

**RETAIL LEASE**

**BETWEEN**

**UNIVERSITY NORTHWEST LLC  
("LANDLORD")**

**AND**

**LULULEMON USA, INC.  
("TENANT")**

**DATED:**

**LULULEMON ATHLETICA**

**AT**

**RICE VILLAGE**

**HOUSTON, TEXAS**

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Each of the following exhibits are incorporated herein as a part of this Lease:

**LIST OF EXHIBITS**

- Exhibit A** – Site Plan of the Demised Premises
- Exhibit A-1** – Protected Area
- Exhibit A-2** – Exclusive Area
- Exhibit A-3** – Co-Tenancy Zone/Exclusion Zone
- Exhibit A-4** – Quadrants Exhibit
- Exhibit B** – Site Plan of the Shopping Center
- Exhibit C** – Landlord’s Work
- Exhibit D** – Tenant’s Work
- Exhibit D-1** – Contractor Insurance Requirements
- Exhibit D-2** – Tenant’s Plans and Construction Milestones
- Exhibit E** – Signage Submittal Requirements
- Exhibit F** – Reserved
- Exhibit G** – Reserved
- Exhibit H** – Demised Premises Use Restrictions
- Exhibit I** – Current Exclusives
- Exhibit J** – Current Designated Employee Parking Area

## RETAIL LEASE

This Lease dated as of this \_\_\_\_ day of \_\_\_\_\_, 202\_ (the “*Effective Date*”), is made by and between **UNIVERSITY NORTHWEST LLC** (“*Landlord*”) and **LULULEMON USA, INC.**, D/B/A lululemon athletica (“*Tenant*”) in accordance with the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the rents, covenants and agreements hereinafter set forth, Landlord and Tenant hereby enter into the following agreement:

### 1. FUNDAMENTAL LEASE PROVISIONS AND CERTAIN DEFINITIONS

This **Article 1** is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following, whenever used in this Lease, shall have the meanings set forth in this Section:

(a) **Address for Notice:**

To Landlord

UNIVERSITY NORTHWEST LLC  
c/o Rice Management Company  
6100 Main Street, MS-91  
Houston, Texas 77005  
Attn: Morgan Lera

With copies to:

UNIVERSITY NORTHWEST LLC  
c/o REIS Associates, LLC  
Rice Village  
2400 University Blvd., Suite 210  
Houston, Texas 77005  
Attn: Property Manager  
[Ricevillage@reiservice.com](mailto:Ricevillage@reiservice.com)

And to:

Greenberg Traurig, LLP  
1000 Louisiana Street  
Suite 6700  
Houston, TX 77002  
Attn: Denis C. Braham

To Tenant:

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

**Landlord's  
Remittance Address:**

VIA ACH TRANSFER TO:

JPMorgan Chase  
RV Main Campus Revenue  
Acct Number 355932663

(b) **Tenant's Texas Taxpayer ID Number:** \_\_\_\_\_.

(c) **Demised Premises:**

Street Address: [2560 University Blvd, Houston, TX 77005], situated substantially in the location which is shown outlined or hatched on the site plan designated on **Exhibit A** attached hereto and made a part hereof.

Space Number: A100.

(d) **Gross Area of Demised Premises:** 4,600 square feet.

(e) **Lease Term:**

**Primary Term:** Commencing on the Effective Date and continuing until the last day of the fifth (5<sup>th</sup>) Lease Year (defined below) and if such last day of the fifth (5<sup>th</sup>) Lease Year occurs between October 1<sup>st</sup> and December 31st, plus a fraction of a year commencing on the first day of the sixth (6<sup>th</sup>) Lease Year and terminating on January 31 during the sixth (6<sup>th</sup>) Lease Year, as more fully described in **Section 3**.

**Option Term(s):** Two (2) option(s) of five (5) Lease Years each as more fully described in **Section 3**.

(f) **Delivery Date.** The date on which Landlord satisfies the Delivery Requirements as more fully set forth in **Section 4**.

(g) **Required Completion Date.** The one hundred fiftieth (150th) day after the Delivery Date, such one hundred fifty (150) day period being referred to herein as the "**Fixturing Period**". Notwithstanding the foregoing, the Fixturing Period shall not commence until all of the following conditions are satisfied: (i) Tenant receives Landlord's approval of Tenant's Plans, or alternatively, if applicable, Tenant's waiver of this condition, (ii) Tenant receives all building permits required to commence Tenant's Work ("**Tenant's Permits**"), or alternatively, if applicable, Tenant's waiver of this condition, provided that the conditions set forth in clauses (i) and (ii) shall be deemed satisfied if Tenant fails to prepare and submit Tenant's Plans as and when required by the Lease including without limitation on the Milestone dates set forth on **Exhibit D-2** and apply for Tenant's Permits within fifteen (15) days after Landlord's approval of Tenant's Plans, utilize an expeditor for the submittal of all Tenant's Permits and/or use best efforts to promptly and diligently apply for and obtain all Tenant's Permits pursuant to the terms of this Lease, and (iii) Tenant receives a subordination, non-disturbance and attornment agreement from Landlord's Lender (hereinafter defined) on such Lender's customary form (Tenant may, at its sole cost and expense, attempt to negotiate such form with any such Lender, however, the failure of Tenant to obtain a negotiated form shall not affect satisfaction of the condition in this clause (iii)), or alternatively, if applicable, Tenant's waiver of this condition.

(h) **Rent Commencement Date.** The earlier of (i) the date Tenant opens the Demised Premises for business to the public, or (ii) the Required Completion Date. Notwithstanding anything in this Lease to the contrary, Tenant shall not be required to initially open the Demised Premises for business between the time period from [November 15<sup>th</sup> of any calendar through January 15th] of the next succeeding calendar year (the "**Optional Opening Period**"). Accordingly, if the Rent Commencement Date would

otherwise occur during the Optional Opening Period, then the Rent Commencement Date shall be delayed until the earlier of the date Tenant actually opens for business to the public, and [January 16<sup>th</sup>] of the next calendar year, as applicable, succeeding the Optional Opening Period. For avoidance of doubt, this **Section** applies only to Tenant's initial opening of the Demised Premises to the public on the Required Completion Date and/or the Rent Commencement Date and does not apply to any other time during the Term.

