

**Fill in this information to identify the case:**

Debtor 1 Body Contour Ventures, LLC  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing) \_\_\_\_\_  
United States Bankruptcy Court Eastern District of Michigan  
Case number: 19-42510

FILED  
U.S. Bankruptcy Court  
Eastern District of Michigan  
6/27/2019  
Katherine B. Gullo, Clerk

**Official Form 410  
Proof of Claim**

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>BRE RC Alamo Ranch TX LP</u> Name of the current creditor (the person or entity to be paid for this claim)  Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b> <u>BRE RC Alamo Ranch TX LP</u>  Name  Kelly M. Conlan, Esq. Connolly Gallagher LLP 1201 North Market Street, 20th Fl Wilmington, DE 19801  Contact phone <u>3027577300</u>  Contact email <u>kconlan@connollygallagher.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b> <u>BRE RC Alamo Ranch TX LP</u>  Name  c/o ShopCore Properties LP Two Liberty Place, 50 S. 16th Street Suite 3325 Philadelphia, PA 19102  Contact phone <u>215-330-4201</u>  Contact email <u>lmadway@shopcore.com</u>
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Official Form 410

Proof of Claim

page 1

LIGHTRX POC  
01085

**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

<b>6. Do you have any number you use to identify the debtor?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
<b>7. How much is the claim?</b>	<div style="display: flex; justify-content: space-between;"><div><b>\$</b> <u>72458.81</u></div><div><b>Does this amount include interest or other charges?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).</div></div>
<b>8. What is the basis of the claim?</b>	<p>Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).</p> <p>Limit disclosing information that is entitled to privacy, such as healthcare information.</p> <p>Amounts Due Under Guaranty of Non-Residential Real Property Lease (See Exhibit A)</p> <p>_____</p>
<b>9. Is all or part of the claim secured?</b>	<div><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property.</div> <div><b>Nature of property:</b> <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i>. <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____</div> <div><b>Basis for perfection:</b> _____</div> <div>Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)</div> <div><div><b>Value of property:</b></div><div><b>\$</b> _____</div><div><b>Amount of the claim that is secured:</b></div><div><b>\$</b> _____</div><div><b>Amount of the claim that is unsecured:</b></div><div><b>\$</b> _____</div><div style="text-align: right;">(The sum of the secured and unsecured amounts should match the amount in line 7.)</div></div> <div><div><b>Amount necessary to cure any default as of the date of the petition:</b></div><div><b>\$</b> _____</div><div><b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable</div></div>
<b>10. Is this claim based on a lease?</b>	<div><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. <b>Amount necessary to cure any default as of the date of the petition.</b> \$ _____</div>
<b>11. Is this claim subject to a right of setoff?</b>	<div><input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____</div>

<b>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</b>	<input checked="checked" type="checkbox"/> No <input type="checkbox"/> Yes. <i>Check all that apply.</i>	<b>Amount entitled to priority</b>
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies	\$ _____ \$ _____ \$ _____ \$ _____ \$ _____ \$ _____
* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.		

### Part 3: Sign Below

<p><b>The person completing this proof of claim must sign and date it. FRBP 9011(b).</b></p> <p>If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.</p> <p><b>A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.</b></p>	<p>Check the appropriate box:</p> <p><input checked="checked" type="checkbox"/> I am the creditor.  <input type="checkbox"/> I am the creditor's attorney or authorized agent.  <input type="checkbox"/> I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.  <input type="checkbox"/> I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.</p> <p>I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.</p> <p>I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.</p> <p>I declare under penalty of perjury that the foregoing is true and correct.</p> <p>Executed on date <u>6/27/2019</u>          MM / DD / YYYY</p> <p><u>/s/ Linda Madway</u>          _____          Signature</p> <p>Print the name of the person who is completing and signing this claim:</p> <table style="width: 100%;"> <tr> <td style="width: 20%;">Name</td> <td>Linda Madway</td> </tr> <tr> <td></td> <td>First name      Middle name      Last name</td> </tr> <tr> <td>Title</td> <td>Sr. Vice President</td> </tr> <tr> <td>Company</td> <td>BRE RC Alamo Ranch TX LP</td> </tr> <tr> <td></td> <td>Identify the corporate servicer as the company if the authorized agent is a servicer</td> </tr> <tr> <td>Address</td> <td>Two Liberty Place, 50 S 16th St, Ste3325</td> </tr> <tr> <td></td> <td>Number      Street</td> </tr> <tr> <td></td> <td>Philadelphia, PA 19102</td> </tr> <tr> <td></td> <td>City      State      ZIP Code</td> </tr> <tr> <td>Contact phone</td> <td>215-330-4201</td> </tr> <tr> <td></td> <td>Email      lmadway@shopcore.com</td> </tr> </table>	Name	Linda Madway		First name      Middle name      Last name	Title	Sr. Vice President	Company	BRE RC Alamo Ranch TX LP		Identify the corporate servicer as the company if the authorized agent is a servicer	Address	Two Liberty Place, 50 S 16th St, Ste3325		Number      Street		Philadelphia, PA 19102		City      State      ZIP Code	Contact phone	215-330-4201		Email      lmadway@shopcore.com
Name	Linda Madway																						
	First name      Middle name      Last name																						
Title	Sr. Vice President																						
Company	BRE RC Alamo Ranch TX LP																						
	Identify the corporate servicer as the company if the authorized agent is a servicer																						
Address	Two Liberty Place, 50 S 16th St, Ste3325																						
	Number      Street																						
	Philadelphia, PA 19102																						
	City      State      ZIP Code																						
Contact phone	215-330-4201																						
	Email      lmadway@shopcore.com																						

**EXHIBIT A TO PROOF OF BRE RC ALAMO RANCH TX LP  
IN RE: BODY CONTOUR VENTURES, LLC (CASE NO. 19-42510) (PJS)**

1. On February 22, 2019 (“Petition Date”), Body Contour Ventures, LLC (“Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. BRE RC Alamo Ranch TX LP (“Landlord”), as landlord, and LRX San Antonio West Side LLC, as tenant (“Tenant”), are parties to a lease (“Lease”) for nonresidential real property located at 5419 Charles W. Anderson Loop, San Antonio, Texas (“Premises”). On October 21, 2017, the Debtor executed the Guaranty (“Guaranty”). Pursuant to the Guaranty, the Debtor has unconditionally, absolutely and irrevocably guaranteed all obligations of the Tenant under the Lease. A copy of the Guaranty is attached hereto as Exhibit B.

3. The Tenant owes Landlord the sum of \$72,458.81 for unpaid rent, real estate tax charges, sales tax charges common area maintenance charges and/or certain other obligations that accrued and/or became due under the Lease. Additionally, other amounts may become due under the Lease subsequent to the filing of this proof of claim, but are not yet known to Landlord or liquidated in this proof of claim.

4. Accordingly, Landlord has an unsecured, non-priority claim against the Debtor in the amount of at least \$72,458.81, plus attorneys’ fees and costs and other as of yet unknown amounts that may become due under the Lease after the filing of this proof of claim (“Claim”).

5. Nothing herein shall be deemed a waiver of Landlord’s right to seek payment of all or any portion of any amounts that may become known subsequent to the filing of this claim, pursuant to section 365(d)(3) of the Bankruptcy Code, or as an administrative expense pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code.

6. Landlord expressly reserves all rights and remedies that it has or may have against the Debtor or any other person or persons liable for all or part of the indebtedness claimed herein. This proof of claim is filed to protect Landlord from forfeiture of its Claim. The filing of this proof of claim is not: (a) a waiver or release of Landlord’s rights or remedies against any person, entity or property; (b) an election of a remedy; or (c) a waiver of the right to assert a different or enhanced classification or priority in respect of the Claim asserted herein.

7. Landlord expressly reserves the right to amend, modify or supplement this Claim to, among other things, assert an unsecured claim for any pre-petition obligations that have not yet been billed under the Lease, for any clean-up costs that may be incurred, and for any indemnification obligations concerning claims that may not become known until a later date.

**EXHIBIT B TO PROOF OF BRE RC ALAMO RANCH TX LP  
IN RE: BODY CONTOUR VENTURES, LLC (CASE NO. 19-42510) (PJS)**



**LEASE AGREEMENT**

**by and between**

**BRE RC Alamo Ranch TX LP,  
a Delaware limited partnership,  
as Landlord**

**and**

**LRX SAN ANTONIO WEST SIDE, LLC,  
a Michigan limited liability company,  
d/b/a Light Rx Face & Body,  
as Tenant**

**Alamo Ranch  
San Antonio, Texas**

## TABLE OF CONTENTS

<b>ARTICLE 1: BASIC LEASE PROVISIONS AND DEFINED TERMS .....</b>	<b>6</b>
Section 1.01. Basic Lease Provisions.....	6
Section 1.02. Defined Terms.....	11
<b>ARTICLE 2: PREMISES .....</b>	<b>13</b>
Section 2.01. Premises. ....	13
Section 2.02. Condition of the Premises.....	14
Section 2.03. Surrender of the Premises.....	15
Section 2.04. Construction Allowance. ....	15
<b>ARTICLE 3: LEASE TERM .....</b>	<b>17</b>
Section 3.01. Lease Term. ....	17
Section 3.02. Commencement of Lease Term. ....	17
Section 3.03. Holding Over. ....	17
Section 3.04. Option to Extend the Lease Term. ....	18
<b>ARTICLE 4: RENT .....</b>	<b>18</b>
Section 4.01. Minimum Annual Rent. ....	18
Section 4.02. Intentionally Deleted. ....	19
Section 4.03. Gross Sales.....	19
Section 4.04. Intentionally Deleted. ....	19
Section 4.05. Tenant's Records. ....	19
Section 4.06. Intentionally Deleted. ....	20
Section 4.07. Intentionally Deleted. ....	20
Section 4.08. Radius.....	20
Section 4.09. Additional Rent. ....	20
Section 4.10. Returned Check Fees, Late Payments and Default Interest. ....	21
Section 4.11. Trash Removal. ....	21
Section 4.12. Payment Under Protest. ....	21

Section 4.13. Payment by Third Party .....	21
Section 4.14. Security Deposit. ....	22
<b>ARTICLE 5: REAL ESTATE TAXES .....</b>	<b>22</b>
Section 5.01. Real Estate Taxes. ....	22
Section 5.02. Taxes on Leasehold. ....	24
Section 5.03. Taxes on Rentals.....	24
<b>ARTICLE 6: COMMON AREAS .....</b>	<b>24</b>
Section 6.01. License.....	24
Section 6.02. Control of the Shopping Center and the Common Areas by Landlord. ....	25
Section 6.03. Operating Costs. ....	25
Section 6.04. Excavation.....	28
Section 6.05. Extended Hours Services. ....	28
Section 6.06. Security Officers. ....	28
<b>ARTICLE 7: USE OF THE PREMISES .....</b>	<b>29</b>
Section 7.01. Use of the Premises. ....	29
Section 7.02. Nuisance and/or Disturbance.....	30
Section 7.03. General Prohibited Uses.....	30
Section 7.04. Storage, Office Use. ....	30
Section 7.05. Tenant's Operation of Business.....	30
Section 7.06. Failure of Tenant to Operate its Business.....	31
Section 7.07. Rules and Regulations. ....	31
Section 7.08. Quiet Enjoyment.....	31
Section 7.09. Environmental. ....	32
<b>ARTICLE 8: TENANT'S CONSTRUCTION AND MAINTENANCE .....</b>	<b>33</b>
Section 8.01. Tenant's Plans and Specifications. ....	33
Section 8.02. Tenant's Construction, Installations and Alterations.....	34
Section 8.03. Signs, Awnings and Canopies. ....	35



Section 8.04. Laws, Waste or Nuisance.....	36
Section 8.05. Mechanic's Lien.....	36
<b>ARTICLE 9: MAINTENANCE OF BUILDING; ACCESS TO PREMISES .....</b>	<b>37</b>
Section 9.01. Repairs.....	37
Section 9.02. Access to Premises.....	37
<b>ARTICLE 10: UTILITIES .....</b>	<b>38</b>
Section 10.01. Utilities.....	38
<b>ARTICLE 11: ASSIGNMENT; SUBLEASE .....</b>	<b>39</b>
Section 11.01. Assignment or Subletting.....	39
<b>ARTICLE 12: RELOCATION.....</b>	<b>42</b>
Section 12.01. Relocation of the Premises.....	42
<b>ARTICLE 13: REIT .....</b>	<b>43</b>
Section 13.01. Landlord REIT Status.....	43
<b>ARTICLE 14: NOTICES .....</b>	<b>44</b>
Section 14.01. Notices.....	44
<b>ARTICLE 15: INDEMNITY; PROPERTY AND LIABILITY INSURANCE.....</b>	<b>44</b>
Section 15.01. Indemnity.....	44
Section 15.02. Insurance.....	45
Section 15.03. Increase in Insurance Premiums.....	48
Section 15.04. Waiver of Subrogation.....	49
Section 15.05. Insured's Release.....	49
Section 15.06. Notice to Landlord.....	49
<b>ARTICLE 16: LIABILITY OF LANDLORD.....</b>	<b>49</b>
Section 16.01. Waiver of Liability.....	49
Section 16.02. Tenant's Risk of Loss.....	50
Section 16.03. No Partnership.....	50
Section 16.04. Consent Clause.....	50

Section 16.05. Successors.....	50
<b>ARTICLE 17: DAMAGE CLAUSE.....</b>	<b>51</b>
Section 17.01. Destruction. ....	51
<b>ARTICLE 18: CONDEMNATION.....</b>	<b>51</b>
Section 18.01. Condemnation. ....	51
<b>ARTICLE 19: PRIORITY OF LEASE.....</b>	<b>52</b>
Section 19.01. Subordination, Attornment, Power of Attorney. ....	52
Section 19.02. Estoppel. ....	53
Section 19.03. Recording. ....	53
<b>ARTICLE 20: LANDLORD'S REMEDIES.....</b>	<b>53</b>
Section 20.01. Default.....	53
Section 20.02. Landlord's Remedies. ....	55
Section 20.03. Debtor-in-Possession. ....	56
Section 20.04. Landlord Lien.....	56
Section 20.05. Redemption; Reinstatement. ....	56
Section 20.06. Waiver of Jury Trial.....	57
Section 20.07. Accord and Satisfaction.....	57
Section 20.08. No Waiver.....	57
Section 20.09. Merger. ....	57
Section 20.10. Legal Fees.....	57
<b>ARTICLE 21: MISCELLANEOUS PROVISIONS.....</b>	<b>58</b>
Section 21.01. Tenant Defined; Use of Pronoun. ....	58
Section 21.02. Delivery of Lease.....	58
Section 21.03. Entire Agreement.....	58
Section 21.04. Partial Invalidity. ....	58
Section 21.05. Applicable Law. ....	59
Section 21.06. Rules of Construction. ....	59

Section 21.07. Brokerage Commission. ....	59
Section 21.08. Force Majeure. ....	59
Section 21.09. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. ....	59
Section 21.10. Guaranty.....	60
Section 21.11. Counterparts.....	60
Section 21.12. Confidentiality. ....	60
Section 21.13. Net Lease. ....	60
Section 21.14. State or Property Specific Lease Provisions. ....	60
Section 21.15. Contingency. ....	61
Section 21.16. Exhibits.....	61

**THIS LEASE AGREEMENT** (this "Lease") is made and entered into as of October 21, 2017 (the "Effective Date"), by and between **BRE RC ALAMO RANCH TX LP**, a Delaware limited partnership, herein called "Landlord", and **LRX SAN ANTONIO WEST SIDE, LLC**, a Michigan limited liability company, herein called "Tenant".

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound hereby, agree with each other as follows:

## **ARTICLE 1: BASIC LEASE PROVISIONS AND DEFINED TERMS**

### **Section 1.01. Basic Lease Provisions.**

Wherever used in this Lease, the following terms shall have the meanings provided for in this Section. Each reference in this Lease to any of the Basic Lease Provisions in this Section 1.01 shall be deemed and construed to incorporate all of the terms provided under such Basic Lease Provision, provided that the Basic Lease Provisions shall be controlled by the specific terms and provisions of this Lease relating to the subject matter of the Basic Lease Provision.

**Shopping Center:** The land, building(s) and other improvements owned by or leased to Landlord, known as Alamo Ranch and more particularly depicted on **Exhibit A** attached hereto and made a part hereof.

**Shopping Center Address:** 5503 W. Loop 1604 N., San Antonio, Texas 78253

**Premises:** Unit No. 96 consisting of approximately one thousand four hundred sixty two (1,462) total square feet in the Shopping Center, as approximately depicted on **Exhibit A** attached hereto.

**Premises Address:** 5539 W. Loop 1604 N., Suite 96, San Antonio, Texas 78253

**Landlord's Address for Notices:** BRE RC Alamo Ranch TX LP  
c/o ShopCore Properties, L.P.  
307 Fellowship Road, Suite 116  
Mt. Laurel, New Jersey 08054  
Attention: Office of General Counsel  
Phone: 856-780-4451

**With Copy to:** BRE RC Alamo Ranch TX LP  
c/o ShopCore Properties, L.P.  
10920 Via Frontera, Suite 220  
San Diego, California 92127  
Attention: Legal Department  
Phone: 858-613-1800

Please note that Landlord's phone numbers are provided for informational purposes only, and notices from Tenant to Landlord, pursuant to this Lease, shall not be delivered via phone.

**Landlord's Rent Payment Address:**

The address set forth below or such other rent payment address established by Landlord from time to time by the delivery of written notice thereof to Tenant.

Make Checks Payable to: BRE RC Alamo Ranch TX LP

Mailing Address:  
BRE RC Retail Parent, LLC  
c/o BRE RC Southpark I TX LP  
P.O. Box 845660  
Los Angeles, CA 90084-5660

Overnight Address:  
Lockbox Services #845660  
Attn: BRE RC Southpark I TC LP  
3440 Flair Drive  
El Monte, CA 91731

Wire Instructions:  
Wells Fargo Bank, N.A.  
San Francisco, CA  
ABA#: 121000248  
Account#: 4427961834

**Tenant's Name and Billing/ Notice Address:**

LRX San Antonio West Side, LLC  
Attention: Jay Gately  
34405 12 Mile Road  
Farmington Hills, Michigan 48331  
Phone: 617-513-9226  
E-Mail: [Jay@lightrx.com](mailto:Jay@lightrx.com)

**Tenant's Trade Name:**

Light Rx Face & Body

**Tenant's FEIN:**

32-0530011

**Guarantors:**

Body Contour Ventures, LLC

**Guaranty:**

As provided for in Section 20.10 and **Exhibit I** attached hereto.

**Permitted Use:**

Tenant shall use and operate the Premises solely for the purpose of a medspa business that provides laser hair removal, body contouring, skin rejuvenation, cellulite reduction and skin tightening, together with the incidental display and retail sale of related skincare products. Tenant shall not use the Premises, or permit the use thereof, for any other use or purpose.

**Direct Competitor Covenant:**

Tenant acknowledges that Landlord does not intend to grant exclusive use protection for any tenants and/or occupants of

the Shopping Center ("No Exclusive Policy").

"Direct Competitor" means Ideal Image or Sono Bello.

"Direct Competitor Area" means in that portion of the Shopping Center identified on Exhibit A as the "Direct Competitor Area".

Landlord agrees that no portion of the Direct Competitor Area shall be leased by Landlord to a Direct Competitor (the "Direct Competitor Covenant").

If Tenant is in default of this Lease (beyond any applicable notice and cure period), the Direct Competitor Covenant shall automatically terminate and be of no further force and effect.

If Tenant ceases to conduct business in the Leased Premises for the use permitted in this Lease during all hours and days required by this Lease, the Direct Competitor Covenant shall automatically terminate and be of no further force and effect. If Tenant assigns this Lease or subleases any portion of the Leased Premises, the Direct Competitor Covenant shall automatically terminate.

Tenant acknowledges that the Direct Competitor Covenant is a restriction against the acts of Landlord only. Accordingly, it shall not be a violation of the Direct Competitor Covenant if any tenant or occupant in the Direct Competitor Area: (a) permits the use of its premises by a Direct Competitor; (b) subleases all or any portion of its premises to a Direct Competitor; or (c) assigns its lease or occupancy to a Direct Competitor; provided, however, that if Landlord's consent is required in connection with such use, sublease or assignment pursuant to the express terms of the applicable lease, then Landlord's consent to such use, sublease or assignment shall be a breach of the Direct Competitor Covenant.

Tenant acknowledges and agrees that the Direct Competitor Covenant is not intended to grant, and shall not be construed to grant, to Tenant an exclusive right to: (a) sell any product or product type, or (b) conduct business for any particular use in the Shopping Center.

**Lease Term:**

The Lease Term of five (5) Lease Years (hereinafter defined) beginning on the Commencement Date, and any renewal or extension thereof.

**Commencement Date:** The Commencement Date of the Lease Term shall be the earlier of (i) one hundred twenty (120) days after the Possession Date ("Fixturing Period"), or (ii) the date upon which Tenant opens for business at the Premises.

**Possession Date:** The date Landlord makes the Premises available to Tenant, but in no event more than fifteen (15) business days after the later of (i) the Effective Date, and (ii) the date Landlord recovers possession of the Premises from the existing tenant. Tenant shall take possession of the Premises on the Possession Date.

**Expiration Date:** The last day of the final calendar month of the Lease Term, unless sooner terminated or otherwise extended pursuant to the terms of this Lease.

**Minimum Annual Rent:** \$4,873.33 per month during the first (1<sup>st</sup>) Lease Year, based on \$40.00 per square foot, per annum.

\$5,019.53 per month during the second (2<sup>nd</sup>) Lease Year, based on \$41.20 per square foot, per annum.

\$5,170.61 per month during the third (3<sup>rd</sup>) Lease Year, based on \$42.44 per square foot, per annum.

\$5,325.34 per month during the fourth (4<sup>th</sup>) Lease Year, based on \$43.71 per square foot, per annum.

\$5,484.94 per month during the fifth (5<sup>th</sup>) Lease Year, based on \$45.02 per square foot, per annum.

**Option Term:** There shall be one (1) Option Term of five (5) Lease Years.

**Exercise of Option Term:** Tenant must notify Landlord of its election to exercise the Option Term by written notice given no later than six (6) months prior to the last day of the then current Lease Term.

**Option Term Minimum Annual Rent:** The Minimum Annual Rent for the Option Term shall be Fair Market Rent. "Fair Market Rent" shall be determined by Landlord, in its sole, but good faith, discretion based upon the annual minimum rental rates then being charged in the Shopping Center for comparable space and for a lease term commencing on or about the commencement date of the Option Term and equal in duration to the Option Term, taking into consideration the Lease terms, the creditworthiness and quality of Tenant; and any other relevant term or condition in making such evaluation, as reasonably determined by Landlord. In no event, however, shall the Fair Market Rent be less than the rate of Minimum Annual Rent in effect as of the expiration of the then-current Lease Term. Promptly after Tenant's exercise of the Option Term, Landlord shall notify

Tenant in writing of Landlord's determination of Fair Market Rent for the Option Term, which notification shall be binding upon Landlord and Tenant. Upon Landlord's written request, Tenant shall acknowledge in writing Landlord's notification of the Fair Market Rent for the Option Term.

**Estimate of Real Estate Taxes:** \$6.77 per square foot, per annum

**Estimate of Operating Costs:** \$2.86 per square foot, per annum

**Estimate of Insurance Charge:** \$0.09 per square foot, per annum

**Gross Sales Reporting Frequency:** Annually

**Landlord's E-Mail Address for Sales Reporting:** [sales@shopcore.com](mailto:sales@shopcore.com)  
Reference: Light Rx Face & Body/Alamo Ranch

**Tenant's Sales Reports:** Landlord requires that Tenant provide an e-mail address for requesting Tenant's Gross Sales statements.

Tenant's e-mail address: [rich@lightrx.com](mailto:rich@lightrx.com)

**Security Deposit:** \$6,057.55

**Rent Deposit:** \$6,057.55

**Construction Allowance:** \$20.00 per square foot of the Premises

Tenant's request for payment of the Construction Allowance must be delivered to Landlord at the following address:

BRE RC Alamo Ranch TX LP  
c/o ShopCore Properties, L.P.  
Attention: Tenant Project Manager  
10920 Via Frontera, Suite 220  
San Diego, California 92127  
Phone: 858-613-1800

Please note that Landlord's phone numbers are provided for informational purposes only, and notices from Tenant to Landlord, pursuant to this Lease, shall not be delivered via phone.

**Broker(s):** On Behalf of Landlord:  
Reata Real Estate Services LP  
1100 NE Loop 410, Suite 400  
San Antonio, Texas 78209



On Behalf of Tenant:  
Weitzman  
70 NE Loop 410, Suite 450  
San Antonio, Texas 78216

**Section 1.02. Defined Terms.**

Wherever used in this Lease, the following terms shall have the meanings provided for in this Section 1.02. To avoid any ambiguity, all defined terms used in this Lease may not be defined in this Section, and any term defined elsewhere in this Lease shall the meaning as expressly provided for within the Section of this Lease in which such term is defined.

**Additional Insured(s):** BRE RC Alamo Ranch TX LP, ShopCore Properties, L.P., and BRE RC Retail Parent LLC, and Wells Fargo Bank, N.A.

**Additional Rent:** In addition to Minimum Annual Rent and, Percentage Rent, if any, all other payments to be made by Tenant to Landlord pursuant to the terms of this Lease, whether or not the same be designated as such in this Lease.

**Additional Rent Commencement Date:** The Possession Date.

**Assignment Administrative Fee:** Two Thousand and 00/100 Dollars (\$2,000.00).

**Authority:** All federal, state and local governmental or quasi-governmental authorities, entities or agencies having jurisdiction over the Shopping Center (each an “**Authority**”, more than one being “**Authorities**”).

**Bankruptcy Filing:** As defined in Section 20.01(d).

**Bankruptcy Terms:** As defined in Section 20.01(d).

**Common Areas:** As defined in Section 6.02(a).

**Conflict:** Any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant of the Shopping Center.

**Construction Criteria:** The terms, conditions and requirements established by Landlord that govern the completion of Tenant’s Work and any other alteration, modification, change or improvement to the Premises to be completed by Tenant in accordance with the terms of this Lease.

**Default Interest Rate:** The lesser of: (i) four percent (4%) per annum above the prime rate published in The Wall Street Journal, and if more than one such rate is designated then the highest such rate, or if the Wall Street Journal no longer publishes a prime rate, such other reference rate as selected by Landlord in its sole discretion; or (ii) the highest lawful annual rate of interest permitted at the time in the state in which the Shopping Center is located calculated as of the due date.

**Electronic Copies:** Any signatures to this Lease transmitted by facsimile machine or via e-mail in a “.pdf” format.

**Event of Default:** As defined in Section 20.01.

**Excluded Items:** The costs of Tenant's movable fixtures and equipment, interior and exterior signage, inventory and all other costs customarily known as "soft costs".

**Fiscal Year:** The fiscal year for the Shopping Center established by Landlord from time to time. As of the Effective Date, the Fiscal Year is a calendar year.

**GLA:** The gross leasable area of the Premises and/or other buildings within the Shopping Center, as applicable, which shall be measured from the outside of exterior walls and from the center of interior walls.

**Gross Sales:** As defined in Section 4.03.

**Insurance Charge:** As defined in Section 15.02(b).

**Insurance Charge Reconciliation Statement:** As defined in Section 15.02(d).

**Landlord's Work:** As defined in Exhibit B attached hereto, if any.

**Late Payment(s):** Any payment required to be paid by Tenant to Landlord pursuant to the terms of this Lease that is not paid within five (5) days after its due date as set forth in this Lease.

**Late Fee:** The lesser of: (i) five percent (5%) for each dollar past due or (ii) the maximum late fee permitted under applicable Law.

**Law(s):** Any reference in this Lease to "law", compliance with "law", or any variation thereof, shall mean all federal, state and local laws, rules, regulations, ordinances, codes, guidelines, judgments and orders and all requirements of any Authorities, in effect or hereafter amended, enacted or passed during the Lease Term, including, without limitation, the Americans with Disabilities Act.

**Lease Year:** The twelve (12) consecutive calendar months commencing with the first day of the first full calendar month of the Lease Term, and thereafter with each succeeding anniversary thereof; provided, however, if the Commencement Date is other than the first day of a calendar month, then the first Lease Year shall include the partial month from the Commencement Date through the end of the month in which the Commencement Date occurs.

**Major Tenant:** Any tenant or occupant of the Shopping Center using or occupying more than ten thousand (10,000) square feet.

**Maximum Deductible/Retention Amount:** Ten Thousand and 00/100 Dollars (\$10,000.00).

**Operating Costs:** As defined in Section 6.03.

**Operating Costs Reconciliation Statement:** As defined in Section 6.03(c).

**State or Property Specific Provisions:** As defined in Section 21.14.

**Radius Area:** A three (3) mile radius from the outside boundary of the Shopping Center, which distance shall be measured in a straight line without reference to road mileage.

**Real Estate Taxes:** As defined in Section 5.01(a).

**Real Estate Tax Reconciliation Statement:** As defined in Section 5.01(d).

**REIT:** Real Estate Investment Trust, as defined in Section 856 of the Internal Revenue Code of 1986, as amended.

**Rent:** The Minimum Annual Rent, Percentage Rent, if any, and Additional Rent.

**Regulations:** As defined in Section 13.01.

**Tenant's Records:** The (i) daily dated cash register receipts, including tapes from temporary registers; (ii) serially numbered sales slips; (iii) the originals of all mail orders received or filled at the Premises; (iv) the original records of all telephone, computer, internet and other electronic orders at and to the Premises; (v) settlement report sheets of transactions with subtenants, concessionaires and licensees; (vi) the original records showing that merchandise returned by customers was purchased at the Premises by such customers; (vii) memorandum receipts or other records of merchandise taken out on approval; (viii) records of daily bank deposits of the entire receipts and transactions in, at, on or from the Premises; (ix) duplicate bank deposit slips; (x) check stubs, cancelled checks and bank statements; (xi) all City, County, State and Federal tax returns; (xii) such other sales records, if any, which would normally be examined by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales; and (xiii) the records specified in (i) to (xii) above of subtenants, assignees, concessionaires, licensees and any other occupant of the Premises.

**Tenant's Share:** The percentage used to determine Tenant's pro rata share of the Real Estate Taxes, Operating Costs and Insurance Charge, which is a fraction, the numerator of which is the number of square feet of leasable area within the Premises and the denominator of which is the number of square feet of leasable floor area within the Shopping Center, whether leased, vacant or occupied, subject to adjustment as provided in Sections 5.01(i), 6.03(d), 15.02(e), respectively.

**Tenant's Work:** As defined in **Exhibit B** attached hereto.

**Unamortized Allowance:** The Unamortized Allowance is calculated by amortizing the actual amount of the Construction Allowance disbursed by Landlord on straight-line basis over the initial Lease Term using the Default Interest Rate, and the Unamortized Allowance shall be established as of the date of termination of the Lease.

**Unamortized Commissions:** The Unamortized Commissions shall be calculated by amortizing the actual amount of the fees and commissions paid by Landlord to Broker(s) on a self-liquidating mortgage style basis over the initial Lease Term using the Default Interest Rate and the Unamortized Commissions shall be established as of the date of termination of this Lease.

## **ARTICLE 2: PREMISES**

### **Section 2.01. Premises.**

(a) Landlord, in consideration of the Rent to be paid and the covenants to be performed by Tenant, hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, for the Lease Term. Landlord reserves the right to change the name of the Shopping Center at any time in its sole discretion.

(b) It is expressly agreed that nothing contained in this Lease shall be construed as a grant or rental of (and the Premises shall not include) (i) any space above the finished ceiling of the Premises (or, if none, above the bottom edge of the framework supporting the roof), (ii) any rights in the roof or exterior of the building within which the Premises is located, (iii) the area below the finished floor of the Premises, or (iv) the land and subsurface area upon which the Premises is located.

(c) Prior to the Commencement Date, Landlord shall have the right to re-measure the Premises to determine the actual GLA of the Premises. Any such re-measurement shall be calculated from the exterior face of any exterior walls and from the centerline of common walls. In the event the re-measurement discloses that the actual GLA of the Premises is either more or less than the GLA of the Premises as set forth in Section 1.01, then Tenant shall have the right to either (i) accept the re-measurement, or (ii) have the Premises re-measured by a licensed architect mutually acceptable to Landlord and Tenant, at the cost and expense of Tenant, and the results of such re-measurement shall be binding upon Landlord and Tenant. Landlord and Tenant shall execute an amendment to this Lease reflecting the actual GLA of the Premises, adjusting the Minimum Annual Rent, Tenant's Share of Real Estate Taxes, Operating Costs and Insurance Charge, Construction Allowance and any other component of Rent that is calculated based on the GLA of the Premises in accordance with the terms of this Section. If, as a result of the re-measurement of the Premises, it is determined that the actual GLA of the Premises is more than the GLA of the Premises as set forth in Section 1.01, then Tenant shall pay to Landlord the difference between the charges actually due and the charges actually paid within fifteen (15) days after receipt of a statement therefor. If, as a result of the re-measurement of the Premises, it is determined that the actual GLA of the Premises is less than the GLA of the Premises as set forth in Section 1.01 by more than two percent (2%), then Landlord shall credit the excess of each charge accruing under this Lease against the amount of each such charge next becoming due. If, as a result of the re-measurement of the Premises, it is determined that the actual GLA of the Premises is less than the GLA of the Premises as set forth in Section 1.01 by two percent (2%) or less, then there shall not be any adjustments to the Minimum Annual Rent, Tenant's Share of Real Estate Taxes, Operating Costs and Insurance Charge, Construction Allowance and any other component of Rent that is calculated based on the GLA of the Premises. If the Premises is not re-measured prior to the Commencement Date, then the square footage of the Premises, as set forth in Section 1.01 of this Lease, shall be deemed to be the square footage of the Premises for all purposes in connection with this Lease.

## **Section 2.02. Condition of the Premises.**

Tenant acknowledges that it is familiar with the Premises and except as specifically set forth herein to the contrary, there is no work of any sort to be performed by Landlord and no representation or warranty by Landlord as to the fitness of the Premises, or any equipment servicing the Premises, or as to any use permitted herein. Tenant's Work shall be Tenant's obligation to perform, at Tenant's sole cost and expense. Tenant shall indemnify, defend with competent legal counsel reasonably acceptable to Landlord, and save harmless Landlord from and against any and all claims, actions, suits at law or equity, judgments, expenses, costs, liabilities, fines and debts in connection with any injury, loss or damage to the Shopping Center resulting or occurring by reason of Tenant's Work.

Landlord and Tenant hereby agree to observe and comply with the provisions set forth in **Exhibit B** attached hereto with respect to any Landlord's Work and/or Tenant's Work. Landlord and Tenant shall each comply with all Laws affecting their respective covenants and obligations with respect to any Landlord's Work or Tenant's Work. Without limiting the generality of the

foregoing, Tenant acknowledges and agrees: (i) all covenants and obligations of Landlord (including without limitation, concerning construction, site service, access, building location, waste disposal and the like), remain subject to Landlord obtaining the approval in writing of, and complying with the requirements of, every Authority; (ii) all rights of Tenant (including without limitation, concerning Tenant signage and the like), remain subject to Tenant obtaining, at its cost, the approval in writing of, and complying with the requirements of, every Authority; (iii) Landlord may make such changes to the Shopping Center as any Authority requires; and (iv) if Landlord is unable to obtain any necessary approval or permit from any Authority in respect of any of Landlord's covenants or obligations hereunder, then Landlord shall be entitled, at its sole and unfettered option, by simple written notice to Tenant, to treat said covenant or obligation as null and void and proceed with the remainder of this Lease unaffected.

### **Section 2.03. Surrender of the Premises.**

At the Expiration Date, Tenant shall quit and surrender exclusive possession of the Premises to Landlord, in "broom clean" condition and in the same condition as the Premises were in upon delivery of possession, reasonable wear and tear excepted, and shall surrender all keys for the Premises to the Shopping Center's property manager and shall inform the property manager of all combinations of locks, safes and vaults, if any, in the Premises. Any alterations, additions, improvements and fixtures paid for by Tenant or installed by Tenant upon the interior or exterior of the Premises (whether or not approved by Landlord), other than unattached moveable trade fixtures, decorations, Tenant's signage and Tenant's other personal property, shall at Landlord's option, become the property of Landlord on the Expiration Date. If Landlord chooses not to retain such alterations, additions, improvements and fixtures, then Tenant shall, prior to the Expiration Date, remove such of these as Landlord chooses at Tenant's expense and shall restore the Premises to its condition immediately preceding Tenant's installation of such alterations, additions, improvements and fixtures, reasonable wear and tear excepted. Tenant shall not leave any personal property in the Premises upon the Expiration Date, and all such personal property shall be removed by Tenant. Tenant's obligation to observe or perform the covenants contained in this Section shall survive the Expiration Date.

### **Section 2.04. Construction Allowance.**

As an inducement to the execution and delivery of this Lease and the performance by Tenant of all obligations hereunder, Landlord agrees to pay to Tenant, in consideration therefor, to be applied only toward the cost of the build-out of leasehold improvements (specifically excluding the costs of the Excluded Items) in an amount up to the Construction Allowance within forty five (45) days following the date that Tenant opens for business; provided however, that the following conditions are fully satisfied:

(a) Tenant is not in default of any term, covenant or condition of the Lease after notice and the expiration of any applicable cure period, and the Lease is in full force and effect;

(b) Tenant has completed all of the work required to be performed by Tenant prior to Tenant's opening for business at the Premises in strict accordance with plans and specifications approved in writing by Landlord;

(c) Tenant is open for business and has paid the first installment of Rent;

(d) The Premises, including all installations therein, are free and clear of all liens, security interests, charges and encumbrances and there are no judgments, levies, attachments, liens or tax liens pending (or threatened) or in effect with respect to Tenant and/or the Premises;

(e) Tenant submits the following completed documentation to the Tenant project manager at the address set forth in Section 1.01 within forty five (45) days following the completion of Tenant's Work. Tenant shall supply either originals or recordable counterparts of the following documents, unless otherwise agreed by Landlord:

(i) A Tenant Affidavit in the form attached hereto as **Exhibit G** certifying that all of the conditions contained herein are satisfied.

(ii) Tenant's General Contractor's Application for Payment and Lien Waiver.

(iii) Tenant's Subcontractors'/Materialmen's Lien Waiver (to be submitted for each and every subcontractor with aggregate requisitions in excess of \$3,000).

(iv) Final and Unconditional Certificate of Occupancy.

(v) Any necessary approvals for Tenant's lawful operation for its Permitted Use (e.g. liquor license, health certificate, etc.), as determined by Landlord's construction manager.

(vi) Proof satisfactory to Landlord of the cost to Tenant of the build-out of leasehold improvements (specifically excluding the costs of the Excluded Items).

(vii) Tenant's Form W-9.

(viii) Affidavit of Tenant's General Contractor listing all subcontractors and material suppliers and amounts owed to each.

(ix) Copy of Tenant's insurance certificates as approved by Landlord and otherwise in compliance with the terms of this Lease.

(f) If and to the extent that Tenant owes any monies to Landlord under this Lease at the time when Landlord is obligated to pay the Construction Allowance to Tenant, then Landlord shall be permitted to deduct those monies owed to Landlord by Tenant from the Construction Allowance. If Tenant has not satisfied all conditions for payment of the Construction Allowance within two hundred and ten (210) days after the Commencement Date then, as of such day, Tenant waives any and all rights to the payment of the Construction Allowance, notwithstanding anything contained in this Lease to the contrary.

(g) If Landlord terminates this Lease prior to the anticipated Expiration Date on account of a default by Tenant under the terms hereof, including without limitation, an Event of Default as described in Section 20.01(c) and/or (d), or if this Lease is otherwise terminated for any reason, in addition to all other remedies available to Landlord on account of such default, Tenant shall, upon receipt of written demand therefor, promptly pay to Landlord the Unamortized Allowance and Unamortized Commissions. The provisions of this subsection shall survive the termination of this Lease.

