

<b>Fill in this information to identify the case:</b>
Debtor 1 <u>Body Contour Ventures, LLC</u>
Debtor 2 (Spouse, if filing)
United States Bankruptcy Court <u>Eastern District of Michigan</u>
Case number: <u>19-42510</u>

**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.

<b>Part 1: Identify the Claim</b>		
<b>1. Who is the current creditor?</b>	<u>BPP Shops at La Jolla LLC</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>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>BPP Shops at La Jolla LLC</u>	<u>BPP Shops at La Jolla LLC</u>
	Name	Name
	<u>Kelly M. Conlan, Esq. Connolly Gallagher LLP 1201 North Market Street, 20th Fl Wilmington, DE 19801</u>	<u>c/o ShopCore Properties LP Two Liberty Place, 50 S 16th St, Ste 3325 Philadelphia, PA 19102</u>
	Contact phone <u>302-757-7300</u>	Contact phone <u>215-330-4201</u>
	Contact email <u>kconlan@connollygallagher.com</u>	Contact email <u>lmadway@shopcore.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<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 _____ <span style="float: right;">MM / DD / YYYY</span>	
<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? _____	



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

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 59935.32  
 Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?  
 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).  
 Limit disclosing information that is entitled to privacy, such as healthcare information.  
 Amounts Due Under Guaranty of Non-Residential Real Property Lease (See Exhibit A)  
 \_\_\_\_\_

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
 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.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ \_\_\_\_\_

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No	
	<input type="checkbox"/> Yes. Check all that apply:	<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**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

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.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

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.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 6/27/2019  
MM / DD / YYYY

/s/ Linda Madway

Signature

Print the name of the person who is completing and signing this claim:

Name Linda Madway

First name Middle name Last name

Title Sr. Vice President

Company BPP Shops at LaJolla LLC

Identify the corporate servicer as the company if the authorized agent is a servicer

Address Two Liberty Place, 50 S 16th St Ste 3325

Number Street

Philadelphia, PA 19102

City State ZIP Code

Contact phone 215-330-4201 Email lmadway@shopcore.com

**EXHIBIT A TO PROOF OF CLAIM OF BPP SHOPS AT LA JOLLA LLC  
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. BPP Shops at La Jolla LLC (“Landlord”), as landlord, and LRX La Jolla LLC, as tenant (“Tenant”), are parties to a lease (“Lease”) for nonresidential real property located at 8891 Villa La Jolla Drive, San Diego, California (“Premises”). On June 29, 2018, the Debtor executed the Guaranty of Lease (“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 \$59,935.32 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 **\$59,935.32**, 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 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 CLAIM OF BPP SHOPS AT LA JOLLA LLC  
IN RE: BODY CONTOUR VENTURES, LLC (CASE NO. 19-42510) (PJS)**



**LEASE AGREEMENT**

by and between

**BPP SHOPS AT LA JOLLA LLC  
as Landlord**

and

**LRX LA JOLLA, LLC  
d/b/a LIGHT RX  
as Tenant**

**THE SHOPS AT LA JOLLA VILLAGE  
San Diego, CA**

**TABLE OF CONTENTS**

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

    Section 1.01. Basic Lease Provisions..... 1

    Section 1.02. Defined Terms..... 6

**ARTICLE 2: PREMISES ..... 9**

    Section 2.01. Premises..... 9

    Section 2.02. Condition of the Premises..... 9

    Section 2.03. Surrender of the Premises..... 10

    Section 2.04. Construction Allowance..... 10

**ARTICLE 3: LEASE TERM ..... 12**

    Section 3.01. Lease Term..... 12

    Section 3.02. Commencement of Lease Term..... 12

    Section 3.03. Holding Over..... 12

    Section 3.04. Option to Extend the Lease Term..... 13

**ARTICLE 4: RENT ..... 13**

    Section 4.01. Minimum Annual Rent..... 13

    Section 4.02. Intentionally Deleted..... 13

    Section 4.03. Gross Sales..... 13

    Section 4.04. Intentionally Deleted..... 14

    Section 4.05. Tenant’s Records..... 14

    Section 4.06. Intentionally Deleted..... 14

    Section 4.07. Intentionally Deleted..... 14

    Section 4.08. Intentionally Deleted..... 14

    Section 4.09. Additional Rent..... 14

    Section 4.10. Returned Check Fees, Late Payments and Default Interest..... 15

    Section 4.11. Trash Removal..... 15

    Section 4.12. Payment Under Protest..... 16

Section 4.13. Payment by Third Party.....	16
Section 4.14. Security Deposit.....	16
<b>ARTICLE 5: REAL ESTATE TAXES.....</b>	<b>17</b>
Section 5.01. Real Estate Taxes.....	17
Section 5.02. Taxes on Leasehold.....	18
Section 5.03. Taxes on Rentals.....	19
<b>ARTICLE 6: COMMON AREAS.....</b>	<b>19</b>
Section 6.01. License.....	19
Section 6.02. Control of the Shopping Center and the Common Areas by Landlord.....	19
Section 6.03. Operating Costs.....	20
Section 6.04. Excavation.....	22
Section 6.05. Extended Hours Services.....	23
Section 6.06. Security Officers.....	23
<b>ARTICLE 7: USE OF THE PREMISES.....</b>	<b>23</b>
Section 7.01. Use of the Premises.....	23
Section 7.02. Nuisance and/or Disturbance.....	24
Section 7.03. General Prohibited Uses.....	25
Section 7.04. Storage, Office Use.....	25
Section 7.05. Tenant's Operation of Business.....	25
Section 7.06. Failure of Tenant to Operate its Business.....	26
Section 7.07. Rules and Regulations.....	26
Section 7.08. Quiet Enjoyment.....	26
Section 7.09. Environmental.....	26
<b>ARTICLE 8: TENANT'S CONSTRUCTION AND MAINTENANCE.....</b>	<b>28</b>
Section 8.01. Tenant's Plans and Specifications.....	28
Section 8.02. Tenant's Construction, Installations and Alterations.....	28
Section 8.03. Signs, Awnings and Canopies.....	30