(i) **Minimum Rent.**

<b>Lease Year</b>	<b>Minimum Rent per square foot</b>	<b>Annual Minimum Rent</b>	<b>Monthly Minimum Rent</b>
<b><u>PRIMARY TERM</u></b>			
Rent Commencement Date through Lease Year 1	\$65.00	\$299,000.00	\$24,916.67
Lease Year 2	\$66.30	\$304,980.00	\$25,415.00
Lease Year 3	\$67.63	\$311,079.60	\$25,923.30
Lease Year 4	\$68.98	\$317,301.19	\$26,441.77
Lease Year 5	\$70.36	\$323,647.22	\$26,970.60
Lease Year 6*	\$71.77	\$330,120.16	\$27,510.01
<b><u>1<sup>ST</sup> OPTION TERM</u></b>			
First Option Term Lease Year 1	\$71.77	\$330,120.16	\$27,510.01
First Option Term Lease Year 2	\$73.20	\$336,722.56	\$28,060.21
First Option Term Lease Year 3	\$74.66	\$343,457.01	\$28,621.42
First Option Term Lease Year 4	\$76.16	\$350,326.15	\$29,193.85
First Option Term Lease Year 5	\$77.68	\$357,332.68	\$29,777.72
<b><u>2<sup>ND</sup> OPTION TERM</u></b>			
Second Option Term Lease Year 1	\$79.23	\$364,479.33	\$30,373.28
Second Option Term Lease Year 2	\$80.82	\$371,768.92	\$30,980.74
Second Option Term Lease Year 3	\$82.44	\$379,204.30	\$31,600.36
Second Option Term Lease Year 4	\$84.08	\$386,788.38	\$32,232.37
Second Option Term Lease Year 5	\$85.77	\$394,524.15	\$32,877.01

\*In the event of an additional stub Lease Year pursuant to **Section 1(e)** above.

(j) **Percentage Rent Rate.** Four percent (4%) (**Section 5**).

(k) **Sales Breakpoint.** The Sales Breakpoint for each Lease Year of the Primary Term and each Option Term shall be based on the applicable Minimum Rent for each Lease Year divided by the Percentage Rent Rate.

Notwithstanding the terms of this Lease to the contrary, in no event shall Tenant be liable for Percentage Rent in any Lease Year of more than Forty Thousand Dollars (\$40,000.00) (the “**Percentage Rent Cap**”).

(l) **Tenant Improvement Allowance.** \$110.00 per square foot of Gross Area of the Demised Premises, to be paid in accordance with **Section 4**.

(m) **Fixed CAM Fee.** Tenant shall pay the Fixed CAM Fee as set forth in **Section 5**. Tenant shall initially pay Fifteen Dollars and Zero Cents (\$15.00) per square foot of Gross Area of the Demised Premises per Lease Year for the first (1<sup>st</sup>) Lease Year which amount shall increase for each Lease Year thereafter by two percent (2%) over the prior Lease Year’s Fixed CAM Fee.

(n) **Tenant’s Share of Real Estate Taxes.** Tenant shall pay its proportionate share of Real Estate Taxes as set forth in **Section 5**. Tenant shall initially pay a rate of Eleven Dollars and Fifty Cents (\$11.50) per square foot of Gross Area of the Demised Premises as Tenant’s Share of Real Estate Taxes for the calendar year in which the Commencement Date occurs. Thereafter, Tenant shall pay Tenant’s Share of Real Estate Taxes as set forth in **Section 5**.

(o) **Tenant’s Share of Landlord’s Insurance.** Tenant shall pay its proportionate share of “**Landlord’s Insurance**” as set forth in **Section 5**. Tenant shall initially pay a rate of Zero Dollars and Twenty-Eight Cents (\$0.28) per square foot of Gross Area of the Demised Premises per calendar year as Tenant’s Share of Landlord’s Insurance for the calendar year in which the Commencement Date occurs. Thereafter, Tenant shall pay Tenant’s Share of Landlord’s Insurance as set forth in **Section 5**.

(p) **Promotion Fund Charge.** Tenant shall pay the Promotion Fund Charge as more fully set forth in **Section 5**. The Promotion Fund Charge shall be One Hundred Dollars (\$100.00) per Lease Year. Tenant shall receive a credit equal to the Promotion Fund Charge against Minimum Rent.<sup>1</sup>

(q) **Permitted Use.** Subject to applicable Legal Requirements (defined below), Tenant shall use the Demised Premises for the sale of (a) apparel, footwear, and related accessories, and (b) yoga and athletic equipment, as its primary use, and ancillary to such primary use for the retail sale of (c) personal care products (including, without limitation, well-being products and skin-care products), (d) prepared food and beverage (including, without limitation, alcohol, subject to applicable Legal Requirements, permitting and approvals including without limitation the Texas Alcoholic Beverage Commission regulations and the regulations of any and all other applicable agencies and bureaus governing the same (collectively, the “**TABC**”) and so long as no additional cost to Landlord for parking, grease, trash etc.), (e) fitness related electronics (including, without limitation, virtual reality products), (f) home workout products (including, without limitation, The Mirror), and (g) any other related goods and services, provided that no more than 25% of the floor area of the Demised Premises shall be used for the aggregate display and sale of items listed in (c)-(g). In addition, Tenant shall also have the right to use the Premises for occasional fitness,

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<sup>1</sup> NTD: This is a nominal amount and is used as a credit against MR.



meditation, wellness, mindfulness classes and/or community space. Except as set forth in the prior two sentences, Tenant may not use the Demised Premises for any other purpose. Notwithstanding the foregoing, Tenant shall not use the Demised Premises for a use which is in violation of the Demised Premises Use Restrictions (herein so called) set forth on **Exhibit H** attached hereto or are in conflict with an exclusive or prohibited use granted by Landlord to another tenant/owner/occupant in the Shopping Center and existing as of the date of this Lease set forth on **Exhibit I**. (**Section 8**).