(h) If an Event of Default described in Section 20.01(c) and/or (d) occurs, then in addition to all of Landlord's other rights and remedies as set forth in this Lease, Landlord shall have the right to defer payment of any Construction Allowance until such time as Tenant both (a) properly assumes this Lease pursuant to the bankruptcy code and (b) pays all pre and post-bankruptcy arrears due under this Lease.

### **ARTICLE 3: LEASE TERM**

#### **Section 3.01. Lease Term.**

The Lease Term shall be for the period set forth in Section 1.01.

#### **Section 3.02. Commencement of Lease Term.**

(a) The Lease Term shall commence on the Commencement Date and shall expire at 11:59 P.M. on the Expiration Date. Tenant's obligation to pay (i) Minimum Annual Rent shall commence on the Commencement Date, and (ii) Additional Rent and all other components of Rent shall commence on the Additional Rent Commencement Date.

(b) Although Rent does not commence until the applicable date(s) identified in Section 3.02(a), the parties hereby acknowledge and agree that all other rights and obligations of the parties commence as of the Effective Date, including, but not limited to, Tenant's obligations to take possession and construct the Premises, to obtain insurance, to indemnify Landlord, to waive certain Landlord liability and to pay for all utilities on and after the Possession Date; and the parties agree to be bound by all of such obligations as of the Effective Date.

(c) Within ten (10) days after Landlord's written request to Tenant, Tenant shall execute and return to Landlord the Commencement Date Agreement attached hereto and made a part hereof.

(d) If the Possession Date has not occurred within three (3) months after the date of execution of this Lease, then this Lease may be terminated by Landlord or Tenant at any time thereafter prior to the occurrence of the Possession Date by written notice given to the other party, and thereafter, neither party hereto shall be obligated or liable to the other under this Lease. Tenant shall have no other rights or remedies for any delay in Landlord's delivery of the Premises to Tenant.

#### **Section 3.03. Holding Over.**

Tenant shall not have the right to remain in possession of the Premises after the Expiration Date without having first received Landlord's written consent. If Tenant remains in possession of the Premises thereafter, such possession shall be a default under the Lease and Tenant shall be deemed a holdover tenant on the following terms and conditions: Tenant's holdover Rent shall be equal to one hundred and fifty percent (150%) the total of the Minimum Annual Rent and Percentage Rent, if any, as were due during the final month of the Lease Term, plus all Additional Rent due in accordance with the terms of the Lease calculated on a per diem basis; Tenant shall be fully obligated to perform all of the terms and conditions contained in the Lease, except as expressly modified by this Section; Landlord shall not be obligated or liable to Tenant for any failure to perform under the Lease; any co-tenancy rights, exclusive use rights and/or use restrictions applicable to Landlord's leasing of premises in the Shopping Center shall not apply; Tenant shall not be deemed a "month-to-month" tenant and shall be considered a tenant at sufferance. By continuing to use and occupy the Premises after the Expiration Date, Tenant agrees that such use and occupancy is subject to and pursuant to all of the terms, covenants and conditions set forth in this Lease, excepting only as specifically modified by this Section. If Tenant has remained in possession of the Premises after the Expiration Date, Tenant shall vacate and surrender the Premises to Landlord within three (3) days after written notice to Tenant. Tenant shall indemnify, defend with legal counsel reasonably acceptable to Landlord, and hold harmless Landlord from and against any loss or liability Landlord incurs resulting from

Tenant's delay in surrendering the Premises on the Expiration Date. The provisions of this Section shall survive the Expiration Date.

**Notwithstanding anything herein to the contrary, pursuant to Section 91.001(c) of the Texas Property Code, Landlord and Tenant specifically agree that no notice to terminate Tenant's tenancy hereunder will be required from and after the expiration of the Term under Section 91.001 or Section 24.005 of the Texas Property Code before Landlord files a forcible detainer suit on grounds that Tenant is holding over beyond the end of the Lease Term; and any sublease hereunder shall not be approved unless it also contains a specific comparable waiver by the subtenant thereunder.**

#### **Section 3.04. Option to Extend the Lease Term.**

Provided that Tenant is open and operating a business at the Premises in compliance with the Permitted Use, has not assigned or sublet the Premises, and Tenant is not in default under this Lease, Tenant shall have the right and option to extend the Lease Term upon the same terms and conditions, except that (i) Rent shall be as set forth in Section 1.01, and (ii) Tenant shall have no further option to extend the Lease Term beyond the Option Term(s) provided for in Section 1.01. Tenant shall exercise its right and option to extend the Lease Term by serving written notice upon Landlord of its election to exercise said option as provided in Section 1.01 under Exercise of Option Term. In the event Tenant does not timely exercise its option for extension of the Lease Term as provided above, or is in default under this Lease at the time of such exercise, then Tenant shall have no right to the Option Term and Tenant shall be deemed to have waived any claim or right to invoke or exercise such election after the above prescribed time period. Time shall be of the essence with respect to Tenant's exercise of said extension option.

### **ARTICLE 4: RENT**

#### **Section 4.01. Minimum Annual Rent.**

(a) Tenant hereby covenants and agrees to pay to Landlord the Minimum Annual Rent, without any prior demand therefor and without any offset, abatement or deduction whatsoever, in equal monthly installments on or before the first day of each month during the Lease Term, in advance, at Landlord's Rent payment address set forth in Section 1.01 or at such other place designated in writing by Landlord. All Rent shall be pro-rated on a per diem basis for any partial month during the Lease Term.

(b) The Rent Deposit, if any, is due and payable simultaneously with Tenant's execution of this Lease, and will be credited to the first full monthly installment of Rent coming due under this Lease.

(c) Landlord and Tenant agree that each provision of this Lease for determining charges, amounts and other additional rent payable by Tenant is commercially reasonable and, as to each such charge or amount, constitutes a "method by which the charge is to be computed" for purposes of Section 93.012 of the Texas Property Code, which Section was originally enacted by House Bill 2186, 77th Legislature. ACCORDINGLY, TENANT VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS, IF ANY, AVAILABLE TO TENANT UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS SUCH SECTION NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED, SUCCEEDED AND/OR RENUMBERED.



#### **Section 4.02. Intentionally Deleted.**

#### **Section 4.03. Gross Sales.**

"Gross Sales" means the dollar aggregate of: (a) the price of all goods, wares and merchandise, and/or food and beverages, as applicable based on Tenant's Permitted Use, sold, leased or rented, and the charges for all services performed, by Tenant or otherwise, from all business conducted on, in, at or from the Premises, whether made for cash, by check, on credit or otherwise, without reserve or deduction for inability or failure to collect for the same, including, but not limited to, such sales, leases, rentals and services (i) where the orders therefor originate at and are accepted by Tenant in the Premises, but delivery or performance thereof is made from or at any other place or where the orders therefor originate at any place other than the Premises but are filled from the inventory located at the Premises; (ii) pursuant to mail, telephone, computer, internet or other electronic means, or other similar orders received, billed or shipped at or from the Premises; (iii) by means of mechanical or other vending devices, excluding any such devices reserved for use by Tenant's employees only; (iv) as a result of transactions originating from whatever source, and which Tenant in the normal and customary course of its operations would credit or attribute to its business at the Premises; (b) all monies or other things of value received by Tenant from its operations at the Premises which are neither included in nor excluded from Gross Sales by the other provisions of this definition; and (c) all sales by any subtenant, licensee or concessionaire of Tenant or any other occupant of the Premises. Gross Sales shall not include: (a) the exchange of merchandise between stores of Tenant where such exchanges are made solely for the convenient operation of Tenant's business, provided separate and detailed records of purchases and sales from all such premises are maintained by Tenant and made available to Landlord for audit; (b) returns to shippers or manufacturers; and (c) sales of fixtures after use thereof, sold other than in the ordinary course of business. In addition, Tenant may deduct from Gross Sales: (a) cash or credit refunds made upon transactions previously included within Gross Sales; and (b) the amount of any City, County, State or Federal sales, luxury or excise tax, which is added to the selling price of sales included in Gross Sales, and also paid to the taxing authority directly by Tenant; provided, however, that no franchise or capital stock tax and no income or similar tax based upon income, profits or gross sales as such, shall be deducted from Gross Sales in any event whatsoever. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when Tenant shall receive payment thereof. Collections made at the Premises for sales originating at premises other than the Premises shall be included within Gross Sales.

#### **Section 4.04. Intentionally Deleted.**

#### **Section 4.05. Tenant's Records.**

(a) Tenant shall submit to Landlord, on or before the thirtieth (30<sup>th</sup>) day following the end of each Lease Year, to Landlord's notice address (as set forth in Article 1) or such other address as directed by Landlord in writing to Tenant, a written statement of the amount of Gross Sales during the preceding Lease Year, which statement shall be duly certified to Tenant and Landlord by an independent certified public accountant of recognized standing. The statements referred to herein shall be in such form and style and contain such details and breakdown as Landlord may reasonably require.

(b) If Tenant fails to provide the foregoing annual Gross Sales statement within thirty (30) days after written notice from Landlord, then Tenant shall incur a late fee in the amount of

Two Hundred Fifty and 00/100 Dollars (\$250.00) per month, per statement, until such statement is received by Landlord.

**Section 4.06. Intentionally Deleted.**

**Section 4.07. Intentionally Deleted.**

**Section 4.08. Radius.**

Tenant acknowledges that the success and viability of the Shopping Center is dependent, in part, upon Tenant's concentrating all of its business efforts within the geographical area in which the Shopping Center is located upon Tenant's business at the Premises, so as to maximize Tenant's Gross Sales, and Tenant further acknowledges that any activity by Tenant within such geographical area in operating or participating in the operation of a similar or competing business must necessarily have an adverse effect on the customer traffic at the Shopping Center to the detriment of Landlord and the success and viability of the Shopping Center. Accordingly, in the event that during the Lease Term either Tenant, or Tenant's management, or any person or entity controlled by Tenant, or controlling Tenant, or controlled by the same person or entity or persons or entities who control Tenant, or any officer or director of Tenant, directly or indirectly, owns, operates, is employed in, directs or serves any other place of business, which is (i) the same, or similar to, or competitive with, Tenant's business as set forth herein, (ii) within the Radius Area and (iii) not open and operating as of the date of this Lease, the Minimum Annual Rent shall automatically increase by twenty percent (20%).

**Section 4.09. Additional Rent.**

(a) Additional Rent shall be due and payable upon the earlier of ten (10) days after demand is made therefor or together with the next succeeding installment of Minimum Annual Rent. Landlord shall have the same remedies for failure to pay Additional Rent as for a non-payment of Minimum Annual Rent.

(b) Tenant's obligation to pay any and all Rent under this Lease, and Landlord's and Tenant's obligation to make the adjustments referred to in this Lease, shall survive the Expiration Date.

(c) Unless otherwise specifically stated herein or except as otherwise directed by written notice from Landlord, all payments of Rent shall be made to Landlord at Landlord's Rent Payment Address or to such other address as to which Landlord has given Tenant written notice. Tenant shall note any identifying information requested by Landlord on all checks delivered in payment of Rent.

(d) Tenant shall have one hundred eighty (180) days from the receipt of any Fiscal Year-end Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and/or Insurance Charge Reconciliation Statement from Landlord within which to object to such statement in whole or in part. Tenant waives any right it may have to dispute any Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and/or Insurance Charge Reconciliation Statement after such one hundred eighty (180) day period and waives any right to make any claims against Landlord for any errors not disputed within such one hundred eighty (180) day period. Additionally, with respect to all other Rent payments, Tenant shall be deemed to have waived the right to dispute any matter relating to Tenant's obligation to pay such other Rent payments, unless Tenant provides written notice of any such dispute to

Landlord within one hundred eighty (180) days after the date Tenant receives Landlord's billing statement setting forth the exact amount of such Rent charge.

#### **Section 4.10. Returned Check Fees, Late Payments and Default Interest.**

(a) If any check from Tenant delivered in full or partial payment of any amounts due hereunder is not honored because of insufficient funds, uncollected funds, or any other reason, then Tenant shall pay to Landlord an administrative charge of Seventy Five and 00/100 Dollars (\$75.00) per dishonored check and, at Landlord's option, all subsequent payments due from Tenant hereunder shall be made by certified check or money order directly to the order of Landlord, its managing agent or designee.

(b) In the event of a Late Payment by Tenant, a Late Fee shall become immediately due to Landlord, as liquidated damages for Tenant's failure to make timely payment. The Late Fee shall be Additional Rent and shall be payable together with the next installment of Minimum Annual Rent.

(c) All Late Payments shall bear interest at the Default Interest Rate until received by Landlord. The default interest on such Late Payments shall be Additional Rent and shall be payable together with the next installment of Minimum Annual Rent.

#### **Section 4.11. Trash Removal.**

Separate from Operating Costs, Tenant shall directly pay the cost of removal of garbage or refuse generated from the Premises, and if Landlord shall provide or designate a service for picking up refuse and garbage, then Tenant shall use such service at Tenant's expense, provided that such service is priced competitively with other comparable waste removal service providers operating within the vicinity of the Shopping Center. If not provided by the designated waste removal service provider, Tenant is responsible, at Tenant's sole cost and expense, for providing a trash dumpster for Tenant's Premises. The size of Tenant's trash dumpster and its location outside of the rear or side of the Premises shall be subject to Landlord's approval. If a trash enclosure is provided by Landlord, then Tenant's dumpster shall be located therein. Landlord may also determine the time or times for collection of waste generated at the Premises.

#### **Section 4.12. Payment Under Protest.**

All Rent payable hereunder by Tenant to Landlord shall be payable without abatement, offset or deduction. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, then Tenant shall make such payment "under protest" and under no circumstances shall Tenant be entitled to withhold any payment due hereunder. If Tenant makes a payment "under protest" and it is subsequently determined that Tenant was not obligated to pay all or a portion of an amount paid "under protest" then Landlord shall refund to Tenant the portion of the payment made "under protest" that Tenant was not obligated to pay.

#### **Section 4.13. Payment by Third Party.**

In no event shall Landlord's acceptance of the payment of Rent from any party other than Tenant constitute a release of Tenant's primary obligations under this Lease or Landlord's acceptance of any other party as an assignee or sublessee of Tenant, regardless of the number of payments accepted by Landlord or the length of time that said party made such payments.

#### **Section 4.14. Security Deposit.**

(a) Tenant herewith deposits with Landlord the Security Deposit, as security for the full and faithful performance by Tenant of every provision of this Lease and all obligations of Tenant under this Lease. In the event that Tenant is in default hereunder, Landlord may use, apply or retain the whole or any part of the Security Deposit for the payment of (i) any Rent or any other sum of money which Tenant may not have paid or which may become due after the occurrence of a default, (ii) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease, (iii) any sum which Landlord may expend or be required to expend by reason of Tenant's default, including any costs, damages or deficiency in the re-letting of the Premises as hereinafter provided. The use, application or retention of the Security Deposit or any portion thereof by Landlord shall not prevent Landlord from exercising any other right or remedy provided for hereunder or at law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. If the Security Deposit, or any part thereof, be appropriated and applied by Landlord pursuant to the terms hereof, Tenant shall, within fifteen (15) days of the sending by Landlord of a written demand, remit to Landlord as Additional Rent an amount sufficient to restore the Security Deposit to its original balance, and Tenant's failure so to remit shall be an immediate monetary default without additional notice required.

(b) Subject to Section 4.14(a), the Security Deposit, or any balance thereof, shall be returned to Tenant within thirty (30) days after the later of (i) the Expiration Date, (ii) the date upon which Tenant has vacated the Premises, and (iii) Tenant's payment of Rent payable to Landlord, if any, after Landlord's delivery to Tenant of the Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and Insurance Charge Reconciliation Statement for the Fiscal Year in which the Expiration Date occurs.

(c) In the event of a transfer of Landlord's interest in the Premises, Landlord shall have the right to transfer the Security Deposit to the transferee thereof. In such event and only if Transferee assumes all Landlord's obligations in this Section 4.14, Landlord shall be deemed released by Tenant from all liability for the return of such Security Deposit, and Tenant agrees to look solely to such transferee for the return of said Security Deposit.

(d) Tenant shall have no legal power to assign or encumber the Security Deposit, and the return of the Security Deposit to the original Tenant shall completely relieve Landlord of liability with regard thereto. No action of Landlord in enforcing any default shall be deemed such a termination of this Lease so as to entitle Tenant to recover said Security Deposit.

### **ARTICLE 5: REAL ESTATE TAXES**

#### **Section 5.01. Real Estate Taxes.**

Tenant shall pay, as Additional Rent, Real Estate Taxes in accordance with the following:

(a) "Real Estate Taxes" shall mean all taxes, possessory interest taxes, government property lease excise taxes, personal property taxes, excise taxes, levies, license and permit fees, payments in lieu of taxes and assessments, both ad valorem and non-ad valorem, levied, assessed or imposed at any time by any governmental authority, upon or against all or a portion of the land and/or buildings in the Shopping Center of which the Premises forms a part, including site impact fees, water drainage and/or solid waste disposal levies and assessments, if any. If any Real Estate Taxes are permitted to be paid in installments, then all references in

this Section to the dates on which Real Estate Taxes are payable shall be deemed to refer to the dates on which the installments are payable.

(b) If at any time during the Lease Term the method of taxation then prevailing shall be altered so that any new tax, assessment, levy, imposition or charge or any part thereof, shall be imposed upon Landlord in place of, partly in place of, or in addition to, any Real Estate Taxes as heretofore defined, and shall be measured by or be based, in whole or in part, upon the Shopping Center or the rents or other income therefrom, then all such new taxes, assessments, levies, impositions or charges or part thereof, to the extent that they are so measured or based, shall constitute Real Estate Taxes for purposes hereof, allocated as if the Shopping Center were the only property of Landlord subject thereto and as if the rents were Landlord's only income and Tenant shall pay the same as herein provided as Real Estate Taxes.

(c) From and after the Additional Rent Commencement Date, and throughout the Lease Term, Tenant shall pay to Landlord a sum equal to Tenant's Share of the Real Estate Taxes for each Fiscal Year. As a deposit towards said amount, Tenant shall pay to Landlord, without any deduction, abatement or setoff whatsoever, an estimate of Tenant's Share of Real Estate Taxes to become due, payable in equal monthly installments together with the Minimum Annual Rent payable hereunder. The foregoing amount shall be adjusted annually at the end of each Fiscal Year, which adjustment shall be based upon Landlord's estimation of the Real Estate Taxes to become due.

(d) Within one hundred eighty (180) days after Landlord is notified of the Real Estate Taxes due for a particular Fiscal Year as designated by the appropriate taxing authorities, Landlord shall furnish to Tenant a statement ("Real Estate Tax Reconciliation Statement") showing (i) the Real Estate Taxes for such Fiscal Year from such authority; (ii) Tenant's Share of Real Estate Taxes; and (iii) the credit or balance due, as the case may be, after applying sums already paid against Tenant's Share of Real Estate Taxes as reflected on said statement. Any balance due to Landlord shall be payable by Tenant within ten (10) days after delivery of the Real Estate Tax Reconciliation Statement; and any balance due to Tenant shall be a credit against the next payments of Minimum Annual Rent due Landlord (or shall be paid within thirty (30) days after its determination if after the Expiration Date), in either case after first deducting therefrom any due and outstanding Rent then owed to Landlord.

(e) Subject to the terms set forth in Section 4.09(d), the Real Estate Tax Reconciliation Statement to be furnished by Landlord shall constitute a prima facie determination as between Landlord and Tenant of Real Estate Taxes for the periods represented thereby.

(f) If Tenant's obligation to pay Tenant's Share of Real Estate Taxes commences on a date other than the first day of a Fiscal Year, Tenant shall pay a proportionate share of the Real Estate Taxes for the Fiscal Year in which the Additional Rent Commencement Date occurs, which share shall be based upon the length of time that this Lease shall have been in existence during such first Fiscal Year. At any time throughout the Lease Term, Landlord shall have the right to recalculate the estimated Real Estate Taxes due from Tenant, which computations shall be an estimate based upon the most recent annual statements of Real Estate Taxes and Tenant's Share of Real Estate Taxes shall be adjusted accordingly.

(g) Tenant's obligations to pay any and all Additional Rent under this Lease shall continue and shall cover all periods through the Expiration Date. Tenant's obligation to pay any and all Additional Rent under this Lease and Landlord's and Tenant's obligation to make the adjustments referred to in subsection (f) above, shall survive the Expiration Date.

(h) Landlord may contest any and all Real Estate Taxes and/or Landlord may retain a tax consultant and/or legal counsel for the purpose of obtaining and maintaining the most reasonable attainable Real Estate Taxes upon the Shopping Center. Landlord's tax counsel shall have the authority to present complaints, briefs and supporting data, including appraisals, before the appropriate agencies having jurisdiction over the assessment and levy of the Real Estate Taxes affecting the Shopping Center. All of the costs of contesting any taxes and all of the out-of-pockets fees and costs paid by Landlord for such services, including without limitation the costs of tax counsel, shall be included in Real Estate Taxes prior to the calculation of Tenant's Share thereof and shall be Additional Rent.

(i) Notwithstanding anything contained in this Lease to the contrary, prior to calculating Real Estate Taxes, Landlord shall have the right to exclude from the Shopping Center, and the denominator used to calculate Tenant's Share of Real Estate Taxes, the square footage of any portions thereof that are: (i) separately assessed and taxed or are the subject of records maintained by the taxing authority from which the amount of tax fairly allocable to such portions may be determined; (ii) billed to an entity other than Landlord or paid directly by an entity other than Landlord even though billed to Landlord; (iii) any Major Tenant, provided that the contributions for Real Estate Taxes made to Landlord by any Major Tenant are deducted from the Real Estate Taxes prior to the calculation of Tenant's Share thereof; (iv) non-retail office space located within the Shopping Center; and/or (v) a kiosk, gas station, public library, post office or other governmental agency or office, basement or mezzanine area, storage area, garden area, outdoor sales area, patios/outdoor seating area, temporary or seasonal sales area, outdoor lumber or material storage area, Shopping Center management office, and/or decommissioned space within the Shopping Center.

#### **Section 5.02. Taxes on Leasehold.**

Tenant shall be responsible for, and shall pay before delinquency, all taxes assessed during, from and after the date of this Lease against any leasehold interest or improvements, decorations, alterations, fixtures and/or personal property of any kind owned by or placed in, upon or about the Premises by Tenant, whether such taxes are assessed against Landlord or Tenant.

#### **Section 5.03. Taxes on Rentals.**

In addition, Tenant shall pay any and all taxes assessed by the state or any municipality with jurisdiction over the Premises, whether now in place or hereafter levied or assessed, that are applicable to rentals or any other payments or charges payable by Tenant to Landlord specified in this Lease. Said tax payment shall be paid to Landlord with and when the applicable rental or charge is due. Said tax shall be at the legally prevailing rate.

### **ARTICLE 6: COMMON AREAS**

#### **Section 6.01. License.**

Notwithstanding anything to the contrary herein contained, the Common Areas are to be used and occupied under a revocable, non-exclusive license, and if any such license be revoked, or if the amount of such areas be diminished or their locations changed, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of Rent, nor shall such revocation or diminution of such areas be deemed a constructive or actual eviction.

## **Section 6.02. Control of the Shopping Center and the Common Areas by Landlord.**

(a) All parking areas, sidewalks, access roads and facilities furnished, made available or maintained by Landlord in or near the Shopping Center, including employee parking areas, truck ways, driveways, loading docks and areas, delivery areas, multi-story parking facilities (if any), package pickup stations, elevators, escalators, pedestrian sidewalks, malls, courts and ramps, landscaped areas, roofs, retaining walls, stairways, bus stops, first-aid and comfort stations, lighting facilities, sanitary systems, utility lines, water filtration and treatment facilities and the areas and improvements provided by Landlord for the general use in common of tenants and others in the Shopping Center and their customers (all herein called "Common Areas") shall at all times be subject to the exclusive control and management of Landlord.

(b) The purpose of the site plan attached hereto as **Exhibit A** is to show the approximate location of the Premises and is not to be deemed to be a warranty, representation or agreement on the part of Landlord that the Shopping Center will be exactly as depicted thereon or that tenants depicted thereon (if any) are now in occupancy or will be in occupancy at any time during the Lease Term. Landlord shall have the right from time to time to: change or modify, add to or subtract from, include in or exclude from the GLA of the Shopping Center any buildings, separately assessed parcels, non-retail office space, separately maintained parcels, separately owned parcels and premises; change or modify and add to or subtract from the sizes, locations, shapes and arrangements of parking areas, entrances, exits, parking aisle alignments and other Common Areas; retain revenue from income producing events in the Common Areas; designate areas of the Common Areas as limited Common Areas for the use by only some tenants and their agents, employees and/or customers and/or exclusive Common Areas for the use only by a specific tenant and its agents, employees and/or customers; restrict parking by Tenant's officers, agents and employees, to designated areas; construct surface, sub-surface or elevated parking areas and facilities; construct, maintain and operate lighting facilities on all said areas; police the same; establish and from time to time change the level or grade of parking surfaces; enforce parking charges (by meters or otherwise), with appropriate provisions for free parking ticket validating by tenants; close all or any portion of said areas or facilities to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; add to or subtract from the land, buildings and/or other improvements included within the Shopping Center; make alterations or additions to and to build additional stories on the building in which the Premises are contained and to build adjoining the same; to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking; and do and perform such other acts in and to said Common Areas as Landlord in its sole discretion deems advisable for the use thereof by tenants and their customers. Subject to Landlord's compliance with applicable laws, casualty, condemnation, or on a temporary basis in connection with emergencies, maintenance, repair, or construction, Landlord shall not unreasonably limit or restrict accessibility to the Premises, nor unreasonably interrupt Tenant's use of the Premises in connection with Landlord's exercise of its rights set forth in this Section 6.02(b). Landlord will operate and maintain the Common Areas in such a manner as Landlord, in its sole discretion, shall determine from time to time, but at least in a manner consistent with the standard of operation of shopping centers similarly situated and located in the San Antonio, Texas area. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ and discharge all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the Common Areas.

## **Section 6.03. Operating Costs.**

From and after Additional Rent Commencement Date, Tenant shall pay, as Additional Rent, to Landlord, without any deduction, abatement or setoff whatsoever, an amount equal to Tenant's Share of the "Operating Costs", which are defined as follows:

(a) "Operating Costs" shall mean and include all costs and expenses of every kind and nature as may be paid or incurred directly, or through an operating and easement agreement or other encumbrances upon the Shopping Center, in operating, owning, policing, managing, equipping, landscaping, lighting, repairing, renovating, modifying, replacing and maintaining the Shopping Center, including without limitation, the Common Areas, including, without limitation, the cost and expense of providing or causing any or all of the following to be provided:

(i) operating, maintaining, repairing, replacing, renovating, modifying, lighting, cleaning, sweeping, painting and resurfacing of the Common Areas including, without limitation: parking lots, curbs, roofs, gutters, sidewalks, paving, vehicle area lighting facilities, lighting and sound facilities, storm and sanitary drainage systems and other utility conduit systems, ducts and similar items, security, fire protection systems, sprinkler systems, security alarm systems, building fire and security monitoring systems and services, Shopping Center signs (whether on or off the Shopping Center), retaining walls, fences, canopies, steps, escalators and ramps, exclusive of casualty loss replacement covered by insurance;

(ii) a reserve for resurfacing and/or replacing the parking lot, curbs, roofs, gutters and sidewalks;

(iii) gardening, landscaping and maintenance of grass, trees and shrubbery;

(iv) personal property taxes on equipment and systems in, pertaining to, or used in maintaining or operating the Common Areas;

(v) utility charges and other costs of lighting the Common Areas, the vehicle areas, Shopping Center signs and other similar facilities;

(vi) removal of snow and ice (including, when necessary, removing snow and ice from the roof);

(vii) collection and removal of trash, garbage and other waste from all Common Areas, including without limitation, the sweeping and cleaning of the parking lot and other paved areas;

(viii) equipment, machinery and supplies used in the operation and/or maintenance of the Common Areas (including cleaning and snow removal equipment) and of Shopping Center signs, fixtures, furnishings (including the cost of inspection and depreciation thereof, unless the original cost was included in Operating Costs);

(ix) power and fuel for operating the Common Areas' equipment and systems, and for operating vehicles and equipment used for cleaning, maintenance or snow removal;

(x) salaries of personnel engaged in operating, cleaning and maintaining the Common Areas and/or the Shopping Center (including security personnel and parking attendants) and all related payroll charges, benefits and taxes;

(xi) a rental charge imposed by Landlord, in its sole discretion, for the non-leasable service areas serving the Shopping Center, including any enclosed garbage, utility, transformer,



electrical, telephone or storage room or rooms, and any utility meter/submeter cost, expense or other charge;

(xii) loud speakers, public address and musical broadcasting systems and any telephone answering service used in or serving the Shopping Center,

(xiii) costs for repairing, resealing, striping, painting and paving the parking areas and other paved areas;

(xiv) policing, security, supervision and traffic control;

(xv) cost of providing additional parking or other Common Areas for the benefit of the Shopping Center;

(xvi) costs and expenses of environmental site reviews and investigations, removal and/or clean up of Hazardous Materials from the Common Areas;

(xvii) accounting and audit fees incurred in the preparation of the statements required to be prepared and supplied by Landlord under the terms of this Lease or otherwise in connection with the operation of the Shopping Center;

(xviii) heating, ventilating and air conditioning of the Common Areas if applicable;

(xix) all capital and non-capital repairs and replacements to and maintenance and operation of the Shopping Center and the Common Areas;

(xx) any management fees paid for the management of the Shopping Center, not in excess of amounts paid for other comparable shopping centers in the area in which the Shopping Center is located; and

(xxi) an administrative fee in an amount equal to fifteen percent (15%) of the total of said Operating Costs.

(b) Tenant's payment of Tenant's Share of Operating Costs shall be paid in equal monthly installments simultaneously with the Minimum Annual Rent payable hereunder. The foregoing amount shall be adjusted annually at the end of each Fiscal Year, which adjustment shall be based upon Landlord's estimation of the then current Operating Costs and Tenant's Share thereof. During the Term, Tenant's Share of Operating Costs shall not be less than the Estimate of Operating Costs set forth in Section 1.01.

(c) Within one hundred eighty (180) days after the end of each Fiscal Year, Landlord shall provide Tenant with a statement of the prior Fiscal Year's Operating Costs ("Operating Costs Reconciliation Statement"), which shall include a statement of the total deposits Tenant made toward such Fiscal Year's Operating Costs and the total share of the actual Operating Costs. There shall be an appropriate adjustment made between Landlord and Tenant based thereon. If such adjustment shows a balance due to Landlord, such balance shall be payable by Tenant within ten (10) days after delivery of the annual Operating Costs Reconciliation Statement; if such adjustment shows a balance due to Tenant, then Tenant shall have a credit against the next payments of Minimum Annual Rent due Landlord in the amount of the balance due (or such shall be paid within thirty (30) days after its determination if after the Expiration Date), in either case after first deducting therefrom any due and outstanding Rent then owed to Landlord. The foregoing shall survive the Expiration Date. At any time throughout the Lease

Term, Landlord shall have the right to recalculate Landlord's estimate of Operating Costs due from Tenant pursuant to the terms of this Lease, which computations shall be an estimate based upon the most recent annual statements of Operating Costs and Tenant's Share of Operating Costs shall be adjusted accordingly.

(d) Notwithstanding anything contained in this Lease to the contrary, prior to calculating Operating Costs, Landlord shall have the right to exclude from the Shopping Center, and the denominator used to calculate Tenant's Share, the square footage of any portions thereof that are: (i) owned, leased or occupied by parties that self-maintain all or any portion within the Shopping Center; (ii) any Major Tenant, provided that the contributions for Operating Costs made to Landlord by any such Major Tenant, if any, are deducted from the Operating Costs prior to the calculation of Tenant's Share thereof; (iii) non-retail office space located within the Shopping Center and/or (iv) a kiosk, gas station, public library, post office or other governmental agency or office, basement or mezzanine area, storage area, garden area, outdoor sales area, patios/outdoor seating area, temporary or seasonal sales area, outdoor lumber or material storage area, Shopping Center management office, and/or decommissioned space within the Shopping Center.

(e) Notwithstanding anything in this Section 6.03 to the contrary, Operating Costs payable by Tenant for any Lease Year, not including the portion of Operating Costs attributable to insurance maintained by Landlord, snow and ice removal, cleaning of gutters and downspouts, storm clean-up and Common Area utilities, shall not exceed seven percent (7%) of the prior Lease Year's Operating Costs. Notwithstanding the foregoing, on each fifth (5<sup>th</sup>) anniversary of the Additional Rent Commencement Date, the Operating Costs shall be reset for the following year to be the actual Operating Costs payable by Tenant in the preceding year as if such Operating Costs had not been limited.

#### **Section 6.04. Excavation.**

If an excavation shall be made upon land near or adjacent to the Premises, Tenant shall permit the person or persons performing such excavation license to enter upon the Premises for the purpose of doing such work as Landlord or such person or persons shall deem necessary to preserve the wall or the building of which the Premises forms a part from damage and to support the same by proper foundations, without any claim for damages or indemnification against Landlord or diminution or abatement of Rent.

#### **Section 6.05. Extended Hours Services.**

If Tenant desires to operate its business in the Premises beyond the normal Shopping Center hours of operation, Tenant shall request Landlord's consent thereto. Thereafter, Tenant shall notify Landlord of any changes in the times or dates of the extended hours of operation. Landlord will provide during those extended hours services that it deems necessary and Tenant shall reimburse Landlord for the increased costs incurred by Landlord for such extended hours services including, without limitation, lighting, security, utilities and Landlord's administrative fee with respect to all such expenses. Tenant shall pay such increased costs as Additional Rent concurrently with its deposit payments under Section 6.03. Landlord acknowledges that Tenant's current hours of operation are expected to be Monday through Friday 9am to 7pm, Saturday 9am to 3pm and closed on Sundays.

#### **Section 6.06. Security Officers.**

Notwithstanding anything contained in this Lease to the contrary, Tenant agrees and

acknowledges that Landlord shall not be required to provide security officers for the Common Areas and/or otherwise provide security within such Common Areas, and if Landlord, in its sole discretion, elects to provide security officers or other security measures within the Common Areas, then Landlord does not represent, guarantee or assume responsibility that Tenant will be secure from any claims relating to such security officers or other security measures, and Tenant hereby expressly waives and releases Landlord from any and all liability in connection therewith. Landlord shall have no obligation to hire, maintain or provide such services, which may be withdrawn or changed at any time with or without notice to Tenant or any other person and without liability to Landlord. Any and all costs of providing said security shall be included in Shopping Center Operating Costs pursuant to Section 6.03.

## **ARTICLE 7: USE OF THE PREMISES**

### **Section 7.01. Use of the Premises.**

(a) Tenant shall use and operate the Premises solely for the Permitted Use, only under Tenant's Trade Name, and in full compliance with all applicable Laws, including, without limitation, obtaining and maintaining any and all licenses, permits and approvals necessary for the operation of Tenant's business at the Premises. Tenant shall not use, or permit the use, of the Premises for any other use or purpose whatsoever and shall not operate its business at the Premises, or permit any operation, under any other trade name whatsoever.

(b) The Permitted Use, which sets forth the nature of the business to be conducted by Tenant in the Premises, shall not be deemed or construed to constitute a representation or warranty by Landlord that such business may be conducted in the Premises, or is lawful or permissible under the certificate of occupancy, if any, issued for the building of which the Premises forms a part, or is otherwise permitted by Law.

(c) Tenant covenants and agrees that it shall operate its business only in accordance with the Permitted Use and without creating any nuisances and that Tenant's use of the Premises is in all events subject to the Lease terms and conditions; matters of public record; public or private restrictions affecting Landlord or the Shopping Center; any mortgages, ground leases or other agreements or restrictions of record; and all applicable governmental rules and regulations.

(d) Without limiting any other provision contained in this Lease, Tenant shall at all times: (i) keep the inside of the Premises and the adjacent outside areas free and clear of all odors; (ii) comply with all applicable Laws; (iii) provide 24-hour ventilation of the Premises, as determined and approved by Landlord; and (iv) generally maintain the Leased Premises in a first-class, clean, orderly manner.

Any violation of any of the foregoing covenants shall constitute a material breach hereunder if not cured within fifteen (15) days following written notice from Landlord (unless such failure cannot reasonably be cured within fifteen (15) days and Tenant shall have notified Landlord of same, commenced to cure said failure within said fifteen (15) days, and continues diligently to pursue the curing of the same), and entitle Landlord to thereafter immediately terminate this Lease as well as pursue all other rights and remedies against Tenant including, without limitation, the right to correct any of the foregoing at Tenant's sole cost and expense.

If Landlord determines that additional ventilation is required directly due to Tenant's use of the Premises, then Tenant shall, at Tenant's sole cost and expense, provide and install rooftop exhaust fans or other ventilation as required by Landlord to consume and dispense all odors produced at

the Leased Premises. All plans for such rooftop exhaust system shall be subject to Landlord's review and approval, and any work involving rooftop penetration shall include certified engineering plans and shall only be done by Landlord's approved contractor. Such fans shall have flow-through baffles to deflect exhaust gases away from the buildings in the Shopping Center and prevent any back draft caused by winds.

#### **Section 7.02. Nuisance and/or Disturbance.**

Tenant shall not perform any acts or carry on any practice which may or do cause a nuisance or disturbance to other tenants and business invitees or the general public. If Landlord, in Landlord's sole discretion, determines that Tenant's business operation is or may be producing noise, vibrations and/or odors, which may be causing or may cause a nuisance and/or disturbance to other tenants and business invitees or the general public, then Tenant agrees upon written notice from Landlord to immediately: (i) install sound and vibration attenuation countermeasures, such as insulating the walls and installing a rubberized floor mat, (ii) install a ventilation system to prevent odors from emanating into another tenant's or occupant's premises, and/or (iii) comply with other recommendations of Landlord. If Tenant fails to perform the action required by Landlord in Landlord's notice, then Landlord may (but shall not be required to) install the sound and vibration attenuation countermeasures, ventilation system and/or complete any other measures necessary to eliminate the nuisance, and upon completion of such work and presentation of a bill therefore, Tenant shall immediately pay Landlord's cost for such work, plus fifteen percent (15%) for overhead and supervision, as Additional Rent. In the event such countermeasures (whether installed by or at the direction of Tenant or Landlord) do not adequately resolve the nuisance or disturbance caused by Tenant's business operation, Tenant, upon written notice from Landlord, shall immediately cease the activities causing the nuisance or disturbance. Tenant expressly acknowledges and agrees that Landlord's review and/or approval of any plans and specifications for improvements to the Premises to be completed by Tenant as part of Tenant's Work or any other alterations to the Premises will not ensure that Tenant will be in compliance with the terms of this Section, and Tenant agrees and acknowledges that Tenant is solely responsible for ensuring that it is in compliance with the terms of this Section.

#### **Section 7.03. General Prohibited Uses.**

Tenant shall keep the Premises, and every part thereof, in a clean and wholesome condition. Notwithstanding anything contained in this Lease to the contrary, in no event may Tenant, or any party using or occupying the Premises by or through Tenant, use the Premises in violation of the provisions of Exhibit F, attached hereto.

#### **Section 7.04. Storage, Office Use.**

Tenant shall warehouse, store and/or stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Premises. This shall not preclude occasional emergency transfers of merchandise to other stores of Tenant, if any. Tenant shall use for office, clerical or other non-selling purposes only such space in the Premises as is from time to time reasonably required for Tenant's business in the Premises. Tenant shall not perform in the Premises any office or clerical function for any other store or business.