Section 8.04. Laws, Waste or Nuisance.....	31
Section 8.05. Mechanic's Lien.....	31
<b>ARTICLE 9: MAINTENANCE OF BUILDING; ACCESS TO PREMISES .....</b>	<b>32</b>
Section 9.01. Repairs.....	32
Section 9.02. Access to Premises.....	33
<b>ARTICLE 10: UTILITIES .....</b>	<b>33</b>
Section 10.01. Utilities.....	33
<b>ARTICLE 11: ASSIGNMENT; SUBLEASE .....</b>	<b>34</b>
Section 11.01. Assignment or Subletting.....	34
<b>ARTICLE 12: RELOCATION.....</b>	<b>37</b>
Section 12.01. Relocation of the Premises.....	37
<b>ARTICLE 13: REIT .....</b>	<b>38</b>
Section 13.01. Landlord REIT Status.....	38
<b>ARTICLE 14: NOTICES .....</b>	<b>38</b>
Section 14.01. Notices.....	38
<b>ARTICLE 15: INDEMNITY; PROPERTY AND LIABILITY INSURANCE.....</b>	<b>39</b>
Section 15.01. Indemnity.....	39
Section 15.02. Insurance.....	39
Section 15.03. Increase in Insurance Premiums.....	43
Section 15.04. Waiver of Subrogation.....	43
Section 15.05. Insured's Release.....	44
Section 15.06. Notice to Landlord.....	44
<b>ARTICLE 16: LIABILITY OF LANDLORD.....</b>	<b>44</b>
Section 16.01. Waiver of Liability.....	44
Section 16.02. Tenant's Risk of Loss.....	44
Section 16.03. No Partnership.....	45
Section 16.04. Consent Clause.....	45

Section 16.05. Successors.....45

**ARTICLE 17: DAMAGE CLAUSE .....45**

Section 17.01. Destruction.....45

**ARTICLE 18: CONDEMNATION .....46**

Section 18.01. Condemnation.....46

**ARTICLE 19: PRIORITY OF LEASE .....47**

Section 19.01. Subordination, Attornment, Power of Attorney.....47

Section 19.02. Estoppel.....47

Section 19.03. Recording.....48

**ARTICLE 20: LANDLORD’S REMEDIES.....48**

Section 20.01. Default.....48

Section 20.02. Landlord’s Remedies.....49

Section 20.03. Debtor-in-Possession.....50

Section 20.04. Landlord Lien.....51

Section 20.05. Redemption; Reinstatement.....51

Section 20.06. Waiver of Jury Trial.....51

Section 20.07. Accord and Satisfaction.....51

Section 20.08. No Waiver.....51

Section 20.09. Merger.....52

Section 20.10. Legal Fees.....52

**ARTICLE 21: MISCELLANEOUS PROVISIONS.....52**

Section 21.01. Tenant Defined; Use of Pronoun.....52

Section 21.02. Delivery of Lease.....52

Section 21.03. Entire Agreement.....53

Section 21.04. Partial Invalidity.....53

Section 21.05. Applicable Law.....53

Section 21.06. Rules of Construction.....53

Section 21.07. Brokerage Commission. ....53

Section 21.08. Force Majeure. ....54

Section 21.09. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. ....54

Section 21.10. Guaranty. ....54

Section 21.11. Counterparts.....54

Section 21.12. Confidentiality.....54

Section 21.13. Net Lease.....55

Section 21.14. State or Property Specific Lease Provisions. ....55

Section 21.15. Contingency. ....57

Section 21.16. Exhibits.....57

**THIS LEASE AGREEMENT** (this "Lease") is made and entered into as of June 29, 2018 (the "Effective Date"), by and between BPP SHOPS AT LA JOLLA LLC, a Delaware limited liability company, herein called "Landlord", and LRX LA JOLLA, LLC, a California 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 The Shops at La Jolla Village and more particularly depicted on **Exhibit A** attached hereto and made a part hereof.

**Shopping Center Address:** 8801 Villa La Jolla Drive., San Diego, CA 92037

**Premises:** Unit 886103 consisting of approximately 1,817 total square feet in the Shopping Center, as approximately depicted on **Exhibit A** attached hereto.

**Premises Address:** 8861 Villa La Jolla Drive, Suite 503, La Jolla, CA 92037

**Landlord's Address for Notices:** BPP SHOPS AT LA JOLLA LLC  
c/o ShopCore Properties, L.P.  
Attention: Office of the General Counsel  
Two Liberty Place  
50 S. 16th Street, Suite 3325  
Philadelphia, Pennsylvania 19102  
Phone: 215-330-4201

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.

Standard USPS Delivery:  
BPP Shops at La Jolla LLC  
c/o BPP New Hyde Park LLC

P.O. Box 789496  
Philadelphia, PA 19178-9496

Overnight Address  
BPP Shops at La Jolla LLC  
c/o BPP New Hyde Park LLC  
LOCKBOX- 789496  
Wells Fargo Bank  
MAC Y1372-045  
401 Market Street  
Philadelphia, PA 19106

Wire  
Wells Fargo Bank, N.A.  
San Francisco, CA  
Routing #: 121000248  
Account #: 4339866832

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

Make checks payable to "BPP Shops at La Jolla LLC".  
LRX La Jolla, LLC  
Attn: Rich Morgan  
34405 12 Mile Road, Suite 200  
Farmington Hills, Michigan 48331  
Phone: (248) 579-6772  
E-mail: Rich@lightrx.com

**Tenant's Trade Name:**

Light RX Face & Body

**Tenant's FEIN:**

38-4065891

**Guarantor(s):**

Body Contour Ventures, LLC

**Guaranty:**

As provided for in Section 21.10 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.

**Exclusive Use:**

Provided Tenant is not in default under this Lease beyond applicable notice and grace periods, and so long as Tenant is open and operating and is engaged in a business in strict accordance with the Permitted Use, and has not assigned this Lease or sublet the Premises pursuant to the applicable terms of this Lease, Landlord agrees, during such period that Tenant is so in compliance with the foregoing, that Landlord will not lease space in the Shopping Center, as existing as of the Effective Date, to a tenant or occupant whose primary use shall be the operation of a medspa, which shall mean any business

that provides laser hair removal, body contouring, skin rejuvenation, cellulite reduction, skin tightening or similar treatments (herein "Competing Tenant"). The foregoing restriction shall not prohibit the sale of such items, or the provision of such services, or the operation of such a business, by other tenants or occupants of the Shopping Center on an ancillary, incidental or other non-principal or non-primary basis.

