsel they have freely and voluntarily entered into this Agreement.

h. Further Assurances. Each of the parties hereto agrees to execute and deliver all such further documents and to take all such further actions as may be reasonably requested by the other party hereto to effectuate fully the terms and provisions of this Agreement, provided such documents or actions do not limit, reduce or impair the rights of the party upon whom such request is made.



i. Electronic Signatures: Counterparts. Each party hereto, and their respective successors and assigns shall be authorized to rely upon the signatures of all of the parties hereto on this Agreement which are delivered by PDF or other electronic means as constituting a duly authorized, irrevocable, actual, current delivery of this Agreement with original ink signatures of each person and entity. This Agreement may be executed in counterparts, each of which shall be deemed an original part and all of which together shall constitute a single agreement.

j. Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the day and year first set forth above.

**LANDLORD:**

**TENANT:**

CREATIVE CONCEPTS GROUP, LLC  
a California limited liability company

JV NOODLES LLC,  
a California limited liability company

DocuSigned by:  
Anne Marie Bachmann  
By: 724E391C70BE45U  
Anne Marie Bachman, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017

By: \_\_\_\_\_  
Name: Vy Duong  
Its: Manager/Member

Manager  
DocuSigned by:  
John J Vinciguerra III, Trustee  
By: 2A97DB284D38442  
John J. Vinciguerra, III, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017  
Manager

**GUARANTOR:**  
Hua Guo Liang  
HUA GUO LIANG



EXHIBIT A

PROMISSORY NOTE

\$400,000.00

Date: \_\_\_\_\_, 2021

For value received, the undersigned, CREATIVE CONCEPTS GROUP, LLC, a California limited liability company ("Borrower"), promises to pay to JV NOODLES LLC, a California limited liability company ("Lender") or its order, the principal sum of Four Hundred Thousand and 00/100 Dollars (\$400,000.00), together with interest on the unpaid principal hereof at the rate of Six Percent (6.0%) per annum ("Interest Rate") on the unpaid Principal Balance in consecutive monthly payments as set forth below:

**Interest Only Payments.** Borrower shall make monthly installment payments of interest only on the first (1st) day of every month beginning on \_\_\_\_ 1, 2021, in the sum of \$2,000.00 each. Interest on the principal balance of this Note shall be calculated on a monthly basis using, as the agreed method of calculation, a three hundred sixty (360) day year consisting of twelve (12) months of thirty (30) days each; provided, however, that interest for a period of less than a full month shall be calculated by multiplying the actual number of days elapsed during such partial month by a daily rate based upon a three hundred sixty-five (365) day year and the interest rate then due under this Note. Principal and interest are payable in lawful money of the United States.

**Maturity Date and Final Payment.** The Maturity Date is and Final Payment is due on that day which this is the second (2<sup>nd</sup>) anniversary of the date above, and shall include all unpaid principal, interest, charges and other amounts due hereunder, subject to adjustment as provided below. Each payment shall be credited first to the interest then due and then to principal, and then the charges due, and interest shall thereupon cease upon the principal so credited, except upon default Lender may allocate payment(s) to principal, interest and/or charges at its discretion. Borrower acknowledges and agrees that this Note contains a balloon payment. The outstanding principal balance of this Note plus any accrued Interest are due and payable at the Maturity Date. There is no amortization of principal under this Note prior to the Maturity Date.

**Prepayment.** The Loan may be paid off at any time without any penalty provided Borrower pays the interest through the payoff date.

**Default.** If Borrower should default in the payment of this Note or the performance of the Deed of Trust, then Lender may declare the entire balance hereof immediately due and payable. Borrower shall be liable for all expenses of collection, including attorneys fees and costs. The Default Interest Rate in the amount of ten percent (10%) shall apply from the date of the Borrower's default until the date that such default is cured.

**Attorneys' Fees and Other Expenses.** Borrower shall pay upon demand reasonable attorneys' fees, advances to lienholders senior to Lender, and all other out-of-pocket expenses, incurred by Lender in connection with the exercise of any right or remedy under this Note and any Deed of Trust or other security instruments securing this Note, including attorneys' fees incurred by Lender if: (a) legal counsel is engaged to assist in the collection of this Note after a default hereunder whether or not suit is instituted, (b) Borrower or any other party purporting to hold an interest in the property securing this Note becomes subject to legal proceedings such as condemnation, or proceedings under the provisions of the Bankruptcy Code, and Lender in the exercise of prudent business practices engages counsel to represent the interests of Lender.

**Miscellaneous.** This Note and all of the covenants, promises, and agreements contained in it and in the accompanying loan documents shall be binding on and inure to the benefit of their respective legal and personal representatives, devisees, heirs, successors, and assigns. Time is of the essence for each and every obligation under this Note. This Note shall be governed by and construed in accordance with the laws of the State of California applied to contracts between residents thereof, to be wholly performed within the State of California. This Note

and any provisions hereof may be changed, waived, discharged or terminated but only by an instrument in writing signed by both Borrower and Lender.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date set forth above.

BORROWER:

CREATIVE CONCEPTS GROUP, LLC  
a California limited liability company

By:           [exhibit – do not sign]            
Anne Marie Bachman, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017  
Manager

By:           [exhibit – do not sign]            
John J. Vinciguerra, III, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017  
Manager

EXHIBIT B

DEED OF TRUST

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

JV Noodles LLC  
Attn: Yih Hsuen Sun  
21700 Copley Dr., Suite 320  
Diamond Bar, CA 91765

(Above Space for Recorder's Use)

SHORT FORM DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT & FIXTURE FILING

THIS SHORT FORM DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT & FIXTURE FILING ("Deed of Trust") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and among: CREATIVE CONCEPTS GROUP, LLC, a California limited liability company, whose address is 19640 Horace Street, Chatsworth, CA 91311 ("Trustor"); CHICAGO TITLE INSURANCE COMPANY, whose address is 700 South Flower, Suite 800, Los Angeles, California 90017 ("Trustee"); and JV NOODLES LLC, a California limited liability company whose address is 21700 Copley Dr., Suite 320, Diamond Bar, CA 91765, Attn: Yih Hsuen Sun ("Beneficiary").

WITNESSETH: That Trustor irrevocably GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE that property located at 11911 Wilshire Blvd., in the City of Los Angeles, in the County of Los Angeles, State of California, described in Exhibit A attached hereto. TOGETHER WITH the rents, issues and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph (10) of the provisions incorporated herein by reference to collect and apply such rents, issues and profits.

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by reference or contained herein. 2. Payment of the Property Advance in the sum of \$400,000.00, as defined and evidenced by that certain Promissory Note, dated as of \_\_\_\_\_, 2021, and any extension or renewal thereof, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record owner of said property may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is so secured.

To Protect the Security of This Deed of Trust, Trustor Agrees: By the execution and delivery of this Deed of Trust and the rate secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded October 23, 1961, in the book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, viz.:

COUNTY	DATE	BOOK	PAGE
ORANGE	9/6/68	8714	147
VENTURA	9/6/68	3363	84
LOS ANGELES	8/28/68	T5910	842
SAN DIEGO	9/10/68	SERIES 9 BOOK 1968 PAGE 155820	

(which provisions, identical in all counties, are printed on the reverse hereof) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

The undersigned Trustor requests that a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to him at his address hereinbefore set forth.

TRUSTOR:

CREATIVE CONCEPTS GROUP, LLC  
a California limited liability company

By:                   [exhibit – do not sign]  
Anne Marie Bachman, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017  
Manager

By:                   [exhibit – do not sign]  
John J. Vinciguerra, III, Trustee of the  
Second Amended And Restated  
John J. Vinciguerra Trust dated  
June 6, 2017  
Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

of California

State

County of \_\_\_\_\_

On \_\_\_\_\_, 2021, before me, \_\_\_\_\_, Notary Public personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A TO DEED OF TRUST

(Description of Real Property)

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOTS 1 AND 2 IN BLOCK 4 OF THE WESTGATE TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7 PAGE 22 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOT 3 IN BLOCK 4 OF THE WESTGATE TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7 PAGE 22 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 4265-014-037 & 4265-014-038

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious deed of trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein

To Protect the Security of This Deed of Trust, Trustor Agrees:

(1) To keep said property in good condition and repair, not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit, suffer or permit any act upon said property in violations of law to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general

(2) To provide maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, and to pay all costs and expenses including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed

(4) To pay at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, all costs, fees and expenses of this Trust

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto, and in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his rights either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting

the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey any part of said property, consent to the making of any map or plot thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary state that all sums secured hereby have been paid, and upon surrender of this Deed and said note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "The person or persons legally entitled thereto "Five years after issuance of such full reconveyance, Trustee may destroy said note and this Deed (unless directed in such request to retain them)

(10) That as additional security, Trustor hereby give to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees. Upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder. Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed, said note and all documents evidencing expenditures secured hereby .