#### **Section 7.05. Tenant's Operation of Business.**

(a) Tenant shall continuously operate and keep open to the public one hundred percent (100%) of the Premises (excluding any reasonable portion thereof used by Tenant for storage or office purposes) during the entire Lease Term. Tenant shall keep its store adequately staffed with employees and shall carry a full stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum volume of Gross Sales. Tenant shall conduct its business in the Premises in a manner typical for such type of business in the city or trade area in which the Shopping Center is located.

(b) Tenant will keep the Premises open for business, at a minimum, during the hours of Monday through Friday 9am to 7pm, and Saturday 9am to 3pm.

(c) Tenant shall not display any merchandise within or immediately next to the storefront windows of the Premises without obtaining Landlord's prior written approval thereof. In no event shall any paper signs be displayed in, on or about the storefront windows of the Premises. Tenant shall keep the display windows and signs, if any, in the Premises well lighted during the hours from sundown to 12:00 midnight.

(d) Tenant shall refer to the Shopping Center by its name in all advertising by Tenant.

#### **Section 7.06. Failure of Tenant to Operate its Business.**

Except where the Premises are untenable by reason of fire, casualty or causes beyond Tenant's control not resulting from the negligent act or omission to act of Tenant, its servants, agents, employees, invitees, licensees and concessionaires, and without limiting any other rights or remedies which may be available to Landlord, if Tenant (i) fails to take possession of the Premises on the Possession Date; (ii) fails to commence Tenant's Work, as hereafter defined, within thirty (30) days after the Possession Date and Landlord's approval of Tenant's plans and specifications, as required by Exhibit B, or thereafter fails to prosecute Tenant's Work diligently and continuously to completion; (iii) fails to open for business fully fixtured, stocked and staffed on the Commencement Date; (iv) vacates, abandons or deserts the Premises; (v) ceases operating its store in the Premises; or (vi) fails to open or maintain any or all of the hours of operation designated by Landlord to the extent required herein then, in any such event, following any applicable notice and/or cure period(s), Landlord shall have in addition to all remedies herein provided, the right to terminate this Lease and/or to collect not only the Minimum Annual Rent, Percentage Rent, if any, and Additional Rent, but also to collect twice the Minimum Annual Rent, as liquidated damages and not as a penalty, calculated on a per diem basis, for each and every day or part thereof that Tenant shall fail to do business in strict compliance with the provisions of this Lease. The parties acknowledge the impossibility of calculating the actual damages resulting from Tenant's failure to operate over the remainder of the Term as required herein. Accordingly, the parties agree that the liquidated damages above are a reasonable estimate of said damages.

#### **Section 7.07. Rules and Regulations.**

Tenant agrees to abide by the rules and regulations of the Shopping Center, attached hereto as Exhibit C. Landlord may, from time to time, amend or add to the rules and regulations for the use and care of the Premises, the buildings of which the Premises are a part, and the Common Areas, and Tenant agrees to comply with such amendments or additions immediately upon receipt of notice thereof.

#### **Section 7.08. Quiet Enjoyment.**

Tenant, upon paying the Rent and performing all of the terms of this Lease on its part to be performed, shall peaceably and quietly enjoy the Premises subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease or agreements to which this Lease is subordinated.

#### **Section 7.09. Environmental.**

(a) Tenant shall not use or suffer the Premises to be used in any manner so as to create an environmental violation or hazard, nor shall Tenant permit, cause or suffer to be caused any Hazardous Material contamination or discharge of a substance of any nature which is noxious, offensive or harmful or which under any Law constitutes a known or suspected hazardous, dangerous or toxic substance or waste. As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous release (as such terms are defined in any Federal, State or local Law) and other said wastes.

(b) Tenant shall immediately notify Landlord in writing of environmental concerns, liabilities or conditions of which Tenant is, or becomes, aware or which are raised by any private party or government agency with regard to Tenant's business or the Premises. Tenant shall notify Landlord immediately of any Hazardous Materials released at or suspected to emanate from the Premises, whether it is released by Tenant or otherwise and shall immediately upon knowledge of a known or suspected release of any Hazardous Materials investigate and fully remediate all such substances in compliance with law and subject to Landlord's prior review and approval of Tenant's remediation measures.

(c) Without limiting the foregoing, but as additional covenants thereto, Tenant specifically agrees that, (i) Tenant shall not generate, manufacture, refine, transport, treat, store, handle, dispose or otherwise deal with any Hazardous Materials in violation of applicable law; (ii) if at any time during the Lease Term there shall be required, with respect to the Premises or any part thereof, any act pursuant to or to comply with applicable law, including obtaining permits or approvals, the filing of any required notice of sale or negative declaration affidavits or the preparation or effectuation of any remediation plans, Tenant shall immediately notify Landlord of same in writing and Tenant shall be solely responsible for the cost of such compliance. Tenant shall defend with counsel reasonably acceptable to Landlord, indemnify and hold harmless Landlord against any claims, actions, fines, penalties, liability, loss, cost or expense, including consultants' and attorneys' fees and costs (whether or not legal action has been instituted), incurred by reason of (i) the presence of petroleum or Hazardous Materials at, under or about the Premises, (ii) any failure by Tenant to comply with the terms hereof or with any environmental law, rule or regulation now or hereafter in effect, and (iii) the purchase, sale, use or storage of any goods, products, petroleum, equipment or other items at, under or about the Premises, or the repair, maintenance or condition of the Premises and all equipment and fixtures appurtenant thereto. For the purposes of this paragraph, the term Tenant shall be deemed to include Tenant, Tenant's agents, servants, employees and invitees. Notwithstanding the foregoing, this indemnification shall only apply to contamination by a Hazardous Materials resulting from Tenant's and its agents, employees and contractors actual use and operation of the Premises and/or its/their acts, omissions or negligence in, on or about the Shopping Center.

(d) Tenant expressly acknowledges its understanding and agreement that, during the Lease Term or at or after the Expiration Date, certain notices, filings (and, possibly, sampling plans, remediation plans and remediation work) may be required by law and, if this occurs, then Tenant shall in its own name or, if required, in the name of Landlord, comply, at Tenant's sole cost and expense, with all such applicable notices, filings and other required

actions, and defend, indemnify and hold Landlord harmless from all costs and expenses related to the same. However, Tenant shall file no documents or take any other action under this Section without Landlord's prior written approval thereof, and Landlord shall also have the right to file such documents or take such action instead or on behalf of Tenant (but still at Tenant's sole cost and expense), and Tenant shall cooperate with Landlord in so doing. Tenant shall (i) provide Landlord with copies of any documents filed by Tenant pursuant to any environmental law; (ii) permit Landlord to be present at any inspection, on or off site, and at any meetings with government environmental officials; and (iii) provide Landlord with an inventory of materials and substances dealt with by Tenant at the Premises, as well as such additional information for government filings or determinations as to whether there has been compliance with an environmental law. In the event that Tenant uses any underground storage tanks, Tenant shall remove the underground storage tanks and sample the ground around and under the tanks prior to the Expiration Date. Tenant shall provide Landlord with at least thirty (30) days' prior written notice of the removal of the underground storage tanks and the sampling around and under the tanks.

(e) Landlord shall have the right to enter the Premises at any time to inspect the Premises or to conduct tests to discover the facts of any alleged or potential environmental condition or violation.

(f) Tenant shall require any permitted assignee or subtenant of the Premises to agree expressly in writing to comply with all the provisions of this Section. The provisions of this Section shall survive the Expiration Date.

(g) Tenant has inspected the condition of the Premises and the tanks and other equipment thereon and acknowledges that it has received them in good order and repair. Tenant shall take all actions necessary to cause the tanks at the Premises to be registered with applicable governmental agencies and to be eligible for reimbursement for remedial costs from any state reimbursement funds or programs and shall comply with all state financial assurance requirements. Tenant shall perform annual (or more often if required by law) underground storage tank and system tightness testing and shall provide the results of all such tests to Landlord within ten days of performing such tests. Tenant shall take all actions necessary to cause the tanks and related lines and equipment located at the Premises to be tight.

(h) Tenant agrees to comply fully with all applicable Laws and all conditions and restrictions with regard to the use and condition of the Premises and with regard to Tenant's activities thereon. Without limiting the foregoing, Tenant must comply with all requirements of federal, state, and local occupational, health and safety agencies, and environmental protection agencies, concerning the receipt, storage, handling, use, sale and dispensing of petroleum based products or any other Hazardous Materials, the disposal of waste materials, and Tenant's other activities on the Premises, including those governing recovery of vapors.

(i) The obligations contained in this Section shall survive the Expiration Date.

## **ARTICLE 8: TENANT'S CONSTRUCTION AND MAINTENANCE**

### **Section 8.01. Tenant's Plans and Specifications.**

As otherwise referenced in Section 2.02 of this Lease, Tenant agrees and acknowledges that **Exhibit B** attached hereto identifies Tenant's obligations with respect to preparing plans and specifications for Tenant's Work.

## **Section 8.02. Tenant's Construction, Installations and Alterations.**

(a) All work or equipment, other than Landlord's Work, if any, shall be performed by Tenant at its own cost and expense and Tenant shall, without limitation, fully equip the Premises with all trade equipment, furniture, operating equipment, furnishings, fixtures and exterior signs and any other equipment necessary for the proper operation of Tenant's business. Whenever Tenant is performing work within the Premises, Tenant shall commence such work as soon as is practical and shall diligently prosecute such work to its completion as soon as is practical after its commencement. All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not do any construction work or alterations, nor shall Tenant install any equipment other than trade fixtures without first obtaining Landlord's written approval and consent. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought in accordance with **Exhibit B**. Tenant shall commence its work promptly following (i) Landlord's approval of Tenant's plans and specifications, (ii) the date possession of the Premises is made available to Tenant, and (iii) receipt by Tenant of all applicable permits and approvals required to commence Tenant's Work, and shall diligently and continuously prosecute its work to completion so as to open for business no later than the Commencement Date.

(b) Tenant may not perform any structural alterations to the Premises and/or any other repairs, renovations, remodeling or alterations to the Premises without having first received Landlord's written consent thereto. Tenant shall, before performing any major repairs, renovations, remodeling or alterations to the Premises, submit complete architectural and engineering plans and specifications of the Premises, prepared by architects and engineers previously approved in writing by Landlord, describing all of the major repairs, renovations, remodeling or alterations which Tenant proposes. Upon approval by Landlord of Tenant's final plans and specifications therefor, Tenant shall employ a contractor and sub-contractors, approved in writing by Landlord, to perform the repairs, renovations, remodeling or alterations in accordance with the said approved plans and specifications and in accordance with the other terms and provisions of this Lease. Notwithstanding the foregoing, Tenant may, without the prior written consent of Landlord, make non-structural, cosmetic alterations to the interior of the Premises, such as painting of the interior walls of the Premises or installing new flooring within the Premises, that do not, in the aggregate, exceed Ten Thousand and 00/100 Dollars (\$10,000.00) in any Lease Year, so long as such cosmetic alterations do not affect any of the utility or other systems servicing the Premises or other premises within the Shopping Center and do not include the construction of any additional demising or other walls within the Premises.

(c) Tenant may not (i) perform or allow to be performed any work that uses an open flame or that generates sparks or heat sufficient to cause combustion including, without limitation, cutting, welding and brazing nor (ii) shutdown any fire-protection systems within the Premises without having first received Landlord's prior written consent and approval thereto, which Landlord may condition, delay or withhold in its sole discretion. If Tenant fails to comply with the foregoing, without limiting any other rights and remedies Landlord may have at law or equity or under this Lease, Landlord may enter the Premises without notice and immediately take any and all actions necessary to ensure that the Shopping Center is and remains at all times in compliance with all governmental and insurance regulations and requirements.

(d) Tenant agrees that Tenant's Work and any other alteration, modification, change or improvement to the Premises completed by Tenant in accordance with the terms of this Lease shall not be done in a manner that would create a Conflict. Tenant shall immediately stop work or other activity if Landlord notifies Tenant that continuing such work or activity would



cause a Conflict. Tenant shall indemnify, defend with legal counsel reasonably acceptable to Landlord and hold harmless Landlord from any loss, cost or liability suffered or incurred by Landlord as a result of Tenant's violation of the provisions of this paragraph. Tenant's violation of the terms hereof shall constitute a default hereunder and shall entitle Landlord to exercise any remedies that are available to Landlord at law, in equity or hereunder, including, without limitation, obtaining an injunction. Tenant agrees that if any contractors performing Tenant work have outstanding liens filed against Landlord and/or Landlord's parent or affiliate, Tenant agrees not to use such contractor until such lien has been resolved. Landlord may, in its sole discretion, require that Tenant use Landlord's pre-approved contractors and/or sub-contractors for any work affecting the roof, or the plumbing, electrical, HVAC, fire suppression and/or sprinkler systems.

(e) Tenant further agrees that Tenant's Work and any other alteration, modification, change or improvement to the Premises to be completed by Tenant in accordance with the terms of this Lease shall be completed in compliance with the terms of Landlord's Construction Criteria, a copy of which has been provided to Tenant prior to the date of this Lease and is expressly incorporated in this Lease by this reference.

(f) Tenant acknowledges that the Texas Department of Licensing and Regulation (the "Department") requires that prior to commencing construction, a review of the plans for any improvements to the Premises be conducted by the Department to ensure that the Premises complies with the Texas Architectural Barriers Act (the "TAS") and the regulations promulgated thereunder, and to the extent the plans for the Premises do not comply, that they will be brought into compliance. In the event that Tenant, at any time during the Lease Term, desires to perform work in or to the Premises which meets the minimum requirements of the Department for TAS plan review and inspection, then Tenant shall provide Landlord with a copy of the plan review application form submitted to the Department and the assigned "EAB" number, along with a copy of the check showing Tenant has paid the required review fee. Upon completion of construction Tenant shall provide Landlord with a copy of the inspection application form submitted to the Department along with a copy of the check showing the Tenant has paid the inspection fee, as well as a copy of the Notice of Substantial Compliance Certificate, and failure to do so shall constitute a default under this Lease. Furthermore and in addition to Tenant's obligations under Section 6.2 above, if the Department's inspection requires modifications to be made to the interior, non-structural portions of the Premises so as to comply with the TAS, then Tenant shall be responsible to perform any such necessary modifications. Tenant shall defend, indemnify and hold Landlord harmless from all loss, costs, actions, damages or claims which Landlord may be subject to as a result of Tenant failing to timely comply with the provisions of this paragraph.

### **Section 8.03. Signs, Awnings and Canopies.**

(a) Tenant shall not place or suffer to be placed or maintain any sign, awning or canopy in, upon or outside the Premises or in the Shopping Center, nor shall Tenant place in the display windows any sign, decoration, lettering or advertising matter of any kind, without first obtaining Landlord's written approval and consent in each instance. Tenant shall maintain any such sign or other installation as may be approved in good condition and repair. All signs, awnings and canopies shall comply with all applicable Laws and the applicable terms set forth in the Construction Criteria, shall be consistent with the general design of the Shopping Center, shall be in appropriate proportion to the size of Tenant's storefront.

(b) In the event Landlord, in its sole discretion, shall elect to renovate and/or remodel all or part of the Shopping Center, in order to facilitate any such renovations and/or remodeling (including Tenant's façade) Tenant, upon request by Landlord and at Tenant's sole cost and expense, shall remove any and all of Tenant's exterior signs and replace its exterior signs with a new sign or signs in conformity with the uniform signage criteria of the new façade. If Tenant shall fail or refuse to perform the work as required in the preceding sentence, then Landlord shall have the right to perform the work on Tenant's behalf, and upon completion of such work and presentation of a bill therefore, Tenant shall immediately pay Landlord's cost for such work, plus fifteen percent (15%) for overhead and supervision, as Additional Rent.

(c) At the Expiration Date, Tenant shall remove all of its exterior signs from the storefront, fascia and/or canopy and shall repair all damage caused by the initial installation and subsequent removal of such signage to like-new condition.

#### **Section 8.04. Laws, Waste or Nuisance.**

From and after the date Landlord makes the Premises available to Tenant, Tenant shall, at its own cost and expense: (i) comply with all applicable Laws affecting the Premises now or hereafter in force; (ii) comply with and execute all rules, requirements, and regulations of the Board of Fire Underwriters, Landlord's insurance companies and other organizations establishing insurance rates; and (iii) not suffer, permit or commit any waste or nuisance. Tenant shall not perform any acts or carry on any practices which may injure the building or be a nuisance or menace to other tenants or the public.

#### **Section 8.05. Mechanic's Lien.**

Tenant shall not permit to be attached or recorded against the Premises, or any other portion of the Shopping Center, any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or material supplier for or at the request of Tenant. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises is filed against the Premises or any part of the Shopping Center, then Tenant shall, within ten (10) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, letter of credit or other adequate security, as determined by Landlord in its sole discretion. If Tenant fails to cause such lien or notice of lien to be discharged within such period, then Landlord may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Tenant shall, immediately upon demand, reimburse Landlord for any and all costs and expenses incurred by Landlord to discharge such lien including, without limitation, all attorneys' fees, court costs and similar expenses, plus an administrative fee equal fifteen percent (15%) of such costs and expenses incurred by Landlord. Additionally, Tenant shall indemnify, defend with counsel selected by Landlord and hold harmless Landlord from and against all loss, cost, expense and liability whatsoever resulting or occurring by reason of any claims or causes of actions that may arise as a result of any lien, notice of lien or, claim relating to work and/or materials furnished to the Premises at the request of Tenant or its contractors. Upon prior notice to Tenant, Landlord or Landlord's representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in the filing of a mechanics' or materialmen's lien, give Landlord written notice of

Tenant's intention to do so in sufficient time to enable the posting of such notices.

## **ARTICLE 9: MAINTENANCE OF BUILDING; ACCESS TO PREMISES**

### **Section 9.01. Repairs.**

(a) Tenant shall at all times, at its own expense, keep the Premises (including exterior entrances and all glass and show windows) and all partitions, doors and doorframes, interior walls, ceilings, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical and mechanical systems, including, without limitation, the sprinkler and fire alarm system exclusively servicing the Premises to the point of common connection), utility meters, pipes and conduits exclusively serving the Premises to the point of common connection, and non-structural components of the storefront, in good order, first class condition and repair (including periodic painting or redecorating and preventative maintenance as determined by Landlord and including such repairs or replacements as are required to keep the Premises in good repair and condition), regardless of whether such repairs or replacements are ordinary or extraordinary, foreseen or unforeseen. All aforesaid maintenance, repairs, restorations and replacements shall be in quality and class equal to the original work or installations. Additionally, Tenant shall, throughout the Lease Term, operate, maintain, repair, replace when necessary and regulate the heating, ventilating and air conditioning equipment within or installed by or on behalf of Tenant for the Premises in such a manner as to maintain such reasonable conditions of temperature and humidity within the Premises as are determined by Landlord. Landlord confirms that as of the Effective Date, the HVAC unit(s) (excluding any existing duct work, diffusers or grills) exclusively serving the Premises are in working order; provided, however, working order shall not imply suitability or adequacy for any particular use of the Premises. Tenant shall comply with such stipulations and with all rules and regulations of Landlord pertaining to the maintenance and operation of such equipment. Furthermore, Tenant, at its expense, shall maintain a preventative maintenance contract for the heating, ventilating and air conditioning systems servicing the Premises, which shall be subject to Landlord's reasonable approval. Tenant shall provide Landlord with a copy of the preventative maintenance contract no later than thirty (30) days after the Commencement Date. The preventative maintenance contract shall provide for the inspection and maintenance of the heating, ventilating and air conditioning system on not less than a quarterly basis with change of filters at least every thirty (30) days. In the event Tenant shall fail, in Landlord's opinion, to provide the necessary preventative maintenance, repairs and/or replacements as required herein, Landlord may accomplish such maintenance, repairs and/or replacements and all costs incurred thereby shall be paid by Tenant upon demand by Landlord, plus a fifteen percent (15%) administrative fee.

(b) Landlord shall, subject to the other provisions of this Lease, maintain and repair or cause to be maintained and repaired, the structure of the Shopping Center, including without limitation, the foundations, exterior walls, slab, roof, bearing walls and structural columns and structural beams of the Shopping Center; provided, however, if Landlord is required to maintain or repair any structural portions or any other portion of the Premises or the Shopping Center by reason of the negligent acts or omissions of Tenant, its employees, agents, invitees, contractors, suppliers, licensees, concessionaires, assignees or subtenants, then Tenant shall pay on demand as Additional Rent, Landlord's costs for making such maintenance or repairs, together with an administrative fee of fifteen percent (15%) of such costs.

### **Section 9.02. Access to Premises.**

(a) Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon, around and under the Premises as may be necessary for the service of the Premises and other portions of Landlord's property and Landlord (for itself and other tenants in the Shopping Center) hereby reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, utilities and structural elements leading through, under and over the Premises in locations which will not unreasonably interfere with Tenant's use thereof and the same are installed below the finished floor, within or along a wall or column, or above or along the finished ceiling. Landlord shall also have the right to enter the Premises at all reasonable times to inspect or to exhibit the same to prospective purchasers, mortgagees, ground lessors and tenants, and to make such repairs, additions, alterations or improvements as Landlord may deem desirable. Landlord shall be allowed to take all material in, to and upon the Premises that may be required in connection with such repairs, additions, alterations or improvements without the same constituting an eviction of Tenant in whole or in part and the Rents reserved herein shall in no way abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise and Tenant shall have no claim for damages. Subject to Landlord's compliance with applicable laws, Landlord shall not unreasonably limit or restrict accessibility to the Premises, nor unreasonably interrupt Tenant's use of the Premises, under the circumstances, in connection with Landlord's exercise of its rights set forth in this Section 9.02(a). If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be permissible, Landlord may enter the same without rendering Landlord liable therefor and without in any manner affecting the obligations of Tenant under this Lease. The provisions of this Section shall in no way be construed to impose upon Landlord any obligation whatsoever for the maintenance or repair of the building or any part thereof except as otherwise herein specifically provided. During the twelve (12) months prior to the expiration of the Lease Term, Landlord may place upon the Premises "for lease", "to let" or "for sale" signs, or other similar signs, which Tenant shall permit to remain thereon. Landlord shall have the exclusive right to use all or any part of the roof and exterior side walls of the Premises for any purpose.

(b) If the Premises contain means of access to the roof or basement, Landlord shall have the right to enter the Premises at all times to gain access to said roof or basement to inspect same and to make such repairs, additions, alterations or improvements as Landlord may deem desirable. In no event shall Tenant have the right to access the roof without obtaining Landlord's prior written approval thereof, notwithstanding anything contained in this Lease to the contrary.

## **ARTICLE 10: UTILITIES**

### **Section 10.01. Utilities.**

(a) Tenant shall be solely responsible for contracting directly with all utility providers and promptly paying all charges for utilities, including, without limitation, trash and rubbish removal, heat, water, electricity, sewers and/or any other utility used or consumed in or for the Premises commencing from the Possession Date; provided, however, if any utility is sub-metered, then Tenant shall pay the applicable utility charge directly to Landlord. Tenant shall also pay to Landlord any charges incurred by Landlord for meter or sub-meter readings, and Tenant, at its sole cost and expense, shall be responsible for having all utilities transferred into Tenant's name as of the Possession Date. If Landlord elects to supply or to designate a supplier of the water, gas, heat, electricity, trash removal or any other utility used or consumed in the Premises, then Tenant agrees to purchase and pay for the same as Additional Rent at the then applicable rates charged by local suppliers to similar users. Where Landlord provides a

service to a number of users, Landlord shall have the right to determine the charge to such users using Tenant's Share of Operating Costs or by determining each portion based on usage estimates.

(b) As of the Effective Date, the Shopping Center and the Premises are receiving electric service from one or more suppliers. Landlord shall have the right at any time, and from time to time, during the Lease Term to either contract for service from a different company or companies providing electricity service or continue to contract for service from the electric service provider(s) existing as of the Effective Date.

(c) Tenant shall cooperate with Landlord, the existing electric service provider(s), and any alternate service provider selected by Landlord, at all times and shall allow Landlord and any such electric service provider, to access the electric lines, feeders, risers, wiring, and any other equipment or machinery within the Premises.

(d) In no event shall Landlord be liable for an interruption or failure in the supply of any utilities to the Premises or for the character of such service. Additionally, Landlord shall in no way be liable or responsible for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption or defect in the supply or character of the electric energy furnished to the Premises, or if the quality or character of the electric energy supplied by any electric service provider or alternate service provider selected by Landlord is no longer available or suitable for Tenant's requirements and no such change, failure, defect, unavailability or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease. Notwithstanding the foregoing, in the event any interruption or failure in the supply of any utilities to the Premises is directly caused by the gross negligence or willful misconduct of Landlord, and causes the Premises to be untenantable for a period of more than five (5) consecutive business days, and Tenant ceases to operate its business in the Premises or any portion thereof as a result of such interruption or failure, then commencing on the sixth (6<sup>th</sup>) consecutive business day, Rent shall be abated in proportion to the unusable portion of the Premises from the sixth (6<sup>th</sup>) consecutive business day of such interruption or failure until such time as said interruption or failure is cured.

## **ARTICLE 11: ASSIGNMENT; SUBLEASE**

### **Section 11.01. Assignment or Subletting.**

(a) Notwithstanding any references to assignees, subtenants, concessionaires or other similar entities in this Lease, Tenant shall not (i) assign or otherwise transfer, mortgage or encumber this Lease or any of its rights hereunder, (ii) sublet the Premises or any part thereof, or permit the use of the Premises or any part thereof by any persons other than Tenant or its agents or (iii) permit the assignment or other transfer of this Lease, or any of Tenant's rights hereunder, by operation of law or otherwise. Any such attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest therein and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Premises in violation of the foregoing, whether voluntary or involuntary, or by operation of law or otherwise, in addition to being a default under this Lease, shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee or occupant. Further, any violation under the preceding sentence shall, at Landlord's option, terminate this Lease without relieving Tenant of any of its obligations hereunder for the balance of the stated Lease Term. Nothing contained elsewhere in this Lease shall authorize Tenant to enter into any franchise, concession, license, permit, sub-tenancy, departmental operation arrangements or

the like, except pursuant to the provisions of this Article. Tenant acknowledges that the factors governing the granting of Landlord's consent to any transfer may include, without limitation, (i) the restrictive clauses entered into with other tenants by Landlord, (ii) the financial background, business history and the capability of the proposed transferee, (iii) the nature of the business practices of the proposed transferee, and (iv) if Landlord or any direct or indirect owner of Landlord is a REIT, if any proposed assignment or subletting could reasonably be anticipated to jeopardize the REIT status of Landlord, including if such assignment or subletting could reasonably be anticipated to jeopardize such status because it was (1) with any person in which Landlord owns, directly or indirectly (by applying the constructive ownership rules set forth in Section 856(d)(5) of the Internal Revenue Code of 1986, as amended), (a) in the case of any person which is a corporation, stock of such person possessing ten percent (10%) or more of the total combined voting power of all classes of stock entitled to vote, or ten percent (10%) or more of the total value of shares of all classes of stock of such person, or (b) in the case of any person which is not a corporation, an interest of ten percent (10%) or more in the assets or net profits of such person; or (2) consummated in any manner which could cause any portion of the amounts received by Landlord pursuant to this Lease or any assignment or subletting document to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended.

(b) If Tenant is a corporation, then the sale, issuance or transfer of any voting capital stock of Tenant or of any corporate entity which directly or indirectly controls Tenant (unless Tenant is a corporation whose stock is traded on the New York Stock Exchange, the American Stock Exchange, NASDAQ or any other nationally recognized exchange) which shall result in a change in the voting control of Tenant or the corporate entity which controls Tenant shall be deemed to be a prohibited assignment of this Lease within the meaning of this Article. If Tenant is a partnership, a limited liability company or an unincorporated association, then the sale, issuance or transfer of a majority interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership, limited liability company or unincorporated association or corporation which directly or indirectly controls Tenant, or the transfer of any portion or all of any general partnership, managing partnership or managing member interest, shall be deemed to be a prohibited assignment of this Lease within the meaning of this Article.

(c) The consent by Landlord to any assignment, transfer or subletting to any party shall not be construed as a waiver or release of Tenant under the terms of any covenant or obligation under this Lease or as a waiver or release of the non-assignability covenants in their future application, nor shall the collection or acceptance of Rent payments from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant from any covenant or obligation contained in this Lease. If this Lease is transferred or assigned, as aforesaid, or if the Premises, or any part thereof, be sublet or occupied by any person or entity other than Tenant, whether as a result of any act or omission by Tenant, or by operation of law, or otherwise, then Landlord may in addition to, and not in lieu of, any other rights and remedies under this Lease or pursuant to law to which Landlord may be entitled as a result thereof, collect Rent payments from the transferee, assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such transfer, assignment, subletting, occupancy or collection shall be deemed a waiver of the covenants contained herein or the acceptance of the transferee, assignee, subtenant or occupant as tenant under this Lease, or release Tenant from the performance of the covenants required of it as set forth in this Lease.

(d) Without conferring any rights upon Tenant not otherwise provided in this Article, if Tenant desires to enter into any assignment, sublease or transfer of this Lease or Tenant's rights hereunder, Tenant shall request in writing Landlord's consent thereto at least sixty (60)

days before the proposed effective date thereof, providing the following: (i) the full particulars of the proposed assignment, sublease or transfer, including its nature, effective date, terms and conditions and copies of any offers, draft agreements, subleases, letters of commitment or intent, and other documents pertaining to the proposed assignment, sublease or transfer; (ii) a description of the identity, tangible net worth and previous business experience of the proposed assignee, subtenant or transferee including, without limitation, copies of the proposed assignee's, subtenant's or transferee's latest income, balance sheet and changes in financial position statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the proposed assignee, subtenant or transferee; and (iii) any further information and documentation relevant to the proposed assignment, sublease or transfer which Landlord shall request after receipt of Tenant's request for consent including, without limitation, a written assumption agreement from the assignee or transferee. Tenant shall pay to Landlord the Assignment Administrative Fee and shall reimburse Landlord for all out-of-pocket expenses (including, without limitation, reasonable attorney's fees) incurred in connection with processing any proposed assignment or sublease. The Assignment Administrative Fee shall be payable by Tenant to Landlord together with Tenant's written request for Landlord's consent to the assignment, transfer or sublease and shall be non-refundable, whether or not Landlord grants or denies its consent. If such payment does not accompany Tenant's request, then Landlord shall have the right to treat the request as null and void and improperly delivered.

(e) If Tenant requests Landlord's consent in writing to an assignment or transfer of Tenant's interest in this Lease, or a sublease of all or a portion of the Premises, Landlord shall have the right, without regard to whether Landlord's withholding its consent to such a proposed assignment, transfer or sublease would be construed to be unreasonable and in lieu of consenting thereto, to terminate this Lease, or at Landlord's option, the portion thereof intended to be sublet, by giving Tenant notice of Landlord's desire so to do. In such event this Lease shall terminate as to the entire Premises or the portion thereof intended to be sublet, on the date specified by Landlord in such notice, all as if such date were the date specified in Section 1.01 hereof as the anticipated Expiration Date. In the event that the Lease is terminated as to only a portion of the Premises, the Lease shall continue in full force and effect with regard to the remainder of the Premises, which shall thereafter be deemed the Premises hereunder, and appropriate adjustments shall be made to the Rent.

(f) Without conferring any rights upon Tenant not otherwise provided in this Article, in the event of an assignment or transfer of Tenant's interest in this Lease, or a sublease of all or a portion of the Premises, any monthly Rent or other payment accruing to Tenant as the result of any such assignment, transfer or sublease, including any lump sum or periodic payments in any manner relating to such assignment, transfer or sublease, which is in excess of the Rent then payable by Tenant hereunder (excluding, however, amounts allocated in good faith to goodwill and/or going business value, but not excluding amounts allocated to the leasehold, fixtures or other improvements or personalty) shall be paid by Tenant to Landlord as Additional Rent in lump sum or monthly, as the case may be. Landlord may require a certificate from Tenant specifying the full amount of any such payment of whatsoever nature evidencing any excess consideration. In lieu of the payment to Landlord pursuant to the foregoing, Landlord may elect by notice to the assignee, transferee or subtenant, at any time after the effective date of the assignment, transfer or sublease, that the Minimum Annual Rent provided herein shall increase fifteen percent (15%) over the amounts due for the remainder of the Lease Term.

(g) In the event this Lease is assigned or otherwise transferred in whole or in part, with or without Landlord's consent or approval, Tenant shall deliver to Landlord a fully executed copy of the assignment and assumption of lease, sublease or other transfer document, along with the transferee's then current contact information, a written affirmation of Guarantor approving the transfer and acknowledging that the Guaranty remains effective, and Tenant shall at all times remain primarily liable for the full performance of all of the terms, covenants and conditions contained in this Lease and for all obligations accrued or accruing under this Lease. Tenant shall not be released by, or as a result of, any subsequent assignment or transfer of this Lease and Tenant agrees that no amendment, modification, extension or renewal of this Lease shall release Tenant from its obligations under this Lease. Each assignee or transferee, with or without Landlord's consent, shall be liable and obligated to perform all of the terms, covenants and conditions contained in this Lease as if it were the original tenant under this Lease. In any right of action which may accrue to Landlord, Landlord may, at its option, proceed against Tenant without having commenced any action or obtained a judgment against any subsequent assignee or transferee.

(h) Notwithstanding any provision in this Section to the contrary, Landlord's consent shall not be necessary for any assignment, subletting or other transfer of ownership to an affiliate of Tenant, so long as: (i) Tenant shall not be in default under any of the terms of conditions of this Lease at the time of the proposed assignment or subletting; (ii) Tenant shall remain primarily liable for all of its obligations under this Lease; (iii) Tenant such affiliate shall execute, acknowledge and deliver to Landlord a fully executed counterpart of the written assignment of lease or sublease within ten (10) days of the date thereof wherein affiliate agrees to assume or comply, as the case may be, with all of Tenant's obligations under this Lease and be bound by all obligations of Tenant for payment of all amounts of rental and other sums (relative to its pro rata share) and the performance of all covenants required by Tenant pursuant to this Lease; (iv) any such affiliate shall occupy the Premises and conduct its business therein in accordance with the Permitted Use and the usage restrictions contained in this Lease; (v) Tenant shall provide written confirmation to Landlord evidencing the tangible net worth of the affiliate as of the date of such assignment or sublease; and (vi) not less than fifteen (15) days' prior to the effective date of such sublease or assignment, Tenant shall provide Landlord with notice of such transaction and copies of the documents evidencing such transaction and such other evidence as Landlord may reasonably require to establish that such transaction falls within the terms and provisions of this Section (a "Permitted Transfer"). For purposes hereof, "affiliate" shall mean any entity which, directly or indirectly, controls or is controlled by or is under common control with Tenant; provided, however, that such affiliate must either (a) have a net worth substantially similar to or greater than Tenant's net worth as of the Effective Date, or (b) in Landlord's commercially reasonable opinion, have sufficient assets to perform its obligations (monetary or otherwise) under this Lease. For purpose of the definition of "affiliate," the word "control" (including "controlled by" and "under common control with"), as used with respect to any corporation, partnership, or association, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a particular corporation, partnership or association, whether through the ownership of voting securities or by contract or otherwise.

## **ARTICLE 12: RELOCATION**

### **Section 12.01. Relocation of the Premises.**

Subject to the terms of this Section 12.01, Landlord shall have the right, in its sole discretion, to relocate Tenant to other another premises within the area of the Shopping Center identified on



Exhibit A (the "Relocation Area"). If Landlord elects to exercise the right of relocation, then Landlord shall deliver written notice to Tenant identifying the location of the proposed new premises. If Tenant shall not agree to the new premises proposed by Landlord, then Tenant shall have the right to terminate this Lease within ten (10) days after the date of Landlord's relocation notice by delivering written notice to Landlord of its election to terminate. If Tenant elects to terminate this Lease, then Landlord shall have the option to rescind Tenant's termination notice by delivering notice to Tenant within fifteen (15) days after the date Landlord receives Tenant's termination notice, in which event, Tenant's termination notice shall be null and void and this Lease shall continue full force and effect without relocation of Tenant. If Landlord does not provide Landlord's rescission notice to Tenant, then this Lease and the obligations of the parties, excluding any obligations of the parties that expressly survive the termination or expiration of this Lease, or have otherwise accrued as of the Relocation Termination Date (hereinafter defined), shall terminate as of the date which is twenty (20) days after the date of Tenant's termination notice (the "Relocation Termination Date"), provided Tenant pays to Landlord all sums and charges due and owing by Tenant to Landlord through and including the Relocation Termination Date. Any sum that cannot be exactly determined by Landlord as of the Relocation Termination Date shall be paid by Tenant to Landlord within thirty (30) days after Tenant's receipt of a statement therefor. The foregoing obligation shall survive termination of this Lease. If Tenant shall not terminate this Lease within the ten (10) day period set forth above, then Tenant shall be deemed to have waived its right to terminate this Lease pursuant to this Section and Tenant shall relocate to the proposed new premises. Landlord's rescission of Landlord's relocation notice shall not be deemed a waiver of Landlord's right to relocate Tenant to new premises in the future.

Landlord shall pay all costs of such relocation, including, but not limited to (a) all leasehold improvements at the new Premises (at least equal in quality to the leasehold improvements in the current Premises at the time of Landlord's relocation notice; provided, however, Landlord and Tenant acknowledge and agree that Landlord may relocate Tenant's existing fixtures in the Premises or purchase fixtures comparable to the existing fixtures, in Landlord's sole discretion), (b) all costs of moving Tenant's fixtures and equipment to the new Premises (but excluding Tenant's personal property, inventory, supplies and signage), and (c) all reasonable miscellaneous out-of-pocket moving costs, a sum not to exceed Two Thousand and 00/100 Dollars (\$2,000.00) to reimburse Tenant for such costs to include but shall not be limited to, relocating Tenant's personal property, inventory, supplies and signage, and the costs of advertising the relocation, reprinting stationery and sending out appropriate change of address notices (upon Landlord's receipt of canceled checks and invoices evidencing the actual cost of such items).

## **ARTICLE 13: REIT**

### **Section 13.01. Landlord REIT Status.**

The Shopping Center is, or after the Effective Date may be, owned, indirectly, by a REIT. As long as any portion of the Shopping Center is owned directly or indirectly by a REIT, this Lease, and the Rent provided hereunder, shall be interpreted in a manner so that the Rent qualifies as "rents from real property" within the meaning of Section 856(d) of the Code, and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). If the Code, or the Regulations, or interpretations thereof by the Internal Revenue Service contained in the Revenue Rulings, be changed so that any Rent no longer qualifies as "rent from real property" for the purposes of Section 856(d) of the Code and the Regulations, other than by reason of the application of Section 856(d)(2)(B) or 856(d)(5) of the Code or the related Regulations, such

Rent shall be adjusted so that it will so qualify; provided, however, that any adjustments required pursuant to this Section shall be made so as to produce the equivalent (in economic terms) Rent as payable prior to such adjustment and that such adjustments shall not result in any increase in Tenant's Rent.

## **ARTICLE 14: NOTICES**

### **Section 14.01. Notices.**

(a) Any notice by Tenant to Landlord must be served by certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service, addressed to Landlord at the applicable address set forth in Section 1.01, or to such other address as Landlord may designate by written notice. If the holder of an outstanding mortgage on the Shopping Center has given Tenant written notice of its interest in this Lease, then Tenant shall not have any remedies against either Landlord or said holder of a mortgage, unless and until said holder has received written notice from Tenant of a default and a reasonable time to cure the default has passed.

(b) Any notice by Landlord to Tenant must be served by certified mail, return receipt requested, postage prepaid, or by FedEx or other nationally recognized overnight delivery service, addressed to Tenant at the address set forth in Section 1.01, or at such other address as Tenant shall designate by written notice.

(c) Any notice given in conformance with the above shall be deemed received when delivery thereof is received or refused.

(d) To avoid any ambiguity, a notice delivered by the legal counsel for Landlord or Tenant shall be deemed to be a valid notice on behalf of Landlord or Tenant, as the case may be, for purposes of this Lease.