(r) **Permitted Trade Name.** lululemon athletica. Tenant shall have the right upon at least thirty (30) days prior written notice to Landlord to change its Permitted Trade Name to such other trade name as is used (or will be used within three (3) months of such change at the Demised Premises) by majority of Tenant's stores operating in the State of Texas (**Section 8**).

(s) **Exclusive Use.** Tenant's exclusive use restriction is set forth in **Section 8(e)**.

(t) **Intentionally Omitted.**

(u) **Intentionally Omitted.**

(v) **Intentionally Omitted.**

(w) **Certain Definitions.**

(i) **"Shopping Center"** shall mean, as the same may be changed from time to time, the land and buildings and other improvements from time to time constituting a multilevel project owned by Landlord and its affiliates and operated as a unitary project, located as generally shown on the site plan annexed hereto as **Exhibit B** and incorporated by reference herein and made a part hereof for all purposes, together with any existing and future buildings, parking area, sidewalks, service area and other improvements now existing or hereafter erected thereon. The site plan annexed as **Exhibit B** is for the purpose of describing the general site location and general arrangement only. Landlord does not warrant or represent that the Shopping Center and/or the Demised Premises will be constructed as shown thereon.

(ii) **"Legal Requirements"** shall mean, collectively, all present and future laws, ordinances, orders, rules, regulations and requirements of all governmental and/or lawful authorities having jurisdiction, including, without limitation, all applicable building and safety codes and restrictions, health codes, the requirements of the National Fire Protection Association, signage restrictions, planning and zoning ordinances, all requirements and directives of Landlord's insurance carriers, OSHA regulations, all notices from Landlord's mortgagee, and all existing underlying leases, ground leases, easements, covenants, conditions, restrictions, agreements, encumbrances and other matters of record affecting or applicable to the Shopping Center, and/or the Demised Premises. For clarification, and not limitation, **"Legal Requirements"** shall include all applicable laws, regulations and customary industry practices (including those established by the Americans with Disabilities Act ("**ADA**") and any amendment of the ADA (or successor code or regulation thereof), the United States Department of Agriculture ("**USDA**"), the United States Food and Drug Administration ("**FDA**"), including the Hazard Analysis and Critical Control Points ("**HACCP**") promulgated thereby, and all related Federal, State and local health departments).

## 2. DEMISED PREMISES

(a) **Granting Clause.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord the Demised Premises located in Shopping Center. For purposes of this Lease, “**Gross Area**” shall be measured from the exterior of exterior walls, floors and ceilings, and from the center line of interior demising walls or partitions between tenants, and of interior floors and ceilings. All calculations of Gross Area shall be determined by Landlord’s Shopping Center architect or space planner and shall be binding on the parties hereto. For all purposes hereunder, the Gross Area of the Demised Premises is stipulated to be the square footage set forth in **Section 1** of the Lease. Notwithstanding the immediate preceding sentence, Landlord and Tenant each reserve the right to re-measure the Demised Premises within sixty (60) days after the Delivery Date. If either party determines that the Gross Area of the Demised Premises differs from the Gross Area set forth in **Section 1**, it shall provide written notice (the “**Gross Area Notice**”) setting forth its determination of Gross Area of the Demised Premises to the non-measuring party within the aforementioned sixty (60) day period. In the event that the non-measuring party disputes such re-measurement, such party may elect to re-measure the Demised Premises within twenty (20) days of receipt of the Gross Area Notice by providing written notice of such dispute within such twenty (20) day period, in which event a representative appointed by Landlord (“**Landlord’s Representative**”) and a representative appointed by Tenant (“**Tenant’s Representative**”; and together, the “**Remeasurement Representatives**”) shall at a mutually agreed date and time, jointly field measure the Demised Premises to determine such exact square footage. Failure to timely dispute the Gross Area Notice as aforesaid shall be deemed an agreement to the determination of the Gross Area set forth in the Gross Area Notice. In the event of a re-measurement of the Demised Premises as provided in this **Section 2(a)**, Tenant shall pay Tenant’s Representative and Landlord shall pay the Landlord’s Representative. Rent charges that are based on the Gross Area of the Demised Premises and the Tenant Improvement Allowance, shall be appropriately adjusted based on the actual square feet of Gross Area contained in the Demised Premises as determined pursuant to this **Section 2(a)**. Notwithstanding anything to the contrary contained herein, in no event shall the Gross Area of the Demised Premises, for purposes of computing Minimum Rent, Additional Rent and the Tenant Improvement Allowance, be increased by more than two percent (2%) of the square footage set forth in **Section 1** hereof or be reduced by less than two percent (2%) of the square footage set forth in **Section 1** hereof.

(b) **Roof and Walls.** Landlord shall have the exclusive right to use all or any part of the side and rear exterior walls of the Demised Premises, the front (other than the storefront) and the roof for any purpose, including but not limited to erecting signs or other structures on or over all or any part of the same, erecting scaffolds and other aids to the construction, maintenance and installation of the same; provided, however, Landlord shall not be permitted to use any of Tenant’s walls or storefront for marketing purposes of Landlord or any other tenant of the Shopping Center, without Tenant’s written consent, which consent Tenant may withhold in Tenant’s sole discretion. Landlord shall also have the right to install, maintain, use, repair and place pipes, ducts, conduits, wires, tunnels, sewers and structural elements leading through, to or from the Demised Premises and serving other parts of the Shopping Center. Landlord reserves an easement above Tenant’s finished ceiling or light line to the roof or to the floor slab above for general access purposes and in connection with the exercise of Landlord’s other rights under this Lease. In addition, if Landlord intends to demolish, redevelop, reconfigure or renovate all or part of the Shopping Center then, notwithstanding any other provision of this Lease, Landlord has the right to change or modify the structure within the Demised Premises in order to reinforce such structure and Landlord will repair and restore any affected portion of the Demised Premises to be similar, whenever possible, to that condition existing prior to such work.