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof, all other sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof



of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed is recorded and the name and address of the new Trustee.

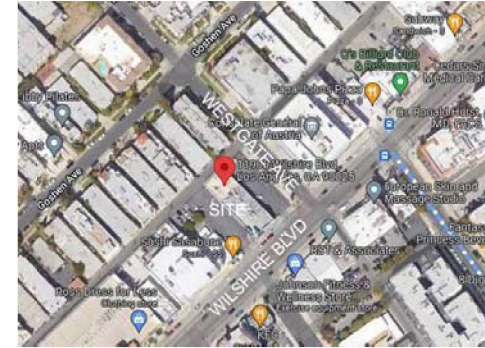
(13) That this Deed applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby whether or not named as Beneficiary herein in this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

Attachment B

Site Plan

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VICINITY MAP

**PROPERTY OWNER**

Radha MFH CAL, LLC  
122 Roundhouse  
Irvine, CA 92618

Contact:  
Naomi Mirsky  
Willow Street Capital  
646 206 0963

**Owner's Representative:**  
Cumming Group  
523 W 6th Street, Suite 1001  
Los Angeles, CA 90014

Contact:  
Matt Reid  
858 735 1858

**ARCHITECT**

Carrier.Johnson + Culture  
725 S Figueroa  
Los Angeles, CA 90017

Contact:  
Steven Kiss  
619 239 2353

**SHEET INDEX - PZA SUBMITTAL**

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PZA-002 PROJECT INFORMATION  
PZA-003 TOPOGRAPHIC SURVEY  
PZA-010 AREA TABULATIONS

- ARCHITECTURE  
PZA-100 P1 SUB-T PARKING LEVEL PLAN  
PZA-101 GROUND LEVEL PLAN  
PZA-102 2ND LEVEL PARKING PLAN  
PZA-103 3RD LEVEL PLAN  
PZA-104 TYPICAL LEVELS 4-6 PLAN  
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PZA-610 EXTERIOR SOUTH ELEVATION  
PZA-611 EXTERIOR EAST ELEVATION  
PZA-612 EXTERIOR NORTH ELEVATION  
PZA-613 EXTERIOR WEST ELEVATION

- LANDSCAPE  
PZA-L1 COMPOSITE LANDSCAPE  
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PZA-L3 LEVEL 3 LANDSCAPE PLAN  
PZA-L4 LEVEL 7 LANDSCAPE PLAN  
Grand total: 22

ISSUES		
NO	DESCRIPTION	DATE

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6197.00  
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Author Checker  
PLOT DATE:  
8/12/2022 10:45:08 AM  
TITLE:

PRELIMINARY  
ZONING  
ASSESSMENT  
SUBMITTAL

DRAWING NO:

**PZA-001**

**11905  
WILSHIRE**

11905 WILSHIRE BLVD  
LOS ANGELES, CA 90025

**carrierjohnson + CULTURE**  
architecture + environments + brand strategy + graphics  
725 South Figueroa St, Suite 1650, Los Angeles, CA 90017  
phone 213.238.0177

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**PROJECT DATA**

**PROJECT ADDRESS** 11905, 11911 & 11913 WILSHIRE BLVD.  
LOS ANGELES, CA 90025

**LEGAL DESCRIPTION**

THE LAND REFERENCE TO HEREIN BELOW IS SITUATED IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:  
**PARCEL 1:**  
 LOTS 1 AND 2 IN BLOCK 4 OF THE WESTGATE TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7 PAGE 22 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.  
**PARCEL 2:**  
 LOT 3 IN BLOCK 4 OF THE WESTGATE TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7 PAGE 22 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**APN** 426-501-4037  
426-501-4038

**ZONING** [Q] C4-1L-CDO

**LANDUSE DESIGNATION** COMMUNITY COMMERCIAL

**SITE**  
 GROSS AREA 22,488 SF  
 1/2 ALLEY AREA 1,125 SF  
 5' DEDICATION @ WILSHIRE BLVD  
 2.5' DEDICATION @ ALLEY

**PROJECT INFORMATION**

7 STORY RESIDENTIAL MIXED-USE  
 1 LEVEL BELOW GRADE TYPE I A: SUBTERRANEAN PARKING  
 1 LEVEL TYPE I A: COMMERCIAL, LOBBY, PARKING  
 1 LEVEL TYPE I A: ABOVE GROUND PARKING  
 5 LEVELS TYPE III A: RESIDENTIAL

BASE F.A.R. BY RIGHT 1.5:1  
 BASE ALLOWED FLOOR AREA 33,732 SF  
 PROPOSED F.A.R. (DB PER 12.22.A25(f)(4)(ii)) 3.0:1  
 PROPOSED FLOOR AREA 67,464 SF

SITE AREA (DENSITY) : GROSS+ALLEY 23,613 SF

BUILDING HEIGHT ALLOWABLE 75', 6 STORIES  
 PROPOSED BUILDING HEIGHT (DB PER 12.22.A25(f)(5)) 83', 7 STORIES

**REQUIRED YARDS FOR MIXED USE MULTIFAMILY**

**C4 REQUIREMENTS (COMMERCIAL USE)**

FRONT 0'-0"  
 SIDE 0'-0"  
 REAR 0'-0"

**R4 REQUIREMENTS (@ RESIDENTIAL USE)**

FRONT 0'-0"  
 SIDE 10'-0"  
 REAR 0'-0"

**PROPOSED YARDS (20% REDUCTION PER 12.22.A25(f)(1))**

FRONT 0'-0"  
 SIDE(DB) 0'-0"/8'-0"  
 REAR 0'-0"

**RESIDENTIAL**

BASE DENSITY 60 DU  
 PROPOSED DENSITY 81 DU  
 PROPOSED AFFORDABLE (VLI)(15%) 12 DU

**BICYCLE PARKING**

COMMERCIAL SHORT TERM REQUIRED 12 PROVIDED 12  
 COMMERCIAL LONG TERM REQUIRED 4 PROVIDED 4

RESIDENTIAL REQUIRED 144 PROVIDED 144

RESIDENTIAL UNIT MIX				
ROOM TYPE	AVERAGE UNIT (SF)	TOTAL UNITS	TOTAL AREA	%
1 BEDROOM	595 SF	38	22609 SF	45%
2 BEDROOM	805 SF	20	16093 SF	32%
STUDIO	491 SF	23	11297 SF	23%
Grand total: 81	1891 SF	81	49998 SF	

**OPEN SPACE CALCULATIONS**

REQUIRED:	UNIT TYPE	# OF DWELLING UNITS	SF/DU	TOTAL (SF)
	STUDIO (<3 HABITABLE ROOMS)	23 UNITS	100	2300
	1 BEDROOM (<3 HABITABLE ROOMS)	38 UNITS	100	3800
	2 BEDROOM (=3 HABITABLE ROOMS)	20 UNITS	125	2500
<b>TOTAL REQUIRED</b>				<b>8,600 SF</b>
<b>PROVIDED</b>				
COMMON OPEN SPACE OUTDOOR				6,345 SF
- 3RD LEVEL AMENITY				
- 7TH LEVEL AMENITY				
COMMON OPEN SPACE INDOOR (MAX 25% OF REQUIRED)				2,181 SF
- GYM				
- LOBBY				
- PLAZA				
PRIVATE OPEN SPACE				2,203 SF
- BALCONIES				
- PATIOS				
<b>TOTAL PROVIDED</b>				<b>10,729 SF</b>

**PARKING CALCULATIONS**

COMMERCIAL REQUIRED	OCCUPANCY TYPE	AREA (SF)	RATIO	PARKING
	SMALL RESTAURANT/CAFE	1000	1:200	5 STALLS
	COMMERCIAL RETAIL	3000	1:250	10 STALLS
<b>REQUIRED</b>				<b>15 STALLS</b>
20% REDUCTION (SEE BIKE PARKING)				-3 STALLS
<b>TOTAL REQUIRED</b>				<b>12 STALLS</b>