## **ARTICLE 15: INDEMNITY; PROPERTY AND LIABILITY INSURANCE**

### **Section 15.01. Indemnity.**

From and after the Possession Date or such earlier date that Tenant or its agents, employees or contractors are permitted to access the Premises, Tenant shall indemnify, defend with legal counsel reasonably acceptable to Landlord and hold harmless Landlord and its lender(s) from and against any suits, actions, damages, claims, judgments, costs, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising from, or out of, any occurrence in, upon, at or from the Premises, or the occupancy or use by Tenant of the Premises, or any part thereof, or occasioned wholly, or in part, by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, (including use of the sidewalks and Common Areas within the Shopping Center), or otherwise in connection with any breach of the terms of this Lease by Tenant or its agents, contractors, employees, servants, invitees, licensees or concessionaires. In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees. Tenant's indemnification obligations shall not be limited by the provisions of any Workers' Compensation Act or similar statute. Tenant shall not, however, be liable for damages, liabilities, judgments, costs, claims, liens, expenses, penalties, loss of permits and attorneys' and consultants' fees and costs damage or injury occasioned by the negligence or willful violations of this Lease by Landlord or the Landlord's Indemnified Parties, or their agents,

contractors, servants or employees.

#### **Section 15.02. Insurance.**

(a) (i) From and after the Possession Date or such early date that Tenant or its agents, employees or contractors are permitted to access the Premises, Tenant shall maintain, at its sole cost and expense:

(1) "Special Form" insurance coverage (or its then equivalent successor) which shall include fire, flood, earthquake and extended coverage insurance, in an amount adequate to cover one hundred percent (100%) of the cost of replacement of all interior leasehold improvements installed by or for the benefit of Tenant, furniture, fixtures, non-structural components of the walls and storefronts, equipment, including, without limitation, any HVAC, trash compactor or other equipment located outside of the Premises, but that exclusively service the Premises, inventory, decorations and improvements in the Premises in the event of a loss;

(2) Comprehensive boiler and machinery insurance, if steam boilers or other pressure-fixed vessels are in operation, in amounts as shall be reasonably required by Landlord, and if applicable;

(3) All inclusive "Commercial General Liability" insurance (or its then equivalent successor), written on an occurrence basis with the broadest and most comprehensive forms generally available providing coverage for bodily injury, property damage, personal and advertising injury, including associated defense costs, with coverage for at least One Million and 00/100 Dollars (\$1,000,000.00) Dollars per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) Dollars in the aggregate;

(4) An umbrella liability policy or excess liability policy having a limit of not less than Two Million and 00/100 Dollars (\$2,000,000.00), which policy shall be in "following form" and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. Such umbrella liability policy or excess liability policy shall include coverage for Additional Insureds.

(5) Plate glass insurance covering all plate glass on the Premises at full replacement value;

(6) Business interruption insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings attributable to all perils insured against by Tenant hereunder for a period of 12 months;

(7) Automobile liability insurance with a combined single limit for bodily injury and property damage of not less than One Million and 00/100 Dollars (\$1,000,000.00) each occurrence with respect to Tenant's owned, hired and non-owned vehicles, if applicable;

(8) Workers' compensation and occupational disease or similar insurance affording statutory coverage and containing statutory limits in accordance with applicable law, and employer's liability insurance with limits of not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence; and

(9) Any other form of insurance as Landlord may reasonably require from time to time in form, in amounts and for insurance risks against which a prudent tenant would insure.

Landlord and the other designated Additional Insureds shall be named as an additional insured with tenant's coverage applying on a primary and non-contributory basis under the policy providing the coverage as set forth above in this Section. Landlord shall have the right to update, modify or revise the designated Additional Insureds from time to time by delivering written notice thereof to Tenant, which Additional Insureds may include, without limitation, any successor-in-interest to Landlord, Landlord's subsequent or additional lender(s) and/or a subsequent property manager of the Shopping Center. If Tenant fails to procure the required insurance, Landlord may, but shall not be required to, obtain the same for Tenant and Tenant shall reimburse Landlord, within ten (10) days of demand, for the cost thereof as Additional Rent. If Tenant provides the insurance required herein under a policy covering multiple locations, then Tenant's insurance covering the Premises shall include a general aggregate per location endorsement in the minimum required amount of coverage set forth herein. Landlord shall be a loss payee on Tenant's property insurance in regards to the leasehold improvements.

(ii) All companies providing Tenant's insurance shall have and maintain a minimum AM Best rating of A-VIII. Tenant may not self-insure any part of the required liability insurance coverages, nor may the total of Tenant's deductibles and self-insurance retentions exceed the Maximum Deductible/Retention Amount without having first received Landlord's written consent.

(iii) Flood and earthquake coverages shall be required only in those jurisdictions where Landlord's insurance includes such flood and/or earthquake coverages and where Landlord's insurance providers require such coverages to be included. If any portion of the Shopping Center is currently, or at any time in the future, located in a federally designated "special flood hazard area", Landlord may require flood hazard insurance in an amount equal to the maximum amount of such insurance available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973 or the National Flood Insurance Reform Act of 1994, as each may be amended, plus excess amounts as Landlord shall reasonably require.

(iv) Tenant shall deliver to Landlord certificates of insurance for all insurance required to be maintained by Tenant in the form of ACORD 28 (Evidence of Property Insurance) and ACORD 25 (Certificate of Liability Insurance) (or in a form acceptable to Landlord in its sole discretion), no later than seven (7) days after the Effective Date (but in any event prior to any entry onto the Premises by Tenant or any employee, agent or contractor of Tenant, if such entry is any earlier than such seven (7)-day period). Upon request, Tenant shall also provide to Landlord a true, correct and complete copy of the actual insurance policy for all insurance required to be maintained by Tenant hereof. Tenant shall, prior to expiration of any required coverage, furnish Landlord with certificates of renewal or "binders" thereof. Each policy shall expressly provide that such policies shall not be cancelable or otherwise subject to modification, except after thirty (30) days' prior written notice to the parties named as Additional Insureds in this Lease (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Landlord). Acceptance by Landlord of delivery of any certificates of insurance does not constitute approval or agreement by Landlord that the insurance requirements in the insurance Section have been met, and failure of Landlord to demand such evidence of full compliance with these insurance requirements or failure of Landlord to identify a deficiency from evidence provided will not be construed as a waiver of Tenant's obligation to maintain such insurance. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs suffered or incurred by Landlord (including litigation costs and attorneys' fees and expenses) resulting from said failure.

(b) From and after Additional Rent Commencement Date, Tenant shall pay, as Additional Rent, to Landlord, without any deduction, abatement or setoff whatsoever, except as otherwise expressly provided for in this Lease to the contrary, an amount equal to Tenant's Share of the "Insurance Charge", which is defined as any and all costs and expenses of every kind and nature as may be paid or incurred by Landlord directly, or through an operating and easement agreement or other encumbrances upon the Shopping Center, in insuring the Shopping Center buildings, Common Areas and other improvements, including without limitation, the cost and expense of providing or causing any or all of the following to be provided:

(i) Special Form Cause of Loss Policy (or an equivalent policy that becomes the insurance industry standard in the future) on the Shopping Center improvements constructed by Landlord in an amount equal to one hundred percent (100%) of the insurable value of such improvements, together with endorsements insuring against such other risks as Landlord and/or its lender(s) deem(s) appropriate (including, but not limited to, earthquake, flood, boiler and machinery, plate glass, mold, windstorm, terrorism, seepage or leakage and loss of rent) and in such amounts, with such terms and with such insurers, all as Landlord deems appropriate in Landlord's sole discretion. Such insurance shall specifically exclude Tenant's personal property and the interior leasehold improvements, mechanical equipment and permanent fixtures that Tenant is obligated to maintain and insure pursuant to the terms of this Lease;

(ii) commercial general liability insurance with regard to the Common Areas with minimum limits of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate, for bodily injury, death and property damage liability. Landlord shall have the right to carry its insurance under "blanket" and/or "umbrella" policies covering the Shopping Center and other properties. Any insurance policies maintained by Landlord may include deductibles, self-insured retentions or the like in amounts determined by Landlord, in Landlord's sole discretion. Landlord shall have the right, but not the obligation, to maintain commercial insurance policies covering some or all of the deductibles, self-insured retentions or the like which are provided in any of Landlord's other insurance policies;

(iii) such other form or forms of insurance as Landlord and/or its lender(s) reasonably consider(s) advisable including but not limited to rental income insurance; and

(iv) an administrative fee in an amount equal to fifteen percent (15%) of the total of said Insurance Charge.

(c) Tenant's payment of Tenant's Share of Insurance Charge shall be paid in equal monthly installments simultaneously with the Minimum Annual Rent payable hereunder. The foregoing amount shall be adjusted annually at the end of each Fiscal Year, which adjustment shall be based upon Landlord's estimation of the then current Insurance Charge and Tenant's Share thereof. During the Term, Tenant's Share of Insurance Charge shall not be less than the Estimate of Insurance Charge set forth in Section 1.01.

(d) Within one hundred eighty (180) days after the end of each Fiscal Year, Landlord shall provide Tenant with a statement of the prior Fiscal Year's Insurance Charge ("Insurance Charge Reconciliation Statement"), which shall include a statement of the total deposits Tenant made toward such Fiscal Year's Insurance Charge and the total share of the actual Insurance Charge. There shall be an appropriate adjustment made between Landlord and Tenant based thereon. If such adjustment shows a balance due to Landlord, such balance shall be payable by Tenant within ten (10) days after delivery of the annual Insurance Charge Reconciliation Statement; if such adjustment shows a balance due to Tenant, then Tenant shall have a credit

against the next payments of Minimum Annual Rent due Landlord in the amount of the balance due (or such shall be paid within thirty (30) days after its determination if after the Expiration Date), in either case after first deducting therefrom any due and outstanding Rent then owed to Landlord. The foregoing shall survive the Expiration Date. At any time throughout the Lease Term, Landlord shall have the right to recalculate Landlord's estimate of Insurance Charge due from Tenant pursuant to the terms of this Lease, which computations shall be an estimate based upon the most recent annual statements of Insurance Charge and Tenant's Share of Insurance Charge shall be adjusted accordingly.

(e) Notwithstanding anything contained in this Lease to the contrary, prior to calculating Insurance Charge, Landlord shall have the right to exclude from the Shopping Center, and the denominator used to calculate Tenant's Share, the square footage of any portions thereof that are: (i) owned, leased or occupied by parties that self-insure all or any portion of the Shopping Center; (ii) any Major Tenant, provided that the contributions for Insurance Charge made to Landlord by any such Major Tenant, if any, are deducted from the Insurance Charge prior to the calculation of Tenant's Share thereof; (iii) non-retail office space located within the Shopping Center and/or (iv) a kiosk, gas station, public library, post office or other governmental agency or office, basement or mezzanine area, storage area, garden area, outdoor sales area, patios/outdoor seating area, temporary or seasonal sales area, outdoor lumber or material storage area, Shopping Center management office, and/or decommissioned space within the Shopping Center.

(f) Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interest. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

(g) Prior to the Possession Date or such earlier date that Tenant or its agents, employees or contactors are permitted to access the Premises, at least ten (10) days prior to the cancellation or termination of Tenant's insurance policies and within ten (10) days after Landlord's written request therefor, Tenant shall provide Landlord with certificates of insurance evidencing that Tenant has insurance coverages at least equal to the coverages required herein, that Tenant's insurance is in full force and effect and that Landlord is named as an additional insured under Tenant's liability insurance policies.

#### **Section 15.03. Increase in Insurance Premiums.**

Notwithstanding anything contained in this Lease to the contrary, Tenant shall not stock, use or sell any article, or do anything in or about the Premises, which may be prohibited by Landlord's insurance policies or any endorsements or forms attached thereto, or which will increase any insurance rates and premiums on the Premises, the building of which it is a part and/or any other buildings in the Shopping Center. Tenant shall pay on demand any increase in premiums for Landlord's insurance, or that of any other tenant in the Shopping Center, resulting directly from Tenant's use, occupancy or vacancy of the Premises or the Shopping Center, whether or not Landlord has consented to the same. In determining whether increased premiums are the

result of Tenant's use, occupancy or vacancy of the Premises, a schedule issued by the organization making the fire insurance, extended coverage, vandalism and malicious mischief, special extended coverage or any all-risk insurance rates for said Premises or any rule books issued by the rating organization or similar bodies or by rating procedures or rules of Landlord's insurance companies shall be conclusive evidence of the several items and charges which make up the insurance rates and premiums on the Premises and the Shopping Center. If, due to Tenant's occupancy (or failure to occupy) or abandonment of the Premises, any insurance shall be cancelled by the insurance carrier, or if the premium for any such insurance shall be increased, then, in any of such events, Tenant shall indemnify and hold Landlord harmless and shall pay on demand the increased cost of such insurance. Tenant also shall pay in any of such events any increased premium on the rent insurance that may be carried by Landlord.

#### **Section 15.04. Waiver of Subrogation.**

Landlord and Tenant hereby waive all rights to claims for damages as against the other and the other's insurance companies, and Landlord's and Tenant's insurance policies shall contain provisions requiring that the respective insurance companies waive all rights of subrogation as against Landlord and Tenant and as against the other's insurance companies, which either party has, or which may arise hereafter, for: damage to the Premises or the Shopping Center; damage to real or personal property located in the Shopping Center; loss of business; any loss for which either party may be reimbursed as a result of insurance coverage affecting any loss suffered by it; or any other loss caused by perils typically covered by fire and extended coverage, building contents, store contents and business interruption insurance coverages.

#### **Section 15.05. Insured's Release.**

Landlord and Tenant mutually agree that with respect to any loss which is covered by insurance then being carried by them respectively, or required to be carried, the one carrying or required to carry such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss to the extent of such insurance carried or required to be carried.

#### **Section 15.06. Notice to Landlord.**

Tenant shall give prompt written notice to Landlord, which shall in no event be more than ten (10) days after any case of fire or accidents in the Premises, or in the building of which the Premises is a part, or of any defects therein or in any fixtures or equipment. Tenant, within forty-eight (48) hours of any fire or accident, shall give written notice to Landlord of any damage claimed. Tenant shall not be entitled to any abatement or diminution of Minimum Annual Rent pursuant to Section 17.01 hereof for any period during which it prevents Landlord from repairing that portion of the damages, if any, which it is Landlord's obligation to repair, nor for any period beyond the aforementioned forty-eight (48) hours during which it has failed to notify Landlord.

### **ARTICLE 16: LIABILITY OF LANDLORD**

#### **Section 16.01. Waiver of Liability.**

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, TENANT AGREES THAT IT SHALL LOOK SOLELY TO THE EQUITY INTEREST OF LANDLORD IN THE SHOPPING CENTER, SUBJECT TO PRIOR RIGHTS OF ANY MORTGAGEE OR TRUSTEE OF THE SHOPPING CENTER, FOR THE COLLECTION OF ANY JUDGMENT (OR OTHER JUDICIAL PROCESS) REQUIRING THE PAYMENT OF**

**MONEY BY LANDLORD IN THE EVENT OF ANY DEFAULT OR BREACH BY LANDLORD WITH RESPECT TO ANY OF THE TERMS, COVENANTS AND CONDITIONS OF THIS LEASE TO BE OBSERVED AND/OR PERFORMED BY LANDLORD AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCEDURES FOR THE SATISFACTION OF TENANT'S REMEDIES. IN THE EVENT LANDLORD TRANSFERS THIS LEASE, EXCEPT AS COLLATERAL SECURITY FOR A LOAN, UPON SUCH TRANSFER LANDLORD WILL BE RELEASED FROM ALL LIABILITY AND OBLIGATIONS HEREUNDER, TO THE EXTENT THAT THE TRANSFEREE ASSUMES THE OBLIGATIONS OF THIS LEASE. IF THIS LEASE IS EXECUTED ON LANDLORD'S BEHALF BY A MANAGER, A MANAGING MEMBER OR A MANAGING AGENT, SUCH PARTY'S EXECUTION HEREOF IS FOR THE SOLE PURPOSE OF EVIDENCING LANDLORD'S AGREEMENT TO BE BOUND BY AND TO ALL OF THE TERMS, COVENANTS AND CONDITIONS CONTAINED HEREIN. NO SUCH MANAGER, MANAGING MEMBER OR MANAGING AGENT SHALL BE LIABLE OR OBLIGATED TO TENANT UNDER THIS LEASE.**

**Section 16.02. Tenant's Risk of Loss.**

Tenant shall store its property in and shall occupy the Premises and all other portions of the Shopping Center at its own risk and releases Landlord, to the full extent permitted by law, from all claims of every kind resulting from loss of life, personal or bodily injury or property damage. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage to either the person or property of Tenant or to Tenant's merchandise, equipment, fixtures or other personal property or to Tenant's business, arising from any cause. Notwithstanding anything contained in the Lease to the contrary, if Landlord is found liable or obligated to Tenant under the Lease, then Landlord shall be liable to Tenant only for actual, proven damages; in no event shall Landlord be liable to Tenant for lost sales or profits or any indirect or consequential damages.

**Section 16.03. No Partnership.**

Landlord neither is nor shall, in any way or for any purpose, become a partner of Tenant in the conduct of its business or otherwise, or joint venturer or a member of a joint enterprise with Tenant. The provisions of this Lease relating to the Percentage Rent payable hereunder, if any, are included solely for the purpose of providing a method whereby Rent is to be measured and ascertained.

**Section 16.04. Consent Clause.**

Unless Landlord's consent or approval is required by the express terms of this Lease not to be unreasonably withheld, such consent or approval may be withheld or delayed by Landlord in its sole and arbitrary discretion. If in this Lease it is provided that Landlord's consent or approval as to any matter will not be unreasonably withheld, and it is established by a Court or other body having final jurisdiction that Landlord has been unreasonable, the sole effect of such finding shall be that Landlord shall be deemed to have consented to or approved the matter for which its consent or approval was requested. Landlord shall not be liable to Tenant in any respect for money or money damages by reason of withholding or delaying its consent or approval.

**Section 16.05. Successors.**

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of



the said parties. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition and, if there shall be more than one Tenant, they shall all be bound jointly and severally by these provisions. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as provided in Article 11 hereof. Notwithstanding the foregoing, in the event Landlord or any successor owner shall convey or otherwise dispose of the Premises, all liabilities and obligations on the part of Landlord or successor owner under this Lease arising or accruing after such conveyance shall cease and terminate and thereupon all such liabilities and obligations shall be binding upon the new owner.

## **ARTICLE 17: DAMAGE CLAUSE**

### **Section 17.01. Destruction.**

If the Premises is damaged by any event of damage or destruction covered by the insurance policies that Landlord is required to maintain pursuant to this Lease, then such damage shall, except as hereinafter provided, be promptly repaired by Landlord, at Landlord's expense; provided, however that in no event shall Landlord be required to repair or replace any of Tenant's property or improvements identified in Section 15.02(a)(i)(1) and (3), which shall be the obligation of Tenant to replace to at least equal condition immediately prior to such damage. If (i) the Premises are damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, (ii) the building(s) within the Shopping Center are damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damages to the Premises, (iii) the building containing the Premises is damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damage to the Premises, or (iv) any damage to the Premises occurs during the last two (2) Lease Years of the then current Lease Term, then Landlord may elect either to repair or rebuild the Premises or the building(s) within the Shopping Center, as the case may be, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the event causing the damage. If the casualty, repairing, or rebuilding shall render the Premises untenable, in whole or in part, a proportionate abatement of the Rent in proportion to the leasable area of the Premises rendered untenable shall be allowed until the date Landlord completes the repairs or rebuilding. Notwithstanding the foregoing, in the event Landlord elects to repair or rebuild the Premises, and such repairs are not substantially complete within three hundred sixty-five (365) days following Landlord's receipt of any applicable building permits, subject to delays caused by force majeure and/or actions of Tenant (the "Outside Casualty Date"), then Tenant shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after such Outside Casualty Date. If Tenant does not exercise its right to terminate under this Section 17.01 within thirty (30) days after such Outside Casualty Date, Tenant shall be deemed to have waived its right to terminate this Lease pursuant to this Section 17.01.

## **ARTICLE 18: CONDEMNATION**

### **Section 18.01. Condemnation.**

(a) If the whole of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the Lease Term shall cease and terminate as of the date of title vesting in the condemnor in such proceeding and all Rent shall be paid up to that date and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term.

(b) If any part of the Premises or of the Shopping Center shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Premises and/or the Shopping Center unsuitable for the business of Tenant as determined by Landlord, then the Lease Term shall cease and terminate as of the date of title vesting in the condemnor in such proceeding, and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Premises, less the portion lost in the taking, and this Lease shall continue in full force and effect. Landlord shall not be required to expend in such restoration more than the proceeds of the award which is reserved for such purpose. The Minimum Annual Rent and the Breakpoint (if the Breakpoint is a fixed amount, that is not determined by dividing the Minimum Annual Rent by the Percentage Rent Rate), if any, shall be reduced in the proportion that the area of the Premises taken bears to the entire area contained in the Premises.

(c) In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, Tenant shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and Landlord is to receive the full amount of such award. Tenant hereby expressly waives any right or claim to any part thereof and assigns to Landlord any share of such an award as may be granted to it.

(d) Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, and although Tenant hereby expressly waives all claims against Landlord, Tenant shall have the right to claim and recover from the condemning authority, not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

## **ARTICLE 19: PRIORITY OF LEASE**

### **Section 19.01. Subordination, Attornment, Power of Attorney.**

Tenant has been informed and understands that Landlord is now, or may be in the future, a tenant under a lease of the land and/or entire building of which the Premises forms a part. This Lease is and shall be automatically subject and subordinate to all ground or underlying leases and to all mortgages, deeds of trust or liens resulting from any other method of financing or refinancing which now or hereafter affects such leases or the real property of which the Premises forms a part and to all renewals, modifications, consolidations, replacements and extensions thereof. This Section shall be self-operative and no further instrument of subordination shall be necessary; provided, however, if requested by Landlord's ground lessor or any mortgagee, Tenant shall execute such party's then current subordination, non-disturbance and attornment agreement within ten (10) days after written request by Landlord. If the requested subordination, non-disturbance and attornment agreement shall not be executed and delivered by Tenant, from time to time, within such ten (10) day period, then Tenant shall pay to Landlord Two Hundred Fifty and 00/100 Dollars (\$250.00) for each day until such subordination, non-disturbance and attornment agreement is executed and delivered to Landlord. Additionally, in confirmation of such subordination, Tenant shall execute promptly any other certificate or document that Landlord may request. In the event that any ground or

underlying lease is terminated, or any mortgage or deed of trust is foreclosed or title transferred as a result of a deed-in-lieu of foreclosure, this Lease shall not terminate or be terminable by Tenant, unless Tenant is specifically named in any termination or foreclosure judgment or final order, and Tenant shall attorn to any such successor lessor and recognize such lessor as Landlord under this Lease. In the event of a sale or assignment of Landlord's interest in the building of which the Premises forms a part, Tenant shall attorn to the purchaser and recognize such purchaser as Landlord under this Lease. In the event that any ground or underlying lease is terminated as aforesaid or any mortgage foreclosed or the property transferred by deed-in-lieu of foreclosure, Tenant agrees, at Landlord's, master landlord's, trustee's or mortgagee's option, to enter into a new lease covering the Premises for the remaining Lease Term and otherwise on the same terms, conditions and rentals as herein contained. Notwithstanding anything contained in this Lease to the contrary, if the holder of any mortgage or deed of trust elects to have this Lease superior to its mortgage or deed of trust, then, upon Tenant being notified to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage or deed of trust, whether this Lease is executed prior to or subsequent to the date of said mortgage or deed of trust.

#### **Section 19.02. Estoppel.**

Tenant shall, within ten (10) days after written request by Landlord, execute and deliver to Landlord a tenant estoppel certificate in the form attached hereto as **Exhibit E** or such other form as required by a prospective purchaser of the Shopping Center or Landlord's lender(s). If the requested estoppel certificate shall not be executed and delivered by Tenant, from time to time, within such ten (10) day period, then Tenant shall pay to Landlord Two Hundred Fifty and 00/100 Dollars (\$250.00) for each day until such estoppel certificate is executed and delivered to Landlord. Landlord's purchaser and/or mortgage lender(s) shall be entitled to rely upon the same.

#### **Section 19.03. Recording.**

Tenant agrees, upon request of Landlord, to execute for recording a short form memorandum of this Lease. Notwithstanding the foregoing, Tenant shall not record this Lease, or a memorandum thereof, without the prior written consent of Landlord. Any recording of this Lease shall be at the sole cost and expense of the party requesting recordation.

### **ARTICLE 20: LANDLORD'S REMEDIES**

#### **Section 20.01. Default.**

Any one of the following shall be deemed to be an "Event of Default":

(a) Tenant shall be in default in the payment of any Rent and such default shall continue for a period of ten (10) days after written notice thereof from Landlord, except as set forth below to the contrary.

(b) With respect to a non-monetary violation of this Lease, failure of Tenant to cure the same within the minimum time period within which Tenant is required by the terms of this Lease to cure the violation after Landlord has sent to Tenant notice of such violation (or if no such time period is specified, within thirty (30) days after Landlord has sent Tenant notice of such violation), except as set forth below to the contrary.

(c) The commencement of any of the following proceedings, with such proceeding not being dismissed within sixty (60) days after it has begun: (i) the estate hereby created being taken on execution or by other process of law; (ii) Tenant, or any surety or guarantor of Tenant, being judicially declared bankrupt or insolvent according to applicable Law; (iii) an assignment being made of the property of Tenant, or any surety or guarantor of Tenant, for the benefit of creditors; (iv) a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer being appointed to take charge of all or any substantial part of Tenant's property, or that of Tenant's surety or guarantor, by a court of competent jurisdiction; or (v) a petition being filed for the reorganization of Tenant, or any surety or guarantor of Tenant, under any provisions of the Bankruptcy Code or any federal or state law now or hereafter enacted.

(d) Tenant, or any surety or guarantor of Tenant, filing a petition for reorganization or for rearrangement under or otherwise availing itself of any provisions of, the Bankruptcy Code or any federal or state law now or hereafter enacted providing a plan or other means for a debtor to settle, satisfy or extend the time for the payment of debts (a "Bankruptcy Filing"). In the event that Tenant, or any surety or guarantor of Tenant, makes a Bankruptcy Filing, the then present Lease Term shall cease as of the day prior to the Bankruptcy filing and a new term ("Bankruptcy Term") shall commence as of the date of the Bankruptcy filing and all Rent and other charges due and payable under this Lease for the month in which the date of the Bankruptcy Filing occurs, whether or not actually paid by Tenant, shall be prorated on a daily basis. The per diem amounts attributable to the period from the first day of the month in which the date of the Bankruptcy Filing occurs through the day immediately preceding the date of the Bankruptcy Filing shall be deemed pre-petition and the per diem amounts attributable to the period from the date of the Bankruptcy Filing through to the end of the month in which the date of the Bankruptcy Filing occurs shall be deemed due as of the commencement date of the Bankruptcy Term which, if not already paid, shall be and become immediately due and payable by Tenant to Landlord. All of the terms and conditions of this Lease other than the determination of Rent and other charges due and payable in the month in which the Bankruptcy Filing occurs as a result of the Bankruptcy Term, including but not limited to the Expiration Date, the timing of options, Rent increases and the like, shall remain as set forth in this Lease without regard to this paragraph and without regard to the Bankruptcy Term.

(e) If Tenant shall close for business for more than five (5) days during any Lease Year, when required by this Lease to be open, or if Tenant shall abandon or vacate the Premises.

(f) Excepting only those periods when Tenant is prevented from performing by virtue of strike, fire, unavoidable casualty or other event beyond the control of Tenant, (financial inability shall never be deemed to be an event beyond Tenant's control) and Tenant agrees promptly to notify Landlord in writing of any such event and closing and further agrees to reopen as soon thereafter as possible, the failure of Tenant (i) to take possession of the Premises on the Possession Date, (ii) to proceed diligently and continuously with Tenant's Work, (iii) to complete its initial alterations and equipping of the Premises, or (iv) to have opened for business within thirty (30) days after the Commencement Date shall be considered for the purposes hereof to be an abandonment of the Premises by Tenant and an Event of Default.

Notwithstanding anything to the contrary set forth in this Lease, if Tenant shall be in default of the same term, condition or requirement of this Lease, and if any such default shall be repeated two (2) times in any period of twelve (12) consecutive months, then, notwithstanding that such default shall have been cured within the period after notice, as provided above, any further similar default within said twelve (12) month period shall be deemed to be an automatic Event of

Default, Tenant shall not have any right to cure the same, and Landlord, without giving Tenant any notice and without affording Tenant any opportunity to cure such default, may exercise any rights or remedies available to Landlord as set forth in this Lease, including, without limitation, the right to terminate this Lease.

#### **Section 20.02. Landlord's Remedies.**

If an Event of Default occurs, in addition to any right Landlord may have at law or in equity including, without limitation, the right to seek injunctive relief or specific performance against Tenant, Landlord may:

(a) Elect to re-enter or take possession of the Premises pursuant to legal proceedings or any notice provided for herein and may either terminate this Lease or, without terminating this Lease, (i) remove all persons and property from the Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby and (ii) make such alterations and repairs as may be necessary in order to re-let the Premises for a term, rental rate and conditions as Landlord, in its sole discretion, may deem advisable. Upon re-letting, rentals received by Landlord from such re-letting shall be applied first to the payment of any indebtedness other than Minimum Annual Rent due hereunder from Tenant; second to the payment of any costs and expenses of such re-letting, including brokerage fees, reasonable attorneys' fees and costs of alterations and repairs; third to the payment of the most current Minimum Annual Rent owed at that time; and the residual, if any, shall be held by Landlord and applied in payment of future Minimum Annual Rent as the same may become due and payable hereunder from Tenant. If such rentals received from such re-letting are less than that to be paid by Tenant, Tenant shall be liable for the deficiency to Landlord. Any such deficiency shall be calculated and due monthly. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease or to accept a surrender thereof.

(b) Whether or not Landlord elects to re-enter or take possession of the Premises in accordance with subsection (a) above, Landlord may, at any time after the occurrence of an Event of Default, elect to terminate this Lease. Should Landlord elect to terminate this Lease then, in addition to any other remedies Landlord may have available to it, Landlord may recover from Tenant all damages incurred by reason of such breach, including the cost of recovering the Premises and the worth at the time of such termination of the excess, if any, of the amount of Minimum Annual Rent, Percentage Rent, if any, Additional Rent and all other charges reserved in this Lease, payable over the remainder of the stated Lease Term, over the then-reasonable rental value of the Premises, all of which amounts shall be immediately due and payable from Tenant to Landlord as if by terms of this Lease it were payable in advance. Landlord may immediately proceed to distrain, collect, or bring action for the worth of the whole Rent, as aforesaid, or any part thereof as aforesaid, as Rent being in arrears, or may enter judgment therefor in an amicable action in case of Rent in arrears, or may file a proof of claim in any bankruptcy or insolvency proceedings for such Rent, or Landlord may institute any other proceedings, whether similar to the foregoing or not to enforce payment thereof. In determining the Rent which would be payable by Tenant hereunder subsequent to an Event of Default, the Percentage Rent for each Lease Year of the unexpired Lease Term shall be equal to the average Percentage Rent paid by Tenant from the Commencement Date to the Event of Default, or during the preceding three (3) full Lease Years, whichever period is shorter.

(c) Treat all or any part of the Rent reserved hereunder as immediately due and payable, it being understood that the method of monthly or other periodic payments provided for

herein are for the convenience of Tenant and available to Tenant only if Tenant is not in default under this Lease.

(d) Cure such default for the account of Tenant (without waiving any claim for breach of this Lease); said right to cure shall include, without limitation, the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event Landlord shall, at its election, pay such sums or do such acts requiring the expenditure of monies, Tenant agrees to pay Landlord, upon demand, all such sums and the sum so paid by Landlord, plus fifteen percent (15%) thereof for overhead and supervision and interest thereon at the Default Interest Rate, shall be deemed Additional Rent and be payable as such.

(e) Notwithstanding anything contained herein to the contrary, Landlord shall have no duty to mitigate the damages suffered by Landlord rising from an Event of Default by Tenant.

#### **Section 20.03. Debtor-in-Possession.**

Tenant agrees that this Lease is a lease of "real property in a Shopping Center" and that a debtor in possession and/or trustee in bankruptcy acting pursuant to the provisions of the revised bankruptcy code, may assume this Lease only if, in addition to such other conditions of this Lease and applicable law, such debtor's in possession and/or trustee's use is compatible with the retail operations at the Shopping Center, as a whole, and does not conflict with any other use or violate any exclusive use at the Shopping Center and said debtor in possession and/or trustee shall provide Landlord with such written assurances of future performance as are acceptable to Landlord.

#### **Section 20.04. Landlord Lien.**

Landlord shall have at all times a valid lien for Minimum Annual Rent, Percentage Rent, if any, Additional Rent and any and all other sums becoming due by Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated on the Premises and such property shall not be removed therefrom without the consent of Landlord until all arrearage in Minimum Annual Rent as well as any and all other sums then due to Landlord shall first have been paid and discharged. Upon the occurrence of an Event of Default, Landlord may, in addition to any other remedies provided herein or by law or equity, enter upon the Premises and take possession of all Tenant's improvements, any and all goods, wares, equipment, fixtures, furniture and other personal property of Tenant thereon and may remove all persons and property from the Premises by force, summary action or otherwise. Said property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, all without service or notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Landlord may sell said property with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or its assigns may purchase and apply the proceeds thereof less any and all expenses connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Tenant agrees to execute and deliver to Landlord a Uniform Commercial Code Financing Statement perfecting Landlord's lien within thirty (30) days after Landlord's written request therefor.

#### **Section 20.05. Redemption; Reinstatement.**

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future Laws in the event Tenant is evicted or dispossessed for any cause, or in the

event Landlord obtains possession of the Premises. No receipt of monies by Landlord from or for the account of Tenant or from anyone in possession or occupancy of the Premises after the termination of this Lease or after the giving of any notice of termination shall reinstate, continue or extend the Lease Term or affect any notice given to Tenant prior to the receipt of such money.

**Section 20.06. Waiver of Jury Trial.**

**LANDLORD AND TENANT WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM COUNTERCLAIM. CROSS-COMPLAINT OR CAUSE OF ACTION IN ANY ACTION, PROCEEDINGS OR HEARING BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE THE RELATIONSHIP OF LANDLORD AND TENANT OR TENANT'S USE OR OCCUPANCY OF THE PREMISES INCLUDING WITHOUT LIMITATION ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE REGULATION CODE OR ORDINANCE.**

**Section 20.07. Accord and Satisfaction.**

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest Rent then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Notwithstanding anything contained herein to the contrary, if the Rent payments are made to a "lock-box", Landlord shall not be bound by any endorsement or statement on any check or by any letter accompanying any check or payment as Rent made to such a "lock-box."

**Section 20.08. No Waiver.**

The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies, and the exercise of any of them shall not be deemed to exclude Landlord's right to exercise any or all of the others. The waiver by Landlord of any breach or of the strict and/or prompt performance of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of Landlord's right to strictly enforce same in the future. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any terms, covenants or conditions of this Lease regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord. No waiver by Landlord in respect to other tenants shall be deemed to constitute a waiver in favor of Tenant.

**Section 20.09. Merger.**

Tenant expressly waives any right of defense which it may have to claim a merger and neither the commencement of any action or proceedings nor the settlement thereof or entering of judgment therein shall bar Landlord from bringing subsequent actions or proceedings from time to time.

**Section 20.10. Legal Fees.**

If any legal fees are incurred by Landlord or Tenant in enforcing the terms of this Lease, then the prevailing party shall be liable for such reasonable costs and the same shall be due and payable upon presentation of a bill therefor.

## **ARTICLE 21: MISCELLANEOUS PROVISIONS**

### **Section 21.01. Tenant Defined; Use of Pronoun.**

The word Tenant shall be deemed and taken to mean each and every person or party mentioned as a tenant herein, be the same one or more; and if there shall be more than one tenant, (i) the liability of each shall be individual, joint and several, and (ii) any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

### **Section 21.02. Delivery of Lease.**

The submission of this Lease for examination does not constitute a reservation of or option for the Premises. Tenant hereby waives and is estopped from asserting any rights with respect to the Premises or against Landlord which may arise from any alleged oral agreement; oral lease; any acts or expenditures (including without limitation the return of this Lease to Landlord executed by Tenant and the payment of any sums on account hereof) or series of same taken or made by Tenant in reliance on the anticipated execution hereof by Landlord; or any letter from Landlord or its attorneys sent prior to the execution and delivery hereof by Landlord as aforesaid; it being expressly understood and agreed that Tenant shall under no circumstances have any such rights until said execution and delivery hereof by Landlord. This Lease shall have no force and effect until (i) it is executed and delivered by Tenant to Landlord, and (ii) it is fully reviewed and executed by Landlord; provided, however, that upon execution of this Lease by Tenant and delivery to Landlord, such execution and delivery by Tenant shall, in consideration of the time and expense incurred by Landlord in reviewing this Lease and Tenant's credit, constitute an offer by Tenant to lease the Premises upon the terms and conditions set forth herein (which offer to lease shall be irrevocable for twenty (20) business days following the date of delivery).

### **Section 21.03. Entire Agreement.**

This Lease and the exhibits, riders and/or addenda, if any attached, set forth the entire agreement between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by Landlord and Tenant. If any provision contained in a rider or addenda is inconsistent with the provisions contained herein, then the provisions contained in said rider or addenda shall supersede said provisions contained herein. The captions and numbers appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this Lease.

### **Section 21.04. Partial Invalidity.**



If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

#### **Section 21.05. Applicable Law.**

This Lease and the rights and obligations of the parties arising hereunder, shall be construed in accordance with the Laws of the state in which the Shopping Center is located.

#### **Section 21.06. Rules of Construction.**

The parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any addenda or Exhibits hereto.

#### **Section 21.07. Brokerage Commission.**

Landlord and Tenant represent and warrant that they have had no dealings, negotiations, or consultations with respect to the Premises, the Shopping Center or this transaction with any broker, except for the Broker(s), if any. In the event that any broker, other than Broker(s), if applicable, claims to have taken part in any dealings, negotiations, or consultations with respect to the Premises, the Shopping Center, or this transaction, then the party having failed to disclose such contact will be responsible for and will defend, indemnify, and save harmless the other party from and against all reasonable costs, fees (including reasonable attorneys' fees), expenses, liabilities, and claims incurred or suffered by such party as a result thereof. Such agreement shall survive the Expiration Date. Landlord shall be responsible for all fees and commissions due Broker(s), if any, pursuant to the terms of a separate agreement between Landlord and Broker(s). If this Lease shall be terminated as a result of a default by Tenant, beyond the lapse of all applicable notice and cure periods, prior to the anticipated Expiration Date, then Tenant shall pay to Landlord, in addition to all other amounts due and payable by Tenant to Landlord pursuant to the terms of this Lease, the Unamortized Commissions. The provisions of this Section shall survive the termination of this Lease.

#### **Section 21.08. Force Majeure.**

Landlord shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by a cause or causes beyond Landlord's control which shall include, without limitation, all labor disputes, riots, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain permits or approvals from governmental authorities, fire or other casualty, inability to obtain any material, services or financing or through acts of God.

#### **Section 21.09. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws.**

Landlord and Tenant each certify that (i) it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person", or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) it is not engaged in

this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

#### **Section 21.10. Guaranty.**

As an inducement to Landlord consenting to this Lease and as a specific condition hereof, Guarantor shall simultaneously herewith execute an unconditional personal Guaranty, attached hereto as **Exhibit I**. If Guarantor becomes insolvent or files for Bankruptcy and/or can no longer perform its obligations under the Guaranty, then Tenant must deliver a creditworthy substitute guarantor, as reasonably determined by Landlord, and such substitute guarantor shall execute an unconditional personal guaranty, in substantially the same form as the Guaranty attached hereto as **Exhibit I**, within five (5) days after written notice thereof from Landlord to Tenant.