(c) **Protected Area.** Notwithstanding anything to the contrary contained herein, except as may be reasonably required in the case of emergency, casualty, condemnation, or temporarily to make a repair, alteration or to perform maintenance, Landlord agrees not to construct or place, or allow others to construct or place, any kiosk, pushcart or RMU, or other obstructions, whether temporary or permanent within the area as shown on **Exhibit A-1** (the “**Protected Area**”). The foregoing shall not, and nothing in this Lease shall, be deemed to prohibit Landlord from (a) the placement of any landscaping or trees, or (b) the placement of any plantings, seating, mall directories, and other amenities customary to first-class shopping malls, in the common areas, including the common areas in front of the Demised Premises, provided, however that with respect to (b) above, (x) without Tenant’s consent, which may not be unreasonably withheld, conditioned or delayed, none of the same placed in the Protected Area may exceed the height of four feet (4’), and (y) the placement of any of the same in the Protected Area shall not be done so as to materially adversely affect access to the Demised Premises or visibility of the Demised Premises when viewed directly from the Protected Area. In the event Landlord violates the provisions of this **Section 2(b)**, then, provided Tenant is not then in default of this Lease beyond any applicable notice and cure periods, and Tenant provides to Landlord seven (7) days’ written notice of the impairment and opportunity to cure same, then in lieu of Minimum Rent, Tenant shall be entitled to pay Alternate Rent (as defined in **Section 33(d)**), as of the eighth (8th) day following Landlord’s receipt of such notice (provided Landlord has not cured same within such seven (7) day period) until such time that Landlord cures the violation of the provisions of this **Section 2(b)**.

(d) **Intentionally Omitted.**

(e) **Modifications to the Shopping Center.** Notwithstanding anything in this Lease contained to the contrary, Landlord reserves the right, without notice to or consent of Tenant, and without in any manner diminishing Tenant’s obligations under the Lease, to change the name of the Shopping Center, change or modify and add to or subtract (including vertically) from the size and dimensions of the Shopping Center or any part thereof, the number, location and dimensions of buildings and stores, the size, location and configuration of the parking areas, entrances, exits and parking aisle alignments, dimensions of hallways, malls and corridors, the number of floors in any building, the location, size and number of tenants’ spaces and kiosks which may be erected in or fronting on any mall or otherwise, the identity, type and location of other stores and tenants, and the size, shape, location and arrangement of Common Areas (as defined below), including altering the boundaries of the Shopping Center by the addition or subtraction of land or the granting of easements or rights, and to renovate, re-merchandise, design and decorate any portion of the Shopping Center as it desires including without limitation adding or modifying any new or existing landscaping or trees. For purposes of this Lease, references to the Gross Area of the Shopping Center shall mean the leasable Gross Area of the ground floor of the Shopping Center. Landlord also reserves the right to exclude from the Shopping Center any existing or future areas to be developed or redeveloped by Landlord, whether in one or more phases, in which event, the Gross Area of the Shopping Center and the definition of the Shopping Center shall be accordingly adjusted for all purposes of this Lease until such future phases are open for business to the public. Tenant does not rely on the fact nor does Landlord represent that any specific tenant or number of tenants shall occupy any space in the Shopping Center. Notwithstanding the foregoing, Landlord, in the exercise of its rights under this **Section 2(e)**, shall not cause any material, permanent and adverse interference with (a) Tenant’s use of the Demised Premises for the Permitted Use, (b) access to the Demised Premises by Tenant, or Tenant’s agents, employees or customers or (c) direct visibility of Tenant’s storefront from the area that is within reasonable viewing distance from the Demised Premises; provided, however that the foregoing representation shall not apply in the event of interference with access or visibility caused by any casualty, condemnation, or necessary repairs or alterations required to be made to the Shopping Center by Landlord.

### 3. LEASE TERM

(a) **Primary Term.** The term of this Lease (hereinafter called “**Term**” or “**Lease Term**”) shall commence upon the Effective Date and shall thereafter end at 11:59 p.m. EST on the last day of the Primary Term or any Option Term(s), if exercised (the “**Expiration Date**”), unless sooner terminated as herein provided. This Lease shall be effective on the Effective Date.

(b) **Option Terms.** Tenant shall notify Landlord in writing of Tenant’s exercise of any Option Term(s) at least three hundred sixty-five (365) days prior to the expiration of the Primary Term (or, as applicable, the Option Term then in effect) hereof, time being of the essence. All of the terms and conditions of this Lease shall remain in full force and effect during all Option Terms, except as otherwise set forth in the Lease. Landlord, at its option, shall have the right to nullify Tenant exercise of any Option Terms hereunder if (a) Tenant is in default under this Lease either at the time Tenant provides its notice exercising its rights with respect to the Option Term or at any time before the Option Term is to begin or (b) Tenant is not then open for business to the public. Tenant’s rights with respect to an unexercised Option Term will immediately expire and become null and void if the original Tenant named in this Lease assigns or otherwise transfers all or a majority of its interest in this Lease (other than a Permitted Transfer pursuant to **Section 26(e)**) or, with respect to the second Option Term, if Landlord delivers a Termination Notice pursuant to **Section 33(a)** prior to the commencement of the second Option Term.

(c) **Lease Year.** For purposes of this Lease, each “**Lease Year**” shall be defined as a period of twelve (12) months with the first (1<sup>st</sup>) Lease Year commencing on the Rent Commencement Date and expiring on the day immediately preceding the first (1<sup>st</sup>) anniversary of the Rent Commencement Date and with each subsequent Lease Year commencing upon the expiration of the prior Lease Year; provided, however, that if the Rent Commencement Date is a day other than the first day of a calendar month, then the first Lease Year shall include that period of time from the Rent Commencement Date up to the first day of the next calendar month and the following twelve (12) months, and any subsequent Lease Year shall be the twelve (12) month period beginning on the anniversary of the first day of the next calendar month following end of the first Lease Year. “**Partial Lease Year**” means that portion of the Lease Term prior to the first full Lease Year (which shall be deemed a portion of the first full Lease Year) or that portion of the Lease Term following the last full Lease Year.

(d) **Lease Month.** For purposes of this Lease, a “**Lease Month**” shall be defined as those successive calendar month periods beginning with the Rent Commencement Date and continuing through the Primary Term or any Option Term of this Lease; provided, however, that if the Rent Commencement Date is a day other than the first day of a calendar month, then the first Lease Month shall include that period of time from the Rent Commencement Date up to the first day of the next calendar month following the Rent Commencement Date, and each subsequent Lease Month shall be a calendar month period beginning on the first day of such month.