**Lease Term:** The Lease Term of ten (10) 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 one hundred and twenty (120) days after the Possession Date ("Fixturing Period").

**Possession Date:** The date Landlord makes the Premises available to 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:** \$8,327.92 per month during the first (1<sup>st</sup>) Lease Year, based on \$55.00 per square foot, per annum.

\$8,577.75 per month during the second (2<sup>nd</sup>) Lease Year, based on \$56.65 per square foot, per annum.

\$8,835.09 per month during the third (3<sup>rd</sup>) Lease Year, based on \$58.35 per square foot, per annum.

\$9,100.14 per month during the fourth (4<sup>th</sup>) Lease Year, based on \$60.10 per square foot, per annum.

\$9,373.14 per month during the fifth (5<sup>th</sup>) Lease Year, based on \$61.90 per square foot, per annum.

\$9,654.34 per month during the sixth (6<sup>th</sup>) Lease Year, based on \$63.76 per square foot, per annum.

\$9,943.97 per month during the seventh (7<sup>th</sup>) Lease Year, based on \$65.67 per square foot, per annum.

\$10,242.29 per month during the eighth (8<sup>th</sup>) Lease Year, based on \$67.64 per square foot, per annum.

\$10,549.56 per month during the ninth (9<sup>th</sup>) Lease Year, based on \$69.67 per square foot, per annum.

\$10,866.04 per month during the tenth (10<sup>th</sup>) Lease Year, based on \$71.76 per square foot, per annum.

**Option Term(s):** There shall be two (2) Option Term(s) of five (5) Lease Years each.

**Exercise of Option Term(s):** Tenant must notify Landlord of its election to exercise each 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(s) Minimum Annual Rent:**

The Minimum Annual Rent for the Option Term(s) 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(s) and equal in duration to the Option Term(s), 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 one hundred and three percent (103%) of the rate of Minimum Annual Rent in effect as of the expiration of the then-current Lease Term. Minimum Annual Rent shall increase by three percent (3%) during each Lease Year of an Option Term. Promptly after Tenant's exercise of each 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:** \$10.80 per square foot, per annum

**Estimate of Operating Costs:** \$6.73 per square foot, per annum

**Estimate of Insurance Charge:** \$.48 per square foot, per annum

**Gross Sales Reporting Frequency:** Annually

**Landlord's E-Mail Address for Sales Reporting:** sales@shopcore.com  
Reference: Light RX and Shops at La Jolla Village

**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: righ@lightrx.com

**Security Deposit:** \$11,053.42

**Rent Deposit:** \$11,053.42

**Construction Allowance:** \$40.00 per square foot of the Premises  
Tenant's request for payment of the Construction Allowance must be delivered to Landlord at the following address:

BPP Shops at La Jolla LLC  
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:  
Flocke & Avoyer  
  
On Behalf of Tenant:  
Epsteen & Associates



## **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 have the meaning as expressly provided for within the Section of this Lease in which such term is defined.

**Additional Insured(s):** ShopCore Properties, L.P.; BPP Viking Holdings 1 LLC; BPP Shops at La Jolla LLC; Sudberry Properties, Inc.

**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.

**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 final 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 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%) of 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.

**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.

**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 Gross Sales statement within thirty (30) days after written notice to Tenant, 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. Intentionally Deleted.**

**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 expressly 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; install electric car charging stations for use by guests of the Shopping Center; 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 La Jolla, California 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, promoting, 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, promoting, marketing, 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;

(xxi) costs and expenses to market and promote the Shopping Center; and

(xxii) 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.

#### **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.(e) If Landlord shall lease space to a Competing Tenant, Tenant shall provide Landlord with (30) days written notice to cure the violation of the Exclusive Use, and may pursue any remedy available at law or in equity. Provided that if Landlord commences the cure of any such violation within thirty (30) days after receipt of any such written notice from Tenant, and thereafter diligently pursues by taking appropriate legal action against the Competing Tenant to compel such tenant to cease the violation of Tenant's Exclusive Use, then Tenant shall not be entitled any remedy. Notwithstanding the foregoing, if the Competing Tenant remains in violation of the Exclusive Use after one hundred eighty (180) days from the date of notice of such violation to Landlord by Tenant, then as Tenant's sole remedy, it may terminate this Lease. The parties agree that the Exclusive Use shall not apply to: (i) any leases existing as of the Effective Date, nor to any renewals or extensions of such leases ("Existing Leases"); (ii) any successors or assigns using or occupying the premises under any Existing Leases; (iii) any relocations under any Existing Leases; (iv) any Major Tenant; and/or (v) any property included within the Shopping Center after the Effective Date. Notwithstanding the above, Landlord shall not be in violation of Tenant's Exclusive Use as set for the in Article 1 if the Competing Tenant is operating in violation of the terms of its lease or operating agreement, provided however that Landlord shall use commercially reasonable efforts to enforce such tenant's permitted use pursuant to its lease.

If Tenant violates its Permitted Use or if Tenant's Permitted Use is changed by an amendment to this Lease at any time during the Lease Term, then Tenant's Exclusive Use, and the provisions of this subsection, shall be immediately null and void and of no further force or effect, notwithstanding any subsequent compliance by Tenant with said Permitted Use clause, and/or any other term set forth in this Lease to the contrary.