#### **Section 21.11. Counterparts.**

This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart. In order to facilitate the agreements contemplated by this Lease, signatures to this Lease transmitted as Electronic Copies may be used in place of original signatures on this Lease. Landlord and Tenant each (i) intends to be bound by Electronic Copies of this Lease, (ii) is aware that the other party is relying on the Electronic Copies, and (iii) hereby waives any defenses to the enforcement of this Lease based upon the Electronic Copies. Promptly following the delivery of the Electronic Copies, the parties shall deliver to one another the original executed Lease.

#### **Section 21.12. Confidentiality.**

Tenant agrees that this Lease is confidential and Tenant shall not, without Landlord's prior written consent, disclose to any third party the contents of this Lease or any information related to this Lease, including but not limited to (a) Rent-related information, and/or (b) the modification of any terms originally included, but subsequently modified, in this Lease. In the event Tenant violates this confidentiality clause, Tenant shall be obligated to promptly pay Landlord Ten Thousand and 00/100 Dollars (\$10,000.00) as liquidated damages; the actual damages which would be suffered by Landlord in such event being impossible to ascertain as of the date hereof, but the agreed upon amount being a reasonable estimate thereof.

#### **Section 21.13. Net Lease.**

Tenant acknowledges and agrees that it is intended that this Lease is a completely net lease to Landlord, except as expressly herein set forth to the contrary, that Landlord is not responsible during the Lease Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the Premises, or the use and occupancy thereof, or the contents thereof, or the business carried on therein, and Tenant shall pay all charges, impositions, costs and expenses of every nature and kind relating to the Premises, except as expressly herein set forth to the contrary.

#### **Section 21.14. State or Property Specific Lease Provisions.**

Landlord and Tenant acknowledge and agree that the following "State or Property Specific Provisions" apply to the Shopping Center, and to the extent that the terms of the State or Property Specific Provisions conflict with the other terms and conditions of the remainder of this

Lease, including, without limitation, the Exhibits attached hereto, the terms of the Property Specific Provisions shall govern and control. The "Property Specific Provisions" are as follows:

(a) **TENANT HEREBY WAIVES ALL ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES CONSUMER PROTECTION ACT SECTION 17.41 ET SEQ OF THE TEXAS BUSINESS AND COMMERCE CODE A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS AFTER CONSULTATION WITH AN ATTORNEY OF TENANT'S OWN SELECTION, TENANT VOLUNTARILY CONSENTS TO THIS WAIVER.**

**Section 21.15. Contingency.**

This Lease is expressly contingent upon Landlord obtaining all approvals required by Landlord's existing covenants and obligations with respect to the Shopping Center, including, without limitation, any required approvals from Landlord's lender(s). If Landlord is unable to obtain any such approvals, Landlord shall have the right to terminate this Lease immediately upon written notice to Tenant at any time, and upon the giving of such notice this Lease shall be null and void, and of no further force or effect.

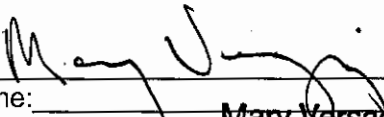
**Section 21.16. Exhibits.**

The following Exhibits are attached to this Lease and incorporated herein by reference:

- Exhibit A - Site Plan
- Exhibit B - Landlord's Work and Tenant's Work
- Exhibit C - Rules and Regulations
- Exhibit D - Intentionally Deleted
- Exhibit E - Estoppel
- Exhibit F - Use Restrictions
- Exhibit G - Tenant's Affidavit of Payment of Debts and Claims
- Exhibit H - Commencement Date Agreement
- Exhibit I - Guaranty

**IN WITNESS WHEREOF**, the parties have respectively executed this Lease effective as of the day and year first above written.


**WITNESSES:**

  
Name: Mary Versaggi

**LANDLORD:**

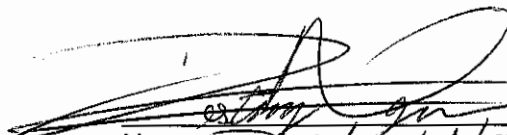
**BRE RC ALAMO RANCH TX LP,**  
a Delaware limited partnership

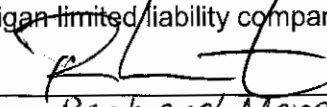
By: BRE RC Alamo Ranch TX GP LLC,  
a Delaware limited liability company,  
its general partner

By:   
Name: Linda M. Madway  
Title: Senior Vice President

**TENANT:**

**LRX SAN ANTONIO WEST SIDE, LLC,**  
a Michigan limited liability company

  
Name: Destiny Nguyen

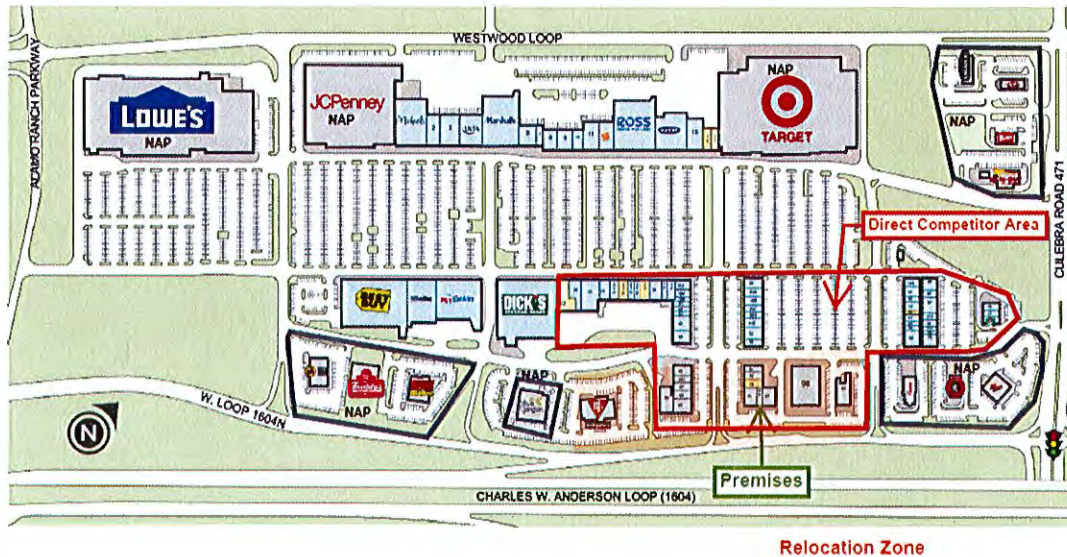
By:   
Name: Richard Morgan  
Title: President

ADDENDUM –DIRECT COMPETITOR AREA; RELOCATION ZONE

**ALAMO RANCH**

5503 W LOOP 1604 N // SAN ANTONIO, TX, 78253

**LIGHT Rx FACE & BODY**



This document is for general information purposes only. Any and all features, matters and other information depicted hereon or contained herein are for illustrative marketing purposes only, are subject to modification without notice, are not intended to be relied upon by any party and are not intended to constitute representations or warranties as to any matter, including ownership of the real property depicted hereon, the size and nature of improvements (or that any improvements will be constructed or will continue to exist as depicted), or the identity or nature of any occupants thereof.



## TENANTS

SUITE#	Tenant Name	GLA(SF)	SUITE#	Tenant Name	GLA(SF)	SUITE#	Tenant Name	GLA(SF)
NAP 1	LOWE'S (NAP)		26	MASSAGE ENVY	3,000 SF	62	LAS QUESADILLAS	956 SF
NAP 2	TARGET (NAP)		27A	SCRUBS & BEYOND	3,200 SF	63	STYLE AMERICA	1,165 SF
NAP 3	J.C. PENNEY (NAP)		27B	MOTHERHOOD MATERNITY	1,578 SF	64	EYEMASTERS	3,578 SF
NAP 4	RAISING CANE'S RESTAURANT		27C	ARCH 2 ARCH	1,500 SF	65	DENTAL ONE	2,711 SF
NAP 5	KNEADERS BAKERY AND CAFE		27D	AVAILABLE	2,352 SF	66	LE NAILS & SPA	1,491 SF
NAP 6	IN N OUT BURGER		34	AVAILABLE	2,900 SF	67	STEAK N SHAKE SIGNATURE	2,188 SF
1	MICHAELS	21,262 SF	35	THE CHILDREN'S PLACE	4,100 SF	67A	HOP + VINE	1,645 SF
1B	WENDY'S	2,675 SF	36	CALI NAILS	1,458 SF	69	AMAZING LASH STUDIO	2,162 SF
2	CATO	5,661 SF	37	YUM! THAI	2,197 SF	73	MATHNASIUM	1,180 SF
3	SKECHERS	8,760 SF	38A	KUMORI SUSHI AND TEPPANYAKI	3,000 SF	74	REMAX REALTY	1,180 SF
4	ULTA SALON	10,117 SF	39A	CAJUN CRAWFISH	2,151 SF	75	USAA	2,639 SF
5	MARSHALL'S	27,000 SF	39B	THE JOINT	1,068 SF	76	T-MOBILE	2,000 SF
6	MAURICES	5,000 SF	40	EDIBLE ARRANGEMENTS	1,231 SF	77	EUROPEAN WAX CENTER	1,449 SF
7	SALLY BEAUTY SUPPLY	1,671 SF	41	SUPERCUTS	1,231 SF	78	STARBUCKS	1,725 SF
8	RUE21	4,400 SF	42	OLD WINE JEWELERS	1,377 SF	84	MEN'S WEARHOUSE	5,000 SF
9	BATH & BODY WORKS	4,764 SF	43	RIDE AWAY BICYCLES	3,185 SF	85	HEARTLAND DENTAL CARE	2,847 SF
10	HALLMARK	3,180 SF	44	FREEBIRDS WORLD BURRITO	2,649 SF	86	ZALES	2,400 SF
11	LANE BRYANT	6,800 SF	45	JAMES AVERY CRAFTSMAN	2,435 SF	86C	JIMMY JOHN'S	2,000 SF
12	RACK ROOM SHOES	6,050 SF	46A	MERLE NORMAN	1,050 SF	87	OODITAS DONA TOTA	1,400 SF
13	ROSS DRESS FOR LESS	30,187 SF	46B	ORANGE LEAF FROZEN YOGURT	1,540 SF	90	VITAMIN SHOPPE	3,500 SF
14	OLD NAVY	14,999 SF	48C	LENSCRAFTERS	4,200 SF	91	BASKIN ROBBINS	1,211 SF
15	KIRKLAND'S STORES	7,807 SF	48D	ESTILO INTERIORS AND GIFTS	1,578 SF	92	FIRENZA PIZZA	1,045 SF
16	AVAILABLE	2,150 SF	48E	DIESEL BARBERSHOP	1,612 SF	94	AVAILABLE	3,660 SF
17	AVAILABLE	2,477 SF	52	HIGH SCHOOL MUSIC	3,476 SF	95	AT&T	3,000 SF
18	BEST BUY	45,000 SF	53	JAMBA JUICE	1,750 SF	96	LIGHT R&F FACE & BODY	1,462 SF
19	OFFICEMAX	18,000 SF	54A	MENCHIES FROZEN YOGURT	1,600 SF	97	MATTRESS FIRM	3,605 SF
20	PETSMART	27,415 SF	55	TOTAL NUTRITION	1,400 SF	98	LAS PALAPAS	3,500 SF
21	DICK'S SPORTING GOODS	50,000 SF	56	PAK MAIL CENTER OF AMERICA	1,300 SF	99	JASON'S DELI	5,315 SF
22	AVAILABLE	8,000 SF	57	ORANGE THEORY FITNESS	2,785 SF	106	BJS RESTAURANT & BREWHOUSE	9,000 SF
23	NO SALON AND SPA	3,028 SF	58	AVAILABLE	566 SF			
25	FIVE BELOW	6,216 SF	61	BEYOND THE SUN TANNING	1,496 SF			

This Site Plan is Not to Scale

As more particularly provided for in the Lease, Landlord hereby reserves the right, at any time and from time to time without notice to Tenant, to alter or otherwise modify the locations and/or dimensions of all buildings, parking areas, service drives, entrances, exits and other facilities shown on this Exhibit A; to place in the common areas of the Shopping Center landscaping, decorative items, and structures and areas for retail sales and promotional activities, and to construct, lease operate and maintain in the area shown on this Exhibit A and on contiguous land, as part of the Shopping Center, buildings, structures and other facilities not shown on this Exhibit A.

**EXHIBIT B**  
**LANDLORD'S WORK AND TENANT'S WORK**

**Landlord's Work:** None, except that Landlord shall place the heating, ventilating and air conditioning unit, and electrical and plumbing facilities which exclusively serve the Premises shall be in good working order on the Possession Date.

Tenant acknowledges that (i) it is familiar with the Premises, (ii) Tenant or its representative has visited the Premises, or was given the opportunity to visit the Premises prior to the Effective Date, (iii) there is no work to be performed by Landlord and no representation or warranty has been made by Landlord as to the fitness of the Premises, or any equipment servicing or improvement within the Premises, for any use permitted herein, and (iv) it is taking possession of the Premises on the Possession Date in its "AS IS/WHERE IS" condition.

**Tenant's Work:** Excluding Landlord's Work, if any, any and all improvements to the Premises required for, or desired by, Tenant to use and operate its Permitted Use in the Premises, including, the improvements to, on or about the Premises to be constructed by Tenant, as identified on the plans and specifications for such improvements prepared by Tenant and approved by Landlord in accordance with the terms of this Exhibit.

Tenant shall, at its cost and expense, complete or cause the completion of Tenant's Work prior to the Commencement Date in accordance with the plans and specifications which have been submitted to and approved in advance in writing by Landlord. All work performed by Tenant with respect to the Premises shall:

- (a) be commenced only after Tenant has delivered to Landlord evidence satisfactory to Landlord that it has obtained all required permits and licenses for all of Tenant's Work or satisfied Landlord that such permits or licenses are not required;
- (b) be completed in accordance with the Construction Criteria;
- (c) be completed as expeditiously as reasonably possible;
- (d) be completed in such manner as will not interfere with work being done by Landlord upon the Premises or any other portion of the Shopping Center;
- (e) be completed in compliance with such reasonable rules and regulations as Landlord or its agents or contractors may make;
- (f) be carried out by competent workers under the supervision of one or more professional contractor(s) and designer(s), who shall be subject to prior written approval of Landlord (such approval not to be unreasonably withheld or delayed), and be subject to the reasonable supervision of Landlord or its agents or contractors;
- (g) be completed only by persons and/or entities that shall maintain harmonious labor relations;
- (h) be commenced only after Tenant has delivered to Landlord a certificate of general liability insurance from its general contractor (or from Tenant if it is acting as its own contractor); and
- (i) be completed at the risk of Tenant.

**OTHER PROVISIONS**

**Performance of Tenant's Work**

The following provisions are in addition to, and do not waive the provisions of any general covenants between Tenant and Landlord as may be contained in the Lease:

A. Before doing any item of Tenant's Work, (i) Tenant shall secure and demonstrate to Landlord that it has secured all necessary permits and licenses which shall, without limitation, include all requisite building permits; (ii) Tenant shall deliver to Landlord a certificate evidencing that it has obtained contractors' general liability insurance naming all Additional Insured(s) as additional named insureds, as well as workers' compensation insurance and automobile liability insurance, all in accordance with the requirements; (iii) Tenant shall deliver to Landlord an itemized budget in respect of all Tenant's Work, and (iv) Tenant will provide (or will cause its general contractor to provide) at its sole cost and expense, builders risk insurance for construction that covers special risk perils including earthquake, flood, fire, and theft of materials stored at or within 1,000 feet of the Premises. The builders risk insurance shall be on a completed value form including for all insurable hard and soft costs of construction.

B. All work by Tenant within the Premises shall utilize new materials. Materials and workmanship shall be of a uniformly high quality and used and/or performed in accordance with the very best standards of practice and shall not be in contravention of any governing codes or regulations and shall be subject to the approval of Landlord and/or its architect. Any damage to the Premises or the Shopping Center caused by Tenant or any of its employees, agents or contractors shall be repaired forthwith by Landlord, at Tenant's expense, together with an administrative overhead charge of fifteen percent (15%) thereon.

C. Under no circumstances will Tenant, its employees, its contractors or its contractors' employees enter onto any roof of the Shopping Center or make any opening in the roof without Landlord's consent and approval.

D. Tenant and its contractor(s) shall not impose a greater load on any concrete floor than the design live load of 100 pounds per square foot uniformly distributed. No unusual loads may be suspended from the underside of roof structure.

E. Tenant shall maintain the Premises in a reasonably clean and orderly manner and shall be responsible for the cost of removing from the Shopping Center all excess materials, trash and cartons resulting from Tenant's Work and stocking of the Premises. Should Tenant fail to regularly clean up construction material, trash and cartons, Landlord may remove such materials and charge the costs to Tenant, plus an administrative overhead charge of fifteen percent (15%) thereon.

F. Tenant agrees that Tenant's Work shall not be done in a manner which would create a Conflict. Tenant shall immediately stop work or other activity if Landlord notifies Tenant that continuing such work or activity would cause a Conflict. Tenant shall indemnify, defend with legal counsel selected by Landlord and hold harmless Landlord from any loss, cost or liability suffered or incurred by Landlord as a result of Tenant's violation of the provisions of this paragraph. Tenant's violation of the terms hereof shall constitute a default hereunder and shall entitle Landlord to exercise any remedies that are available to Landlord at law, in equity or hereunder, including, without limitation, obtaining an injunction.

G. Upon completion of Tenant's Work, Tenant shall deliver the following to Landlord:

- (i) all applicable certificates of completion and occupancy;
- (ii) final Certificate of Occupancy for the Premises and all other licenses, permits and approvals required by Authorities to operate Tenant's business;
- (iii) final as-built plans for the Premises;
- (iv) final notarized lien waivers from Tenant's general contractor waiving any right to file a construction lien for unpaid work or services performed or



- materials supplied (Landlord reserves the right to request final lien waiver(s) from subcontractor(s) to Tenant's general contractor; and
- (v) affidavit from Tenant's general contractor listing all subcontractors and all materialmen and suppliers for all work, labor and materials to Tenant's general contractor and that they have been paid in full

### **Exhaust and Odors**

(a) Objectionable odors from the Premises shall, at Tenant's expense, be exhausted in such a manner as precludes their escaping into the Common Areas or other rental areas, or short circuiting into any fresh air vents. Tenant specifically acknowledges and agrees that it shall be responsible for all costs, expenses or damages suffered or incurred by Landlord as a result of claims by other tenants of the Shopping Center relating to objectionable odors or exhaust emanating from the Premises during the completion of Tenant's Work. Landlord shall be entitled to require Tenant to suspend Tenant's Work on twenty-four (24) hours' prior written notice in the event that Tenant fails to comply with its obligations contained herein.

(b) Where Tenant requests a total exhaust rate greater than 200 CFM/bay, Tenant shall provide a make up air system in accordance with Landlord's specifications, sized in the amount of the excess and shall waive the right to demand of Landlord the ambient design conditions specified in the design package provided to Tenant by Landlord, if any.

(c) Tenant's air handling equipment may not under any circumstances draw air from any enclosed mall or exhaust into it.

(d) Garbage refrigeration equipment must be installed in the Premises by Tenant if perishable items are handled.

### **Complete Drawings by Tenant**

Tenant shall submit to Landlord for its approval complete plans, drawings and specifications for the Premises (the "Plans"), to be prepared by qualified designers and conforming to each of good engineering practice, the outline drawings provided to Tenant by Landlord, if any, and the provisions of this Exhibit. Such Plans shall show at least the following:

### **STORE SUBMISSION REQUIREMENTS**

Tenant shall provide complete working plans and specifications in the following form:

- (a) Floor plan to scale.
- (b) Reflected ceiling plan to scale.
- (c) Storefront and show window elevation and sections to scale.
- (d) Storefront and show window details to scale.
- (e) Interior elevations to scale.
- (f) Interior finishing schedule.
- (g) Sign shop drawings prior to fabrication and related lighting and equipment.
- (h) Any other special facilities or installations that affect the building.
- (i) Sprinkler and other fire protection devices, including the fire alarm system for the Premises.
- (j) Plumbing plan to include single line diagram.
- (k) Lighting plan and electrical plan to include single line diagram and under floor electric.
- (l) Mechanical plan showing RTU location(s) and tonnage.

(m) Ductwork for connection to the air conditioning system, toilet exhaust system and any other ventilation system required by Tenant.

(n) Any necessary structural drawings to include rooftop support to be prepared by a licensed structural engineer.

All Plans shall be submitted for approval upon the earliest of (i) thirty (30) days after execution of this Lease and (ii) fifteen (15) days after written request by Landlord therefor. Any required revisions to the Plans shall be submitted within five (5) business days after Landlord's disapproval and/or request for revisions. No Tenant's Work may proceed prior to Landlord's written approval, which will not be unreasonably withheld nor unduly delayed. In the event that the completion of Landlord's Work and/or Tenant's Work is delayed as a result of the failure by Tenant to comply with its obligations contained herein, the Fixturing Period shall be reduced by the length of delay caused or contributed to by Tenant.

Tenant shall apply for all permits and licenses necessary for the performance of Tenant's Work within seven (7) days after the later of (x) the date Landlord approves Tenant's Plans and (y) the Possession Date.

Tenant acknowledges that Landlord's approval of Tenant's Plans (i) does not eliminate the need for Tenant to obtain all necessary approvals and permits required from any public or governmental agency or authority having jurisdiction over the Shopping Center, and (ii) shall not be construed as a waiver of or the satisfaction of any laws, regulations, restrictions or requirements of record, conformance thereto being solely Tenant's responsibility. Tenant also acknowledges that Landlord has no liability to Tenant or any other person or entity as a result of Landlord's approval of said Plans for any defects, omissions, inconsistencies or shortcomings contained in such Plans or the work to be performed in accordance therewith.

**TENANT SHALL SUBMIT TENANT'S PLANS FOR LANDLORD REVIEW AND APPROVAL, BOTH IN ELECTRONIC PDF FORMAT AND TWO (2) HARD COPIES, MINIMUM SIZE 18" X 24". ALL MECHANICAL AND/OR STRUCTURAL DRAWINGS AND SPECIFICATIONS SHALL BE STAMPED BY AN ENGINEER DULY QUALIFIED AND LICENSED IN THE STATE IN WHICH THE SHOPPING CENTER IS LOCATED. ALL ELECTRICAL DRAWINGS AND SPECIFICATIONS (INCLUDING LIFE SAFETY AND FIRE SAFETY) SHALL BE STAMPED BY AN ELECTRICIAN DULY QUALIFIED AND LICENSED IN THE STATE IN WHICH THE SHOPPING CENTER IS LOCATED. ANY CHANGES TO THE PLANS THAT HAVE BEEN APPROVED BY LANDLORD SHALL BE STAMPED BY AN ARCHITECT OR ENGINEER DULY QUALIFIED AND LICENSED IN THE STATE IN WHICH THE SHOPPING CENTER IS LOCATED AND SHALL ALSO BE SUBJECT TO THE PRIOR WRITTEN APPROVAL OF LANDLORD. ANY INCREASE IN THE COST OF COMPLETING THE LANDLORD'S WORK (IF ANY) RESULTING FROM CHANGES REQUESTED BY TENANT SHALL BE FOR THE ACCOUNT OF TENANT AND LANDLORD SHALL BE REIMBURSED FOR SAME IMMEDIATELY UPON PRESENTATION OF AN INVOICE IN RESPECT THEREOF.**

**EXHIBIT C**  
**RULES AND REGULATIONS**

(a) All deliveries or shipments of any kind to and from the Premises, including loading and unloading of goods, shall be made only by way of the rear of the Premises, or at any other location designated by Landlord, and only at such times designated for such purpose by Landlord;

(b) Garbage and refuse shall be kept in the kind of container specified by Landlord and shall be placed at a location within the Premises designated by Landlord for collection at the times specified by Landlord. Tenant shall bear all costs of garbage and refuse removal;

(c) No radio, television, phonograph or other similar devices or dishes, antennas or aerials attached thereto (inside or outside) shall be installed within, on or about the Premises, without first obtaining in each instance Landlord's consent in writing and, if such consent be given, no such devices shall be used in a manner so as to be heard or seen outside of the Premises except as expressly permitted;

(d) Tenant shall keep the Premises adequately heated and cooled to prevent damage to the Premises, and the systems and improvements thereof, including, without limitation, at a sufficient temperature to prevent freezing of water in pipes;

(e) The outside areas immediately adjoining the Premises shall be kept clear and free from snow, ice, dirt and rubbish by Tenant, and Tenant shall not place, suffer, or permit any obstructions or merchandise in such areas, unless expressly provided for to the contrary in the Lease;

(f) Tenant shall not use the public, parking or common areas in the Shopping Center for business purposes including, but not limited to, solicitation or the distribution or affixing of handbills;

(g) Tenant and its employees shall park their cars only in those portions of the parking areas, if any, designated for that purpose by Landlord; Tenant shall furnish Landlord with its and its employees' automobile license numbers within five (5) days after taking possession of the Premises and Tenant shall thereafter notify Landlord of any changes within five (5) days after such changes occur; if Tenant or its employees fail to park their cars in designated parking areas, then Landlord may charge Tenant One Hundred and 00/100 Dollars (\$100.00) per day for each day or partial day per car parking in any areas, other than those designated, if any, as and for liquidated damages; Tenant hereby authorizes Landlord to tow away from the Shopping Center any of Tenant's cars or cars belonging to Tenant's employees and/or to attach violation stickers or notices to such cars;

(h) Plumbing facilities shall not be used for any other purposes than that for which they are constructed, and no foreign substance of any kind shall be thrown therein;

(i) Tenant shall use, at Tenant's cost, a pest extermination contractor at such intervals as Landlord may require (and in the event that Tenant fails to so exterminate as required by Landlord, Landlord shall have the right to exterminate the Premises at Tenant's sole cost and expense);

(j) Tenant shall not burn trash or garbage in and about the Premises or the Shopping Center;

(k) Tenant shall not place, suffer or permit displays or decorations or shopping carts on the sidewalk in front of the Premises or on or upon the Common Areas of the Shopping Center;

(l) Tenant shall store soiled or dirty linen only in approved fire rating organization containers;

(m) Except as required by applicable Law, Tenant shall not conduct or permit to be conducted any sale by auction upon or from the Premises, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding without the express written permission of Landlord. Except as required by applicable Law, no auction, fire, bankruptcy, "going out of business" or other distress sale of any nature may be conducted on the Premises without the prior written consent of Landlord; and

(n) Tenant shall keep the Premises and all areas in which it conducts business well-lit so as to provide a safe and secure environment for its customers and shall abide by any lighting requirements suggested or required by any appropriate agencies or insurance companies including, without limitation, any banking regulations as to lighting of ATMs.

**EXHIBIT D**  
**INTENTIONALLY DELETED**

D-1

**EXHIBIT E**  
**TENANT ESTOPPEL**

**TENANT ESTOPPEL CERTIFICATE**

BRE RC Alamo Ranch TX LP  
c/o Shopcore Properties, L.P.  
307 Fellowship Road, Suite 116  
Mt. Laurel, New Jersey 08054  
Attention: Legal Department

Re: Lease Agreement (the "Lease") between BRE RC Alamo Ranch TX LP, as landlord ("Landlord"), and LRX San Antonio West Side, LLC, as tenant ("Tenant"), dated \_\_\_\_\_, 2017, amended \_\_\_\_\_ (collectively "Lease") for space described as Unit No. 96 consisting of approximately one thousand four hundred sixty two (1,462) square feet ("Premises") within Alamo Ranch, San Antonio, Texas ("Shopping Center")

Ladies and Gentlemen:

The undersigned is Tenant pursuant to the Lease described above. The undersigned hereby certifies, represents and warrants to Landlord, as of the date hereof, as follows:

1. Attached hereto as Exhibit A is a true, complete and accurate copy of the Lease, and the Lease has not been modified, supplemented or superseded in any manner other than by the documents, if any, which are attached hereto. The Lease constitutes a complete statement of the agreements, covenants, terms and conditions of Landlord and Tenant with respect to the letting of the Premises, and there are no other agreements or understandings between Landlord and Tenant with respect to the Premises, the Lease, the letting or otherwise.

2. The current Lease Term commenced on \_\_\_\_\_, 20\_\_\_\_ and will end on \_\_\_\_\_. Except as described below, Tenant has no:

- (a) options or other rights to renew or extend the Lease Term or to cancel the Lease,
- (b) options or other rights to purchase the Premises of which the Premises is a part or rights of first refusal or first offer in respect thereof, or
- (c) options or other rights of first refusal or first offer in respect of any leasing thereof. (If there are any such options or rights, describe; if there is none write "NONE"):

\_\_\_\_\_  
None of such options or rights, if any, have been exercised, except as specified below (write "NONE" if there is none):

\_\_\_\_\_  
3. The Lease is in full force and effect and legal, valid, binding and enforceable.

4. To the best of Tenant's knowledge, there is no default under the Lease in the payment of rent or any other amounts or in the observance or performance of any other agreement, covenant, term or condition to be observed or performed by Landlord or Tenant, and the undersigned has no knowledge of any state of facts or events which, with the passage of time or the giving of notice, would constitute a default by Landlord or Tenant.

5. Tenant has received no rent or other concessions, except as specified below (write "NONE" if there is none):

\_\_\_\_\_.

6. Tenant has received no rent or other concessions that remain outstanding. The current Rent payable by Tenant to Landlord pursuant to the Lease is as follows:

- a. Minimum Annual Rent in the amount of \$\_\_\_\_\_ per annum;
- b. Percentage Rent payable in accordance with the terms of the Lease, if any;
- c. CAM Charge in the amount of \$\_\_\_\_\_ per annum;
- d. Tax Charge in the amount of \$\_\_\_\_\_ per annum; and
- e. Insurance Charge in the amount of \$\_\_\_\_\_ per annum.

Rent payable by Tenant to Landlord pursuant to the Lease has been paid through the following date(s):

- a. Minimum Annual Rent: \_\_\_\_\_, 20\_\_;
- b. Percentage Rent, if applicable: \_\_\_\_\_, 20\_\_;
- c. CAM Charge: \_\_\_\_\_, 20\_\_;
- d. Tax Charge: \_\_\_\_\_, 20\_\_; and
- e. Insurance Charge: \_\_\_\_\_, 20\_\_.

7. Tenant has accepted possession and is in actual occupancy of the Premises and there are no setoffs, defenses or counterclaims against enforcement of the obligations to be observed or performed under the Lease.

8. There is no work to be performed by Landlord that has not been completed, and there are no defects or deficiencies which entitle Tenant to cancel the Lease or to receive any other benefit or relief.

9. The undersigned has not deposited any funds to secure any of its obligations under the Lease and has not paid any advance rentals or other amounts, except as specified below (write "NONE" if there is none):

\_\_\_\_\_.

10. Tenant has no knowledge of any broker or other intermediary who is entitled to receive any leasing, brokerage or other compensation out of or with respect to rentals or other payments or rights or obligations under the Lease or with respect to the Lease itself.

11. Landlord has not waived the observance or performance by Tenant of any of the agreements, covenants, terms or conditions to be observed or performed by Tenant under the Lease.

12. To the best of Tenant's knowledge, Tenant has never permitted or suffered the generation, treatment, storage or disposal of any hazardous waste or any other hazardous or toxic substances in, on or about the Premises or any adjacent property.

13. The party executing this Tenant Estoppel Certificate on behalf of Tenant is fully authorized and empowered to do so.

The certifications, representations and warranties herein made shall be binding upon the undersigned, its successors and assigns, and shall inure to your benefit and the benefit of your successors and assigns. Tenant acknowledges that Landlord and any other party to which this Tenant Estoppel Certificate is addressed, may rely on this Tenant Estoppel Certificate.

**TENANT:**

**LRX SAN ANTONIO WEST SIDE, LLC,**  
a Michigan limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## **EXHIBIT F USE RESTRICTIONS**

Tenant shall use and occupy the Premises strictly in accordance with the Permitted Use defined in the Lease. Additionally, but without limiting any other provision contained in the Lease, the Premises may not under any circumstance be used or occupied by Tenant or any permitted subtenant, assignee or other occupant, for any of the uses set forth below in this Exhibit. If Tenant violates the provisions of this Exhibit, such shall constitute a material Event of Default under the Lease and Landlord shall be entitled, if it so elects, in addition to any of the other rights or remedies listed for a default in the Lease, to institute and prosecute proceedings in any court of competent jurisdiction to obtain damages, to seek an injunction against the violation of the provisions of this Exhibit and/or to seek the immediate termination of the Lease.

1. Tenant's use and occupancy of the Premises shall be limited by, and is subject to the existing exclusive uses and use restrictions applicable to the Shopping Center as of the Effective Date, which are as follows:

### **SUPERIOR TITLE**

**Operation and Easement Agreement** between W2005 CRM Real Estate Limited Partnership and Target Corporation ("Target"), dated as of May 15, 2007, filed May 15, 2007 Document No. 20070111921, Official Public Records of Bexar County, Texas, as amended by that certain First Amendment to Operation and Easement Agreement effective as of November 5, 2007, entered into by and between W2005 CRM Real Estate Limited Partnership, Target and J.C Penney Properties Inc. ("JC Penney"), filed November 5, 2007, Document No. 20070259703, Official Public Records of Bexar County, Texas and that certain Second Amendment to Operation and Easement Agreement dated March 10, 2008, by and among W2005 CRM Real Estate Limited Partnership, Target Corporation, J.C. Penney Properties, Inc. and Lowe's Home Centers, Inc., being recorded as Document No. 20080048381, Bexar County, Texas Records, and that certain Third Amendment to Operation and Easement Agreement dated September 30, 2010, by and among W2005 CRM Real Estate Limited Partnership, Target Corporation, J.C. Penney Properties, Inc. and Lowe's Home Centers, Inc., being recorded as Document No. 20100176675, Bexar County, Texas Records, (collectively, the "OEA")

5.1.1. The Shopping Center shall be used only for retail sales, offices, Restaurants or other permitted commercial purposes. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to financial institutions, real estate, tax consulting, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics. No more than ten percent (10%) of the total Floor Area on the Developer Tract may be used for Retail Office and/or Business Office purposes; provided, however, that office space used by an Occupant for administrative purposes, and which is not open to the general public, shall not be considered Retail Office or Business Office for the purpose of this limitation.

5.1.2. No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center provided, however, the customary operation of a Lowe's home improvement store shall not violate this restriction.

(B) An operation primarily used as a storage warehouse operation (provided however, for purposes hereof, a "storage warehouse operation" shall not be construed to include a warehouse operation incidental to a retail use or retail operations using a warehouse format) and any assembling, manufacturing, distilling, refining, smelting, agricultural (excluding the retail sale of plants or garden shop items) or mining operation.

(C) Any "second hand" store, "surplus" store, or pawn shop; provided, however, this provision

shall not prohibit a Gamestop, a Blockbuster, a Second Swing Golf or other retail establishment selling second hand merchandise as an incidental portion (not to exceed 15%) of its operations, which Occupant is located at least three hundred (300) feet from the Building Area on the Target Tract and the Building Area on the JC Penney Tract and the Building Area on the Lowe's Parcel.

(D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

(F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

(H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; provided, however, this prohibition shall not prohibit or restrict (i) an Occupant from operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, (ii) the leasing of trucks by an Occupant to its customers for the sole purpose of transporting purchases from such Occupant's premises to the customer's home, storage or use destination and (iii) one (1) retail car rental establishment, provided that such retail car rental establishment contains no more than 2,500 square feet of Floor Area, is located at least three hundred (300) feet from the Building Area on the Target Tract and the Building Area on the JC Penney Tract and the Building Area on the Lowe's Parcel" and does not have any designated or reserved parking spots.

(I) Any bowling alley or skating rink;

(J) Any movie theater or live performance theater; provided, however, this provision shall not prohibit such a use for demonstration purposes incidental to an Occupant's primary use as a consumer electronics store such as Best Buy.

(K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

(L) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition (i) shall not be applicable to pet shops and (ii) shall not prohibit the operation of a single PetsHotel in connection with a PetSmart and/or Petco located at least four hundred (400) feet from the Building Area on the Target Tract and the Building Area on the JC Penney Tract and the Building Area on the Lowe's Parcel (the "Permitted PetsHotel"). Notwithstanding the foregoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited other than in connection with the operation of the Permitted PetsHotel; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than thirty-five percent (35%) of the Floor Area of the pet shop.

(M) Any mortuary or funeral home.

(N) Any establishment selling or exhibiting "obscene" material, provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed "obscene".

(O) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.

(P) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on premises consumption exceeds forty percent (40%) of the gross revenues of such business.

(Q) Any massage parlor or similar establishment.

(R) No health spa, yoga studio, fitness center or workout facility exceeding six thousand five hundred (6,500) square feet of Floor Area, and in no event shall any such operation on the Developer Tract be located within three hundred (300) feet of the Target Tract or three hundred (300) feet of the Building Area on the JC Penney Tract, or three hundred (300) feet of the Building Area on the Lowe's Parcel.

(S) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; provided, however, this prohibition shall not prohibit (i) Chuck E. Cheese, or another similar family-themed Restaurant that is open and operating as a Restaurant, from having an amusement or video arcade, children's play center, pinball, computer and/or other gameroom and other physical play activities for children, kiddie rides and games within its leased premises, (ii) a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes or (iii) an Entertainment Venue (as defined below) located on Phase Two. For the purposes of this OEA, an "Entertainment Venue" shall be a first-class family entertainment center that has amusement and/or video arcade machines, pool or billiard tables and/or bowling lanes incidental to its Restaurant operation, such as Main Event, ESPN Zone or Dave & Buster's, as same are currently operated.

(T) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (i) on site employee training by an Occupant incidental to the conduct of its business at the Shopping Center and (ii) one (1) educational facility such as Sylvan or Huntington Learning Centers or one (1) martial arts studio, of not more than three thousand (3,000) square feet of Floor Area.

(U) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

(V) Unless approved by the Approving Party for the Target Tract, which approval may be given (or withheld) in the sole and absolute discretion of such Approving Party and shall not be subject to the "deemed approval" provisions of 6.5.2., no retail Occupant of the Shopping Center (other than of the Target Tract, the JC Penney Tract, and/or the Lowe's Parcel) shall occupy more than 80,000 square feet of Floor Area; provided, however, this provision shall not be applicable to Costco, Lowe's, J.C. Penney, Regal Cinema, Belk or Garden Ridge.

(W) Governmental offices; provided, however, a post office is not prohibited by this provision.

(X) Telephone call center.

5.1.4. No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area;

5.1.5.

(A) No Restaurant shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract, the Building Area located on the JC Penney Tract, and/or the Building Area located on the Lowe's Parcel, provided however, (i) a Restaurant operating as an incidental use to an Occupant with greater than 10,000 square feet of Floor Area shall not be deemed a violation of the foregoing and (ii) this provision shall not prohibit one or more Restaurants on Outparcels 1, 2 and 3.

(B) No store, department or operation of any size selling or offering for sale any pharmaceutical drugs requiring the services of a licensed pharmacist shall be permitted.

(C) No pet shop shall be located thereon within (i) four hundred (400) feet of the Building Area located on the Target Tract, (ii) three hundred (300) feet of the Building Area located on the JC Penney Tract, and/or (iii) four hundred (400) feet of the Building Area located on the Lowe's Parcel.

(D) No gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel shall be permitted; provided, however, this provision shall not prohibit (i) one (1) gas station or other facility that dispenses gasoline, diesel or other petroleum products as fuel located on the portions of the Developer Tract designated as Outparcel 1, Outparcel 5 or Outparcel 6 on the Site Plan.