### 4. LANDLORD’S WORK AND TENANT’S WORK

(a) **Landlord’s Work.** Landlord shall perform the Landlord’s Work described in **Exhibit C** attached hereto and made a part hereof, at Landlord’s cost and expense, except as otherwise provided in **Exhibit C**. All work, in addition to the Landlord’s Work, performed by Landlord at Tenant’s request shall be paid for by Tenant as and when set forth in **Exhibit C**. Any items of Landlord’s Work which are not completed as of the Delivery Date shall be identified by Tenant in writing within five (5) days after the Delivery Date. Landlord shall respond with respect to any such items so identified by Tenant which it disputes in good faith, and the parties shall reconcile any disputes in good faith in order to create an agreed-

upon punch list of remaining Landlord's Work. Landlord shall thereafter complete any such items on the agreed-upon punch list. Any items of Landlord's Work which are not timely identified in writing by Tenant as aforesaid shall be deemed completed.

(b) **Tenant's Obligations before the Rent Commencement Date.** As soon as reasonably possible hereafter, Landlord shall provide Tenant with the Rice Village Tenant Handbook (defined below) including the Tenant Design Criteria and Construction Rules & Regulations for the Shopping Center (the "**Construction Criteria**"). Tenant will submit to Landlord for approval complete 100% construction drawings and specifications for Tenant's Work (collectively, "**Tenant's Plans**"), in accordance with the Construction Criteria, **Exhibit D** and all applicable Legal Requirements, on or before the Milestone (defined below) dates set forth on **Exhibit D-2**. The approval of Tenant's Plans by Landlord shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency or conformity with Legal Requirements, and Tenant shall be solely responsible to ensure that Tenant's Plans comply therewith. No material deviations from Tenant's Plans, once approved by Landlord, shall be permitted unless necessary to comply with applicable Legal Requirements.

(c) **Tenant Delay.** If any component of Tenant's Plans is not furnished by Tenant to Landlord within the required time period set forth in **Exhibit D** and **Exhibit D-2**, and in form to permit approval by Landlord in accordance with the Construction Criteria and the Lease, then the same shall constitute a "**Tenant Delay**." In addition "**Tenant Delay**", as used in this Lease, shall also include (a) Tenant's failure to (i) timely respond to comments on Tenant's Plans, provide revisions to Tenant's Plans or apply for and obtain approvals and/or permits with respect to Tenant's Plans within the time periods set forth in this Lease and/or in the **Exhibit D** and **Exhibit D-2**; (ii) timely provide to Landlord any information or payment that is required for Landlord to be able to perform any portion of Landlord's Work (if any), or any portion of Tenant's Work performed by Landlord at Tenant's expense (including any required advance payment for such work); or (iii) avoid interference by Tenant with the performance of Landlord's Work, and (b) any Tenant initiated changes to (i) Tenant's Plans after approval of same by Landlord or (ii) Landlord's Work as set forth in this Lease. Notwithstanding anything contained in this Lease to the contrary, in addition to Landlord's other rights and remedies hereunder, the Fixturing Period (as described in **Section 1**) shall be reduced by one (1) day for each day of Tenant Delay and any Landlord performance dates set forth in this Lease shall be extended by one (1) day for each day of Tenant Delay. If the number of days of Tenant Delay are greater than the number of days constituting the Fixturing Period, then Landlord may, at its option, deem the Rent Commencement Date to have occurred on any date thereafter. If Landlord so elects to deem the Rent Commencement Date to have occurred and Landlord has not yet completed Landlord's Work or delivered possession of the Demised Premises to Tenant, Landlord agrees to use commercially reasonable efforts to complete Landlord's Work and deliver possession of the Demised Premises to Tenant.

(d) **Delivery Date.** Tenant shall accept possession of the Demised Premises on the Delivery Date and, upon receipt of Tenant's Permits and satisfaction of the requirements in Landlord Construction Criteria for the commencement of Tenant's Work, Tenant shall promptly commence Tenant's Work on or before the Milestone date set forth on **Exhibit D-2**, diligently complete the same in strict accordance with the Construction Criteria, Tenant's Plans, **Exhibit D**, applicable Legal Requirements and other provisions of this Lease and install all store and trade fixtures, equipment, stock in trade, merchandise and inventory and open for business not later than the Rent Commencement Date (time being of the essence). As used herein, Landlord's Work shall be deemed "**Substantially Completed**" when Landlord's Work has been completed to a point such that (i) the Demised Premises are in suitable condition for the commencement of Tenant's Work, and (ii) the completion by Landlord of any incomplete elements of Landlord's Work will not materially interfere with the performance of Tenant's Work except with respect to items of Landlord's Work which under good construction scheduling practice should be done after any additional work to be

performed by Tenant. Notwithstanding the foregoing, Tenant shall not be deemed to accept possession of the Demised Premises and the Delivery Date shall not be deemed to have occurred until all of the following conditions are satisfied: (i) Tenant's receipt of a fully executed Lease at least sixty (60) days prior to Landlord's delivery of physical possession of the Demised Premises to Tenant in accordance with subsection (ii) herein; (ii) Landlord delivers physical possession of the Demised Premises to Tenant in a broom clean condition with all of Landlord's Work Substantially Completed and free from any other tenancies including, without limitation, free from any furniture, fixtures, equipment, inventory, or personal property of any existing tenant (this delivery requirement shall not be deemed satisfied until ten (10) days after Tenant receives written notice from Landlord that Landlord has satisfied this delivery requirement); and (iii) Landlord removes all Pre-Existing Conditions (as defined in **Section 8(d)**) from the Demised Premises if applicable (collectively, the "**Delivery Requirements**"). Tenant hereby waives any claim against Landlord and releases Landlord and its contractors from any claim whatsoever for damages against Landlord or its contractors for any delay in the date on which the Demised Premises shall be ready for delivery to Tenant or the total failure to complete same or deliver the Demised Premises to Tenant, or if Landlord is unable to deliver possession of the Demised Premises to Tenant because of the holding-over or retention of possession of any tenant, undertenant or occupants, or because of the fact that a certificate of occupancy has not been procured, or for any other reason, and the validity of the Lease shall not be impaired under such circumstances, nor shall the same be construed in any way to extend the term of this Lease.