COMMERCIAL PROVIDED	STANDARD	12 STALLS
	COMPACT	1 STALL
	STANDARD (LEASING)	1 STALL
<b>TOTAL</b>		<b>14 STALLS</b>

RESIDENTIAL REQUIRED	UNIT TYPE	# OF UNITS	RATIO	PARKING
	STUDIO	23	1.0	23 STALLS
	1 BEDROOM	38	1.5	57 STALLS
	2 BEDROOM	20	2.0	40 STALLS
<b>TOTAL UNITS 81</b>				<b>120 STALLS</b>
30% REDUCTION (SEE BIKE PARKING)				-36 STALLS
<b>TOTAL REQUIRED</b>				<b>84 STALLS</b>

RESIDENTIAL PROVIDED	STANDARD	62 STALLS
	TANDEM (STANDARD)	12 STALLS
<b>TOTAL STANDARD</b>		<b>74 STALLS</b>
	COMPACT	2 STALLS
	TANDEM (COMPACT)	12 STALLS
<b>TOTAL COMPACT</b>		<b>14 STALLS</b>
<b>TOTAL PROVIDED</b>		<b>88 STALLS</b>

ACCESSIBLE STALLS (COMMERCIAL 1-25) REQUIRED 1 STALL PROVIDED 1 VAN STALL  
 ACCESSIBLE STALLS (RESIDENTIAL 76-100) REQUIRED 4 STALLS PROVIDED 2 VAN STALLS

ELECTRIC VEHICLE COMMERCIAL PROVIDED 2 STALLS  
 ELECTRIC VEHICLE RESIDENTIAL PROVIDED 9 STALLS

**carrierjohnson + CULTURE**  
 architecture + environments + brand strategy + graphics  
 726 South Figueroa St, Suite 1650, Los Angeles, CA 90017  
 phone 213.286.0777

**11905 WILSHIRE**  
 11905 WILSHIRE BLVD  
 LOS ANGELES, CA 90025

ISSUES		
NO	DESCRIPTION	DATE

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 CHECKED BY: Checker  
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PROJECT INFORMATION

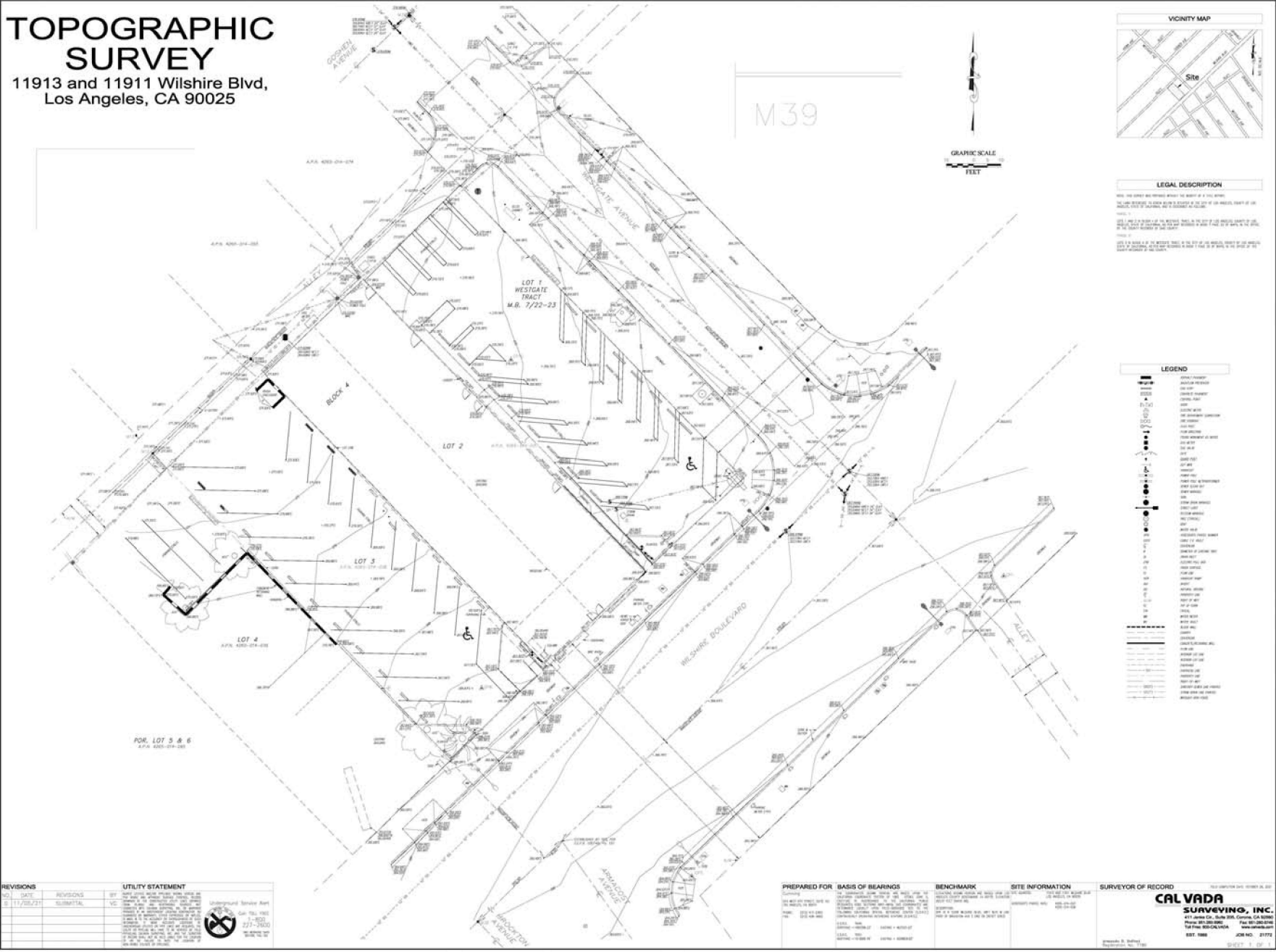
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**PZA-002**

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# TOPOGRAPHIC SURVEY

## 11913 and 11911 Wilshire Blvd, Los Angeles, CA 90025



# M39



**LEGAL DESCRIPTION**

THIS SURVEY WAS PERFORMED UNDER THE SUPERVISION OF CALIFORNIA REGISTERED SURVEYOR AND ENGINEER AND IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS AND ETHICS OF THE SURVEYING AND ENGINEERING PROFESSION AS SET FORTH IN THE CALIFORNIA PROFESSIONAL STANDARDS AND ETHICS ACT, CALIFORNIA GOVERNMENT CODE SECTION 67200, AND THE ETHICS AND STANDARDS ACT, CALIFORNIA GOVERNMENT CODE SECTION 67201.

THIS SURVEY WAS PERFORMED ON BEHALF OF THE CLIENT BY THE SURVEYOR AND ENGINEER AND IN ACCORDANCE WITH THE PROFESSIONAL STANDARDS AND ETHICS OF THE SURVEYING AND ENGINEERING PROFESSION AS SET FORTH IN THE CALIFORNIA PROFESSIONAL STANDARDS AND ETHICS ACT, CALIFORNIA GOVERNMENT CODE SECTION 67200, AND THE ETHICS AND STANDARDS ACT, CALIFORNIA GOVERNMENT CODE SECTION 67201.