(E) No automotive service/repair station or any other facility that both sells and installs any lubricants, tires, batteries, transmissions, brake shoes or any other similar vehicle accessories shall be permitted; provided, however, one (1) of the following shall be permitted on Phase Two: an automotive service station (such as Goodyear, Firestone, NTB) but not a automobile lubrication operation (such as Jiffy Lube or Q Lube) so long as the following conditions are met: (1) all outdoor storage of personal property or inventory, all refuse containers and areas, and the rear of such facilities are screened from public view in a manner approved by the Approving Parties for the Lowe's Parcel and the JC Penney Tract and the service bays may not face the Buildings on the Lowe's Parcel or the JC Penney Tract, (2)

no portion of the Lowe's Parcel shall be utilized for parking of customer or employee vehicles related to the operation of such facility, (3) any such business shall be operated by a national or regional chain of facilities having at least ten (10) other locations under a national or regional trade name, and (4) any such facility must comply with all local, state and federal storage and disposal regulations rules, law and ordinance for petroleum products or petrochemicals, batteries and tires and have in place and functioning adequate facilities and programs for monitoring and preventing any release of petroleum products or chemicals into the environment.

(F) No liquor store offering the sale of alcoholic beverages for off-premises consumption shall be permitted within three hundred (300) feet of the Building Area on the Target Tract, within three hundred (300) feet of the Building Area on the JC Penney Tract, and/or within three hundred (300) feet of the Building Area on the Lowe's Parcel, nor shall any liquor store offering the sale of alcoholic beverages for off-premises consumption exceeding 5,000 square feet of Floor Area be permitted, provided, however, the foregoing shall not prohibit the operation of a Cost Plus.

(G) No grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats or delicatessen products, except two Occupants of the Developer Tract may use up to 2,000 square feet of Floor Area each for the retail sale and display of such products. One-half of the aisle space adjacent to any shelving or display case used for the retail display of such products shall be included in calculating Floor Area for purposes of this 5.1.5.(G). Restaurants shall not be prohibited on the basis of this 5.1.5.(G).

(H) No health spa (provided that those typical services offered in an Ulta cosmetics store as its typical stores are currently operated shall not be considered a health spa) within the Developer Tract shall be located within 1000 feet of the Building located on the JC Penney Tract.

(I) No medical clinic or office on Outparcels 17 and/or 18 (provided that such restriction shall not prohibit: (a) dental, chiropractic, osteopathic, ophthalmologic, optician or cardiac care clinics or offices; and (b) one (1) general family practice clinic (but not a specialized clinic such as a family planning clinic, lasik surgery clinic, cosmetic surgery clinic, immunology clinic, gynecology/obstetrics clinic, or indigent services clinic (other than those specific uses allowed under clause (a) above)) of not more than 5,000 square feet of Floor Area and provided that the Tract on which the clinic is located provides at least ten (10) parking spaces for each 1,000 square feet of Floor Area for the clinic.

5.1.10. No portion of the Developer Tract (except for the Lowe's Parcel) may be used for any of the following purposes:

- (a) A hardware store or center containing more than 5,000 square feet of Floor Area.
- (b) An appliance and/or lighting store or center containing more than 5,000 square feet of Floor Area and/or other stores or centers similar to those operated by or as a Conn's (provided, however, that the foregoing restriction does not apply to any Best Buy store);
- (c) A nursery and/or lawn and garden store or center containing more than 3,000 square feet of Floor Area (including any outdoor areas).
- (d) A paint, wall paper, tile, flooring, and/or carpeting store or center containing more than 4,000 square feet of Floor Area.
- (e) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware, Great Indoors, Sutherlands, Scotty's and/or Orchard Supply.

**Declaration of Restrictions** between W2005 CRM Real Estate Limited Partnership and Lowe's Home Centers, Inc. dated September 29, 2010, Book 14664 Page 1, Document No. 20100175996

1. Use Restrictions. No tenant or occupant executing a lease or occupancy agreement after the Effective Date may use the Developer Parcel for the following purposes:

- (a) hardware store or center.
- (b) An appliance store or center, and/or lighting store or center (provided, however, that the foregoing restriction does not apply to any Best Buy store or Fry's Electronics store or similar consumer electronic store).
- (c) A nursery and/or lawn and garden store or center.

(d) A paint store or center, wall paper store or center, tile store or center, flooring store or center, carpeting store or center, and/or home decor store or center (for the purposes of this Declaration, a "home decor" store or center is a store selling lighting and fans, rugs and floor treatments, household hardware and window treatments, provided that this shall not prohibit the operation of operators whose primary use is furniture, including, but not limited to, Pier One; West Elm; The Dump; The Room Store; Robb & Stuckey; Ethan Allen; Haverly's; Thomasville; and IKEA, as such retail facilities are currently being operated and merchandised, or the following operators: Cost Plus World Market; Bed, Bath and Beyond; T J Maxx/Home Goods; Tuesday Morning; Big Lois; Kirkland's; Anna's Linens; Crate and Barrel; Pottery Barn; Anthropologie; Christmas Tree Shops; Container Store; and Sur la Table. as such retail facilities are currently being operated and merchandised, and similar local operators.

(e) A store or center selling Kenmore branded goods or Craftsman branded goods.

(f) A retail and/or warehouse home improvement center; lumber yard; building materials supply center; home improvement service center; and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Pacific Sales, HH Gregg, Conn's, Great Indoors, Sutherlands, Scotty's and Orchard Supply.

(g) A store operating under the Sears name which directly competes with Lowe's, such restriction including, without limitation, Sears Hardware and Sears Appliance Showroom, but excluding Sears Tire & Automotive and Sears stores whose primary purpose is selling apparel.

**Declaration of Covenants, Conditions, Restrictions and Easements** between W2005 CRM Real Estate Limited Partnership and Inland Western San Antonio Alamo Ranch Limited Partnership, dated December 2, 2011, Document No. 20110216382, Official Public Records of Bexar County, Texas, (the "Declaration")

(c) No Outparcel Owner shall lease its Outparcel to or permit any tenant or occupant of its Outparcel to operate as (i) Radio Shack, (ii) a cell phone store, or (iii) a used video game store.

(d) No Outparcel Owner shall permit any retail business on its Outparcel to operate as a consumer electronics store such as Fry's Electronics, Circuit City, Conn's, or any other consumer electronics store in excess of 3,000 square feet.

(e) No Outparcel Owner shall permit any portion of its Outparcel to be used for entertainment facility, health club (except as otherwise allowed within the list of Prohibited Uses) and/or grocery store.

7. No Outparcel Owner shall permit any portion of its Outparcel to be used for any Prohibited Uses.

#### Exhibit C - Prohibited Use

No Outparcel Owner shall permit its Outparcel to be used for the following purposes:

1. A facility, for any use which is illegal or would reasonably be determined to cause a threat of imminent harm to persons or property, constitutes a public or private nuisance or emits an obnoxious odor, noise, or sound which can be heard or smelled (in either event to more than a de minimus extent) outside of any building in the Shopping Center.

2. Any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors located on such Outparcel or in any building in the Shopping Center).

3. Establishment providing nude or topless entertainment or waitstaff, or any establishment selling or exhibiting pornographic materials (including) without limitation, adult books or videos). Materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided) however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or pornographic hereunder.

4. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation.

5. Any pawn shop, "second hand" store, schlock store, or "surplus" store (however, this prohibition shall not apply to the sale of used merchandise by tenants such as Second Swing Golf, Play It Again Sports and other national first class operations).

6. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation

(but this provision shall not restrict the absolute freedom of an occupant to determine its own selling prices nor shall it preclude the conduct of any seasonal sales, promotional or clearance sales or legitimate going out of business sales in compliance with applicable laws).

7. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Outparcels are located.

8. Any automobile truck, trailer, recreational vehicle, mobile home or boat sales, leasing, display, service and/or repair operation; provided, however, this prohibition shall not prohibit or restrict a tenant/occupant incidental to its primary use, from operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, or the leasing of trucks by the hour by any tenant occupant to its customers for the sole purpose of transporting purchases from such tenant/occupant's premises to the customer's home, storage, or use destination.

9. Any bowling alley, skating rink or roller rink.

10. Any mortuary or funeral home.

11. Any veterinary hospital or animal raising or boarding facilities; provided, however, PetSmart and/or Petco shall be permitted. However, no designated animal excrement areas shall be permitted on any Outparcel.

12. Any bar, pub, tavern or night club.

13. Any flea market, amusement, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games but excluding one (1) daycare facility for children, provided it is located within Outparcels 1-7), pinball, computer or other game rooms, pool or billiard hall, dance or music hall, disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation (except that this prohibition shall not prohibit Chuck E Cheese or another similar fast food establishment, so long as it is open and operating as a restaurant from having an amusement or video arcade, children's playcenter) pinball, computer and/or other gameroom and other physical play activities for children) kiddie rides and games as part of its leased premises on an Outparcel to the extent permitted under its lease.

14. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, or any day care center; provided however, this prohibition shall not be applicable to any of the following, to the extent the same are incidental to an occupants business on an Outparcel: (a) any onsite employee training by an occupant, or (b) any "how to" training for customers.

15. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor: table games such as blackjack or poker: slot machines, video poker/blackjack keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant. Notwithstanding the above, this paragraph is not intended to prohibit the installation and use of video game machines by the occupants, subject however to the provisions of Paragraph 13 of this Exhibit C above.

16. Any carnival, amusement park or circus.

17. Any banquet hall, auditorium) or other place of public assembly.

18. Any house of worship.

19. Any liquor store (provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any occupant ancillary to its primary use of the premises, the sale of beer, wine or alcohol for on-premises consumption at any restaurant or bar permitted hereunder, or the sale of beer, wine or alcohol by Cost Plus World Market.

20. Any venue for in-person, on-site sporting events (provided, however, that the foregoing shall not prohibit the demonstration of spotting goods for sale).

21. Any Hazardous Substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all Hazardous Substances Laws.

22. A theater of any kind, excluding demonstration purposes incidental to primary use as a consumer electronics store such as Best Buy.

23. Any outdoor meetings, events or promotional activities.
24. Any shooting gallery.
25. Any residential use.
26. Any health club, gymnasium, exercise or dance studio provided) however a health club, gymnasium, exercise or dance studio with less than 3,000 square feet shall be permitted.

**Supplemental Agreement** between W2005 CRM Real Estate Limited Partnership and RDF Loop 1604 dated April 24, 2009 Document No. 20090073562, Official Public Records of Bexar County, Texas, (Pertaining to Logan's Roadhouse Outparcel): "Outback", "Roadhouse Grille", "Texas Roadhouse", "Longhorn", "Lonestar", "Ryan's", "Colton's", "Western Sizzlin", "Golden Corral" or an establishment, in excess of 3,500 square feet, deriving thirty five (35%) or more of its store revenues (determined on an annualized basis) from grilled red meats.

**Supplemental Agreement** between W2005 CRM Real Estate Limited Partnership and MJKL Enterprises Texas, LLC dated June 26, 2009 Document No. 20090119254, Official Public Records of Bexar County, Texas, (Pertaining to Carl's Jr Outparcel): Burger King, Whataburger, McDonald's, In & Out Burger or Sonic;

**Supplemental Agreement** between W2005 CRM Real Estate Limited Partnership and AZ Alamo Ranch Development, LP dated October 30, 2009 Document No. 20090214068, Official Public Records of Bexar County, Texas, (Pertaining to Red Robin Outparcel): Johnny Rockets or Fuddruckers

**Supplemental Agreement** between W2005 CRM Real Estate Limited Partnership and SA Culebra BWW dated November 3, 2009 Document No. 20090216000, Official Public Records of Bexar County, Texas, (Pertaining to Buffalo Wild Wings Outparcel): Wing Stop, Wings 'N More, Wings n Things, Buffalo Wings & Rings, Wings To Go

**Supplemental Agreement** between W2005 CRM Real Estate Limited Partnership and Inland Western San Antonio Alamo Ranch Limited Partnership dated December 2, 2011, Document No. 20110216381, Official Public Records of Bexar County, Texas (Pertaining to PetSmart Outparcel):

1. No Outparcel Owner shall use its Outparcel in a manner or take action which shall be in violation of or cause a violation of the restrictions set forth on Exhibit B.

2. No Outparcel Owner shall do any of the following: (i) lease any space in such owner's Outparcel to a direct competitor of PetSmart, Inc. such as Petco, Petland or any other similar operation, or (ii) any tenant or occupant that uses a primary portion of its premises for an operation similar to the retail sale of (a) pets (included but not limited to fish, birds, reptiles, dogs, cats and other small mammals), (b) pet food, pet accessories and other products relating to pets and animals, including equestrian products and apparel related thereto, (c) services related to pets and animals, such as grooming, boarding, including overnight boarding in connection with the PetsHotel operations, animal training and obedience classes, pet day care, pet adoption and veterinary services, (d) products relating to nature and the environment, and (e) educational products and services relating to any of the foregoing and office and storage uses incidental to the foregoing.

#### Exhibit B/D to Supplemental Agreements

(Listed as Exhibit D in the Supplemental Agreements Dated 4/24/2009, 6/26/2009, 10/30/2009, and 11/3/2009 and listed as Exhibit B in the Supplemental Agreement Dated 12/2/2011)

#### Restrictions

##### 1. OEA

a. Any restriction, covenant or agreement contained in that certain Operation and Easement Agreement (the "Original OEA") dated May 15, 2007, filed for record in Volume 12868, Page 2349 of the Real Property Records of Bexar County, Texas, as amended by that certain First Amendment to Operation and Easement Agreement dated November 1, 2007 by and among Developer, Target

Corporation ("Target") and J.C. Penney Properties, Inc. ("Penney's") filed for record as Document Number 20070259703 of the Real Property Records of Bexar County, Texas, and that certain Second Amendment to Operation and Basement Agreement dated March 10, 2008, by and among Developer, Target, Penney's and Lowe's Home Centers, Inc. ("Lowe's") filed for record as Document Number 200SQ048381 of the Real Property Records of Bexar County, Texas, and that certain Third Amendment to Operation and Easement Agreement dated September 30, 2010, by and among Developer, Target, Penney's and Lowe's and filed for record as Document Number 20100176875 of the Real Property Records of Bexar County, Texas (the Original OEA, as so amended, the "OEA").

b. Outparcel Owner shall not use or authorize use of any portion of the Outparcel in a manner that is inconsistent with the operation of a business within a first class retail shopping center. Without limiting the generality of the foregoing, Outparcel Owner shall not be permitted to use the Outparcel for any of the following: (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center; (ii) an operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation; (iii) any "second hand" store, "surplus" store, or pawn shop; (iv) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (v) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (vii) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located; (viii) any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; (ix) any bowling alley or skating rink; (x) any movie theater or live performance theater; (xi) any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any veterinary hospital or animal raising or boarding facilities; (xiii) any mortuary or funeral home; (xiv) any establishment selling or exhibiting "obscene" material; (xv) any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xvi) any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business; (xvii) any massage parlor or similar establishment; (xviii) any health spa, fitness center or workout facility; (xix) any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; (xx) any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by a tenant incidental to the conduct of its business within the Outparcel; (xxi) any gambling facility or operation, including but not limited to: off-track or sports bating parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall (notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the tenant); (xxii) any governmental offices; (xxiii) any telephone call centers; (xxiv) any restaurant located within three hundred (300) feet of the Building Area (as defined in the OEA) located on the Target Parcel, the Building Area located on the J.C. Penney Parcel and/or the Building Area located on the Lowe's Parcel; (xxv) any store, department or operation of any size selling or offering for sale any pharmaceutical drugs requiring the services of a licensed pharmacist; (xxvi) any pet shop located within (a) four hundred (400) feet of the Building Area located on the Target Parcel, (b) three hundred (300) feet of the Building Area located on the J.C. Penney Parcel, and/or (c) four hundred (400) feet of the Building Area located on the Lowe's Parcel; (xxvii) any gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel; (xxviii) any automotive service/repair station or any other facility that both sells and installs any lubricants, tires, batteries, transmissions, brake shoes or any other similar vehicle accessories; (xxix) any liquor store offering the sale of alcoholic beverages for off-premises consumption located within three hundred (300) feet of the Building Area located on the Target Parcel, within three hundred (300) feet of the Building Area located on the J.C. Penney Parcel, and/or within



three hundred (300) feet of the Building Area located on the Lowe's Parcel, nor shall any liquor store offering the sale of alcoholic beverages for off-premises consumption exceeding 5,000 square feet of floor area be permitted; (xxx) any grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats or delicatessen products; (xxxi) any health spa located within 1000 feet of the J.C. Penney Parcel; (xxxii) any hardware store or center containing more than 5,000 square feet of floor area; (xxxiii) any appliance and/or lighting store or center containing more than 5,000 square feet of floor area and/or other stores or centers similar to those operated by or as a Conn's (provided, however, that the foregoing restriction does not apply to any Best Buy store); (xxxiv) any nursery and/or lawn and garden store or center containing more than 3,000 square feet of floor area (including any outdoor areas); (xxxv) any paint, wall paper, tile, flooring, and/or carpeting store or center containing more than 4,000 square feet of floor area; (xxxvi) any retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware, Great Indoors, Sutherlands, Scotty's and/or Orchard Supply; (xxxvii) any outdoor circus, carnival or amusement park or other entertainment facility; (xxxviii) any outdoor meetings; (xxxix) a shooting gallery; (xl) an auditorium, meeting hall, ballroom or other place of assembly; (xli) an unemployment agency, service or commission; (xlii) a cell phone store.

2. Best Buy

a. Any restriction, covenant or agreement contained in that certain Memorandum of Lease Agreement between W2005 CRM REAL ESTATE LIMITED PARTNERSHIP and BEST BUY STORES, L.P. dated July 9, 2008, and recorded on July 16, 2008, as Document #20080151784, in Bexar County, Texas.

3. Chick-Fil-A

a. (i) a facility for any use which is illegal or would reasonably be determined to cause a threat of imminent harm to persons or property, constitutes a public or private nuisance or emits an obnoxious odor, noise, or sound which can be heard or smelled (in either event to more than a de minimus extent) outside of any building in the Shopping Center, it being understood that Tenant or another tenant or occupant shall have the right to operate a mobile installation bay incidental to Tenant's business and that no reasonable sounds and/or noises arising **from** such use shall be deemed obnoxious; (ii) any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of or in any building in the Shopping Center); (iii) establishment providing nude or topless entertainment or waitstaff, or any establishment selling or exhibiting pornographic materials (including, without limitation, adult books or videos). Materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or pornographic hereunder; (iv) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation: provided, however, one (1) mini storage facility is permitted on Tract P10 as depicted on Exhibit B attached to the subject lease; (v) any pawn shop, "second-hand" store, schlock store, or "surplus" store (however. Landlord shall be allowed to sell or lease space within the Shopping Center, for use as an establishment that sells used merchandise, to tenants or occupants such as Second Swing Golf, Play It Again Sports, Blockbuster and other national first class operations); (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an occupant to determine its own selling prices nor shall it preclude the conduct of any seasonal sales, promotional or clearance sales or legitimate going out of business sales in compliance with applicable laws); (vii) any central laundry, dry cleaning plant, or laundromat; provided\* however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located; (viii) any automobile, truck, trailer, recreational vehicle, mobile home or boat sales, leasing, display, service and/or repair operation; (ix) any tire center, oil change service, gas

station, tire center or carwash; (x) any bowling alley, skating rink or roller rink; (xi) any mortuary or funeral home; (xii) any veterinary hospital or animal raising or boarding facilities; (xiii) any bar, pub, tavern or night club; (xiv) any flea market, amusement, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games), pinball, computer or other gamerooms, pool or billiard hall, dance or music hall, disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation (except that this prohibition shall not prohibit a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes; (xv) any training or educational facility, including but not limited to; beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, or any day care center; provided however, this prohibition shall not be applicable to the extent incidental to an occupant's business at the Shopping Center: (a) any onsite employee training by an occupant, or (b) any "how to" training for customers; (xvi) any gambling facility or operation, including but not limited to; off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/black-jack keno machines or similar devices; or bingo hall; (xvii) any carnival, amusement park or circus; (xviii) any banquet hall, auditorium, or other place of public assembly, (xix) any house of worship; (xx) any liquor store (provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any occupant ancillary to its primary use of the premises, the sale of beer, wine or alcohol for on-premises consumption at any restaurant or bar permitted hereunder); (xxi) any venue for in-person, on-site sporting events (provided, however, that the foregoing shall not prohibit the demonstration of sporting goods for sale); (xxii) any hazardous substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all hazardous substances laws; (xxiii) a theater of any kind, excluding demonstration purposes incidental to primary use as a consumer electronics store such as Best Buy, and excluding a theater located on Tract P10 as depicted on Exhibit B of the subject lease; (xxiv) any shooting gallery; (xxv) any residential use, except on Tract P10 as depicted on Exhibit B of the subject lease; (xxvi) any health club, gymnasium, exercise or dance studio.

#### 4. Dick's Sporting Goods

a. Any restriction, covenant or agreement contained in that certain Memorandum of Lease Agreement between W200S CRM REAL ESTATE LIMITED PARTNERSHIP and DICK'S SPORTING GOODS, INC. dated July 29, 2007, and recorded on August 3, 2007, as Document #20070183475, in Bexar County, Texas.

b. (i) for any non-retail purposes (however (A) any space in Tract P-10 may be used for office space, and (B) repairs, alterations, storage and offices incidental to retailing shall be permitted, and (C) retail offices which are defined to be offices which provide services directly to consumers, including, but not limited to banks, small loan offices, insurance agency, real estate company, title company, or medical or dental office or similar professional offices shall be permitted in not more than ten percent (10%) of the leasable floor area of the leased premises); (ii) other than on Tract P-10, for any entertainment purposes such as a bowling alley, skating rink, bar (unless such bar is an incidental part of a restaurant whose reasonably projected annual gross revenue from the sale of alcoholic beverages for on-premises consumption does not exceed forty percent (40%)), night club, discotheque, amusement gallery, cinema, poolroom, health club, massage parlor, sporting event, sports or game facility or off-track betting club; (iii) for any establishment which sells or displays pornographic materials; it being understood that materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or pornographic hereunder; (iv) for any establishment which sells or displays used merchandise or second hand goods; provided however that this provision shall not prohibit a Blockbuster or Gamestop, or other retail establishment which is typically found in first-class shopping centers, from selling second hand merchandise as an incidental portion (not to exceed 15%) of its operations, it being understood that operations such as Good Will, Army-Navy Surplus and Salvation Army type stores are specifically prohibited; or (v) for a restaurant or establishment selling food prepared on premises for consumption on or off premises located within two hundred fifty (250) lineal feet of the Demised Premises (however, a restaurant shall be permitted on an out-parcel provided there is self-contained parking with at

least ten (10) parking spaces for so-called standard size American automobiles, and driveways and footways incidental thereto, for each one thousand (1,000) square feet of leasable floor area).

5. Hallmark

a. Any business emitting or having the potential to emit strong odors and/or substances, including, but not limited to, pet stores, restaurants, and hair, beauty and nail salons, Landlord warrants and agrees that it shall use commercially reasonable efforts to prevent said odors and/or substances from penetrating the walls of the Premises.

6. Lane Bryant

a. Any (i) pawn shop, flea market or junk yard, (ii) gun sales or rental shop, (iii) gambling, off-track betting, electronic gaming or bingo parlor, (iv) psychic, tarot card reading or similar services, (v) bailbondsman, (vi) sale or distribution of drug supplies or paraphernalia (except as sold by a licensed pharmacist), including, but not limited to, roach clips; water pipes, bongs, coke spoons, cigarette papers or hypodermic syringes, (vii) tattoo parlor, massage parlors, or exotic or erotic dance clubs, (viii) sale or distribution of any pornographic or "adult" materials including, but not limited to, "adult" books, videos, or recordings of any kind, or (ix) any use which constitutes a public or private nuisance or produces objectionable noise or vibration. In addition, subject to the rights of any current tenant which is or will be operating a store in the Shopping Center under a written lease existing on the date of execution of this Lease whereby pursuant to the terms of such lease such tenant has the right to operate its store for any lawful use, Landlord shall not permit any leasable space immediately adjacent to the Leased Premises to be occupied by (w) a nail salon, (x) a dry cleaning processing plant, (y) a pet store or (z) a restaurant or other establishment engaged primarily in the preparation of food for consumption on or off premises, unless the adjoining walls are constructed in such a fashion as to reasonably prevent odors and vermin from entering the Leased Premises through such adjoining walls.

7. Marshall's

a. Any restriction, covenant or agreement contained in that certain Memorandum of Lease Agreement between W2005 CRM REAL ESTATE LIMITED PARTNERSHIP and MARMAXX OPERATING CORP. dated October 10, 2007, and recorded on November 5, 2007, as Document #20070259705, in Bexar County, Texas.

8. Maurices

a. In no event shall a restaurant or a store selling pets, or pet supplies, be located immediately adjacent to the Premises. No more than 10,000 square feet of floor area in the Shopping Center (excluding the outparcels) may be used for a "Business Office". "Business Office" shall mean an office which does not provide services directly to consumers.

9. Michael's

a. Any restriction, covenant or agreement contained in that certain Memorandum of Lease Agreement between W2005 CRM REAL ESTATE LIMITED PARTNERSHIP and MICHAEL'S STORES, INC. dated January 31, 2008, and recorded on March 10, 2008, as Document #20080048872, in Bexar County, Texas.

b. (i) funeral establishment; (ii) automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities and quick-lube and tire and battery facilities, except that Outparcels 18 and 19 (shown on Exhibit B to the subject lease) shall be permitted to have a full auto service shop such as Firestone, Goodyear, NTB, but not a quick-lube facility such as Jiffy Lube; (iii) auction or bankruptcy sale or fire sale; (iv) pawn shop; (v) outdoor circus, carnival or amusement park, or other entertainment facility; (vi) outdoor meetings; (vii) bowling alley; (viii) primarily pool or billiard establishment, (ix) shooting gallery; (x) off-track betting (provided that state sponsored lottery tickets shall not be prohibited); (xi) an operation primarily used as a storage warehouse operation (provided, however, for purposes hereof, a "storage warehouse operation" shall not be construed to include a warehouse operation incidental to a retail use or retail operations using a warehouse format) and any assembling, manufacturing, distilling, refining, smelting, agricultural (excluding the retail sale of plants or garden shop items) or mining operation; (xii) adult bookstore or facility selling or displaying pornographic books, literature, or videos (materials shall be considered "adult" or "pornographic" for such purpose if the same

are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality) except this (xii) shall not be construed to prohibit the incidental sale of adult literature or videos by a reputable, national or regional bookstore or video store offering a wide variety of literature, such as Barnes & Noble, Borders, Books A Million or Best Buy; (xiii) massage parlor; (xiv) any residential use, including but not limited to living quarters, sleeping apartments or lodging rooms; (xv) theater; (xvi) auditorium, meeting hall, ballroom, day care facility, school or other place of public assembly; provided, however, the foregoing shall not be applicable to on-site employee or other training by Tenant incidental to the conduct of its business on the Premises, nor shall it be applicable to craft or other types of classes incidental to retail use; (xvii) government office, unemployment agency, service or commission; (xviii) gymnasium, health club, exercise or dance studio; (xix) dance hall; (xx) cocktail lounge, bar, disco or night club; (xxi) bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business; (xxii) video game or amusement arcade, except as an incidental part of another primary business; (xxiii) skating or roller rink; (xxiv) car wash, car repair or car rental agency; (xxv) second hand store, close-out store, dollar store, auction house, or flea market (other than GameStop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations); (xxvi) restaurant or food use, except that restaurants shall be permitted in the Shopping Center, except for in the area labeled Pylon Sign Tenants (as identified in the subject lease) and provided that restaurants on any outparcels include self-contained parking areas necessary to satisfy (a) the parking ratio required by the subject lease, or (b) law, whichever is greater; (xxvii) non-retail use; (xxviii) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Shopping Center; (xxix) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (xxx) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building; (xxxi) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located; (xxii) any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xxiii) telephone call center; (xxxiv) a hardware store or center; (xxxv) an appliance and/or lighting store or center; (xxxv) a nursery and/or lawn and garden store or center; (xxxvi) a paint, wall paper, tile, flooring, and/or carpeting store or center, or (xxxviii) a retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware, Great Indoors, Sutherlands, Scotty's and/or Orchard Supply.

#### 10. OfficeMax

a. No portion of the Shopping Center (other than an Outparcel) located within two hundred fifty linear feet (250') of the demising walls of the Demised Premises shall be used as a restaurant (except that an incidental restaurant use such as a cafe in a junior anchor within said 250' may be permitted), or for office purposes (such as medical or office uses, not ancillary to retail use), or for any use that requires parking in excess of five (5) spaces for each one thousand (1,000) square feet of leasable floor area, or for any use prohibited under subparagraph (c) immediately below.

b. No portion of the Shopping Center shall be occupied or used, directly or indirectly, for a nightclub or other entertainment facility; bowling alley; arcade or amusement center (except that video games may be permitted in a Chuck E. Cheese type or other similar fast food restaurant so long as it is open and operating as a restaurant, and further provided that this restriction shall not prohibit a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes); theater or movie theater; fitness center, health club or spa; skating rink; billiard room; massage parlor; adult book store or any other purpose which includes the display or sale of pornographic or obscene materials (provided, however, that said restriction does not prohibit the incidental sale of the type of adult magazines and/or videos sold by a reputable national or regional book and/or video retailer such as Barnes & Noble or Best Buy; off track betting facility; flea market; second hand store (except that

a store such as Second Swing Golf, Play It Again Sports, or other national first class operation may be permitted); pawn shop; blood bank; goodwill store; bar (unless such bar is an incidental part of a restaurant and the sale of liquor accounts for forty percent (40%) or less of such restaurant's gross sales); liquor store or store selling alcoholic beverages for off premises consumption; tavern; pub; ballroom; dance hall; day care center; discotheque; beauty school; barber college; offices; place of instruction; reading room or any operation catering primarily to students or trainees rather than to customers (except on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center).

11. PetSmart

a. Any restriction, covenant or agreement contained in that certain Memorandum of Lease Agreement between W2005 CRM REAL ESTATE LIMITED PARTNERSHIP and PETSMART, INC. dated April 25, 2007, and recorded on June 1, 2007, as Document #20070125889, in Bexar County, Texas, as amended by First Amendment to Memorandum of Lease between W2005 CRM REAL ESTATE LIMITED PARTNERSHIP and PETSMART, INC. dated December 27, 2007, and recorded on December 31, 2007, as Document #20070298041, in Bexar County, Texas.

12. Ross

a. Office (except as incidental to a retail use), residential purposes or as a theater, auditorium, meeting hall, school (except that this "school restriction" shall not be deemed to prohibit retailers from conducting occasional informational classes instructing customers as to the use of products being sold by such retailers) or other place of public assembly, "flea market," gymnasium, veterinary services (including vaccination clinics and overnight stay pet facilities), health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club (except as an ancillary operation to a primary restaurant use), adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under the age of majority in the state in which the Store is located because such inventory explicitly deals with or depicts human sexuality) provided that the foregoing restriction shall not prohibit the operation of a recognized full line bookstore such as Barnes & Noble, Borders, Books-a-Million or similar national or regional vendor of published material. No ATM or similar machine shall be permitted in the Shopping Center within fifty (50) feet of the front and side perimeter walls of the Store (except that an ATM fully located within another retail tenant's premises shall be permitted). Further, no full service, sit-down or fast food restaurant or other "High Intensity Parking User" (as hereinafter defined) shall be permitted in the Shopping Center within four hundred (400) feet of the front and side perimeter walls of the Store. A "High Intensity Parking User" is a tenant or occupant whose use requires more than five and one-half (5.5) parking spaces per one thousand (1,000) square feet of Leasable Floor Area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement except for a restaurant located inside an Anchor Tenant space and operated as an incidental part of the business.

b. (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center; (ii) an operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation; (iii) any "second hand" store, "surplus" store, or pawn shop (other than Gamsestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations); (iv) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (v) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (vii) any central laundry, dry cleaning plant or Laundromat; provided however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located; (viii) any automobile, truck, trailer or recreational vehicle sales, leasing display or body shop repair operation; (ix) any bowling alley or skating rink; (x) any movie theater or live performance theater; (xi) any hotel, motel, short of long

term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any veterinary hospital or animal raising or boarding facilities; (xiii) any mortuary or funeral home; (xiv) any establishment selling or exhibiting "obscene" material; (xv) any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xvi) any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business; (xvii) any health spa, fitness center or workout facility; (xviii) any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; (xix) any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center; (xxx) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall; (xxxi) any outdoor circus, carnival or amusement park or other entertainment facility; (xxxii) any outdoor meetings; (xxxiii) a shooting gallery; (xxxiv) an auditorium, meeting hall, ballroom or other place of assembly; (xxxv) an unemployment agency, service or commission.

### 13. T-Mobile

a. (i) any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center (ii) an operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation; (iii) any "second hand" store, "surplus" store, or pawn shop (other than Gamestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations); (iv) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (v) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (vii) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located; (viii) any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; (ix) any bowling alley or skating rink; (x) any movie theater or live performance theater; (xi) any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any veterinary hospital or animal raising or boarding facilities; (xiii) any mortuary or funeral home; (xiv) any establishment selling or exhibiting "obscene" material; (xv) any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xvi) any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on premises consumption exceeds forty percent (40%) of the gross revenues of such business; (xvii) any health spa, fitness center or workout facility; (xviii) any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; (xix) any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on site employee training by an occupant incidental to the conduct of its business at the Shopping Center; (xx) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall; (xxi) any outdoor circus, carnival or amusement park or other entertainment facility; (xxii) any outdoor meetings; (xxiii) a shooting gallery; (xxiv) an auditorium, meeting hall, ballroom or other place of assembly; (xxv) an unemployment agency, service or commission.

14. Ulta

a. Any restriction, covenant or agreement contained in that certain Memorandum of Lease Agreement between W2005 CRM REAL ESTATE LIMITED PARTNERSHIP and ULTA SALON, COSMETICS & FRAGRANCE, INC. dated June 26, 2007, and recorded on July 23, 2007, as Document #20070170869, in Bexar County, Texas.

b. (i) any nuisance; use causing loud noises or offensive odors (including any business using exterior loud speakers); (ii) any manufacturing facility; (iii) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented solely to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located; (iv) any automobile repair shop; service station or any facility storing or selling gasoline or diesel fuel in or from tanks; (v) any used clothing or thrift store or liquidation outlet (however, Landlord shall be allowed space within the Shopping Center for the sale of used merchandise to tenants such as Second Swing Golf, Play It Again Sports or other national first class operations); (vi) any massage parlor; (vii) any establishment providing nude or topless entertainment or wait staff, or any establishment selling, or exhibiting pornographic materials (including, without limitation, adult books or videos). Materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or pornographic hereunder; (viii) any mortuary or funeral parlor; (ix) any coin operated laundry; (x) any cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant; (xi) any night club; (xii) any cinema or theater, excluding demonstration purposes incidental to primary use as a consumer electronics store such as Best Buy; (xiii) any place of recreation (including but not limited to bowling alley, skating rink, carnival, game arcade, gym, dance studio or exercise facility); (xiv) any church; (xv) any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of or in any building in the Shopping Center); (xvi) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; (xvii) any pawn shop, "second-hand" store, schlock store, or "surplus" store (however, Landlord shall be allowed space within the Shopping Center to the sale of used merchandise to tenants such as Second Swing Golf, Play It Again Sports and other national first class operations); (xviii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (xix) any automobile, truck, trailer, recreational vehicle, mobile home or boat sales, leasing, display, service and/or repair operation; (xxx) any tire center, oil change service, gas station, tire center or carwash; (xxxi) any roller rink; (xxxii) any veterinary hospital or animal raising or boarding facilities; (xxxiii) any flea market, amusement, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games, pinball, computer or other game rooms, pool or billiard hall, dance or music hall, disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation; (xxxiv) any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, or any day care center; provided however, this prohibition shall not be applicable, to the extent incidental to an occupant's business at the Shopping Center, any onsite employee training by an occupant; (xxxv) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker, slot machines, video poker/black-jack keno machines or similar devices; or bingo hall; (xxxvi) any carnival, amusement park or circus; (xxxvii) any banquet hall, auditorium, or other place of public assembly; (xxxviii) any venue for in-person, on-site sporting events (provided, however, that the foregoing shall not prohibit the demonstration of sporting goods for sale); (xxxix) any hazardous substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all hazardous substances laws; (xl) any outdoor meetings, events or promotional activities; (xli) any shooting gallery; (xlii) any residential use; or (xliii) any other use inconsistent with the operation of a high quality retail shopping center.

15. Vitamin Shoppe

a. (i) any use which emits an obnoxious odor, noise or sound which can be heard or

smelled outside of any Building in the Shopping Center; (ii) an operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation; (iii) any "second hand" store, "surplus" store, or pawn shop (other than Gamestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations); (iv) any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance; (v) any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building; (vi) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation; (vii) any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located; (viii) any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; (ix) any bowling alley or skating rink; (x) any movie theater or live performance theater; (xi) any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms; (xii) any veterinary hospital or animal raising or boarding facilities; (xiii) any mortuary or funeral home; (xiv) any establishment selling or exhibiting "obscene" material; (xv) any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; (xvi) any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on premises consumption exceeds forty percent (40%) of the gross revenues of such business; (xvii) any health spa, fitness center or workout facility; (xviii) any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; (xix) any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on site employee training by an occupant incidental to the conduct of its business at the Shopping Center; (xx) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall; (xxi) any outdoor circus, carnival or amusement park or other entertainment facility (xxii) any outdoor meetings; (xxiii) a shooting gallery; (xxiv) an auditorium, meeting hall, ballroom or other place of assembly; or (xxv) an unemployment agency, service or commission.

#### **LEASES**

**Best Buy:** Entertainment facilities, health clubs and/or grocery stores.

#### **Prohibited Uses**

Landlord shall not use or authorize use of any portion of the Shopping Center, and Tenant shall not use or authorize use of any portion of the Premises, for the following purposes:

1. A facility for any use which is illegal or would reasonably be determined to cause a threat of imminent harm to persons or property, constitutes a public or private nuisance or emits an obnoxious odor, noise, or sound which can be heard or smelled (in either event to more than a de minimus extent) outside of any building in the Shopping Center, it being understood that Tenant shall have the right to operate a mobile installation bay incidental to Tenant's business and that no reasonable sounds and/or noises arising from such use shall be deemed obnoxious.
2. Any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of or in any building in the Shopping Center).
3. Establishment providing nude or topless entertainment or waitstaff, or any establishment selling or exhibiting pornographic materials (including, without limitation, adult books or videos). Materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or



pornographic hereunder.

4. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation; provided, however, one (1) mini storage facility is permitted on Tract P10 as depicted on Exhibit B hereof.

5. Any pawn shop, "second-hand" store, schlock store, or "surplus" store (however, Landlord shall be allowed space within the Shopping Center to the sale of used merchandise to tenants such as Second Swing Golf, Play It Again Sports and other national first class operations); provided, however, that this provision shall not restrict or prohibit Tenant from the ancillary sale of consumer electronics merchandise, regardless of whether new, used or refurbished; provided, however, one (1) used video game store, such as Game Stop is permitted provided it is located at least 500 lineal feet from the storefront of the Premises and does not exceed 2000 square feet in size.

6. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an occupant to determine its own selling prices nor shall it preclude the conduct of any seasonal sales, promotional or clearance sales or legitimate going out of business sales in compliance with applicable Laws).

7. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located.

8. Any automobile, truck, trailer, recreational vehicle, mobile home or boat sales, leasing, display, service and/or repair operation; provided, however, this prohibition shall not prohibit or restrict Tenant, or another tenant/occupant incidental to its primary use, from operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, or the leasing of trucks by the hour by any tenant/occupant to its customers for the sole purpose of transporting purchases from such tenant/occupant's premises to the customer's home, storage, or use destination. Notwithstanding anything to the contrary in the foregoing, one (1) retail car rental establishment shall be permitted, provided that it is no more than 2,500 square feet, it is located at least 500 lineal feet from the storefront of the Premises, and it does not have any designated or reserved parking spots.