(e) **Outside Delivery Date.** Landlord anticipates that the Delivery Date will be July 17, 2023 ("**Estimated Delivery Date**"), provided, however, in the event Landlord shall be unable to affect the Delivery Date by the Estimated Delivery Date for any reason, Landlord shall not be subject to any liability for such failure except as set forth in this **Section 4(e)**. Tenant shall not be required to accept possession of the Demised Premises prior to the Estimated Delivery Date, provided that if Tenant elects to do so, the Delivery Date shall be the date Tenant so accepts possession. If Landlord does not deliver the Demised Premises to Tenant on or before the thirtieth (30th) day after the Estimated Delivery Date (as such date shall be extended on a day for day basis for each day of force majeure and Tenant Delay, the "**Outside Delivery Date**"), then, provided Tenant is otherwise ready, willing and able to commence construction in the Demised Premises in accordance with the approved Tenant's Plan and Tenant's Permits, and is not in default of the Lease beyond any applicable notice and cure periods, commencing on the first (1st) day after such Outside Delivery Date, Tenant shall be entitled to a rent abatement of one (1) day of Minimum Rent for each day that elapses after the Outside Delivery Date until the earlier of (i) the Delivery Date or (ii) 90 days after the Outside Delivery Date. If the Delivery Date does not occur within ninety (90) days after the Outside Delivery Date (as such date shall be extended on a day for day basis for each day of force majeure and Tenant Delay, the "**Final Outside Delivery Date**"), then, provided Tenant is otherwise ready, willing and able to commence construction in the Demised Premises in accordance with the approved Tenant's Plan and Tenant's Permits, and is not in default of the Lease beyond any applicable notice and cure periods, Tenant may, within thirty (30) days after the Final Outside Delivery Date, terminate this Lease upon thirty (30) days' prior written notice to Landlord; provided that if the Delivery Date occurs prior to the effective date of termination under this sentence, then such termination notice shall be null and void and be of no force or effect and the termination option will immediately expire. If Tenant terminates the Lease pursuant to this provision, Landlord shall reimburse Tenant for Tenant's documented, reasonable out-of-pocket costs incurred by Tenant in negotiating the Lease and designing Tenant's Plans and obtaining Tenant's Permits, not to exceed \$60,000. Except as provided in this **Section 4(e)**, neither this Lease nor the obligations of Tenant hereunder shall be affected by a postponement or delay of the Delivery Date, and failure to deliver possession of the Demised Premises within the time provided for in this Lease will not give rise to any liability of Landlord to Tenant or any other person or permit Tenant to rescind or terminate this Lease.

(f) **Condition of the Demised Premises.** At Landlord's request, Tenant and/or Tenant's representative or agent shall acknowledge taking possession of the Demised Premises in writing. Tenant agrees that Landlord has made no representations as to conformance with applicable laws respecting the condition of the Demised Premises or the presence or absence of Hazardous Substances (hereinafter defined) in, at, under or abutting the Demised Premises or the environment. Tenant also agrees that no representations respecting the condition of the Demised Premises, no warranties or guarantees, expressed or implied, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, with respect to workmanship or any defects in material, and no promise to decorate, alter, repair or improve the Demised Premises either before or after the execution hereof, have been made by Landlord or its agents to Tenant unless the same are contained herein. Notwithstanding the foregoing, Landlord shall, at its sole cost and expense, remove, repair or replace any structural defect that was not visible or disclosed during any site inspection performed by Tenant prior to accepting possession of Demised Premises (provided Tenant performed such site inspection) and is initially discovered by Tenant in the Demised Premises upon or after the Delivery Date to the extent such structural defect prevents Tenant's from performing Tenant's Work or, if not repaired, will adversely impact Tenant's use of the Demised Premises for the Permitted Use, however, the foregoing is conditioned upon Tenant providing written notice to Landlord within ten (10) business days of the date Tenant discovers such defect (or should have discovered such defect upon reasonable inspection), failing which Landlord shall have no further obligation hereunder. If Tenant notifies Landlord in writing of such defect in accordance with the prior sentence, and Tenant is prevented from performing Tenant's Work due solely to such defect (as reasonably demonstrated by Tenant), then the Fixturing Period shall be extended on a day-for-day basis for each day that Tenant is so prevented from performing Tenant's Work, until such time that Landlord removes or repairs such defect so that Tenant is no longer so prevented from performing Tenant's Work.

(g) **Tenant's Work.** Tenant shall be responsible, at its sole costs and expense, for all work, other than Landlord's Work as set forth on Exhibit C, for Tenant to build the Demised Premises in accordance with the Landlord approved Tenant's Plans, Legal Requirements, the Construction Criteria and this Lease, including, but not limited to those items set forth on Exhibit D as Tenant's Work such that Tenant can open for business and operate pursuant to the terms of this Lease ("**Tenant's Work**"). Tenant shall be responsible for diligently constructing, installing and providing all of Tenant's Work. Tenant's Work shall include the installation of fixtures and equipment and the stocking of the Demised Premises with suitable merchandise. Unless Landlord otherwise directs in writing and except as required hereunder, Tenant shall not open the Demised Premises for business until all construction has been completed pursuant to the provisions of Exhibit D and the Construction Criteria. Throughout the period of Tenant's Work, Tenant shall protect the work in place and perform its work so as not to materially interfere with any work being performed by Landlord or by any other person at or on the Shopping Center. In no event shall Tenant enter the Demised Premises or perform any work thereon unless Tenant has delivered to Landlord satisfactory evidence of the insurance Tenant is required to obtain and carry hereunder, including without limitation as set forth in Exhibit D-1. Tenant covenants that all such fixtures and equipment visible to customers shall be new and otherwise acceptable to Landlord in appearance. In addition to conforming to the requirements specified in Exhibit D and the Rice Village Tenant Handbook, all work performed by Tenant shall comply with such rules and regulations as Landlord and its representatives may make. It is further understood and agreed that Tenant's entry upon and occupancy of the Demised Premises prior to the Rent Commencement Date shall be governed by and subject to all the provisions, covenants and conditions of this Lease.