#### **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.

### **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.

(d) Tenant shall have the right to place its identification panel on that area of the Shopping Center pylon sign ("Pylon Sign") identified or crosshatched on **Exhibit D** attached hereto and made a part hereof. Tenant shall not install Tenant's identification panel on the Pylon Sign until plans and specifications for Tenant's identification panel have been approved in writing by Landlord. Tenant shall, at Tenant's expense, perform all work and supply all installations necessary to install Tenant's identification panel in accordance with the plans and specifications approved by Landlord. No changes to Tenant's identification panel plans and specifications will be made without the prior written consent of Landlord. In the event Tenant fails to install Tenant's identification panel on the Pylon Sign within ninety (90) days following the Commencement Date, or thereafter Tenant's identification panel shall be removed and not replaced with another identification panel acceptable to Landlord for a period of ninety (90) consecutive days, then Tenant's rights under this Section shall be deemed waived and Tenant shall not have any further right to place Tenant's identification panel on the Pylon Sign. Tenant agrees, at its sole cost and expense, to promptly repair Tenant's identification panel in the event of any casualty or other damage thereto. Tenant further agrees to repair any damage to the Pylon Sign resulting from Tenant's installation or removal of Tenant's identification panel. In the event Tenant fails to repair Tenant's identification panel or the Pylon Sign within ten (10) days after receipt of written notice from Landlord, Landlord may terminate Tenant's rights under this Subsection immediately, effective on the date notice is given to Tenant. In the event of any uncured default by Tenant under the terms of this Lease, or upon the expiration or earlier termination of this Lease, Tenant's right to use the Pylon Sign shall automatically terminate. In the event Tenant fails to remove Tenant's identification panel within ten (10) days after the expiration or earlier termination of this Lease or after the expiration of the applicable cure period with respect to Tenant's default,

Landlord shall have the right to remove and dispose of Tenant's identification panel at Tenant's sole cost and expense, and Tenant shall reimburse Landlord upon demand for all costs incurred by Landlord in removing and disposing of Tenant's identification panel, plus a sum equal to fifteen percent (15%) of such cost to reimburse Landlord for its administrative overhead. If Tenant fails to repair any damage caused by the installation or removal of Tenant's identification panel, then Tenant shall pay the cost thereof to Landlord within fifteen (15) days of Landlord's written demand, together with the sum of fifteen percent (15%) of said costs for overhead. Tenant's obligations set forth in this Subsection shall survive the termination of this Lease. Tenant further agrees that in no event shall Landlord be liable to Tenant for failure or interruption of any illumination of the Pylon Sign or Tenant's identification panel, or for any damage to Tenant's identification panel, and Tenant hereby waives any and all such claims against Landlord. The foregoing right of Tenant to place Tenant's identification panel on the Pylon Sign is personal to, and for the sole benefit of Tenant, and shall not be transferable to any third party, including without limitation to any assignee of Tenant's rights under this Lease or any sublessee of all or a portion of the Premises, without the express prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Tenant agrees that any such attempted assignment or transfer shall be null and void. Tenant's rights under this provision shall be subject and subordinate to (a) the requirements of all applicable Laws, including any modifications to the Pylon Sign required by the foregoing; (b) a redevelopment of the Shopping Center, and (c) any existing or future tenant or occupant in the Shopping Center occupying 10,000 or more square feet of gross leasable area in the Shopping Center ([a], [b] and [c] are each defined as a "Reason for Termination"). Therefore, in the event Landlord shall terminate Tenant's rights to occupy the Pylon Sign pursuant to an occurrence of a Reason for Termination as set forth above, Tenant shall remove Tenant's identification panel and repair any damage caused by such removal in accordance with the terms of this Subsection.

#### **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. 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. Landlord confirms that as of the Effective Date, the heating, ventilating and air conditioning equipment serving the Premises is in good working order and no known defects exist in same.

(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 untenable 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 (6th) consecutive business day, Rent shall be abated in proportion to the unusable portion of the Premises from the sixth (6th) 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.

## **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 another premises within the Shopping Center. 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 contactors 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 contactors 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. If Landlord's delayed consent or approval causes Tenant to fail to meet a required time period set forth herein, Tenant's time period for such certain performance shall be reasonably extended to not cause an Event of Default.

**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 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, upon such successor owner's express assumption of all liabilities and obligations of Landlord, 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 distraint, 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.**

**THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE.**

**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:

**CALIFORNIA CERTIFIED ACCESS SPECIALIST.**

Pursuant to California Civil Code Section 1938, Landlord hereby states that the Premises:

have not undergone inspection by a Certified Access Specialist (CASp) (defined in California Civil Code § 55.52(a)(3)). Pursuant to Section 1938 of the California Civil Code, Landlord hereby provides the following notification to Tenant: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction related accessibility standards within the premises." If Tenant requests to perform a CASp inspection of the Premises, Tenant shall, at its cost, retain a CASp approved by Landlord (provided that Landlord may designate the CASp, at Landlord's option) to perform the inspection of the Premises at a time agreed upon by the parties. Tenant shall provide Landlord with a copy of any report or certificate issued by the CASp (the "CASp Report") and Tenant shall, at its cost, promptly complete any modifications necessary to correct violations of construction related accessibility standards identified in the CASp Report, which modifications will be completed as part of Tenant's Work or as an alteration, as applicable, notwithstanding anything to the contrary in this Lease. Tenant agrees to keep the information in the CASp Report confidential except as necessary for the Tenant to complete such modifications.

**SECURITY DEPOSIT.**

Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code and all other provisions of law, now or hereafter in effect, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean the Premises, it being agreed that Landlord may, in addition, claim those sums specified in Section 4.14 of the Lease, and all of Landlord's damages under this Lease and California law including, but not limited to, any damages accruing upon termination of this Lease under Section 1951.2 of the California Civil Code and/or those sums reasonably necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or any officer, employee, agent, contractor or invitee of Tenant.

**CONDITION OF THE PREMISES.**

Tenant hereby waives and relinquishes any right Tenant may have under any applicable law now or hereafter in effect to make any repairs at Landlord's expense including, without limitation, under California Civil Code Sections 1941 and 1942, as the same may be amended or re-codified, or any similar or successor Law. Tenant waives and releases the provisions of California Civil Code Sections 1932(2) or 1933(4), as the same may be amended or re-codified or any similar or successor Law now or hereafter in effect, that would permit termination or automatically terminate this Lease.