LEGEND	
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[Symbol]	PROPOSED IMPROVEMENTS
[Symbol]	PROPOSED ERECTION
[Symbol]	PROPOSED REMOVAL
[Symbol]	PROPOSED CONSTRUCTION
[Symbol]	PROPOSED ADJUSTMENT
[Symbol]	PROPOSED ADJUSTMENT TO EXISTING
[Symbol]	PROPOSED ADJUSTMENT TO PROPOSED
[Symbol]	PROPOSED ADJUSTMENT TO EXISTING AND PROPOSED
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REVISONS		UTILITY STATEMENT	
NO.	DATE	REVISIONS	BY
3	11/28/22	SUBMITAL	VC

**Utility Statement**

**Substantial Under Art**

271  
272  
273  
274

<b>PREPARED FOR</b>	<b>BASIS OF BEARINGS</b>	<b>BENCHMARK</b>	<b>SITE INFORMATION</b>	<b>SURVEYOR OF RECORD</b>
Calvarda Surveying, Inc.	Containing See 11/28/22, 11/28/22 11/28/22, 11/28/22 11/28/22, 11/28/22	11/28/22, 11/28/22 11/28/22, 11/28/22 11/28/22, 11/28/22	11/28/22, 11/28/22 11/28/22, 11/28/22 11/28/22, 11/28/22	<b>CALVADA SURVEYING, INC.</b> 411 Jambor Ct., Suite 208, Corona, CA 92630 Phone: 951-261-8888 Fax: 951-261-8888 Tel/Fax: 951-261-8888 2022 © 2022 JOB NO.: 21178

**carrierjohnson + CULTURE**  
architecture • environments • brand strategy • graphics

726 South Figueroa St., Suite 1650, Los Angeles, CA 90017  
phone 213.286.0777

**11905 WILSHIRE**  
11905 WILSHIRE BLVD  
LOS ANGELES, CA 90025

**PROJECT NO:**  
6197.00

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**CHECKED BY:** Checker

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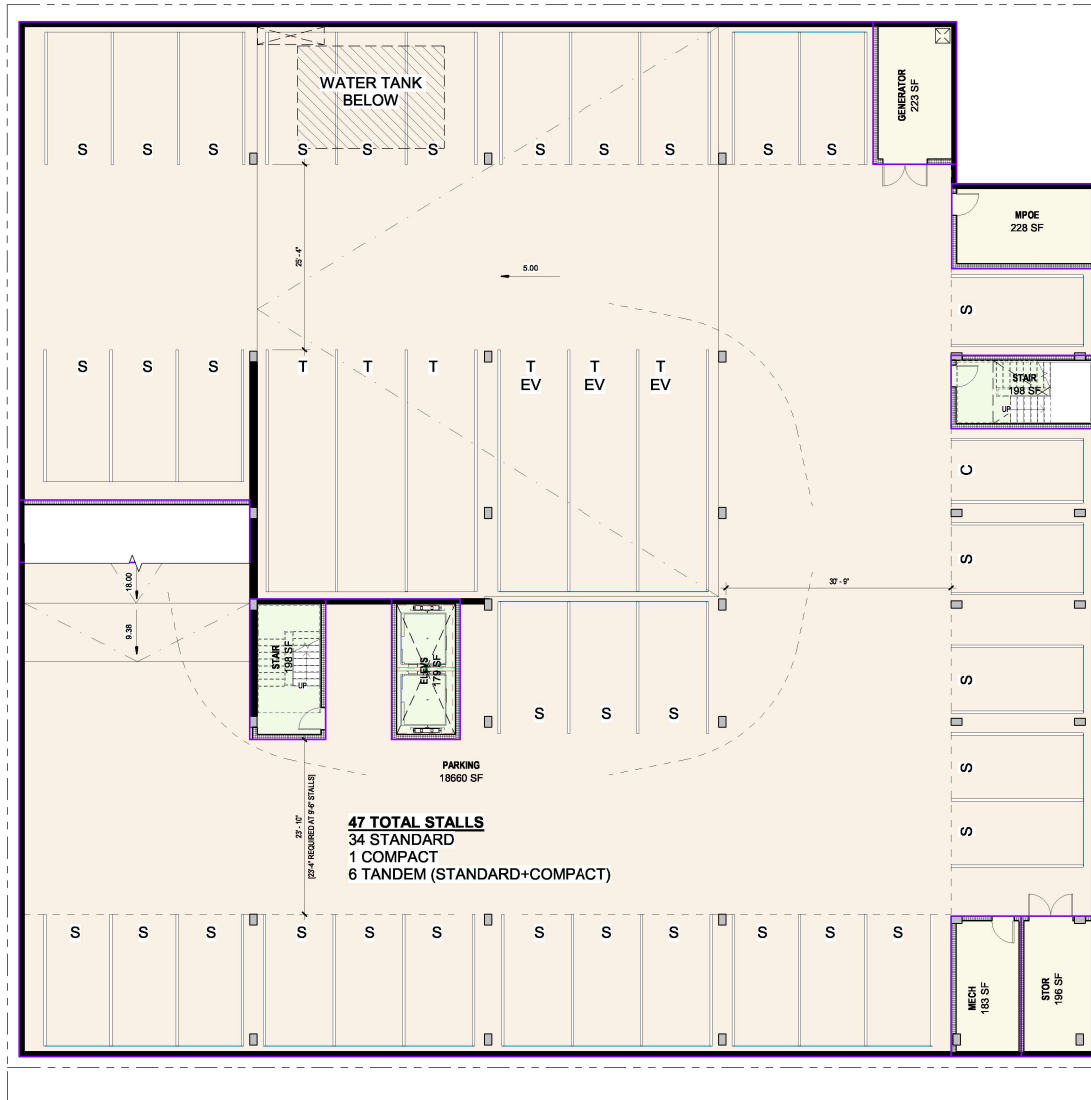
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TOPOGRAPHIC SURVEY

**DRAWING NO:**  
PZA-003

SHEET 1 OF 1

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PZA-610 1



**47 TOTAL STALLS**  
 34 STANDARD  
 1 COMPACT  
 6 TANDEM (STANDARD+COMPACT)

1 P1  
 SCALE: 1/8" = 1'-0"

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 architecture + environments + brand strategy + graphics  
 728 South Figueroa St., Suite 1650, Los Angeles, CA 90017  
 phone 213.238.0777

**11905 WILSHIRE**  
 11905 WILSHIRE BLVD  
 LOS ANGELES, CA 90025

ISSUES	NO	DESCRIPTION	DATE

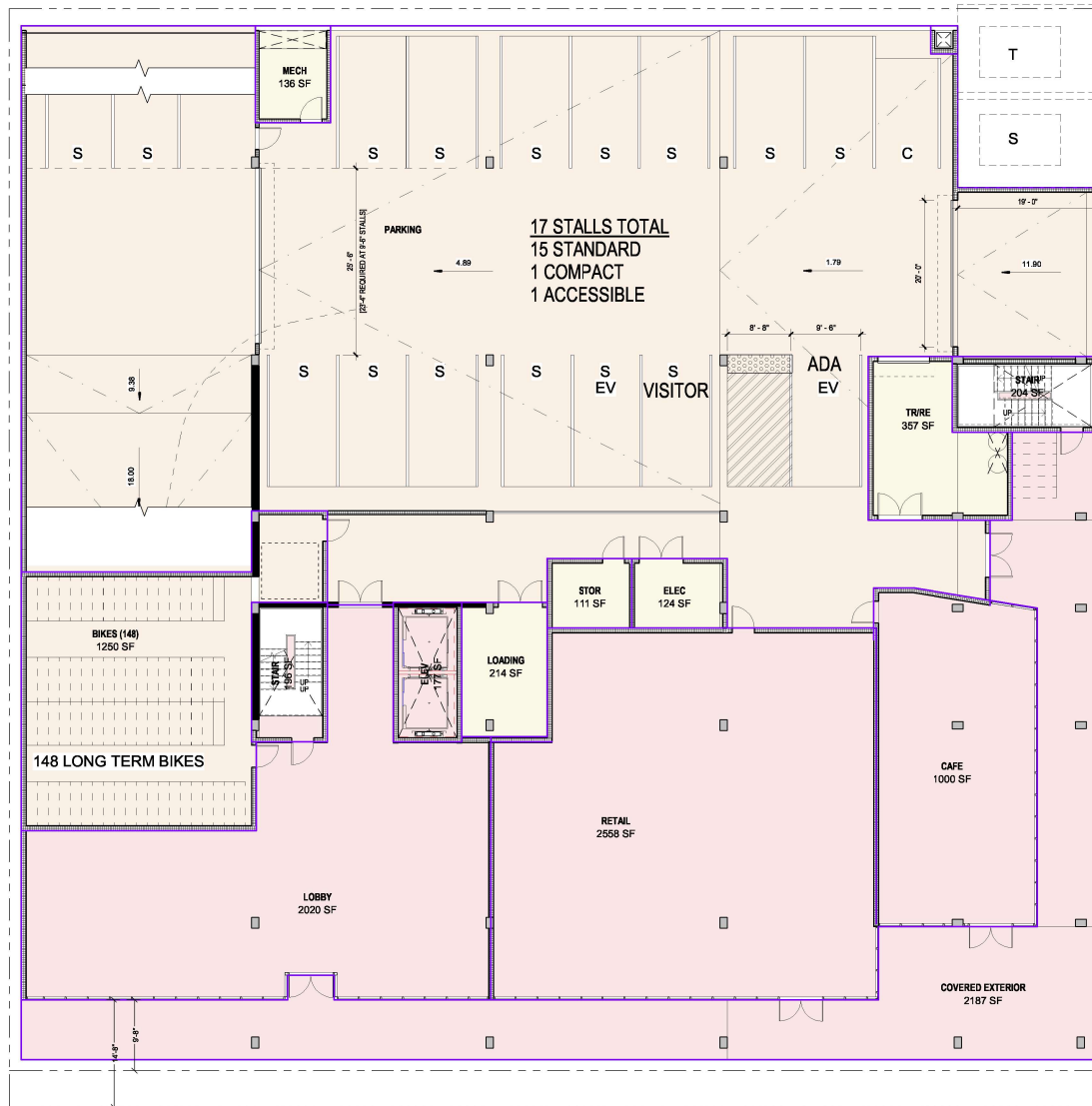
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 PLOT DATE: 8/12/2022 10:45:08 AM  
 TITLE:

**P1 SUB-T PARKING LEVEL PLAN**

DRAWING NO:

**PZA-100**

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1 LEVEL 1  
 SCALE: 1/8" = 1'-0"

ISSUES	NO	DESCRIPTION	DATE

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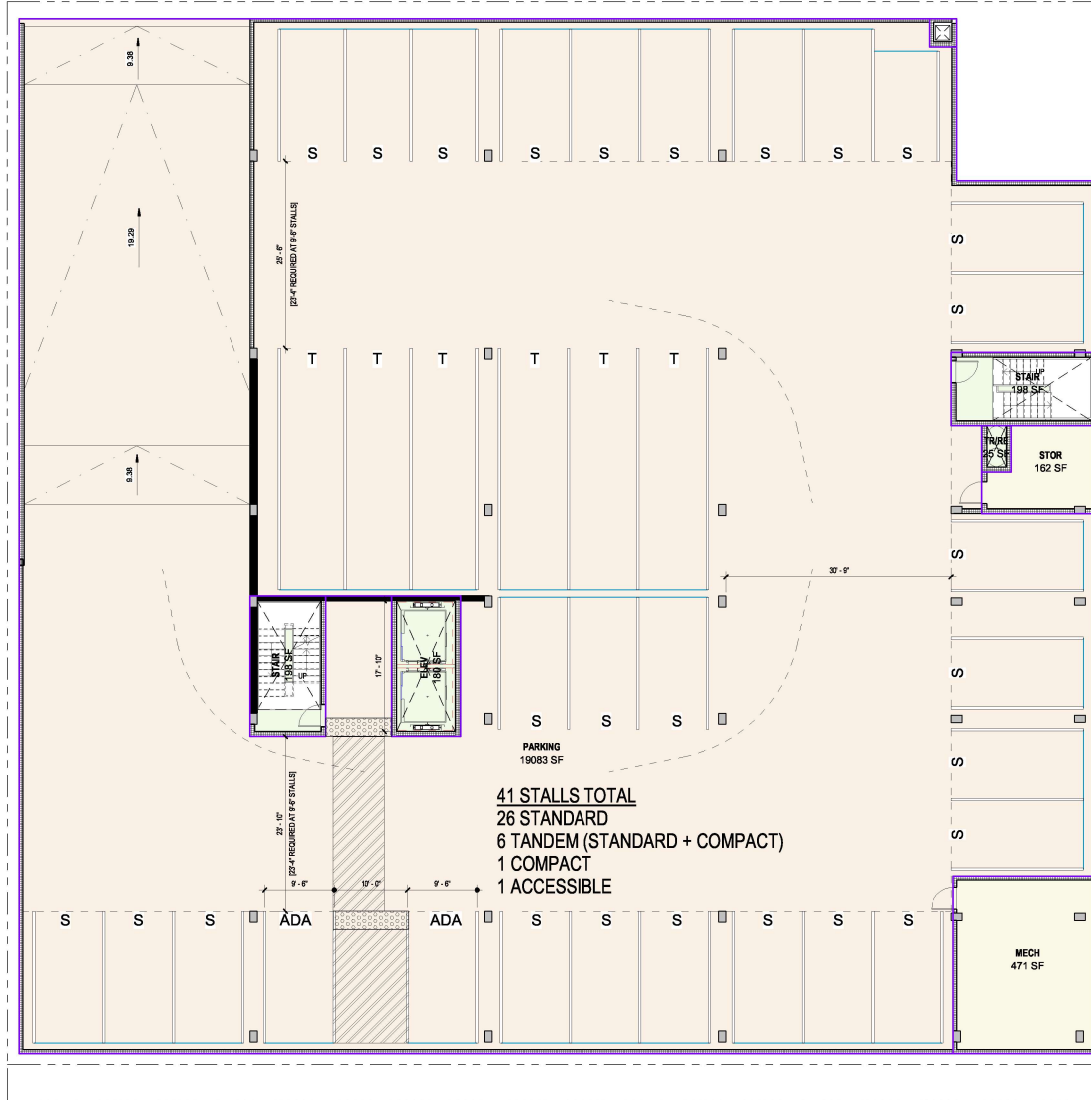
GROUND LEVEL PLAN

DRAWING NO:

**PZA-101**

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PZA-610



**41 STALLS TOTAL**  
**26 STANDARD**  
**6 TANDEM (STANDARD + COMPACT)**  
**1 COMPACT**  
**1 ACCESSIBLE**

PZA-610

1 LEVEL 2  
 SCALE: 1/8" = 1'-0"

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 726 South Figueroa St., Suite 1650, Los Angeles, CA 90017  
 phone 213.238.0777

**11905 WILSHIRE**  
 11905 WILSHIRE BLVD  
 LOS ANGELES, CA 90025

ISSUES	NO.	DESCRIPTION	DATE

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**2ND LEVEL PARKING PLAN**

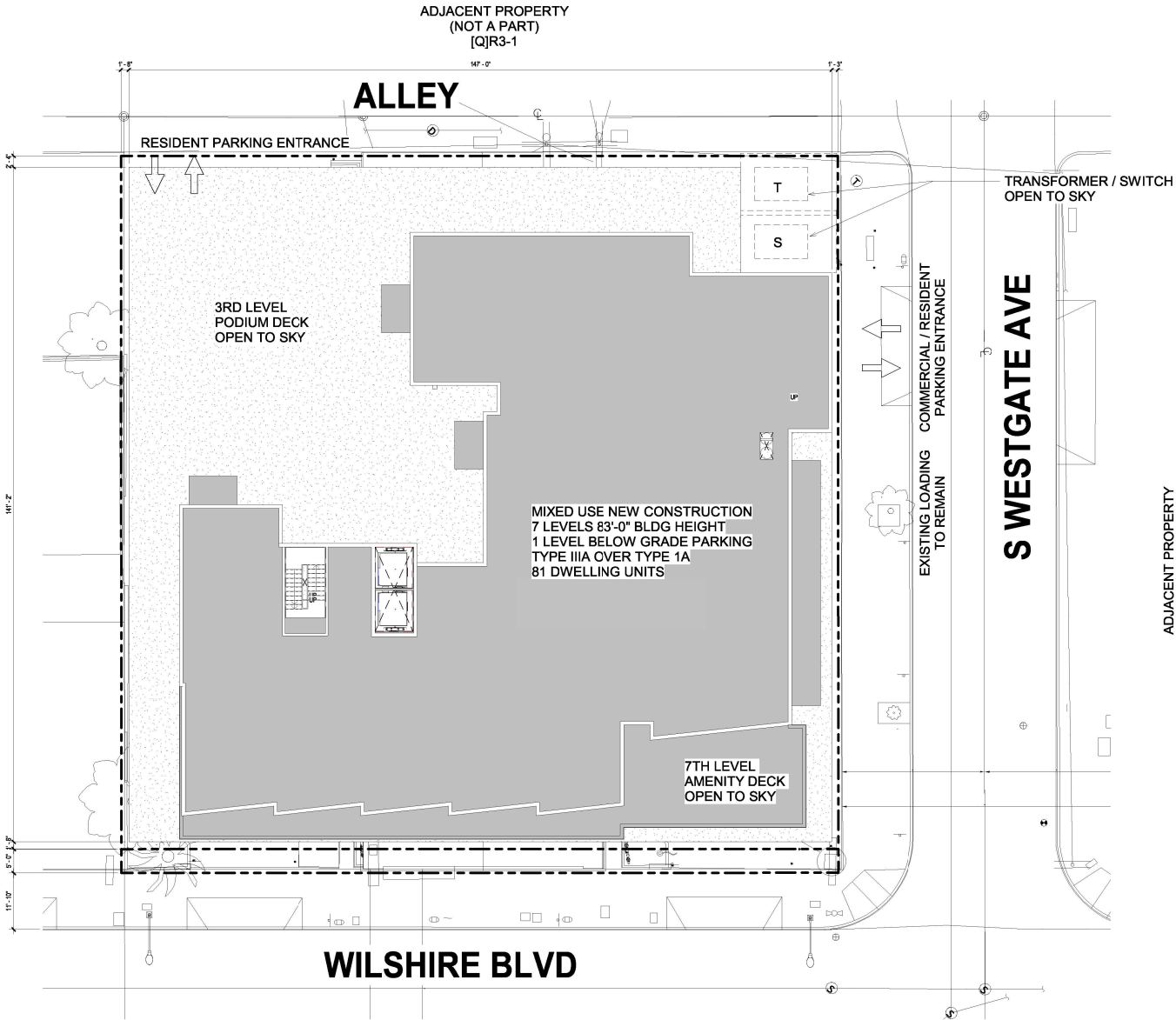
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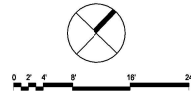