(h) **Temporary Certificate of Occupancy.** Tenant shall ensure, at Tenant's cost, that Tenant's Work and the Demised Premises are maintained at all times in a code compliant state (and in accordance with all applicable Legal Requirements) so as not to prevent (i) Tenant from obtaining and/or maintaining a temporary certificate of occupancy ("**TCO**") or certificate of occupancy ("**CO**") for the entire Demised Premises or (ii) Landlord from maintaining and/or obtaining the TCO or CO for the Shopping Center. If any portions of the Shopping Center are affected by Tenant's Work, Tenant, at Tenant's cost, shall promptly (but not later than required for Landlord to maintain the TCO or CO for the Shopping Center) repair, clean and restore all such portions to their prior condition. Tenant, at Tenant's cost, shall conduct Tenant's Work in a manner that does not adversely interfere with the operation of the Shopping Center or tenants therein. Tenant shall install a construction barricade at the entrance to the Demised Premises to shield the continuing construction activities from sight of the Common Areas of the Shopping Center; provided, however, that Landlord shall have the option to install such barricade for Tenant at Tenant's expense. Tenant shall be responsible for all costs associated with obtaining the TCO or CO for the entire Demised Premises.

(i) **Tenant Improvement Allowance.** Provided Tenant is not in default under this Lease, Landlord shall contribute towards the hard cost of permanent leasehold improvements specified in Tenant's Work a Tenant Improvement Allowance in the amount set forth in **Section 1**. Landlord shall pay the Tenant Improvement Allowance as follows:

(i) Ten percent (10%) within thirty (30) days after Tenant has satisfied all of the following conditions: (i) Tenant has obtained all of Tenant's Permits, (ii) Tenant has entered into a construction with a general contractor for the performance of Tenant's Work, (iii) Tenant has commencement physical construction of Tenant's Work, and (iv) Landlord has received Tenant's written request for the applicable installment, accompanied by reasonable proof demonstrating that Tenant has satisfied the foregoing conditions for payment.

(ii) Eighty percent (80%) within thirty (30) days after Tenant has satisfied all of the following conditions: (A) (i) Landlord has received Tenant's written request for the applicable installment, accompanied by a copy of the paid invoices for which reimbursement is being sought; (ii) all of Tenant's Work has been completed in accordance with the final Construction Drawings and Specifications approved by Landlord, (iii) the work is free and clear of any and all security interests, liens or encumbrances; (iv) Tenant's architect and engineers have delivered to Landlord a certification certifying that the work and materials for which reimbursement is being sought are in substantial accordance with the final working drawings approved by Landlord; and (v) the work and materials for which reimbursement is being sought shall have been physically incorporated into the Demised Premises, (B) Tenant has opened the entire Demised Premises for business to the public in accordance with this Lease; and (C) the Rent Commencement Date has occurred.

(iii) The remaining ten percent (10%) within thirty (30) days after Tenant has satisfied all of the following conditions: (A) the work is free and clear of any and all security interests, liens or encumbrances, and Tenant has delivered to Landlord unconditional and notarized final lien waivers from all contractors, subcontractors, and suppliers/materialmen that have performed work or supplied materials for Tenant's Work costing in excess of \$10,000.00, and (B) Tenant has completed and delivered all items listed in **Article III** of **Exhibit D**.

If Landlord fails to provide Tenant with all or any portion of the Tenant Allowance within the time-frames set forth above, provided Tenant has submitted required documentation, *time being of the essence*, and such amount remains unpaid for an additional thirty (30) days after written notice from Tenant, then, in addition to all other rights and remedies of Tenant hereunder, Tenant may deduct such past due amount



from the Rent next due and owing under the Lease until Tenant recovers all of the amounts outstanding. Notwithstanding the foregoing, if during the thirty (30) day period set forth above, Landlord (i) delivers written notice to Tenant that Landlord, in good faith, disputes any portion of the amount claimed to be due, and (ii) pays any amount not in dispute, then Tenant shall have no right to offset any amount against Rent, but may bring an appropriate action to recover such amount from Landlord, plus interest at 10% per annum starting on the 31st day after Landlord's receipt of Tenant's notice.

Notwithstanding anything contained in this Lease to the contrary, the Tenant Improvement Allowance shall not exceed the lesser of: (i) the amount shown as the Tenant Improvement Allowance in **Section 1**, or (ii) the amount shown by Tenant on detailed signed receipts/invoices showing hard-cost expenditures for permanent leasehold improvements for Tenant's Work. The parties agree that the Tenant Improvement Allowance is for the purpose of constructing or improving qualified long-term real property for use in Tenant's trade or business at the Demised Premises, in accordance with Section 110(a) of the Internal Revenue Code, and that Landlord will be the legal title and beneficial owner of all leasehold improvements that are acquired with or funded by the Tenant Improvement Allowance. In the event Tenant has not made written request for the Tenant Improvement Allowance from Landlord in accordance with all the requirements set forth above within one hundred eighty (180) days after Tenant opens for business from the Demised Premises, then Tenant shall be deemed to have waived any right to the Tenant Improvement Allowance.

If at the time set for payment of the Tenant Improvement Allowance or any other required payment of Landlord to Tenant under this Lease or otherwise, there exists a construction or mechanic's lien notice or claim, or a threat thereof, arising from Tenant's actions, then, in addition to all other rights or remedies Landlord may have, Landlord shall have the right, but not the obligation, (i) to withhold payment of the Tenant Improvement Allowance or such other payment amount until the date which is ten (10) days following receipt of evidence from Tenant that the lien or threat thereof has been discharged or removed or (ii) to apply all or any portion of the Tenant Improvement Allowance or any other payment amounts due from Landlord to Tenant, to pay such claimant, without inquiring into the validity or merits of such claim. Further, if at the time set for payment of the Tenant Improvement Allowance or any other required payment of Landlord to Tenant under this Lease or otherwise, Landlord has performed any work on Tenant's behalf or at Tenant's expense, whether pursuant to the terms of the Lease (including the Exhibits attached hereto), at Tenant's request or otherwise, or if Tenant shall otherwise be responsible to pay Landlord any sum or amounts (including, but not limited to, any charges for temporary utilities used during construction or other construction chargebacks) under this Lease, then, in addition to all other rights or remedies Landlord may have, Landlord shall have the right, but not the obligation, (i) to withhold payment of the Tenant Improvement Allowance or such other payment amount until the date which is ten (10) days following receipt of payment from Tenant for such amounts owed to Landlord or (ii) to deduct from the Tenant Improvement Allowance or any other payment amounts due from Landlord to Tenant an amount equal to the amount Tenant is responsible to pay to Landlord.