**ASSIGNMENT AND SUBLEASE.**

Tenant hereby waives, relinquishes and releases any and all rights to damages of any kind, or the right to terminate this Lease under Section 1995.310 of the California Civil Code, and under all similar Laws now or hereafter in effect.

**EMINENT DOMAIN.**

Tenant hereby waives, releases and relinquishes all rights it may have to terminate this Lease following a condemnation under Section 1265.130 of the California Code of Civil Procedure, or any similar Laws now or hereafter in effect.

**DEFAULT.**

In the event that Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by Sections 20.01(a) and (b) of the Lease. In the event of a Tenant Event of Default, Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any Event of Default, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

**ASBESTOS.**

Tenant acknowledges that Landlord has advised Tenant that the Shopping Center contains or, because of its age, is likely to contain, asbestos-containing materials ("ACMs"). If Tenant undertakes any alterations or repairs to the Premises (to the extent permitted under the Lease), Tenant shall, in addition to complying with the requirements of the Lease, undertake the alterations or repairs in a manner that avoids disturbing any ACMs present in the Shopping

Center. If ACMs are likely to be disturbed in the course of such work, Tenant shall encapsulate or remove the ACMs in accordance with an approved asbestos-removal plan and otherwise in accordance with all applicable environmental laws, including giving all notices required by the California Health and Safety Code.

**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 - Depiction of Pylon/Monument Sign
- 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:**

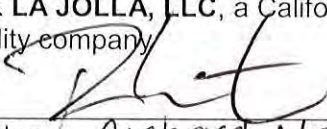
**BPP SHOPS AT LA JOLLA LLC**, a Delaware limited liability company

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

**TENANT:**

**LRX LA JOLLA, LLC**, a California limited liability company

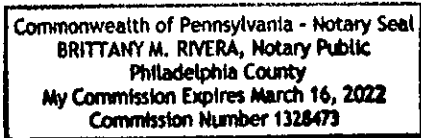
  
Name: Doshay Nguyen

By:   
Name: Richard Morgan  
Title: President

COMMONWEALTH OF PENNSYLVANIA )  
 ) ss.  
COUNTY OF PHILADELPHIA )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared Linda M. Madway, the Senior Vice President of BPP Shops at La Jolla LLC, a Delaware limited liability company, which entity executed the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument for and on behalf of said entity being thereunto duly authorized, and that the same is his/her free act and deed and the free act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Philadelphia, PA this 29 day of June, 2018.



Brittany M. Rivera  
Notary Public

My Commission Expires: March 16, 2022

EXHIBIT A  
SITE PLAN

SHOPS AT LA JOLLA VILLAGE

8801 VILLA LA JOLLA DRIVE // LA JOLLA, CA, 92037

LIGHT RX



Premises  
Space 886103  
Approx 1817 SF

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.



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.

A-1

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

**Landlord's Work:** None.

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. Tenant shall not perform any work that may cause undue noise or vibration to adjacent premises during the hours of 9:00 a.m. through 7:00 p.m.

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 appicate 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  
DEPICTION OF PYLON/MONUMENT SIGN**

D-1

**EXHIBIT E  
TENANT ESTOPPEL**

TENANT ESTOPPEL CERTIFICATE

BPP Shops at La Jolla LLC  
c/o Shopcore Properties, L.P.  
Two Liberty Place  
50 S. 16th Street, Suite 3325  
Philadelphia, Pennsylvania 19102  
Attention: Legal Department

**[ADD PURCHASER/LENDER(S), IF APPLICABLE]**

Re: Lease Agreement (the "Lease") between BPP Shops at La Jolla LLC, as landlord ("Landlord"), and LRX La Jolla, LLC, as tenant ("Tenant"), dated \_\_\_\_\_, 20\_\_\_\_, amended \_\_\_\_\_ (collectively "Lease") for space described as Unit No. 886103 consisting of approximately 1,817 square feet ("Premises") within The Shops at La Jolla Village, La Jolla, CA ("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.

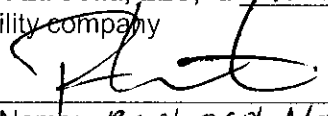
12. To the best of Tenant's knowledge, Tenant has never permitted or suffered the generation, treatment, storage or disposal of any hazardous waste or any other hazardous or toxic substances

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 La Jolla, LLC**, a MI limited liability company

By:   
Name: Richard Morgan  
Title: President

## 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:

### **CVS**

Exclusive Use: Tenant shall have the exclusive right to sell prescription drugs in this Shopping Center.

Prohibited / Restricted Uses: In order to provide for orderly development and operation of the Shopping Center, Landlord agrees that:

1. The Shopping Center shall be developed as a retail shopping center, business and apartment complex. In no event shall any portion of the Shopping Center be used for any of the following: massage parlor, pornography shop, pornography book store, or industrial use. In addition, no building in Building Area A or N [Whole Foods or Aaron Brothers], as shown on the Site Plan, shall be used as an office building or professional building.
2. Landlord shall not allow the ground floor of any building in the Shopping Center to be used as an apartment or other housing facility.
3. Landlord shall not permit in the Shopping Center any display or sale of merchandise, or any storage or placement of merchandise, portable signs or other objects belonging to an occupant of the Shopping Center outside the defined exterior walls, roof and permanent doorways of the store premises except as provided in Section 11.3 and except for center-wide promotions on the sidewalks of the Shopping Center which comply with the provisions of Section 12.1(c) herein.
4. Landlord shall not have or permit any merchandise or substance in or about the Shopping Center or any act in or about the Shopping Center which will cause or threaten the cancellation of any insurance covering the Drug Store Building or will increase the insurance rates applicable to the Drug Store Building over the rates which would otherwise apply. Landlord shall also make and enforce this requirement in all of its leases with other tenants of the Shopping Center.

### **FedEx Office and Print Services**

Exclusive Use: Landlord shall not enter into a new lease with a new tenant for premises in the Shopping Center which lease states that (a) the business to be operated thereon shall be for the primary purpose of self-service photocopying of documents or (b) the business to be operated thereon shall be allowed to have more than one (1) full service machine for the photocopying of documents in the premises ("Leasing Restriction").