9. Any tire center, oil change service, gas station, tire center or carwash; provided, however, such uses shall be permitted in the outparcels.

10. Any bowling alley, skating rink or roller rink.

11. Any mortuary or funeral home.

12. Any veterinary hospital or animal raising or boarding facilities; provided, however, PetSmart and/or Petco shall be permitted. However, no designated animal excrement areas shall be permitted in the Shopping Center.

13. Any bar, pub, tavern or night club.

14. Any flea market, amusement, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games but excluding one (1) exercise facility for children, such as a "Little Gym"-type store and provided it is located outside of Tenant's Protected Area and excluding one (1) daycare facility for children, provided it is located within Outparcels 1-7), pinball, computer or other game rooms, pool or billiard hall, dance or music hall, disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation (except that this prohibition shall not prohibit (x) Chuck E Cheese or another similar fast food establishment, so long as it is open and operating as a restaurant from having an amusement or video arcade, children's playcenter, pinball, computer and/or other game room and other physical play activities for children, kiddie rides and games as part of its leased premises in the Shopping Center to the extent permitted under its lease or (y) a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes).

15. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, or any day care center; provided however, this prohibition shall not be applicable to any of the following, to the extent the same are incidental to an occupant's business at the Shopping Center: (a) any onsite employee training by an occupant, or (b) any "how to" training for customers. Provided, however, one (1) educational facility such as Sylvan or Huntington Learning Centers is permitted outside of Tenant's Protected Area.

16. Any gambling facility or operation, including but not limited to: off-track or sports betting

parlor; table games such as blackjack or poker; slot machines, video poker/blackjack keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant. Notwithstanding the above, this paragraph is not intended to prohibit the installation and use of video game machines by the occupants, subject however to the provisions of Paragraph 14 above.

17. Any carnival, amusement park or circus.
18. Any banquet hall, auditorium, or other place of public assembly.
19. Any house of worship.
20. Any liquor store (provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any occupant ancillary to its primary use of the premises, the sale of beer, wine or alcohol for on-premises consumption at any restaurant or bar permitted hereunder, or the sale of beer, wine or alcohol by Cost Plus World Market or the sale of wine by one (1) high-end wine shop or upscale liquor store such as "Spec's" or "Centennial" liquor stores in the Shopping Center, outside of Tenant's Protected Area).
21. Any venue for in-person, on-site sporting events (provided, however, that the foregoing shall not prohibit the demonstration of sporting goods for sale).
22. Any Hazardous Substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all Hazardous Substances Laws.
23. A theater of any kind, excluding demonstration purposes incidental to primary use as a consumer electronics store such as Best Buy, and excluding a theater located on Tract P10 as depicted on Exhibit B hereof of the Shopping Center.
24. Any outdoor meetings, events or promotional activities (but shall not prohibit and/or restrict Tenant's use of the linear footage of sidewalks in front of the Premises for promotional activities, provided the same shall be limited to (i) four (4) times per any calendar year and (ii) no more than five (5) consecutive days in length.
25. Any shooting gallery.
26. Any residential use, except on Tract P10 as depicted on Exhibit B hereof.
27. Any health club, gymnasium, exercise or dance studio; provided, however (i) a health club, gymnasium, exercise or dance studio with less than 3,000 square feet which is located within the Shopping Center but outside of Tenant's Protected Area shall be permitted, and (ii) a health club, gymnasium, exercise or dance studio of any size shall be permitted in Tract P10, or a Lifetime Fitness or similar exercise facility shall be permitted in the contemplated Phase II of the Shopping Center.

#### **Cato d/b/a Versona**

##### **24. Contiguous Tenants.**

- (a) No space contiguous to the Premises shall be occupied by or used for any of the prohibited uses described on Exhibit E (unless consented to Lessee, such consent not to be unreasonably withheld, conditioned or delayed) or a pet shop, and
- (b) No space in the Shopping Center owned by Lessor located within one hundred feet (100') of the Premises shall be occupied by or used or used for a bar or restaurant or blood or plasma collection center.

##### **Exhibit E-Prohibited Uses**

- (A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.
- (B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling or refining, smelting, agricultural or mining operation.
- (C) Any "second hand" store, "surplus" store, or pawn shop.
- (D) Any mobile home part, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

- (F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.
- (H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.
- (I) Any bowling alley or skating rink.
- (J) Any movie theater or live performance theater.
- (K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.
- (L) Any veterinary hospital or animal raising or boarding facilities.
- (M) Any mortuary or funeral home.
- (N) Any establishment selling or exhibiting "obscene" material.
- (O) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.
- (P) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.
- (Q) Any massage parlor or similar establishment.
- (R) Any health spa, fitness center or workout facility.
- (S) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall.
- (T) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by a tenant incidental to the conduct of its business within the Premises.
- (U) Any gambling facility or operation, including but not limited to: offtrack or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the tenant.
- (V) Any governmental offices.
- (W) Any telephone call centers.
- (X) Any restaurant located within three hundred (300) feet of the Building Area (as defined in the OEA) located on the Target Parcel, the Building Area located on the J.C. Penney Parcel and/or the Building Area located on the Lowe's Parcel.
- (Y) Any store, department or operation of any size selling or offering for sale any pharmaceutical drugs requiring the services of a licensed pharmacist.
- (Z) Any pet shop located within (i) four hundred (400) feet of the Building Area located on the Target Parcel, (ii) three hundred (300) feet of the Building Area located on the J.C. Penney Parcel, and/or (iii) four hundred (400) feet of the Building Area located on the Lowe's Parcel.
- (AA) Any gas station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel.
- (BB) Any automotive service/repair station or any other facility that both sells and installs any lubricants, tires, batteries, transmissions, brake shoes or any other similar vehicle accessories.
- (CC) Any liquor store offering the sale of alcoholic beverages for off-premises consumption located within three hundred (300) feet of the Building Area located on the Target Parcel, within three hundred (300) feet of the Building Area located on the J.C. Penney Parcel, and/or within three hundred (300) feet of the Building Area located on the Lowe's Parcel, nor shall any liquor store offering the sale of alcoholic beverages for off-premises consumption exceeding 5,000 square feet of floor area be permitted.
- (DD) Any grocery store, supermarket, convenience store or other store, or department within a store, for the sale of food, groceries, fruit, produce, dairy products, vegetables, bakery products, meats or delicatessen products.
- (EE) Any health spa located within 1000 feet of the J. C. Penney Parcel.

- (FF) Any hardware store or center.
- (GG) Any appliance store or center, and/or lighting store or center (provided, however, that the foregoing restriction does not apply to any Best Buy store or Fry's Electronics store or similar consumer electronic store).
- (HH) Any nursery and/or lawn and garden store or center.
- (II) Arty paint store or center, wall paper store or center, tile store or center, flooring store or center, carpeting store or center, and/or home decor store or center (for the purposes of this Declaration, a "home decor" store or center is a store selling lighting and fans, rugs and floor treatments, household hardware and window treatments, provided that this restriction shall not prohibit the operation of operators whose primary use is furniture and home accessories, including, but not limited to, Pier 1; West Elm; Restoration Hardware; Z Gallerie; The Dump; The Room Store; Robb & Stuckey; Ethan Mien; Haverty's; Thomasville; and IKEA, as such retail facilities are currently being operated and merchandised, or the following operators: Aaron Brothers, Cost Plus World Market; Bed, Bath and Beyond; TJ Maxx/Home Goods; Tuesday Morning; Big Lots; Kirkland's; Anna's Linens; Crate and Barrel; Pottery Barn; Anthropologie; Christmas Tree Shops; Container Store; and Sur le Table, as such retail facilities are currently being operated and merchandised, and similar national, regional or local operators.
- (JJ) Any store or center selling Kenmore branded goods or Craftsman branded goods.
- (KK) Any retail and/or warehouse home improvement center; lumber yard; building materials supply center; home improvement service center; and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware. 64 Lumber, Wickes, Hughes Lumber, McCoy's, Menard's, Pacific Sales, HH Gregg, Conn's, Great Indoors, Sutherlands, Scott's and Orchard Supply.
- (LL) Any store operating under the Sears name which directly competes with Lowe's, such restriction including, without limitation, Sears Hardware and Sears Appliance Showroom, but excluding Sears Tire & Automotive and Sears stores whose primary purpose is selling apparel.
- (MM) Any outdoor circus, carnival or amusement park or other entertainment facility.
- (NN) Any outdoor meetings.
- (OO) A shooting gallery.
- (PP) An auditorium, meeting hall, ballroom or other place of assembly.
- (QQ) An unemployment agency, service or commission.
- (RR) A cell phone store.

#### **Dick's Sporting Goods**

##### **1.4 Restrictions on Use of Shopping Center.**

The Shopping Center shall not be used:

- (a) for any non-retail purposes (however (i) any space in Tract P-10 may be used for office space, and (ii) repairs, alterations, storage and offices incidental to retailing shall be permitted, and (iii) retail offices which are defined to be offices which provide services directly to consumers, including, but not limited to banks, small loan offices, insurance agency, real estate company, title company, or medical or dental office or similar professional offices shall be permitted in not more than ten percent (10%) of the LFA);
- (b) other than on Tract P-10, for any entertainment purposes such as a bowling alley, skating rink, bar (unless such bar is an incidental part of a restaurant whose reasonably projected annual gross revenue from the sale of alcoholic beverages for on-premises consumption does not exceed forty percent (40%)), night club, discotheque, amusement gallery, cinema, poolroom, health club, massage parlor (except that a single upscale day spa (typical to first class shopping center) may be permitted so long as it does not exceed 3,000 square feet and is located at least 250 lineal feet from the Demised Premises), sporting event, sports or game facility or off-track betting club; provided, however, a health club with less than 3,000 square feet and which is of a type which is typically found in first class retail strip shopping centers, and which is located at least two hundred fifty (250) lineal feet from the Demised Premises, is expressly permitted;
- (c) for any establishment which sells or displays pornographic materials; it being understood that materials shall be considered "adult" or "pornographic" under this paragraph if the same are act available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by

reputable national or regional book end/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or pornographic hereunder;

(d) for any establishment which sells or displays used merchandise or second hand goods; provided however that this provision shall not prohibit a Blockbuster or Gamestop, or other retail establishment which is typically found in first-class shopping centers, from selling second hand merchandise as an incidental portion (not to exceed 15%) of its operations, it being understood that operations such as Good Will, Army-Navy Surplus and Salvation Army type stores are specifically prohibited; or

(e) for a restaurant or establishment selling food prepared on premises for consumption on or off premises located within two hundred fifty (250) lineal feet of the Demised Premises (however, a restaurant shall be permitted on an out-parcel provided there is self-contained parking with at least ten (10) parking spaces for so-called standard size American automobiles, and driveways and footways incidental thereto, for each one thousand (1,000) square feet of leasable floor area.

**European Wax:** Landlord shall not lease, rent occupy or permit to be occupied or used, any space in the Shopping Center which is adjacent to the Leased Premises, to a tenant whose use, in Landlord's commercially reasonable judgment, is likely to create any type of noise, odor or vibration which would penetrate into the Leased Premises which would be sufficient to disrupt the quiet enjoyment of Tenant's clientele. The foregoing shall not be applicable to any existing tenants who may be in the adjacent spaces as of the Effective Date.

**Firenza Pizza:** Landlord agrees that it shall not lease, within five hundred feet (500') of the Premises, a tattoo parlor, adult bookstore or adult theatre. For purposes of the foregoing only, an adult bookstore or adult theatre shall be considered any commercial establishment that frequently shows or has a significant portion of its business in display, sale, rental or viewing of publications, books, films, videos or other visual representations or reproductions that are rate X, XX or XXX, or which are characterized by an emphasis on the exposure, depiction, or description of breasts, genitalia or private parts, or on the conduct or simulation of sexual activities

**Five Below:** Landlord shall not lease, rent, occupy or permit to be occupied or used, any space in the Shopping Center (and to the extent Landlord may in the future have control over any other portion of the Project, either as Landlord or through an affiliate, in the Project) for any of the Prohibited Uses set forth on Exhibit "F" attached hereto [See Superior Title and other tenant's exclusives/restrictions]. In addition to and not in lieu of the foregoing, for so long as Tenant is engaged in the Permitted Use at the Shopping Center (Excused Periods being excluded) and there is no continuing Event of Default hereunder, Landlord shall not lease, rent, occupy or permit to be occupied or used, any space in the Shopping Center that is located within 300 linear feet of the Premises to be used as a military recruitment center, or cash for gold or similar operation.

**Freebirds World Burrito:** The space immediately adjacent to the Premises for the initial use of: another restaurant, pet store or dry cleaners.

**Hallmark:** Adjoining Premises for any business emitting or having the potential to emit strong odors and/or substances, including, but not limited to, pet stores, restaurants, and hair, beauty and nail salons.

**Lane Bryant:** Any (a) pawn shop, flea market or junk yard, (b) gun sales or rental shop (except as sold as an incidental use by a national retail tenant occupying over 10,000 square feet in the Shopping Center), (c) gambling, off-track betting electronic gaming or bingo parlor, (d) psychic, tarot card reading or similar services, (e) bailbondsmen, (f) sale or distribution of drug supplies or paraphernalia (except as sold by a licensed pharmacist), including, but not limited to, roach clips, water pipes, bongs, coke spoons, cigarette papers or hypodermic syringes, (g) tattoo parlor, massage parlors (except that a national chain such as Massage Envy shall be permitted and a massage operation may be permitted as a mama/ use to a hair, nail or beauty salon or salon spa operation), or exotic or erotic dance clubs, (h) sale or distribution of any pornographic or "adult" materials including, but not limited to, "adult" books, videos, or recordings of any kind, or (i) any use which constitutes a public or private nuisance or produces objectionable noise or vibration. Any leasable space immediately adjacent to The Leased Premises to be occupied by (w) a nail salon, (x) a dry cleaning processing plant, (y) a pet store or (z) a restaurant or other

establishment engaged primarily in the preparation of food for consumption on or off premises.

**Marshalls:** The Shopping Center shall not be used (a) for any non-retail purposes (repairs, alterations and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or (b) for any entertainment purposes such as a bowling alley, skating rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club (except that one (1) health club containing not more than three thousand (3,000) square feet of floor area shall be permitted, provided that such health club is not less than two hundred fifty (250) feet away from the nearest demising wall of the Demised Premises), massage parlor, sporting event, sports or game facility, off-track betting club (c) or for any establishment which sells or displays pornographic materials or (d) for any establishment which sells or displays used merchandise or second hand goods, provided, however, that this clause (d) shall not prohibit a Gamestop, a Blockbuster, a Second Swing Golf or other retail establishment of similar quality selling second hand merchandise as an incidental portion (not to exceed fifteen percent (15%)) of its operations, which retail establishment is located not less than three hundred (300) feet away from the nearest demising wall of the Demised Premises. No restaurants or establishments selling food prepared on premises for consumption on or off premises shall be located in the Shopping Center within two hundred (200) feet of the nearest demising wall of the Demised Premises.

#### Schedule F-1-Prohibited Uses

The following uses shall not be permitted:

(A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.

(B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(C) Any "second hand" store, "surplus" store, or pawn shop; provided, however, this provision shall not prohibit a Gamestop, a Blockbuster, a Second Swing Golf or other retail establishment selling second hand merchandise as an incidental portion (not to exceed 15%) of its operations, which Occupant is located at least three hundred (300) feet from the Building Area on the Target Tract.

(D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

(F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

(H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; provided, however, this prohibition shall not prohibit or restrict (i) an Occupant from operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, (ii) the leasing of trucks by the hour by an Occupant to its customers for the sole purpose of transporting purchases from such Occupant's premises to the customer's home, storage or use destination and (iii) one (1) retail car rental establishment, provided that such retail car rental establishment contains no more than 2,500 square feet of Floor Area, is located at least three hundred (300) feet from the Building Area on the Target Tract and does not have any designated or reserved parking spots.

(I) Any bowling alley or skating rink; provided, however, this provision shall not prohibit an Entertainment Venue (as such term is defined in Section 5.1.2(S) below) located on Phase Two.

(J) Any movie theater or live performance theater; provided, however, this provision shall not prohibit (i) such a use for demonstration purposes incidental to an Occupant's primary use as a consumer electronics store such as Best Buy and (ii) a movie theater located on Phase Two.

(K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms, provided however, this provision shall not prohibit a hotel on Phase Two.

(L) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition (i) shall not be applicable to pet shops and (ii) shall not prohibit the operation of a single PetsHotel in connection with a PetSmart and/or Petco located at least four hundred (400) feet from the Building Area on the Target Tract (the "Permitted PetsHotel"). Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited other than in connection with the operation of the Permitted PetsHotel; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than thirty-five percent (35%) of the Floor Area of the pet shop.

(M) Any mortuary or funeral home.

(N) Any establishment selling or exhibiting "obscene" material, provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed "obscene".

(O) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.

(P) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on premises consumption exceeds forty percent (40%) of the gross revenues of such business.

(Q) Any massage parlor or similar establishment.

(R) No health spa, fitness center or workout facility exceeding 5,000 square feet of Floor Area, and in no event shall any such operation on the Developer Tract be located within three hundred (300) feet of the Target Tract or three hundred (300) feet of the Building Area on the JC Penney Tract, provided, however, this provision shall not prohibit a health spa, fitness center or workout facility of any size on Phase Two.

(S) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall; provided, however, this prohibition shall not prohibit (i) Chuck E. Cheese, or another similar family-themed Restaurant that is open and operating as a Restaurant, from having an amusement or video arcade, children's playcenter, pinball, computer and/or other gameroom and other physical play activities for children, kiddie rides and games within its leased premises, (ii) a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes or (iii) an Entertainment Venue (as defined below) located on Phase Two. For the purposes of this OEA, an "Entertainment Venue" shall be a first-class family entertainment center that has amusement and/or video arcade machines, pool or billiard tables and/or bowling lanes incidental to its Restaurant operation, such as Main Event, ESPN Zone or Dave & Buster's, as same are currently operated.

(T) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (i) on site employee training by an Occupant incidental to the conduct of its business at the Shopping Center, (ii) one (1) educational facility such as Sylvan or Huntington Learning Centers and (iii) a training or educational facility of any size on Phase Two.

(U) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

(V) Unless approved by the Approving Party for the Target Tract, which approval may be given (or withheld) in the sole and absolute discretion of such Approving Party and shall not be subject to the "deemed approval" provisions of Section 6.5.2 below, no retail Occupant of the Shopping Center (other than of the Target Tract) shall occupy more than 80,000 square feet of Floor Area; provided, however, this provision shall not be applicable to Costco, Lowe's, J.C. Penney, Regal Cinema, Belk or Garden Ridge.

**Maurices:** The Shopping Center shall be used only for retail sales, retail offices, restaurants or other permitted commercial purposes in accordance with the OEA. No restaurant or a store selling pets, or pet supplies, located immediately adjacent to the Premises.

## Michaels

### PROHIBITED USES

1. funeral establishment;
2. automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities and quick-lube and tire and battery facilities, except that Outparcels 18 and 19 (shown on Exhibit B) shall be permitted to have a full auto service shop such as Firestone, Goodyear, NTB, but not a quick lube facility such as Jiffy Lube;
3. auction of bankruptcy sale or fire sale;
4. pawn shop;
5. outdoor circus, carnival or amusement park, or other entertainment facility;
6. outdoor meetings;
7. bowling alley;
8. primarily pool or billiard establishment. but this #8 shall not prohibit the operation of a Dave and Busters type restaurant in the locations permitted by #26 below;
9. shooting gallery;
10. off-track betting, (provided that state sponsored lottery tickets shall not be prohibited),
11. an operation primarily used as a storage warehouse operation (provided, however, for purposes hereof, a "storage warehouse operation" shall not be construed to include a warehouse operation incidental to a retail use or retail operations using a warehouse format) and any assembling, manufacturing, distilling, refining, smelting, agricultural (excluding: the retail sale of plants or garden shop items) or mining operation;
12. adult bookstore or facility selling or displaying pornographic books, literature, or videos (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality) except this #12 shall not be construed to prohibit the incidental sale of adult literature or videos by a reputable, national or regional bookstore or video store offering a wide variety of literature, such as Barnes & Noble, Borders, Books A Million or Best Buy.
13. massage parlor, provided that the operation of a typical "Massage Envy", as such store operates as of the Effective Date in the San Antonio, TX metropolitan area containing 3,500 Leasable Square Feet or less shall be permitted in the Shopping Center except for in the area labeled "Pylon Sign Tenants" shown on Exhibit B;
14. any residential use, including but not limited to living quarters, sleeping apartments or lodging rooms;
15. theater,
16. auditorium, meeting hall, ballroom, day care facility, school or other place of public assembly; provided, however, the foregoing shall not be applicable to (a) on-site employee or other training by Tenant incidental to the conduct of its business on the Premises, nor shall it be applicable to craft or other types of classes incidental to retail use or (b) "(b) one learning center operating in 2,500 Leasable Square Feet or less on "Retail Shops J-5", "Retail Shops K-5", "Retail Shops F-5", "Retail Shops H-5" or "Retail Shops E-5", each as shown on Exhibit B to this Lease [AS AMENDED BY FIRST LEASE AMENDMENT];
17. government office (provided a post office is permitted), unemployment agency, service or commission;
18. gymnasium, health club, exercise or dance studio; provided that the operation of (a) one (1) workout facility, such as, but not limited to, Curves, containing 6,000 Leasable Square Feet or less and (b) one (1) martial arts facility, yoga studio, dance studio or similar facility, containing 2,000 Leasable Square Feet or less, shall each be permitted in the Shopping Center except for in the area labeled "Pylon Sign Tenants" shown on Exhibit B [AS AMENDED BY FIRST LEASE AMENDMENT];
19. dance hall;
20. cocktail lounge, bar, disco or night club;
21. bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;
22. video game or amusement arcade, except as an incidental part of another primary business (but this #22 shall not prohibit the operation of a Dave and Busters type restaurant in the locations permitted by #26 below);



23. skating or roller rink;
24. car wash, car repair or car rental agency, except that (a) one (1) car rental agency containing 2,500 Leasable Square Feet or less shall be permitted in the Shopping Center except for in the area labeled "Pylon Sign Tenants" shown on Exhibit B and (b) one (1) full service car wash containing 59,000 Leasable Square Feet or less shall be permitted on "Outparcel 2" shown on Exhibit B to this Lease;
25. second hand store, close-out store, dollar store, auction house, or flea market (other than Tuesday Morning, GameStop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations);
26. restaurant or food use, except that restaurants shall be permitted in the Shopping Center; except for in the area labeled Pylon Sign Tenants and provided that restaurants on any outparcels include self-contained parking areas necessary to satisfy (8) the parking ratio required by Section 4.3 of Exhibit C, or (b) Law, whichever is greater;
27. non-retail use (which shall not prohibit in the Shopping Center such uses commonly referred to as "quasi-retail" or "service retail" such as a travel agency, real estate office, insurance agency, accounting service, etc., so long as same do not exceed ten percent (10%) of the Leasable Square Feet of the Shopping Center);
28. any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any building in the Shopping Center; provided, however, the customary operation of a Lowe's home improvement store shall not violate this restriction;
29. any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance;
30. any dumping, disposing, incineration or reduction of garbage; provided however, this prohibition shall not be applicable to garbage compactors located near the rear of any building;
31. any central laundry, dry cleaning plant or laundromat provided, however, this prohibition shall not be applicable to nominal supportive facilities for on site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located;
32. any establishment selling or exhibiting drug related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff;
33. telephone call center;
34. a hardware store or center containing more than 5,000 Leasable Square Feet;
35. an appliance and/or lighting store or center containing more than 5,000 Leasable Square Feet and/or other stores or centers similar to those operated by or as a Conn's, except this #35 shall not prohibit the operation of Best Buy, as such store operates as of the Effective Date;
36. a nursery and/or lawn and garden store or center containing more than 3,000 Leasable Square Feet (including any outdoor areas);
37. a paint, wall paper, tile, flooring, and/or carpeting store or center containing more than 4,000 Leasable Square Feet; or
38. a retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by Of as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware, Great Indoors, Sutherlands, Scotty's and/or Orchard Supply.

**Office Max:** During the initial term of this lease and during any renewal period hereunder:

- (a) No portion of the Shopping Center (other than an Outparcel) located within two hundred fifty linear feet (250') of the demising walls of the Demised Premises shall be used as a restaurant (except that an incidental restaurant use such as a cafe in a junior anchor within said 250' may be permitted), or for office purposes (such as medical or office uses, not ancillary to retail use), or for any use that requires parking in excess of five (5) spaces for each one thousand (1,000) square feet of leasable floor area, or
- (b) No outparcel (or any portion thereof) within the Shopping Center shall be used for purposes of any of the Restricted Uses (as hereinafter defined), if such tapered is not self parked and has the right to use any of the parking areas located within one hundred feet (100') of the Demised Premises;

(c) No portion of the Shopping Center shall be occupied or used, directly or indirectly, for a nightclub or other entertainment facility; bowling alley; arcade or amusement center (except that video games may be permitted in a Chuck E. Cheese type or other similar fast food restaurant so long as it is open and operating as a restaurant, and further provided that this restriction shall not prohibit a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes); theater or movie theater (except that such theaters may be permitted on Tract P-10); fitness center, health club or spa (except that a health club, gymnasium or dance studio (i) of 3,000 square feet or less and located outside Tenant's Key Area, (ii) of any size and located on Tract P-10, (iii) such as a Lifetime Fitness or similar exercise facility so long as it is located on Tract P-10, and (iv) one exercise facility for children such as "Little-Gym" so long as it is located outside Tenant's Key Area may be permitted); skating rink; billiard room; massage parlor (except that a store such as Massage Envy may be permitted so long as it does not exceed three thousand (3,000) square feet and is located at least one hundred (100) feet from the demising walls of the Demised Premises), adult book store or any other purpose which includes the display or sale of pornographic or obscene materials (provided, however, that said restriction does not prohibit the incidental sale of the type of adult magazines and/or videos sold by a reputable national or regional book and/or video retailer such as Barnes & Noble or Best Buy; off-track betting facility; flea market; second hand store (except that a store such as Second Swing Golf, Play It Again Sports, or other national first class operation, as well as one (1) used video game store such as Game Stop which does not exceed 2,000 square feet may be permitted); pawn shop; blood bank; goodwill store; bar (unless such bar is an incidental part of a restaurant and the sale of liquor accounts for forty percent (40%) or less of such restaurant's gross sales); liquor store or store selling alcoholic beverages for Off premises consumption (except that Cost Plus, World Market, or one (1) upscale liquor store or wine shop, such as Spec's or Centennial, shall be permitted so long as such store is located outside Tenant's Key Area); tavern; pub; ballroom; dance hall; day care center (except that a day care center may be permitted on Chit -parcels 1-7); discotheque; beauty school; barber college, offices (except that a bank, insurance agency, real estate company, title company, or medical or dental office, or similar professional offices may be permitted so long as such uses are normally found in first class shopping centers in the San Antonio, Texas metropolitan area, and such uses in the aggregate do not exceed thirty thousand (30,000) square feet); place of instruction; reading room or any operation catering primarily to students or trainees rather than to customers (except that the following may be permitted (A) on-site employee training by an occupant incidental to the conduct of its business at the Shopping Center, or (B) a Sylvan Learning Center or Huntington Learning Center which center shall be located outside Tenant's Key Area) or for any use prohibited under subparagraphs (d) or (e) immediately below;

(e) No portion of the Shopping Center (other than the Demised Premises) shall be leased, occupied or sold by Landlord to a direct competitor of Tenant, such as Staples, Office Depot, or FedEx/Kinko's/.

**Old Navy:** Landlord covenants that no portion of the Shopping Center (except as otherwise provided further in this Section 6.2.2) shall be used for any of the following purposes: a bowling alley (except this shall not prohibit a bowling alley in connection with a restaurant/bar such as a Lucky Strike located at least three hundred (300) feet from the Premises); a video or amusement arcade (other than as an incidental use and except for high end uses typically found in first class shopping centers, such as Dave and Busters or Chuck-E-Cheese or as an incidental use in connection with the operation of bar or restaurant, such as Buffalo Wild Wings); a movie theatre within three hundred (300) feet of the Premises; a fitness center, gymnasium, aerobics studio or weightlifting center within three hundred (300) feet of the Premises (other than a personalized training facility or class instruction such as a yoga studio, pilates studio; the sale, rental or display of materials that are pornographic in nature; any unusual fire, explosive or dangerous hazards (including the storage, display or sale of explosives or fireworks other than "sparklers" and excluding seasonal sales of fireworks by kiosk or retail merchandising unit); the sale of automotive parts including tires (other than as an incidental use or automotive services including repair services) within three hundred (300) feet of the Premises; a carnival or amusement park; the sale of Christmas trees or pumpkins within the Protected Area only; an assembling, manufacturing, distilling (other than in connection with the operation of a restaurant such as a micro-brewery or other restaurant), refining, smelting, industrial, agricultural, drilling or mining operation; storage (other than as an incidental use); a commercial laundry or dry cleaning plant (except that this prohibition shall not be applicable to onsite service provided solely for pick up and delivery by a retail customer, including nominal supporting

facilities) and will not prohibit an on-site laundry facility using Co2 cleaning, silicone cleaning or other non-perchloroethylene methods); a laundromat (except that this prohibition shall not be applicable to onsite service provided solely for pick up and delivery by a retail customer, including nominal supporting facilities); a veterinarian or veterinary hospital within three hundred (300) feet of the Premises (other than as an incidental use such as Petco or Petsmart) – it being agreed that this shall not prohibit a nationally recognized full service pet store such as Petco or Petsmart, provided such pet store is not located adjacent to the Premises; a mortuary or funeral establishment; the sale of coffins or caskets; a pawn shop; a flea market; a shooting gallery; any use that permits a pest infestation without prompt action to eliminate the infestation; any use that permits music or sounds to be heard outside of the premises when all doors are closed; any use that permits noxious odors to be smelled outside of the premises; and any use that permits vibrations to be felt outside of the premises.

### **Petsmart**

#### **Exhibit G**

1. Prohibited Uses. The following uses (collectively referred to as "Prohibited Uses" and individually as a "Prohibited Use") are prohibited during the Term of the Lease in any portion of the Developer's Parcel: no use that is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted; nuisance; any use causing loud noises or offensive odors (including any business using exterior loud speakers); manufacturing facility; dry cleaner (except facilities for drop off and pick up of clothing cleaned at another location); any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles; automobile repair shop or service station (provided, however, such restriction shall not apply to the Outparcels); or any facility storing or selling gasoline or diesel fuel in or from tanks (provided, however, such restriction shall not apply to the Outparcels); used clothing or thrift store or liquidation outlet (it being understood that a first class clothing consignment operation is expressly permitted); massage parlor (it being understood that a first class spa, together with the operation of a Massage Envy, shall be expressly permitted); adult book shop (it being understood that said restriction shall not prohibit the incidental sale of the type of adult materials sold by a reputable national or regional book and/or video retailer (such as Books-A-Million or Best Buy) or adult movie house; mortuary or funeral parlor; coin operated laundry; cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant permitted hereunder (it being understood that the sale of wine or liquor by one (1) high-end wine shop or upscale liquor store such as "Spec's" shall be permitted outside the "Control Area" as shown on Exhibit A); night club; cinema or theater (except on Tract P-10); place of recreation (including but not limited to bowling alley, skating rink, carnival, game arcade or health spa; provided, however (i) a health club or spa with less than 3,000 square feet and which is located outside the Control Area shall be permitted, (ii) a day spa of less than 3,000 square feet shall be permitted as an incidental use by Ulta, and (iii) a health club of any size shall be permitted on Tract P-10); church; or any other use inconsistent with the operation of a high quality retail shopping center. No restaurants of any size shall be located within three hundred (300) feet of the Premises unless located on the Outparcels [AS AMENDED ON THE FIRST AMENDMENT]. In addition, the following uses must first be approved in writing by Tenant (unless located (i) in the Outparcels, or (ii) outside of the "Control Area"): drive-throughs; children's recreational, educational or day-care facility; restaurants occupying more than twenty-five hundred (2,500) square feet of Gross Floor Area; offices; professional uses; and schools of any nature except in conjunction with animal training or obedience training classes associated with Tenant's Primary Business. As used herein, "school" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers. It is the intent of this Section that the Shopping Center shall be devoted to high quality retail uses and that the parking and the other common facilities shall not be burdened by either excessive or protracted use.

**Ride Away Bicycles:** The space immediately adjacent to the Premises for the initial use of an establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.

**Ross:**  
Retail Use.

(a) No part of Landlord's Parcel shall be used for office (except as incidental to a retail use or if located on an Outparcel pursuant to Section 3.2.1(b)(x) below), or residential purposes or as a theater, auditorium, meeting hall, school (except that this "school restriction" shall not be deemed to prohibit retailers from conducting occasional informational classes instructing customers as to the use of products being sold by such retailers) or other place of public assembly, "flea market," gymnasium, veterinary services (including vaccination clinics and overnight stay pet facilities), health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, night club (except as an ancillary operation to a primary restaurant use), adult products, adult books or adult audio/video products (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under the age of majority in the state in which the Store is located because such inventory explicitly deals with or depicts human sexuality) provided that the foregoing restriction shall not prohibit the operation of a recognized full line bookstore such as Barnes & Noble, Borders, Books-a-Million or similar national or regional vendor of published material. No ATM or similar machine shall be permitted in Landlord's Parcel within fifty (50) feet of the front and side perimeter walls of the Store (except that an ATM fully located within another retail tenant's premises shall be permitted). Further, no full service, sit-down or fast food restaurant or other "High Intensity Parking User" (as hereinafter defined) shall be permitted in Landlord's Parcel within four hundred (400) feet of the front and side perimeter walls of the Store. A "High Intensity Parking User" is a tenant or occupant whose use requires more than five and one-half (5.5) parking spaces per one thousand (1,000) square feet of Leasable Floor Area in accordance with either customary shopping center practices or governmental regulations, whichever has a higher parking requirement except for a restaurant located inside an Anchor Tenant space and operated as an incidental part of the business. The foregoing use restrictions are referred to herein as the Ross Prohibited Uses.

#### EXHIBIT D-PROHIBITED USES

The Prohibited Uses provided by Landlord and reproduced below:

(1) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

(A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.

(B) An operation primarily used as a storage Warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(C) Any "second hand" store, "surplus" store, or pawn shop (other than Gamestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations).

(D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

(F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

(H) Any automobile, track, trailer or recreational vehicle sales, leasing, display or body shop repair operation.

(I) Any bowling alley or skating rink

(J) Any movie theater or live performance theater.

(K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

(L) Any veterinary hospital or animal raising or boarding facilities (except that this prohibition shall not prohibit pet shops that do not offer veterinary or boarding services). Notwithstanding the

foregoing, veterinary services may be provided as an incidental retail activity within a pet shop; provided, however, that the operation of such a pet business shall be subject to the following conditions:

- (i) Such operations shall otherwise be in compliance with all provisions of this OEA.
- (ii) Veterinary and other pet services shall be provided only with respect to domestic animals (including but not limited to dogs, cats, fish, birds and other commonly accepted household pets).
- (iii) No exterior signage shall be permitted with respect to veterinary services or other incidental services, except with the prior written approval of the Approving Parties, provided PetsMart may attach its typical exterior signage with respect to such veterinary services without the written approval of the Approving Parties.
- (iv) Overnight boarding of pets shall be limited as follows: (i) all boarding shall be incidental to the business operated in the pet shop and not offered to customers as a separate service; (ii) the combined veterinary and overnight boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop; and (iii) all boarding shall be indoors, and no exterior kennels, runs or pens shall be permitted.
- (v) The Occupant of the pet shop shall perform, or cause to be performed, daily janitorial services sufficient to prevent any accumulation of pet stains, pet odors or pet droppings on the pet shop premises and/or in any portion of the Common Area located within one hundred fifty (150) feet from any customer entrance to the pet shop. In the event that the Occupant of the pet shop fails to perform such janitorial services (or to cause the same to be performed) following receipt of notice as herein provided, Operator and Target shall each have the right to perform such janitorial services (or cause the same to be performed), and the Occupant of the pet shop shall reimburse Operator or Target, as the case may be, in an amount equal to one hundred ten percent (110%) of all reasonable costs paid or incurred for such purposes within thirty (30) days following receipt of an invoice therefor or other reasonable evidence of the amount and purposes thereof, upon failure of which Operator or Target may, in its sole discretion, pursue any other remedy available to it under this OEA or otherwise.
- (M) Any mortuary or funeral home.
- (N) Any establishment selling or exhibiting "obscene" material.
- (O) Any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff
- (P) Any bar, tavern, Restaurant or cyber establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.
- (Q) Any health spa, fitness center or workout facility except that one such workout facility of no more than 5,000 square feet of Floor Area, such as a Carves, shall be permitted; any massage parlors or similar establishments.
- (R) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall (provided that first class family entertainment centers that have amusement or video arcade machines and pool or billiard tables incidental to their operations, such as an ESPN Zone or a Dave and Buster's as currently operated, shall be permitted).
- (S) Any training or educational facility, including but not limited to beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center or to learning centers such as Huntington Learning Center, Sylvan Learning Center or similar operations provided no such learning center shall exceed 2,000 square feet of Floor Area.
- (T) Any gambling facility or operation, including but not limited to: off-track or Sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.
- (U) Any outdoor circus, carnival or amusement park or other entertainment facility.
- (V) Any outdoor meetings.
- (W) A shooting gallery.

- (X) An auditorium, meeting hall, ballroom or other place of assembly.
- (Y) An unemployment agency, service or commission.

**rue21:** Landlord shall not enter into any lease agreement or allow on a permanent or temporary basis any building, structure, tree, Christmas tree sale, pumpkin sale or other temporary or permanent retail or other use within forty feet (40') of Tenant's storefront.

#### Exhibit E

(1) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing and except as otherwise may be provided in the OEA, the following uses shall not be permitted:

(A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.

(B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(C) Any "second hand" store, surplus store, or pawn shop (other than Gamestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations).

(D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

(F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

(H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; provided, however, this prohibition shall not prohibit or restrict (i) an occupant from operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, (ii) the leasing of trucks by an occupant to its customers for the sole purpose of transporting purchaser's from such occupant's premises to the customer's home, storage or use destination and (iii) one (1) retail car rental establishment, provided such retail car rental establishment contains no more than 2,500 square feet of Floor Area.

(I) Any bowling alley or skating rink.

(J) Any movie theater or live performance theater.

(K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms except on Outparcels 17 and 18.

(L) Any veterinary hospital or animal raising or boarding facilities (except that this prohibition shall not prohibit pet shops that do not offer veterinary or boarding services). Notwithstanding the foregoing, veterinary services may be provided as an incidental retail activity within a pet shop; provided, however, that the operation of such a pet business shall be subject to the following conditions:

(i) Such operations shall otherwise be in compliance with all provisions of this OEA

(ii) Veterinary and other pet services shall be provided only with respect to domestic animals (including but not limited to dogs, cats, fish, birds and other commonly accepted household pets).

(iii) No exterior signage shall be permitted with respect to veterinary services or other incidental services, except with the prior written approval of the Approving Parties, provided PetsMart may attach its typical exterior sign age with respect to such veterinary services without the written approval of the Approving Parties.

(iv) Overnight boarding of pets shall be limited as follows: (i) all boarding shall be incidental to the business operated in the pet shop and not offered to customers as a separate service; (ii) the combined veterinary and overnight boarding facilities shall occupy no more than

fifteen percent (15%) of the Floor Area of the pet shop; and (iii) all boarding shall be indoors, and no exterior kennels, runs or pens shall be permitted.