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ADJACENT PROPERTY  
(NOT A PART)  
[Q]C4-1L-CDO



1 P-FLOOR PLAN - PLOT PLAN  
SCALE: 3/32" = 1'-0"



ISSUES		
NO.	DESCRIPTION	DATE

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Author Checker  
PLOT DATE:  
9/22/2022 10:45:11 AM  
TITLE:

SITE PLOT PLAN

DRAWING NO:

**PZA-111**

**11905 WILSHIRE**

11905 WILSHIRE BLVD  
LOS ANGELES, CA 90025

**carrierjohnson + CULTURE**  
architecture + environments + brand strategy + graphics  
726 South Figueroa St, Suite 1650, Los Angeles, CA 90017  
phone 213.238.0777

## Attachment C

### VMT Calculator Sheets & Results

# CITY OF LOS ANGELES VMT CALCULATOR Version 1.3



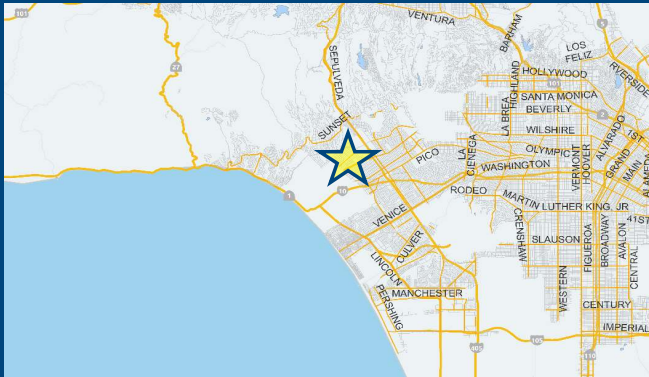
*Project Screening Criteria: Is this project required to conduct a vehicle miles traveled analysis?*

## Project Information

Project:

Scenario:  [WWW](#)

Address:



**Is the project replacing an existing number of residential units with a smaller number of residential units AND is located within one-half mile of a fixed-rail or fixed-guideway transit station?**

Yes  No

## Existing Land Use

Land Use Type	Value	Unit
Retail   High-Turnover Sit-Down Restaurant	6.04	ksf
Retail   High-Turnover Sit-Down Restaurant	6.04	ksf

Click here to add a single custom land use type (will be included in the above list)

## Proposed Project Land Use

Land Use Type	Value	Unit
Retail   General Retail	3	ksf
Housing   Multi-Family	72	DU
Retail   High-Turnover Sit-Down Restaurant	1	ksf
Housing   Affordable Housing - Family	9	DU
Retail   General Retail	3	ksf

Click here to add a single custom land use type (will be included in the above list)

## Project Screening Summary

Existing Land Use	Proposed
<b>617</b> Daily Vehicle Trips	<b>586</b> Daily Vehicle Trips
<b>5,465</b> Daily VMT	<b>4,483</b> Daily VMT
<b>Tier 1 Screening Criteria</b>	
Project will have less residential units compared to existing residential units & is within one-half mile of a fixed-rail station. <input type="checkbox"/>	
<b>Tier 2 Screening Criteria</b>	
The net increase in daily trips < 250 trips	-31 Net Daily Trips
The net increase in daily VMT ≤ 0	-982 Net Daily VMT
The proposed project consists of only retail land uses ≤ 50,000 square feet total.	4.000 ksf
<b>The proposed project is not required to perform VMT analysis.</b>	



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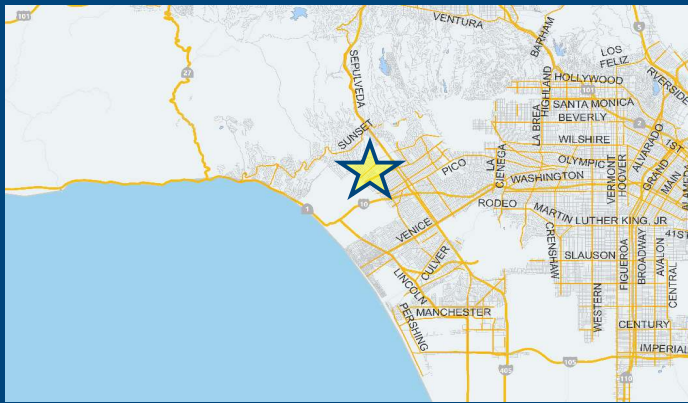


## Project Information

Project:

Scenario:

Address:



Proposed Project Land Use Type	Value	Unit
Housing   Multi-Family	72	DU
Retail   High-Turnover Sit-Down Restaurant	1	ksf
Housing   Affordable Housing - Family	9	DU
Retail   General Retail	3	ksf

## TDM Strategies

Select each section to show individual strategies  
Use  to denote if the TDM strategy is part of the proposed project or is a mitigation strategy

	Proposed Project	With Mitigation
Max Home Based TDM Achieved?	No	No
Max Work Based TDM Achieved?	No	No

**A** **Parking**

Reduce Parking Supply  city code parking provision for the project site  
 Proposed Prj  Mitigation  actual parking provision for the project site

Unbundle Parking  monthly parking cost (dollar) for the project site  
 Proposed Prj  Mitigation

Parking Cash-Out  percent of employees eligible  
 Proposed Prj  Mitigation

Price Workplace Parking  daily parking charge (dollar)  
 Proposed Prj  Mitigation  percent of employees subject to priced parking

Residential Area Parking Permits  cost (dollar) of annual permit  
 Proposed Prj  Mitigation

- B** Transit
- C** Education & Encouragement
- D** Commute Trip Reductions
- E** Shared Mobility
- F** Bicycle Infrastructure
- G** Neighborhood Enhancement

## Analysis Results

Proposed Project	With Mitigation
<b>511</b> Daily Vehicle Trips	<b>511</b> Daily Vehicle Trips
<b>3,910</b> Daily VMT	<b>3,910</b> Daily VMT
<b>N/A</b> Household VMT per Capita	<b>N/A</b> Household VMT per Capita
<b>N/A</b> Work VMT per Employee	<b>N/A</b> Work VMT per Employee
Significant VMT Impact?	
<b>Household: N/A</b> Threshold = 7.4 15% Below APC	<b>Household: N/A</b> Threshold = 7.4 15% Below APC
<b>Work: N/A</b> Threshold = 11.1 15% Below APC	<b>Work: N/A</b> Threshold = 11.1 15% Below APC