### **Nekter Juice Bar**

Exclusive Use: Landlord shall not execute and deliver any lease for space in the Shopping Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for the sale of juices, smoothies and acai bowls ("Exclusive Use").

### **Nordstrom Rack**

Prohibited / Restricted Uses: Neither the Shopping Center, nor any part thereof, shall be used, and no building or other improvement shall be constructed, maintained or used for any purpose other than the following: retail, office, and service establishments of the type common to a first-class shopping center, including, without limitation, financial institutions, brokerage offices, restaurants, and travel and other agencies; provided that so long as Tenant is operating as a retail outlet store upon the Premises, office uses and service establishments (excluding theaters and restaurants) shall not exceed twenty five percent (25%) of the Floor Area of the Shopping Center (except during construction of the Redevelopment, during which the 25% limitation shall not apply).

No use or operation will be made, conducted or permitted on or with respect to all or any part of the Shopping Center, by either Landlord (or its tenants) or Tenant (or Tenant's employees, agents or contractors), which use or operation is obnoxious to or out of harmony with the development or operation of a first-class, mixed-use shopping center that contains residential and office uses, including, but not limited to, the following:

- (1) Any public or private nuisance.
- (2) Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
- (3) Any offensive odor.
- (4) Use, storage, transportation, handling, manufacture, or emission of any noxious, toxic, caustic or corrosive fuel or gas or other hazardous or toxic substance or Hazardous Material unless such materials are handled in accordance with applicable governmental laws, regulations and codes.
- (5) Emission of electronic radiation at levels which materially interfere with the proper operation of Tenant's electronic, telephone, computer or other business equipment.
- (6) Any dust, dirt or fly ash in excessive quantities, subject to Landlord's right to undertake the Redevelopment.
- (7) Any unusual fire, explosion or other damaging or dangerous hazard, including the storage, display or sale of explosives or fireworks.
- (8) Any warehouse (but any area for the storage of goods intended to be sold at any retail establishment in the Shopping Center shall not be deemed to be a warehouse), assembly, manufacture, refining, smelting, agriculture or mining operations. Notwithstanding the foregoing, the operation of a brew pub or a distillery at the Shopping Center is permitted so long as they are in keeping with first class shopping centers.
- (9) Any mobile home or trailer court, labor camp, junk yard, stock yard or animal raising.
- (10) Any drilling for and/or removal of subsurface substances, provided that testing and investigations that involve incidental drilling shall not be prohibited.
- (11) Any dumping of garbage or refuse (other than in dumpsters or compactors designed for such purpose).
- (12) Any mortuary or similar establishment.
- (13) Any automobile body and fender repair work other than automobile services provided by any department store in connection with its operations as a retail department store.

(14) No kiosk, pushcarts, temporary sales booths or other forms of so-called remote merchandising units ("RMUs") shall be allowed within the No-Change Area (defined in Section 18A).

(15) No merchandise and/or services shall be displayed, sold, leased, stored or offered for sale or lease by any party, including Tenant, within the No-Change Area. Sidewalk sales located outside of the No-Change Area shall not unreasonably interfere with pedestrian or vehicular access within the Shopping Center.

(16) The operation of a "head shop," so-called, or other business devoted to the sale of marijuana, cocaine or other illegal drugs or substances, or articles, paraphernalia, or merchandise normally used or associated with the use of marijuana or illegal or unlawful activities.

(17) A business primarily focused on the sale of so-called "adult" materials such as, without limitation, magazines, books, movies and photographs; and provided further that a national or regional drug store, grocery store, or bookstore equal or better quality than Barnes & Noble (or evolutionary equivalent) shall be permitted to sell sexually explicit material (excluding videos or DVDs rated "X" under the Motion Picture Association of America) as an incidental part of its business provided that no more than five percent (5%) of the leaseable floor area of any such user shall be devoted to such material. Nothing in this Section 4E(17) shall prohibit the sale of lingerie or "adult" apparel.

(18) Automotive sales (selling new or used cars, trailers or mobile homes) not in keeping with first class shopping centers and automotive service, provided that such automotive sales tenants/occupants may use no more than five (5) parking stalls to store automobile inventory in the Common Areas.

(19) Factory.

(20) Industrial usage.

(21) Processing or rendering plant.

(22) Any carnivals or flea markets.

(23) Any auction, fire, going out of business, or bankruptcy sales in the Common Areas.

### **Peet's Coffee**

Exclusive Use: Landlord agrees not to sign a lease with another tenant whose primary business is the sale of specialty coffee drinks and whole bean coffee.

### **Unleashed by Petco**

Exclusive Use: Landlord shall not enter into a new Lease in the Shopping Center for a business whose principal use is a pet supply store.

### **Verizon Wireless**

Exclusive Uses: From and after the Lease Date, Landlord shall not execute and deliver any lease for space within the Exclusive Use Zone (as defined herein) pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for the retail sale of communication equipment and services ("Exclusive Use"). The "Exclusive Use Zone" for purposes of this Paragraph 5(g) shall mean the free-standing pad buildings located immediately adjacent to Nobel Drive, as specified on Exhibit A hereto [BJ's Brewhouse Restaurant, Chase; CitiBank; Bank of America; and Mendocino Farms.

### **Wells Fargo (ATM)**

Exclusive Use: Landlord shall not execute and deliver any lease, license or other agreement for the operation of a freestanding ATM or similar mechanism in the Common Areas of the Center (the "Exclusive Use").