(v) The Occupant of the pet shop shall perform, or cause to be performed, daily janitorial services sufficient to prevent any accumulation of pet stains, pet odors or pet droppings on the pet shop premises and/or in any portion of the Common Area located within one hundred fifty (150) feet from any customer entrance to the pet shop. In the event that the Occupant of the pet shop fails to perform such janitorial services (or to cause the same to be performed) following receipt of notice as herein provided, Operator and Target shall each have the right to perform such janitorial services (or cause the same to be performed), and the Occupant of the pet shop shall reimburse Operator or Target, as the case may be, in an amount equal to one hundred ten percent (110%) of all reasonable costs paid or incurred for such purposes within thirty (30) days following receipt of an invoice therefor or other reasonable evidence of the amount and purposes thereof, upon failure of which Operator or Target may, in its sole discretion, pursue any other remedy available to it under this OEA or otherwise.

(M) Any mortuary or funeral home.

(N) Any establishment selling or exhibiting "obscene" material.

(O) Any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.

(P) Except on the Outparcels, no bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.

(Q) Any health spa, fitness center or workout facility except that one such workout facility of no more than 5,000 square feet of Floor Area, such as a Curves, shall be permitted; any massage parlors or similar establishments except that one such national chain such as a Massage Envy shall be permitted and a massage operation may be permitted as an ancillary use to a hair, nail or beauty salon.

(R) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall (provided that first class family entertainment centers that have amusement or video arcade machines and pool or billiard tables incidental to their operations, such as an ESPN Zone or a Dave and Buster's as currently operated shall be permitted).

(S) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (i) on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center or to learning centers such as Huntington Learning Center, Sylvan Learning Center or similar operations provided no such learning center shall exceed 2,000 square feet of Floor Area, or (ii) to an operation similar to the University of Phoenix educational institution which shall contain no more than 10,000 square feet of Floor Area.

(T) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

(U) Any outdoor circus, carnival or amusement park or other entertainment facility.

(V) Any outdoor meetings.

(W) A shooting gallery.

(X) An auditorium, meeting hall, ballroom or other place of assembly.

(Y) An unemployment agency, service or commission.

(Z) A hardware store or center containing more than 5,000 square feet of Floor Area.

(AA) An appliance and/or lighting store or center containing more than 5,000 square feet of Floor Area and/or other stores or centers similar to those operated by or as a Conn's (provided, however, that the foregoing restriction does not apply to any Best Buy store);

(BB) A nursery and/or lawn and garden store or center containing more than 3,000 square feet of Floor Area (including any outdoor areas).

(CC) A paint, wall paper, tile, flooring, and/or carpeting store or center containing more than 4,000 square feet of Floor Area.

(DD) A retail and/or warehouse home improvement center, lumber yard, building materials supply center, home improvement service center and/or other stores or centers similar to those operated by or as Lowe's, Home Depot, Home Depot Expo, Villagers Hardware, 84 Lumber, Wickes, Hughes Lumber, McCoys, Menard's, Sears Hardware, Sears Appliance and Hardware, Great Indoors, Sutherlands, Scotty's and/or Orchard Supply.

(EE) A cell phone store

### **Skechers and T-Mobile**

#### **Prohibited Uses**

(1) No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing and except as otherwise may be provided in the OEA, the following uses shall not be permitted:

(A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.

(B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.

(C) Any "second hand" store, "surplus" store, or pawn shop (other than Gamestop, Blockbuster, Second Swing Golf and any retail establishment selling second hand merchandise as an incidental part of its operations).

(D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.

(E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.

(F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.

(G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.

(H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation.

(I) Any bowling alley or skating rink.

(J) Any movie theater or live performance theater.

(K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.

(L) Any veterinary hospital or animal raising or boarding facilities (except that this prohibition shall not prohibit pet shops that do not offer veterinary or boarding services). Notwithstanding the foregoing, veterinary services may be provided as an incidental retail activity within a pet shop; provided, however, that the operation of such a pet business shall be subject to the following conditions:

(i) Such operations shall otherwise be in compliance with all provisions of this OEA

(ii) Veterinary and other pet services shall be provided only with respect to domestic animals (including but not limited to dogs, cats, fish, birds and other commonly accepted household pets).

(iii) No exterior signage shall be permitted with respect to veterinary services or other incidental services, except with the prior written approval of the Approving Parties, provided PetsMart may attach its typical exterior sign age with respect to such veterinary services without the written approval of the Approving Parties.

(iv) Overnight boarding of pets shall be limited as follows: (i) all boarding shall be incidental to the business operated in the pet shop and not offered to customers as a separate service; (ii) the combined veterinary and overnight boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop; and (iii) all boarding shall be indoors, and no exterior kennels, runs or pens shall be permitted.

(v) The Occupant of the pet shop shall perform, or cause to be performed, daily



janitorial services sufficient to prevent any accumulation of pet stains, pet odors or pet droppings on the pet shop premises and/or in any portion of the Common Area located within one hundred fifty (150) feet from any customer entrance to the pet shop. In the event that the Occupant of the pet shop fails to perform such janitorial services (or to cause the same to be performed) following receipt of notice as herein provided, Operator and Target shall each have the right to perform such janitorial services (or cause the same to be performed), and the Occupant of the pet shop shall reimburse Operator or Target, as the case may be, in an amount equal to one hundred ten percent (110%) of all reasonable costs paid or incurred for such purposes within thirty (30) days following receipt of an invoice therefor or other reasonable evidence of the amount and purposes thereof, upon failure of which Operator or Target may, in its sole discretion, pursue any other remedy available to it under this OEA or otherwise.

(M) Any mortuary or funeral home.

(N) Any establishment selling or exhibiting "obscene" material.

(O) Any establishment selling or exhibiting drug-related paraphernalia for use with illicit drugs or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff.

(P) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.

(Q) Any health spa, fitness center or workout facility except that one such workout facility of no more than 5,000 square feet of Floor Area, such as a Curves, shall be permitted; any massage parlors or similar establishments except that one such national chain such as a Massage Envy shall be permitted and a massage operation may be permitted as an ancillary use to a hair, nail or beauty salon.

(R) Any flea market, amusement or video arcade, pool or billiard hall, car wash or dance hall (provided that first class family entertainment centers that have amusement or video arcade machines and pool or billiard tables incidental to their operations, such as an ESPN Zone or a Dave and Buster's as currently operated shall be permitted).

(S) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (i) on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center or to learning centers such as Huntington Learning Center, Sylvan Learning Center or similar operations provided no such learning center shall exceed 2,000 square feet of Floor Area.

(T) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

(U) Any outdoor circus, carnival or amusement park or other entertainment facility.

(V) Any outdoor meetings.

(W) A shooting gallery.

(X) An auditorium, meeting hall, ballroom or other place of assembly.

(Y) An unemployment agency, service or commission

**Ultra:** The following uses shall not be permitted within the "Restricted Area" as set forth on Exhibit A: Drive-throughs; children's recreational, educational or day-care facility; restaurants occupying more than 2,500 square feet of Gross Floor Area (other than incidental restaurant operations of a tenant occupying more than 10,000 square feet); offices; professional uses; and schools of any nature. In addition, no restaurant or other food service operation or children's recreational facility will be located within two hundred (200) feet of the Premises, except for those cases which are permitted to be operated in connection with the operation of any of the following: Marshalls; Steinmart or tenant's in excess of 20,000 square feet. As used herein, "school" includes, but is not limited to, a beauty school, barber college, reading room; place of instruction or any other operation serving primarily students or trainees rather than retail customers.

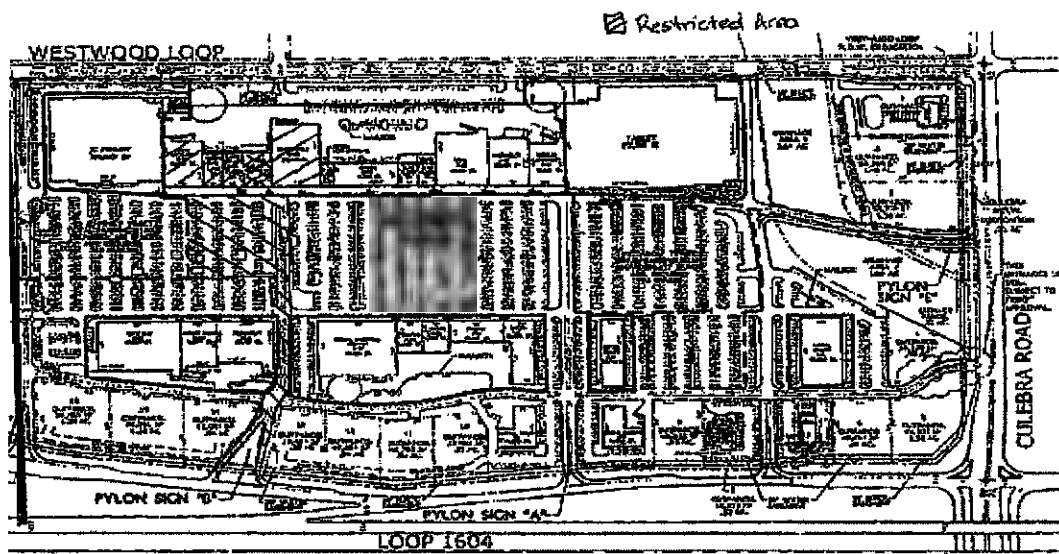


EXHIBIT G-Prohibited Uses

1. Other Prohibited Uses. The following uses (collectively referred to as "Prohibited Uses" and individually as a "Prohibited Use") are prohibited during the Term of the Lease in any portion or the Shopping Center:
  - a. Any nuisance; use causing loud noises or offensive odors (including any business using exterior loud speakers);
  - b. Any manufacturing facility;
  - c. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented solely to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;
  - d. Any automobile repair shop; service station or any facility storing or selling gasoline or diesel fuel in or from tanks except as permitted on the outparcels shown on Exhibit A;
  - e. Any used clothing or thrift store or liquidation outlet (however, Landlord shall be allowed space within the Shopping Center for the sale of used merchandise to tenants such as Second Swing Golf, Play It Again Sports or other national first class operations);
  - f. Any massage parlor (however, Landlord shall be permitted to lease space within the Shopping Center for the operation of (i) a Massage Envy or similar first class operation, and (ii) one (1) day spa of up to 4,000 square feet, provided that Massage Envy (or similar first class operation) and such day spa are not located within five hundred feet (500') of the Premises);
  - g. Any establishment providing nude or topless entertainment or wait staff, or any establishment selling or exhibiting pornographic materials (including, without limitation, adult books or videos). Materials shall be considered "adult" or "pornographic" under this paragraph if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict sexuality; provided, however, that the sale of materials such as books and videos commonly carried by reputable national or regional book and/or video retailers (such as Barnes and Noble or Best Buy) shall not be deemed adult or pornographic hereunder;
  - h. Any mortuary or funeral parlor;
  - i. Any coin operated laundry;
  - j. Any cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant, provided, however, that the foregoing shall not be deemed to prohibit the sale of beer, wine and/or alcohol by any occupant ancillary to its primary use of the premises, the sale of beer, wine or alcohol by Cost Plus World Market or the sale of wine by one (1) high-end wine shop or upscale liquor store such as "Spec's" or "Centennial" liquor stores;
  - k. Any night club;
  - l. Any cinema or theater, excluding demonstration purposes incidental to primary use as a

consumer electronics store such as Best Buy, and excluding a theater located on Phase 2;

m. Any place of recreation (including but not limited to bowling alley, skating rink, carnival, game arcade, gym, dance studio or exercise facility), but specifically excluding (a) one (1) exercise facility for children with up to 10,000 square feet, such as a "Little Gym" type store, provided such exercise facility is not located within two hundred feet (200') of the Premises, (b) one (1) daycare facility for children, provided it is located within Outparcels 1-7, (c) a health club, gymnasium, exercise or dance studio with less than 3,000 square feet provided such health club, gymnasium, exercise or dance studio is not located within two hundred feet (200') of the Premises, (d) a health club, gymnasium, exercise or dance studio of any size within Phase 2, or a Lifetime Fitness or similar exercise facility in the contemplated Phase 2 of the Shopping Center, and/or (e) an amusement or video arcade, children's playcenter, pinball, computer, other gameroom in or other physical play activities for children, kiddie rides and games operated in connection with a Chuck E cheese or other similar fast food establishment provided that such establishment is not located within three hundred feet (300') of the Premises;

n. Any church;

o. Any dumping, disposing (other than in the designated trash removal areas), incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of or in any building in the Shopping Center);

p. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or ruining operation; provided, however, one (1) mini storage facility is permitted on Phase 2 as depicted on Exhibit A hereof;

q. Any pawn shop, "second-hand" store, schlock store, or "surplus" store (however, Landlord shall be allowed space within the Shopping Center to the sale of used merchandise to tenants such as Second Swing GA Play It Again Sports and other national first class operations); provided, however, that this provision shall not restrict or prohibit Tenant from the ancillary sale of consumer electronics merchandise, regardless of whether new, used or refurbished; provided, however, one (1) used video game store, such as Game Stop is permitted provided it is located at least 500 lineal feet from the storefront of the Premises and does not exceed 2000 square feet in size;

r. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an occupant to determine its own selling prices nor shall it preclude the conduct of any seasonal sales, promotional or clearance sales or legitimate going out of business sales in compliance with applicable Laws);

s. Any automobile, truck, trailer, recreational vehicle, mobile home Or boat sales, leasing, display, service and/or repair operation; provided, however, this prohibition shall not prohibit or restrict Tenant, or another tenant/occupant incidental to its primary use, from operating an installation bay for the installation, service and/or repair of consumer electronics for motor vehicles, or the leasing of trucks by the hour by any tenant/occupant to its customers for the sole purpose of transporting purchases from such tenant/occupant's premises to the customer's home, storage, or use destination, Notwithstanding anything to the contrary in the foregoing, one (1) retail car rental establishment shall be permitted, provided that it is no more than 2,500 square feet, it is located at least 500 lineal feet from the storefront of the Premises, and it does not have any designated or reserved parking spots;

t. Any tire center, oil change service, gas station, tire center or carwash; provided, however, such uses shall be permitted in the outparcels;

u. Any roller rink;

v. Any veterinary hospital or animal raising or boarding facilities; provided, however, PetSmart and/or Petco shall be permitted. However, no designated animal excrement areas shall be permitted in the Shopping Center;

w. Any flea market, amusement, video arcade, children's play center (including, without limitation, any business primarily providing physical play activities for children, kiddie rides or games but excluding one (1) exercise facility for children, such as a "Little Gym"-type store and provided it is located outside of Tenant's Protected Area and excluding one (1) daycare facility for children, provided it is located within Outparcels 1-7), pinball, computer or other gamerooms, pool or billiard hall, dance or music hall, disco or nightclub or any other facility operated solely for entertainment purposes, such as a "laser tag" or "virtual reality" theme operation (except that this prohibition shall not prohibit (x) Chuck E Cheese or another similar fast food establishment, so long as it is open and operating as a restaurant from having an amusement or video arcade, children's playcenter, pinball, computer and/or other gameroom and other physical play activities for children, kiddie rides and games as part of its leased premises in the

Shopping Center to the extent permitted under its lease or (y) a consumer electronics store such as Best Buy from operating video or gaming equipment for demonstration purposes);

x. Any training or educational facility, including but not limited to beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers, or any day care center; provided however, this prohibition shall not be applicable to any of the following, to the extent the same are incidental to an occupant's business at the Shopping Center: (a) any onsite employee training by an occupant, or (b) any "how to" training for customers. Provided, however, one (1) educational facility such as Sylvan or Huntington Learning Centers is permitted outside of Tenant's Protected Area;

y. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant. Notwithstanding the above, this paragraph is not intended to prohibit the incidental installation and use of video game machines by the occupants;

z. Any carnival, amusement park or circus;

aa. Any banquet hall, auditorium, or other place of public assembly;

bb. Any venue for in-person, on-site sporting events (provided, however that the foregoing shall not prohibit the demonstration of sporting goods for sale).

cc. Any Hazardous Substances, except in the ordinary course of its usual operations conducted thereon, and any such use shall at all times be in compliance with all Hazardous Substances Laws;

dd. Any outdoor meetings, events or promotional activities (but Shall not prohibit and/or restrict Tenant's use of the linear footage of sidewalks in front of the Premises for promotional activities, provided the same shall be limited to (i) four (4) times per any calendar year and (ii) no more than five (5) consecutive days in length;

ee. Any shooting gallery;

ff. Any residential use, except on Phase 2 as depicted on Exhibit A hereof.

gg. Any other use inconsistent with the operation of a high quality retail shopping center.

**Vitamin Shoppe:** Landlord represents and warrants to Tenant that, (i) Landlord will not lease space within 40 feet of the western demising wall of the Premises to any restaurant user. (ii) Landlord will not lease space in the Building to any single restaurant user occupying in excess of 2,500 square feet, (iii) Landlord will not lease in excess of 5,000 square feet in the aggregate in the Building to restaurant users. Landlord further covenants that it will not lease space in the Building for the operation of a full service, sit-down restaurant, which by way of example shall include Pizzeria Uno, Applebee's, TGI Fridays or Olive Garden.

**Zales:** Notwithstanding anything to the contrary contained in this Lease, no kiosks, RMU's, planters, fountains or items of any nature shall be located within twenty feet (20') of a hypothetical line extending parallel with the demising walls of the Leased Premises; no jewelry kiosks or jewelry RMU's shall be located within fifty feet (50') of a hypothetical line extending parallel with the demising walls of the Leased Premises. No playgrounds or amusement/activity areas shall be located within one hundred feet (100') of a hypothetical line extending parallel with the demising walls of the Leased Premises. No improvements of any kind can be placed between Tenant's storefront and the parking lot.

2. Additionally, Tenant's use and occupancy of the Premises shall be limited by, and is subject to, the following use restrictions and prohibitions:

a) A bar, lounge, nightclub or discotheque or any use where the sale of alcoholic beverages by the drink exceeds forty percent (40%) of such occupant's total gross sales;

b) A place of public entertainment or recreation facility, including, without limitation, a bowling alley, theater, skating rink, billiard parlor, bingo parlor, off-track betting facility, gambling casino, gaming hall, gun range, computer game room or amusement center with arcade, pinball, video or electronic games;

- c) An auditorium or similar place of general assembly;
- d) A massage parlor or tattoo parlor;
- e) A funeral home;
- f) A training or educational facility including, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees, rather than retail customers;
- g) The sale of drug paraphernalia, except as may be permitted in a standard drug store or pharmacy (excluding any medical or other marijuana facility);
- h) The sale or display of pornographic material, as more particularly identified below in this Exhibit;
- i) The sale of any goods and/or services that, in the sole and absolute discretion of Landlord, are inconsistent with the image of a community or family-oriented shopping center;
- j) A flea market or pawn shop;
- k) Any business or use which emits offensive odors, fumes, dust, vapor or vibrations or constitutes a public or private nuisance, or emits loud noises or sounds which are objectionable to the Shopping Center customers, users or occupants, or which creates a fire, explosive or other hazard;
- l) A manufacturing facility, excluding manufacturing incidental to an otherwise permissible retail use;
- m) A warehouse, except warehousing incidental to the operation of Tenant's business at the Premises;
- n) A car wash or for the use of storage, sale, display, repair, rental or servicing or cars, boats or other motorized vehicles or equipment;
- o) A hotel or other lodging facilities;
- p) A dry cleaner (other than a dry cleaner with pickup/drop-off services only) or other business that uses hazardous materials;
- q) Any primarily non-retail use other than a financial institution, a real estate or insurance office, a medical or dental office, a loan office, a brokerage office, a financial planner's office or a tax preparation office;
- r) Any use that violates any legal requirement and/or the requirements of the insurance underwriter(s) of the coverages on the Shopping Center;
- s) Any fire, auction, bankruptcy, "going-out-of-business", "lost our lease", or other similar sale, unless required by applicable Law; and
- t) Except as otherwise approved by Landlord, in its sole discretion, any clinic, medical office that is used for abortions or euthanasia, and/or any clinic, medical office and/or retail store that is used for the sale of (or prescribing of) marijuana.

3. Tenant also agrees that the value of the Premises and the reputation of Landlord will be seriously injured if the Premises are used for any obscene or pornographic purposes or any sort of commercial sex establishment. Tenant agrees that Tenant will not bring or permit any obscene or pornographic material (including without limitation pornographic videotapes and movies) on the Premises, and shall not permit or conduct any obscene, nude, or semi-nude live performances on the Premises, nor permit use of the Premises for nude modeling, rap sessions, or as a so-called rubber goods shop, or as a sex club of any sort, or as a "massage parlor." Pornographic material is defined for purposes of this Section as any written, videotaped, videodisk, filmed, or pictorial matter with prurient appeal, or any objects or instruments that are primarily concerned with lewd or prurient sexual activity.

In furtherance thereof, Tenant agrees that no sublease, assignment, concession or license agreement will be entered into by Tenant with any party whose operation would or could include any of the restricted or prohibited use and/or activities listed above.

**EXHIBIT G**  
**TENANT'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS**

TO: BRE RC Alamo Ranch TX LP ("Landlord")

RE: Lease Agreement ("Lease") dated \_\_\_\_\_, 201\_\_ with respect to  
Premises known as Unit No.96 in Alamo Ranch located in San Antonio, Texas  
("Shopping Center")

The undersigned, Tenant under the captioned Lease, hereby certifies that the cost of all leasehold improvements (excluding all Excluded Items (as defined in the Lease) made by Tenant, at its expense, to the Premises is \$\_\_\_\_\_.

The undersigned, Tenant under the captioned Lease, hereby certifies that, except as disclosed on a schedule attached hereto, the undersigned has paid in full or otherwise satisfied all obligations for all materials and equipment furnished, for all work, labor and services performed and for all known indebtedness and claims against the undersigned for damages arising in any manner, in connection with the construction, improvement, fixturing, equipping, decorating and furnishing of the captioned Premises by or on behalf of the undersigned.

The undersigned further certifies that, to the best of the undersigned's knowledge and belief, attached hereto are releases or waivers of liens from every contractor, subcontractor, supplier of materials and equipment, and performers of labor or services, who have or may have liens against the Premises, the Shopping Center or other property of Landlord arising in any manner in connection with the construction, improvement, fixturing, equipping, decorating and furnishing of the Premises.

The undersigned agrees that this affidavit may be relied upon by any investor or lender providing financing for, and by an insurer issuing title insurance with respect to the Shopping Center.

EXECUTED THIS \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**TENANT:**  
**LRX SAN ANTONIO WEST SIDE, LLC,**  
a Michigan limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT H  
COMMENCEMENT DATE AGREEMENT**

In connection with that certain Lease Agreement ("Lease") dated \_\_\_\_\_, 20\_\_\_\_, by and between BRE RC Alamo Ranch TX LP, a Delaware limited partnership, as Landlord, and LRX San Antonio West Side, LLC, a Michigan limited liability company, as Tenant, Landlord and Tenant hereby agree as follows:

1. The Commencement Date (as defined in the Lease) is agreed to be \_\_\_\_\_, 20\_\_\_\_; and
2. The Expiration Date (as defined in the Lease) is agreement to be \_\_\_\_\_, 20\_\_\_\_ (unless extended, if applicable, or sooner terminated in accordance with the terms of the Lease).

The parties hereto have executed this Commencement Date Agreement as of the day and year set forth above.

**LANDLORD:**

**BRE RC ALAMO RANCH TX LP**, a Delaware limited partnership

By: BRE RC Alamo Ranch TX GP LLC, a Delaware limited liability company, its general partner

By: \_\_\_\_\_  
Name: Linda M. Madway  
Title: Senior Vice President

**TENANT:**

**LRX SAN ANTONIO WEST SIDE, LLC**, a Michigan limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT I GUARANTY

In order to induce **BRE RC ALAMO RANCH TX LP**, a Delaware limited partnership ("Landlord") to execute the Lease Agreement between Landlord and **LRX SAN ANTONIO WEST SIDE, LLC**, a Michigan limited liability company, as Tenant, dated \_\_\_\_\_, 2017 (the "Lease"), the undersigned (individually and collectively referenced herein as "Guarantor") hereby execute(s) this Guaranty (this "Guaranty") in favor of Landlord, its successors and assigns, and agree(s) as follows:

1. Guarantor shall (i) promptly pay all Rent and any other amounts payable by Tenant under the Lease; (ii) promptly perform each and every obligation of Tenant under the Lease; and (iii) indemnify and protect Landlord from any and all losses, expenses, penalties, demands, suits or costs incurred by Landlord (including legal fees) if Tenant fails to pay the Rent or other amounts or to perform any of Tenant's obligations under the Lease. This is a guaranty of payment and performance and not merely of collection.

2. Even if there is an Early Termination (hereinafter defined), Guarantor shall remain obligated under this Guaranty as though the Early Termination had not occurred. An "Early Termination" means a disaffirmance, disclaimer, repudiation, rejection or termination of the Lease (as a result of court proceedings or otherwise), or a surrender of the Lease that Landlord did not accept in writing, which occurs prior to the originally specified expiration date of the Lease. If there is an Early Termination, Guarantor shall, at Landlord's option, become Landlord's tenant on the terms of the Lease.

3. Guarantor's guaranty, as set forth herein, is absolute and unconditional. Guarantor's obligations under this Guaranty shall not be affected by: (a) any modifications to Tenant's rights or obligations under the Lease; (b) the fact that Landlord waives or does not enforce any of the terms of the Lease; (c) any assignment or other transfer of the Lease by Tenant or by any trustee, receiver or liquidator; (d) any consent that Landlord gives to any assignment or other transfer of the Lease; (e) any waiver by Tenant of its rights under the Lease; (f) any additional security accepted by Landlord from Tenant; (g) the expiration of the Lease Term or any extension or renewal thereof; (h) the release or discharge of Tenant by Landlord or in any receivership, bankruptcy, winding-up or other creditors' proceedings or by operation of law; or (i) lack of notice of any of the foregoing. Guarantor's obligations shall not be affected by any repossession of the Premises by Landlord, except that if Landlord re-lets the Premises then the payments received by Landlord (after deducting all costs and expenses of repossessing and reletting the Premises) will be credited by Landlord against Guarantor's obligations under this Guaranty. Landlord is not required to notify the Guarantor that Landlord has accepted this Guaranty or that Tenant has failed to perform any of its obligations under the Lease. Nevertheless, if Landlord wishes to send any notice to Guarantor, it will deliver it or mail it by prepaid certified mail or recognized overnight delivery service addressed to Guarantor at Guarantor's address set forth below in this Guaranty. Any notice will be considered to have been given on the day it was delivered, or if mailed by U.S. mail, three (3) days after the date it was mailed, or if sent by recognized overnight delivery service, one (1) day after the date it was provided to such service. Guarantor may notify Landlord in writing of a substitute address for the above address.

4. If there is a default under the Lease, Landlord shall not be required to: (a) proceed against or pursue anything against Tenant first; (b) proceed against any security of Tenant held by Landlord; or (c) pursue any other remedy whatsoever. Guarantor is not a mere guarantor;



the Guarantor is primarily responsible for Tenant's obligations under the Lease.

5. Even though Landlord may have already taken action against Guarantor under this Guaranty because of a default under the Lease, and whether or not that action has succeeded or been completed, Landlord may take further action against Guarantor under this Agreement if there is any further default under the Lease.

6. No modification to this Guaranty shall be binding, unless signed by both Guarantor and Landlord.

7. If two or more parties are named as Guarantor, each party is jointly and severally responsible for the obligations of Guarantor.

8. Guarantor represents and warrants that:

- (a) No authorization, approval, consent or order of any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty;
- (b) This Guaranty constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
- (c) There are no actions, suits or proceedings pending, or to the knowledge of Guarantor, threatened against or affecting Guarantor before any court, governmental agency or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial conditions, operations, properties or business of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty;
- (d) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation/organization and has full power and authority to execute, deliver and carry out the terms and provisions of this Guaranty; and
- (e) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary action and do not contravene Guarantor's organizational documents or any contractual restriction binding on Guarantor or its assets.

9. Until all obligations have been irrevocably paid and performed in full, Guarantor shall have no right of subrogation and Guarantor waives any right to enforce any remedy which it now has or may hereafter have against Tenant, and any benefit of and any right to participate in any security now or hereafter held by Landlord.

10. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand; (c) any right to require that any action or proceeding be brought against Tenant or any other person, prior to any action against Guarantor under the terms hereof; and (d) any circumstance whatsoever or any act of Tenant or any existence of or reliance on any representation by Tenant that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

11. All of the terms of this Guaranty shall apply to Guarantor and to his or her heirs, executors, administrators, personal legal representatives, or its successors and assigns, as the case may be, and may be enforced by Landlord, its successors and assigns, and any holder of any mortgage or charge over all or any part of the lands on which the Premises are located. This Guaranty may be assigned by Landlord without restriction.

12. Any term used herein without definition shall have the same meanings as set forth in the Lease.

13. This Guaranty shall be governed by the laws of the state in which the Shopping Center is located. The parties agree that the courts of such state shall have exclusive jurisdiction to determine any matters arising hereunder, and the parties do hereby irrevocably consent to the exclusive jurisdiction of such courts to hear and resolve any issue with respect to this Guaranty and the interpretation thereof.

14. Guarantor shall execute and deliver to Landlord within five (5) days after receipt of any request, an estoppel statement or other certificate to the same extent as Tenant is required to deliver same to any existing, future or prospective mortgagee(s) or purchaser(s) of the Shopping Center or Landlord pursuant to the provisions of the Lease.

15. The death or disability of any individual acting as Guarantor, or the dissolution of any entity acting as Guarantor, shall not affect Guarantor's obligations hereunder, and the heirs, executors, administrators, successors and assigns shall remain liable for Guarantor's obligations hereunder.

16. If any term or provision of this Guaranty, or the application thereof to any person, entity or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Guaranty, or the application of such term or provision to any person, entity or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Guaranty shall be valid and be enforced to the fullest extent permitted by law.

17. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

18. Guarantor's address is as follows:

Body Contour Ventures, LLC  
Attention: Richard Morgan, President  
34405 12 Mile Road, Suite 200  
Farmington Hills, Michigan 48331

19. This Guaranty may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon Guarantor, notwithstanding that all the parties are not signatories to the same counterpart.

In order to facilitate the agreements contemplated hereby, the signature(s) to this Guaranty transmitted as Electronic Copies may be used in place of the original signature(s) on this Guaranty. Each Guarantor (i) intends to be bound by Electronic Copies of this Guaranty, (ii) is aware that Landlord is relying on the Electronic Copies, and (iii) hereby waives any defenses to the enforcement of this Guaranty based upon the Electronic Copies. Promptly following the delivery of the Electronic Copies, Guarantor shall deliver to Landlord the original executed Guaranty.

EXECUTED, THIS \_\_\_\_ day of \_\_\_\_\_, 2017 to be effective the same day  
as the effective day of the Lease.

**GUARANTOR:**  
**BODY CONTOUR VENTURES, LLC,**  
a Michigan limited liability company

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT I GUARANTY

In order to induce **BRE RC ALAMO RANCH TX LP**, a Delaware limited partnership ("Landlord") to execute the Lease Agreement between Landlord and **LRX SAN ANTONIO WEST SIDE, LLC**, a Michigan limited liability company, as Tenant, dated October 21, 2017 (the "Lease"), the undersigned (individually and collectively referenced herein as "Guarantor") hereby execute(s) this Guaranty (this "Guaranty") in favor of Landlord, its successors and assigns, and agree(s) as follows:

1. Guarantor shall (i) promptly pay all Rent and any other amounts payable by Tenant under the Lease; (ii) promptly perform each and every obligation of Tenant under the Lease; and (iii) indemnify and protect Landlord from any and all losses, expenses, penalties, demands, suits or costs incurred by Landlord (including legal fees) if Tenant fails to pay the Rent or other amounts or to perform any of Tenant's obligations under the Lease. This is a guaranty of payment and performance and not merely of collection.

2. Even if there is an Early Termination (hereinafter defined), Guarantor shall remain obligated under this Guaranty as though the Early Termination had not occurred. An "Early Termination" means a disaffirmance, disclaimer, repudiation, rejection or termination of the Lease (as a result of court proceedings or otherwise), or a surrender of the Lease that Landlord did not accept in writing, which occurs prior to the originally specified expiration date of the Lease. If there is an Early Termination, Guarantor shall, at Landlord's option, become Landlord's tenant on the terms of the Lease.

3. Guarantor's guaranty, as set forth herein, is absolute and unconditional. Guarantor's obligations under this Guaranty shall not be affected by: (a) any modifications to Tenant's rights or obligations under the Lease; (b) the fact that Landlord waives or does not enforce any of the terms of the Lease; (c) any assignment or other transfer of the Lease by Tenant or by any trustee, receiver or liquidator; (d) any consent that Landlord gives to any assignment or other transfer of the Lease; (e) any waiver by Tenant of its rights under the Lease; (f) any additional security accepted by Landlord from Tenant; (g) the expiration of the Lease Term or any extension or renewal thereof; (h) the release or discharge of Tenant by Landlord or in any receivership, bankruptcy, winding-up or other creditors' proceedings or by operation of law; or (i) lack of notice of any of the foregoing. Guarantor's obligations shall not be affected by any repossession of the Premises by Landlord, except that if Landlord re-lets the Premises then the payments received by Landlord (after deducting all costs and expenses of repossessing and reletting the Premises) will be credited by Landlord against Guarantor's obligations under this Guaranty. Landlord is not required to notify the Guarantor that Landlord has accepted this Guaranty or that Tenant has failed to perform any of its obligations under the Lease. Nevertheless, if Landlord wishes to send any notice to Guarantor, it will deliver it or mail it by prepaid certified mail or recognized overnight delivery service addressed to Guarantor at Guarantor's address set forth below in this Guaranty. Any notice will be considered to have been given on the day it was delivered, or if mailed by U.S. mail, three (3) days after the date it was mailed, or if sent by recognized overnight delivery service, one (1) day after the date it was provided to such service. Guarantor may notify Landlord in writing of a substitute address for the above address.

4. If there is a default under the Lease, Landlord shall not be required to: (a) proceed against or pursue anything against Tenant first; (b) proceed against any security of Tenant held by Landlord; or (c) pursue any other remedy whatsoever. Guarantor is not a mere guarantor;

the Guarantor is primarily responsible for Tenant's obligations under the Lease.

5. Even though Landlord may have already taken action against Guarantor under this Guaranty because of a default under the Lease, and whether or not that action has succeeded or been completed, Landlord may take further action against Guarantor under this Agreement if there is any further default under the Lease.

6. No modification to this Guaranty shall be binding, unless signed by both Guarantor and Landlord.

7. If two or more parties are named as Guarantor, each party is jointly and severally responsible for the obligations of Guarantor.

8. Guarantor represents and warrants that:

- (a) No authorization, approval, consent or order of any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty;
- (b) This Guaranty constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity;
- (c) There are no actions, suits or proceedings pending, or to the knowledge of Guarantor, threatened against or affecting Guarantor before any court, governmental agency or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial conditions, operations, properties or business of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty;
- (d) Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation/organization and has full power and authority to execute, deliver and carry out the terms and provisions of this Guaranty; and
- (e) The execution, delivery and performance of this Guaranty have been and remain duly authorized by all necessary action and do not contravene Guarantor's organizational documents or any contractual restriction binding on Guarantor or its assets.

9. Until all obligations have been irrevocably paid and performed in full, Guarantor shall have no right of subrogation and Guarantor waives any right to enforce any remedy which it now has or may hereafter have against Tenant, and any benefit of and any right to participate in any security now or hereafter held by Landlord.

10. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand; (c) any right to require that any action or proceeding be brought against Tenant or any other person, prior to any action against Guarantor under the terms hereof; and (d) any circumstance whatsoever or any act of Tenant or any existence of or reliance on any representation by Tenant that might otherwise constitute a legal or equitable defense available to, or a discharge of, the Guarantor.

11. All of the terms of this Guaranty shall apply to Guarantor and to his or her heirs, executors, administrators, personal legal representatives, or its successors and assigns, as the case may be, and may be enforced by Landlord, its successors and assigns, and any holder of any mortgage or charge over all or any part of the lands on which the Premises are located. This Guaranty may be assigned by Landlord without restriction.

12. Any term used herein without definition shall have the same meanings as set forth in the Lease.

13. This Guaranty shall be governed by the laws of the state in which the Shopping Center is located. The parties agree that the courts of such state shall have exclusive jurisdiction to determine any matters arising hereunder, and the parties do hereby irrevocably consent to the exclusive jurisdiction of such courts to hear and resolve any issue with respect to this Guaranty and the interpretation thereof.

14. Guarantor shall execute and deliver to Landlord within five (5) days after receipt of any request, an estoppel statement or other certificate to the same extent as Tenant is required to deliver same to any existing, future or prospective mortgagee(s) or purchaser(s) of the Shopping Center or Landlord pursuant to the provisions of the Lease.

15. The death or disability of any individual acting as Guarantor, or the dissolution of any entity acting as Guarantor, shall not affect Guarantor's obligations hereunder, and the heirs, executors, administrators, successors and assigns shall remain liable for Guarantor's obligations hereunder.

16. If any term or provision of this Guaranty, or the application thereof to any person, entity or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Guaranty, or the application of such term or provision to any person, entity or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Guaranty shall be valid and be enforced to the fullest extent permitted by law.

17. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

18. Guarantor's address is as follows:

Body Contour Ventures, LLC  
Attention: Richard Morgan, President  
34405 12 Mile Road, Suite 200  
Farmington Hills, Michigan 48331

19. This Guaranty may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon Guarantor, notwithstanding that all the parties are not signatories to the same counterpart.

In order to facilitate the agreements contemplated hereby, the signature(s) to this Guaranty transmitted as Electronic Copies may be used in place of the original signature(s) on this Guaranty. Each Guarantor (i) intends to be bound by Electronic Copies of this Guaranty, (ii) is aware that Landlord is relying on the Electronic Copies, and (iii) hereby waives any defenses to the enforcement of this Guaranty based upon the Electronic Copies. Promptly following the delivery of the Electronic Copies, Guarantor shall deliver to Landlord the original executed Guaranty.



EXECUTED, THIS 21 day of October, 2017 to be effective the same day as the effective day of the Lease.

**GUARANTOR:**  
**BODY CONTOUR VENTURES, LLC,**  
a Michigan limited liability company

Witness: 

Name: Destiny Nguyen

By: 

Name: Richard Morgan

Title: President

# Eastern District of Michigan Claims Register

[19-42510-pjs Body Contour Ventures, LLC](#)

**Judge:** Phillip J Shefferly

**Chapter:** 11

**Office:** Detroit

**Last Date to file claims:** 07/01/2019

**Trustee:**

**Last Date to file (Govt):** 09/30/2019

**Creditor:** (26028736)  
BRE RC Alamo Ranch TX LP  
Kelly M. Conlan, Esq.  
Connolly Gallagher LLP  
1201 North Market Street, 20th Fl  
Wilmington, DE 19801

**Claim No:** 106  
*Original Filed Date:* 06/27/2019  
*Original Entered Date:* 06/27/2019

*Status:*  
*Filed by:* CR  
*Entered by:* ePOC  
*Modified:*

Amount claimed: \$72458.81

*History:*

[Details](#) [106-1](#) 06/27/2019 Claim #106 filed by BRE RC Alamo Ranch TX LP, Amount claimed: \$72458.81 (ePOC)

*Description:*

*Remarks:*

## Claims Register Summary

**Case Name:** Body Contour Ventures, LLC

**Case Number:** 19-42510-pjs

**Chapter:** 11

**Date Filed:** 02/22/2019

**Total Number Of Claims:** 1

<b>Total Amount Claimed*</b>	\$72458.81
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

**The values are reflective of the data entered. Always refer to claim documents for actual amounts.**

	Claimed	Allowed
<b>Secured</b>		
<b>Priority</b>		
<b>Administrative</b>		