# CITY OF LOS ANGELES VMT CALCULATOR

## Report 1: Project & Analysis Overview

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

Project Information			
	Land Use Type	Value	Units
<b>Housing</b>	<i>Single Family</i>	0	DU
	<b>Multi Family</b>	72	DU
	<i>Townhouse</i>	0	DU
	<i>Hotel</i>	0	Rooms
	<i>Motel</i>	0	Rooms
<b>Affordable Housing</b>	<b>Family</b>	9	DU
	<i>Senior</i>	0	DU
	<i>Special Needs</i>	0	DU
	<i>Permanent Supportive</i>	0	DU
<b>Retail</b>	<b>General Retail</b>	3.000	ksf
	<i>Furniture Store</i>	0.000	ksf
	<i>Pharmacy/Drugstore</i>	0.000	ksf
	<i>Supermarket</i>	0.000	ksf
	<i>Bank</i>	0.000	ksf
	<i>Health Club</i>	0.000	ksf
	<b>High-Turnover Sit-Down Restaurant</b>	1.000	ksf
	<i>Fast-Food Restaurant</i>	0.000	ksf
	<i>Quality Restaurant</i>	0.000	ksf
	<i>Auto Repair</i>	0.000	ksf
	<i>Home Improvement</i>	0.000	ksf
	<i>Free-Standing Discount</i>	0.000	ksf
	<i>Movie Theater</i>	0	Seats
<i>Office</i>	<i>General Office</i>	0.000	ksf
	<i>Medical Office</i>	0.000	ksf
<i>Industrial</i>	<i>Light Industrial</i>	0.000	ksf
	<i>Manufacturing</i>	0.000	ksf
	<i>Warehousing/Self-Storage</i>	0.000	ksf
<i>School</i>	<i>University</i>	0	Students
	<i>High School</i>	0	Students
	<i>Middle School</i>	0	Students
	<i>Elementary</i>	0	Students
	<i>Private School (K-12)</i>	0	Students
<i>Other</i>		0	Trips

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 1: Project & Analysis Overview

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

<b>Analysis Results</b>			
Total Employees: 10			
Total Population: 191			
<b>Proposed Project</b>		<b>With Mitigation</b>	
511	Daily Vehicle Trips	511	Daily Vehicle Trips
3,910	Daily VMT	3,910	Daily VMT
N/A	Household VMT per Capita	N/A	Household VMT per Capita
N/A	Work VMT per Employee	N/A	Work VMT per Employee
<b>Significant VMT Impact?</b>			
<b>APC: West Los Angeles</b>			
Impact Threshold: 15% Below APC Average			
Household = 7.4			
Work = 11.1			
<b>Proposed Project</b>		<b>With Mitigation</b>	
VMT Threshold	Impact	VMT Threshold	Impact
Household > 7.4	N/A	Household > 7.4	N/A
Work > 11.1	N/A	Work > 11.1	N/A

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 2: TDM Inputs

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

TDM Strategy Inputs				
Strategy Type	Description	Proposed Project	Mitigations	
<b>Parking</b>	Reduce parking supply	City code parking provision (spaces)	135	135
		Actual parking provision (spaces)	102	102
	<i>Unbundle parking</i>	<i>Monthly cost for parking (\$)</i>	<i>\$0</i>	<i>\$0</i>
	<i>Parking cash-out</i>	<i>Employees eligible (%)</i>	<i>0%</i>	<i>0%</i>
	<i>Price workplace parking</i>	<i>Daily parking charge (\$)</i>	<i>\$0.00</i>	<i>\$0.00</i>
		<i>Employees subject to priced parking (%)</i>	<i>0%</i>	<i>0%</i>
	<i>Residential area parking permits</i>	<i>Cost of annual permit (\$)</i>	<i>\$0</i>	<i>\$0</i>
(cont. on following page)				

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 2: TDM Inputs

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

TDM Strategy Inputs, Cont.				
Strategy Type	Description	Proposed Project	Mitigations	
<b>Transit</b>	<i>Reduce transit headways</i>	<i>Reduction in headways (increase in frequency) (%)</i>	0%	
		<i>Existing transit mode share (as a percent of total daily trips) (%)</i>	0%	
		<i>Lines within project site improved (&lt;50%, &gt;=50%)</i>	0	
	<i>Implement neighborhood shuttle</i>	<i>Degree of implementation (low, medium, high)</i>	0	0
		<i>Employees and residents eligible (%)</i>	0%	0%
	<i>Transit subsidies</i>	<i>Employees and residents eligible (%)</i>	0%	0%
<i>Amount of transit subsidy per passenger (daily equivalent) (\$)</i>		\$0.00	\$0.00	
<b>Education &amp; Encouragement</b>	<i>Voluntary travel behavior change program</i>	<i>Employees and residents participating (%)</i>	0%	
	<i>Promotions and marketing</i>	<i>Employees and residents participating (%)</i>	0%	
(cont. on following page)				



# CITY OF LOS ANGELES VMT CALCULATOR

## Report 2: TDM Inputs

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

TDM Strategy Inputs, Cont.				
Strategy Type		Description	Proposed Project	Mitigations
<b>Commute Trip Reductions</b>	<i>Required commute trip reduction program</i>	<i>Employees participating (%)</i>	0%	0%
	<i>Alternative Work Schedules and Telecommute</i>	<i>Employees participating (%)</i>	0%	0%
		<i>Type of program</i>	0	0
	<i>Employer sponsored vanpool or shuttle</i>	<i>Degree of implementation (low, medium, high)</i>	0	0
		<i>Employees eligible (%)</i>	0%	0%
		<i>Employer size (small, medium, large)</i>	0	0
<i>Ride-share program</i>	<i>Employees eligible (%)</i>	0%	0%	
<b>Shared Mobility</b>	<i>Car share</i>	<i>Car share project setting (Urban, Suburban, All Other)</i>	0	0
	<i>Bike share</i>	<i>Within 600 feet of existing bike share station - OR- implementing new bike share station (Yes/No)</i>	0	0
	<i>School carpool program</i>	<i>Level of implementation (Low, Medium, High)</i>	0	0
(cont. on following page)				

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 2: TDM Inputs

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

TDM Strategy Inputs, Cont.				
Strategy Type		Description	Proposed Project	Mitigations
<b>Bicycle Infrastructure</b>	<i>Implement/Improve on-street bicycle facility</i>	<i>Provide bicycle facility along site (Yes/No)</i>	0	0
	<b>Include Bike parking per LAMC</b>	<b>Meets City Bike Parking Code (Yes/No)</b>	Yes	Yes
	<i>Include secure bike parking and showers</i>	<i>Includes indoor bike parking/lockers, showers, &amp; repair station (Yes/No)</i>	0	0
<b>Neighborhood Enhancement</b>	<i>Traffic calming improvements</i>	<i>Streets with traffic calming improvements (%)</i>	0%	0%
		<i>Intersections with traffic calming improvements (%)</i>	0%	0%
	<i>Pedestrian network improvements</i>	<i>Included (within project and connecting off-site/within project only)</i>	0	0

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 3: TDM Outputs

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

TDM Adjustments by Trip Purpose & Strategy														
Place type: Suburban Center														
		Home Based Work Production		Home Based Work Attraction		Home Based Other Production		Home Based Other Attraction		Non-Home Based Other Production		Non-Home Based Other Attraction		Source
		Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	
		<b>Parking</b>	Reduce parking supply	12%	12%	12%	12%	12%	12%	12%	12%	12%	12%	
Unbundle parking	0%		0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
Parking cash-out	0%		0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
Price workplace parking	0%		0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
Residential area parking permits	0.00%		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
<b>Transit</b>	Reduce transit headways	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	TDM Strategy Appendix, Transit sections 1 - 3
	Implement neighborhood shuttle	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
	Transit subsidies	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
<b>Education &amp; Encouragement</b>	Voluntary travel behavior change program	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	TDM Strategy Appendix, Education & Encouragement sections 1 - 2
	Promotions and marketing	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
<b>Commute Trip Reductions</b>	Required commute trip reduction program	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	TDM Strategy Appendix, Commute Trip Reductions sections 1 - 4
	Alternative Work Schedules and Telecommute Program	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
	Employer sponsored vanpool or shuttle	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
	Ride-share program	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	
<b>Shared Mobility</b>	Car-share	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TDM Strategy Appendix, Shared Mobility sections 1 - 3
	Bike share	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	
	School carpool program	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 3: TDM Outputs