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: BPP Shops at La Jolla LLC ("Landlord")

RE: Lease Agreement ("Lease") dated \_\_\_\_\_, 20\_\_\_\_ with respect to Premises known as Unit No. 886103 in The Shops at La Jolla located in La Jolla, CA ("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 La Jolla/LLC, a MJ limited liability company

By:   
Name: Richard Morgan  
Title: President



**EXHIBIT H  
COMMENCEMENT DATE AGREEMENT**

In connection with that certain Lease Agreement ("Lease") dated \_\_\_\_\_, 20\_\_, by and between BPP Shops at La Jolla LLC, as Landlord, and LRX La Jolla, LLC, 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 agreed 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:**  
**BPP Shops at La Jolla LLC**, a Delaware  
limited liability company

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

**TENANT:**  
**LRX La Jolla, LLC**, a *Michigan* limited  
liability company

By:   
Name: *Richard Morgan*  
Title: *President*

## EXHIBIT I

### GUARANTY OF LEASE

The undersigned ("Guarantor"), as a material inducement to and in consideration of the execution by BPP Shops at La Jolla LLC, a Delaware limited liability company ("Landlord") of that certain Lease (the "Lease") of even date herewith between Landlord and LRX La Jolla, LLC, a California limited liability company ("Tenant"), relating to premises in that certain building located at The Shops at La Jolla Village hereby agrees as follows:

1. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder. Notwithstanding anything set forth herein to the contrary, after the third Lease Year of the Lease Term, the amount guaranteed pursuant to this Guaranty shall equal the amount of Rent (inclusive of all Additional Rent) due hereunder for a twelve (12) month period at the rate that was in effect during the most recent twelve (12) month period of the Lease Term during which Rent was payable in full.
2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.
3. Guarantor hereby waives and agrees not to assert or take advantage of the following:
  - (a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor, including the provisions of Sections 2845 and 2850 of the Civil Code of California;
  - (b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;
  - (c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons, including the provisions of Section 2810 of the Civil Code of California;
  - (d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease, including the provisions of Section 2819 of the Civil Code of California; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease, including the provisions of Section 2809 of the Civil Code of California.

4. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord 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, including the provisions of Sections 2847, 2848 and 2849 of the Civil Code of California. Guarantor agrees that nothing contained herein shall prevent Landlord from suing on the Lease or from exercising any rights available to Landlord thereunder and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor expressly waives any and all benefits under the second sentence of California Civil Code Section 2822(a). In addition, Guarantor agrees that Landlord (and not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant.

5. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

7. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.

8. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

9. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

10. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

11. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

12. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

13. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

14. If two (2) or more persons or entities are signing this Guaranty of Lease as Guarantor, then all such persons or entities shall be jointly and severally liable for the obligations of Guarantor hereunder.

15. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY OF LEASE AND/OR ANY CLAIM FOR INJURY OR DAMAGE OR OTHERWISE. This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

16. Guarantor hereby waives its right to assert any defense to its liability under the Guaranty based on any rights or benefits in favor of Guarantor under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or any amendment to any of the forgoing statutes.

17. Guarantor's address, telephone number and email address are as follows:

Body Contour Ventures, LLC

Attention: Richard Morgan, President  
34405 12 Mike Road, Suite 200  
Farmington Hills, Michigan 48331

H-4

EXECUTED, THIS \_\_\_\_ day of \_\_\_\_\_, 2018 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: \_\_\_\_\_

EXHIBIT ONLY – NOT FOR SIGNATURE  
Name: \_\_\_\_\_

Witness: \_\_\_\_\_  
Name: \_\_\_\_\_

EXHIBIT ONLY – NOT FOR SIGNATURE  
Name: \_\_\_\_\_

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

## **GUARANTY OF LEASE**

The undersigned ("Guarantor"), as a material inducement to and in consideration of the execution by BPP Shops at La Jolla LLC, a Delaware limited liability company ("Landlord") of that certain Lease (the "Lease") of even date herewith between Landlord and LRX La Jolla, LLC, a California limited liability company ("Tenant"), relating to premises in that certain building located at The Shops at La Jolla Village hereby agrees as follows:

1. Guarantor hereby unconditionally guarantees the performance of, and unconditionally promises to perform, all of the obligations of Tenant under the Lease and any and all extensions and modifications thereof, including, but not limited to, the obligation to pay rent thereunder. Notwithstanding anything set forth herein to the contrary, after the third Lease Year of the Lease Term, the amount guaranteed pursuant to this Guaranty shall equal the amount of Rent (inclusive of all Additional Rent) due hereunder for a twelve (12) month period at the rate that was in effect during the most recent twelve (12) month period of the Lease Term during which Rent was payable in full.
2. In such manner, upon such terms and at such times as Landlord shall deem best, and without notice to or the consent of Guarantor, Landlord may alter, compromise, extend or change the time or manner for the performance of any obligation hereby guaranteed, substitute or add any one or more guarantors, accept additional or substituted security for the performance of any such obligation, or release or subordinate any security therefor, any and all of which may be accomplished without any effect on the obligations of Guarantor hereunder. No exercise or non-exercise by Landlord of any right hereby given, no dealing by Landlord with Tenant, any other guarantor or other person, and no change, impairment or suspension of any right or remedy of Landlord shall in any way affect any of the obligations of Guarantor hereunder or any security furnished by Guarantor or give Guarantor any recourse against Landlord.
3. Guarantor hereby waives and agrees not to assert or take advantage of the following:
  - (a) Any right to require Landlord to proceed against Tenant or any other person or to proceed or exhaust any security held by Landlord at any time or to pursue any other remedy in Landlord's power before proceeding against Guarantor, including the provisions of Sections 2845 and 2850 of the Civil Code of California;
  - (b) Any defense based on the statute of limitations in any action hereunder or in any action for the performance of any obligation hereby guaranteed;
  - (c) Any defense that may arise by reason of the incapacity, lack of authority, bankruptcy, death or disability of any other person or persons or the failure of Landlord to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons, including the provisions of Section 2810 of the Civil Code of California;
  - (d) Any right to receive demands, protests and notices of any kind including, but not limited to, notice of the existence, creation or incurring of any new or additional obligation or of any action or non-action on the part of Tenant, Landlord or any other person;

(e) Any defense based on an election of remedies including, but not limited to, any action by Landlord which shall destroy or otherwise impair any subrogation right of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement, or both;

(f) Any duty on the part of Landlord to disclose to Guarantor any facts Landlord may now or hereafter know about Tenant, regardless of whether Landlord has reason to believe that such facts materially increase the risk beyond that which Guarantor intends to assume or has reason to believe that such facts are unknown to Guarantor or has a reasonable opportunity to communicate such facts to Guarantor, it being understood and agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and of all circumstances bearing on the risk of nonperformance of any obligation hereby guaranteed;

(g) Any right to receive notice of or to consent to any amendments that may hereafter be made to the Lease, including the provisions of Section 2819 of the Civil Code of California; and

(h) Any defense based on the fact that Guarantor's obligations hereunder are larger or more burdensome than that of Tenant's under the Lease, including the provisions of Section 2809 of the Civil Code of California.