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

### TDM Adjustments by Trip Purpose & Strategy, Cont.

#### Place type: Suburban Center

		Home Based Work Production		Home Based Work Attraction		Home Based Other Production		Home Based Other Attraction		Non-Home Based Other Production		Non-Home Based Other Attraction		Source
		Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	
<b>Bicycle Infrastructure</b>	Implement/ Improve on-street bicycle facility	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TDM Strategy Appendix, Bicycle Infrastructure sections 1 - 3
	Include Bike parking per LAMC	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	0.6%	
	Include secure bike parking and showers	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	
<b>Neighborhood Enhancement</b>	Traffic calming improvements	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	TDM Strategy Appendix, Neighborhood Enhancement sections 1 - 2
	Pedestrian network improvements	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	

### Final Combined & Maximum TDM Effect

	Home Based Work Production		Home Based Work Attraction		Home Based Other Production		Home Based Other Attraction		Non-Home Based Other Production		Non-Home Based Other Attraction	
	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated	Proposed	Mitigated
<b>COMBINED TOTAL</b>	13%	13%	13%	13%	13%	13%	13%	13%	13%	13%	13%	13%
<b>MAX. TDM EFFECT</b>	13%	13%	13%	13%	13%	13%	13%	13%	13%	13%	13%	13%

$$= \text{Minimum } (X\%, 1 - [(1-A) * (1-B)...])$$

where X%=

<b>PLACE</b>	urban	75%
<b>TYPE</b>	compact infill	40%
<b>MAX:</b>	suburban center	20%
	suburban	15%

Note:  $(1 - [(1-A) * (1-B)...])$  reflects the dampened combined effectiveness of TDM Strategies (e.g., A, B,...). See the TDM Strategy Appendix (*Transportation Assessment Guidelines Attachment G*) for further discussion of dampening.

# CITY OF LOS ANGELES VMT CALCULATOR

## Report 4: MXD Methodology

Date: September 1, 2022

Project Name:

Project Scenario:

Project Address: 11905 W WILSHIRE BLVD, 90025



Version 1.3

### MXD Methodology - Project Without TDM

	Unadjusted Trips	MXD Adjustment	MXD Trips	Average Trip Length	Unadjusted VMT	MXD VMT
Home Based Work Production	72	-13.9%	62	6.6	475	409
Home Based Other Production	200	-26.0%	148	5.0	1,000	740
Non-Home Based Other Production	149	-2.7%	145	8.7	1,296	1,262
Home-Based Work Attraction	15	-33.3%	10	9.3	140	93
Home-Based Other Attraction	224	-35.3%	145	9.4	2,106	1,363
Non-Home Based Other Attraction	79	-3.8%	76	8.1	640	616

### MXD Methodology with TDM Measures

	<i>Proposed Project</i>			<i>Project with Mitigation Measures</i>		
	TDM Adjustment	Project Trips	Project VMT	TDM Adjustment	Mitigated Trips	Mitigated VMT
Home Based Work Production	-12.8%	54	357	-12.8%	54	357
Home Based Other Production	-12.8%	129	645	-12.8%	129	645
Non-Home Based Other Production	-12.8%	127	1,101	-12.8%	127	1,101
Home-Based Work Attraction	-12.8%	9	81	-12.8%	9	81
Home-Based Other Attraction	-12.8%	126	1,189	-12.8%	126	1,189
Non-Home Based Other Attraction	-12.8%	66	537	-12.8%	66	537

### MXD VMT Methodology Per Capita & Per Employee

Total Population: 191

Total Employees: 10

APC: West Los Angeles

	<i>Proposed Project</i>	<i>Project with Mitigation Measures</i>
<i>Total Home Based Production VMT</i>	<b>1,002</b>	<b>1,002</b>
<i>Total Home Based Work Attraction VMT</i>	<b>81</b>	<b>81</b>
<i>Total Home Based VMT Per Capita</i>	<b>N/A</b>	<b>N/A</b>
<i>Total Work Based VMT Per Employee</i>	<b>N/A</b>	<b>N/A</b>

## VMT Calculator User Agreement

The Los Angeles Department of Transportation (LADOT), in partnership with the Department of City Planning and Fehr & Peers, has developed the City of Los Angeles Vehicle Miles Traveled (VMT) Calculator to estimate project-specific daily household VMT per capita and daily work VMT per employee for land use development projects. This application, the VMT Calculator, has been provided to You, the User, to assess vehicle miles traveled (VMT) outcomes of land use projects within the City of Los Angeles. The term “City” as used below shall refer to the City of Los Angeles. The terms “City” and “Fehr & Peers” as used below shall include their respective affiliates, subconsultants, employees, and representatives.

The City is pleased to be able to provide this information to the public. The City believes that the public is most effectively served when they are provided access to the technical tools that inform the public review process of private and public land use investments. However, in using the VMT Calculator, You agree to be bound by this VMT Calculator User Agreement (this Agreement).

**VMT Calculator Application for the City of Los Angeles.** The City’s consultant calibrated the VMT Calculator’s parameters in 2018 to estimate travel patterns of locations in the City, and validated those outcomes against empirical data. However, this calibration process is limited to locations within the City, and practitioners applying the VMT Calculator outside of the City boundaries should not apply these estimates without further calibration and validation of travel patterns to verify the VMT Calculator’s accuracy in estimating VMT in such other locations.

**Limited License to Use.** This Agreement gives You a limited, non-transferrable, non-assignable, and non-exclusive license to use and execute a copy of the VMT Calculator on a computer system owned, leased or otherwise controlled by You in Your own facilities, as set out below, provided You do not use the VMT Calculator in an unauthorized manner, and that You do not republish, copy, distribute, reverse-engineer, modify, decompile, disassemble, transfer, or sell any part of the VMT Calculator, and provided that You know and follow the terms of this Agreement. Your failure to follow the terms of this Agreement shall automatically terminate this license and Your right to use the VMT Calculator.

**Ownership.** You understand and acknowledge that the City owns the VMT Calculator, and shall continue to own it through Your use of it, and that no transfer of ownership of any kind is intended in allowing You to use the VMT Calculator.

**Warranty Disclaimer.** In spite of the efforts of the City and Fehr & Peers, some information on the VMT Calculator may not be accurate. The VMT Calculator, OUTPUTS AND ASSOCIATED DATA ARE PROVIDED “as is” WITHOUT WARRANTY OF ANY KIND, whether expressed, implied, statutory, or otherwise including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

**Limitation of Liability.** It is understood that the VMT Calculator is provided without charge. Neither the City nor Fehr & Peers can be responsible or liable for any information derived from its use, or for any delays, inaccuracies, incompleteness, errors or omissions arising out of your use of the VMT Calculator or with respect to the material contained in the VMT Calculator. You understand and agree that Your sole remedy against the City or Fehr & Peers for loss or damage caused by any defect or failure of the

VMT Calculator, regardless of the form of action, whether in contract, tort, including negligence, strict liability or otherwise, shall be the repair or replacement of the VMT Calculator to the extent feasible as determined solely by the City. In no event shall the City or Fehr & Peers be responsible to You or anyone else for, or have liability for any special, indirect, incidental or consequential damages (including, without limitation, damages for loss of business profits or changes to businesses costs) or lost data or downtime, however caused, and on any theory of liability from the use of, or the inability to use, the VMT Calculator, whether the data, and/or formulas contained in the VMT Calculator are provided by the City or Fehr & Peers, or another third party, even if the City or Fehr & Peers have been advised of the possibility of such damages.

This Agreement and License shall be governed by the laws of the State of California without regard to their conflicts of law provisions, and shall be effective as of the date set forth below and, unless terminated in accordance with the above or extended by written amendment to this Agreement, shall terminate on the earlier of the date that You are not making use of the VMT Calculator or one year after the beginning of Your use of the VMT Calculator.

By using the VMT Calculator, You hereby waive and release all claims, responsibilities, liabilities, actions, damages, costs, and losses, known and unknown, against the City and Fehr & Peers for Your use of the VMT Calculator.

Before making decisions using the information provided in this application, contact City LADOT staff to confirm the validity of the data provided.

Print and sign below, and submit to LADOT along with the transportation assessment Memorandum of Understanding (MOU).

You, the User	
By:	_____
Print Name:	Liz Fleming _____
Title:	V.P. _____
Company:	OVERLAND TRAFFIC CONSULTANTS _____
Address:	952 MANHATTAN BCH BL #100 _____
Phone:	310 545-1235 _____
Email Address:	liz@overlandtraffic.com _____
Date:	9-1-22 _____