4. Until all obligations hereby guaranteed shall have been fully performed, Guarantor shall have no right of subrogation and waives any right to enforce any remedy which Landlord 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, including the provisions of Sections 2847, 2848 and 2849 of the Civil Code of California. Guarantor agrees that nothing contained herein shall prevent Landlord from suing on the Lease or from exercising any rights available to Landlord thereunder and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor. Guarantor expressly waives any and all benefits under the second sentence of California Civil Code Section 2822(a). In addition, Guarantor agrees that Landlord (and not Tenant) shall have the right to designate the portion of Tenant's obligations under the Lease that is satisfied by a partial payment by Tenant.

5. All existing and future obligations of Tenant to Guarantor, or any person owned in whole or in part by Guarantor, and the right of Guarantor to cause or permit itself or such person to withdraw any capital invested in Tenant are hereby subordinated to all obligations hereby guaranteed, and, without the prior written consent of Landlord, such obligations to Guarantor shall not be performed, and such capital shall not be withdrawn, in whole or in part, while Tenant is in default under the Lease.

6. All rights, powers and remedies of Landlord hereunder and under any other agreement now or at any time hereafter in force between Landlord and Guarantor shall be cumulative and not alternative, and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Landlord at law or in equity. This Guaranty of Lease is in addition to and exclusive of the guarantee of any other guarantor of any obligation of Tenant to Landlord.

7. The obligations of Guarantor hereunder are independent of the obligations of Tenant under the Lease, and, in the event of any default hereunder or under the Lease, a separate action or actions may be brought and prosecuted against Guarantor, whether or not Tenant is joined therein or a separate action or actions are brought against Tenant. Landlord may maintain successive actions for other defaults. Landlord's rights hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all obligations hereby guaranteed shall have been fully performed.



8. Guarantor shall pay to Landlord, without demand, reasonable attorneys' fees and all costs and other expenses which Landlord shall expend or incur in collecting or compromising any obligation hereby guaranteed or in enforcing this Guaranty of Lease against Guarantor, whether or not suit is filed including, but not limited to, attorneys' fees, costs and other expenses incurred by Landlord in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving Guarantor which in any way affects the exercise by Landlord of its rights and remedies hereunder.

9. Should any one or more provisions of this Guaranty of Lease be determined to be illegal or unenforceable, all other provisions shall nevertheless be effective.

10. This Guaranty of Lease shall inure to the benefit of Landlord and its successors and assigns, and shall bind the heirs, executors, administrators, successors and assigns of Guarantor. This Guaranty of Lease may be assigned by Landlord concurrently with the transfer of title to property covered by the Lease, and, when so assigned, Guarantor shall be liable to the assignees without in any manner affecting the liability of Guarantor hereunder.

11. Upon full performance of all obligations hereby guaranteed, this Guaranty of Lease shall be of no further force or effect.

12. No provision of this Guaranty of Lease or right of Landlord hereunder can be waived or modified, nor can Guarantor be released from Guarantor's obligations hereunder, except by a writing duly executed by Landlord.

13. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and the masculine shall include the feminine and neuter and vice versa. The word "person" as used herein shall include any individual, company, firm, association, partnership, corporation, trust or other legal entity of any kind whatsoever.

14. If two (2) or more persons or entities are signing this Guaranty of Lease as Guarantor, then all such persons or entities shall be jointly and severally liable for the obligations of Guarantor hereunder.

15. This Guaranty of Lease shall be governed by and construed in accordance with the laws of the State of California. In any action brought under or arising out of this Guaranty of Lease, Guarantor hereby consents to the jurisdiction of any competent court within the State of California and hereby consents to service of process by any means authorized by California law. TO THE EXTENT PERMITTED BY APPLICABLE LAWS, GUARANTOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY OF LEASE AND/OR ANY CLAIM FOR INJURY OR DAMAGE OR OTHERWISE. This Guaranty of Lease shall constitute the entire agreement of Guarantor with respect to the subject matter hereof, and no representation, understanding, promise or condition concerning the subject matter hereof shall be binding upon Landlord unless expressed herein.

16. Guarantor hereby waives its right to assert any defense to its liability under the Guaranty based on any rights or benefits in favor of Guarantor under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or any amendment to any of the forgoing statutes.

17. Guarantor's address, telephone number and email address are as follows:

Body Contour Ventures, LLC

Attention: Richard Morgan, President  
34405 12 Mike Road, Suite 200  
Farmington Hills, Michigan 48331

EXECUTED, THIS 29 day of June, 2018 to be effective the same day as the effective day of the Lease.

GUARANTOR:  
BODY CONTOUR VENTURES, LLC, a  
Michigan limited liability company

[Signature]

Name: Richard Morgan

Witness: [Signature]  
Name: Destiny Nguyen

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document

State of ~~California~~ Michigan )  
County of Oakland )

On June 8 before me, Richard Morgan  
(insert name and title of the officer)

personally appeared as President, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)

MONICA JARBOW  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF OAKLAND  
My Commission Expires February 2, 2022

# 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:* (26028738)  
 BPP Shops at La Jolla LLC  
 Kelly M. Conlan, Esq.  
 Connolly Gallagher LLP  
 1201 North Market Street, 20th Fl  
 Wilmington, DE 19801

**Claim No:** 107  
*Original Filed Date:* 06/27/2019  
*Original Entered Date:* 06/27/2019

*Status:*  
*Filed by:* CR  
*Entered by:* ePOC  
*Modified:*

Amount claimed: \$59935.32

*History:*

[Details](#) [107-1](#) 06/27/2019 Claim #107 filed by BPP Shops at La Jolla LLC, Amount claimed: \$59935.32 (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>	\$59935.32
<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>		