## **5. RENT AND EXPENSE PAYMENTS**

(a) **General.** The "**Rent**" (or sometimes simply "**rent**") hereunder is composed of Minimum Rent, the Percentage Rent, the Fixed CAM Fee, Tenant's Share of Real Estate Taxes, Tenant's Share of Landlord's Insurance and the Promotion Fund Charge and applicable Expenses (as defined herein). Any monetary obligation(s) due by Tenant under this Lease excluding Minimum Rent, and the Percentage Rent, shall, as applicable, be referred to herein as "**Expense**", or "**Expenses**" (or sometimes "**Additional Rent**" or "**additional rent**"). Beginning on the Rent Commencement Date (unless an earlier date for payment of any particular Expense is set forth in the Lease), Tenant agrees to pay to Landlord all Rent required under

this Lease, which shall be payable on a monthly basis to Landlord on the first (1st) day of each calendar month (unless expressly provided otherwise), without notice, demand, deduction, set-off or counterclaim, in lawful money of the United States of America. All prorations of Rent or Expenses under this Lease for fractional periods shall be based on a thirty (30) day month and a three hundred sixty-five (365) day year. Tenant shall make all payments of Rent by ACH credits to Landlord's Remittance Address set forth in **Section 1** in the amounts set forth therein, unless and until Landlord designates in writing another bank account or process for such payment. Tenant shall execute and deliver such documents as requested by Landlord which are necessary in order to set up and process such ACH payments.

(b) **Minimum Rent.** Beginning on the Rent Commencement Date and thereafter during the entire Lease Term, Tenant covenants and agrees to pay to Landlord, the Minimum Rent set forth in **Section 1**, which sum shall be payable by Tenant in advance in equal consecutive monthly installments on or before the first day of each and every month of the Term. If the Rent Commencement Date occurs on a day other than the first day of a month, then the first installment of Minimum Rent shall be prorated at a daily rate, and such prorated amount shall be due and payable by Tenant on the Rent Commencement Date.

(c) **Intentionally Omitted.**

(d) **Percentage Rent.**

(i) **Formula.** Tenant covenants and agrees to pay to Landlord, without notice, demand, deduction, set-off or counterclaim, an amount, if any, equal to the Percentage Rent Rate multiplied by that portion of Tenant's Gross Sales (hereinafter defined) during each Lease Year in excess of the Sales Breakpoint for such period (hereinafter referred to as "**Percentage Rent**"). In the event of a Partial Lease Year, the Sales Breakpoint shall be determined by multiplying the Sales Breakpoint for the full Lease Year, by a fraction, the numerator of which shall be the number of days contained in such Partial Lease Year and the denominator of which shall be 365 days. If Minimum Rent for any Lease Year or Partial Lease Year is reduced or abated for any reason, the Sales Breakpoint shall be reduced in direct proportion to the reduction or abatement of Minimum Rent for the period of time that such reduction or abatement of Minimum Rent is in effect.

(ii) **Timing of Payments.** Percentage Rent shall be paid monthly as hereinafter set forth. The first payment of Percentage Rent during each Lease Year shall be paid on or before the fifteenth (15th) day after the last day of the first full calendar month in which Tenant's Gross Sales exceed the Sales Breakpoint. Thereafter, Percentage Rent shall be paid on or before the fifteenth (15th) day after the end of each succeeding month during the Lease Year in which the Sales Breakpoint has been exceeded.

(iii) **Annual Adjustment.** Within sixty (60) days after the close of each calendar year during the Term hereof, Tenant shall deliver to Landlord a statement showing the Gross Sales for such calendar year and the amount paid by Tenant to Landlord as Percentage Rent. If such determination shows that Tenant, during such calendar year, has paid an amount less than required by the terms of this Lease, then Tenant shall pay the full amount of the difference to Landlord within ten (10) days after such determination. If such determination shows that Tenant, during such calendar year, has paid an amount greater than required by this Lease, Tenant shall be entitled to a credit against Tenant's next payment of Percentage Rent in the amount of such overpayment (or a refund by Landlord in such amount if the Term of this Lease has expired).

(iv) **Definition of Gross Sales.** "**Gross Sales**" shall mean the entire amount of the actual sales price, whether wholly or partly for cash or for credit or otherwise, without reserve or deduction

for uncollected amounts, of all goods and merchandise (including food and beverages) of every sort whatsoever sold, and the charges for all services performed, and all other amounts received from the sale, barter or otherwise of all business conducted, at, in, from or upon the Demised Premises, including, without limiting the generality of the foregoing, sales, rentals or services (i) where the orders originate in, at or from the Demised Premises, regardless from whence delivery or performance is made, (ii) orders or purchases made pursuant to any catalogue, telephone, application or technology-based systems (e.g., terminals, tablets, consoles or other devices including any mobile phone application designed to scan items or QR codes in the Demised Premises) whether now existing or hereafter developed, located within or about the Demised Premises for the purpose of facilitating purchases of merchandise then in inventory, (iii) resulting from transactions originating in, at or from the Premises, (iv) deposits not refunded to customers; (v) all sales by vending machines on the Demised Premises, and (vi) all sales by any sublessee, assignee, licensee or concessionaire, in, at, from or upon the Demised Premises.

Excluded from “**Gross Sales**” shall be: (a) subject to subsection (b) herein, mail order, internet, or telephone sales which are not ordered, filled or paid for at the Demised Premises, (b) sales through Tenant’s “**Omni-Channel**” program, which means (i) sales that are ordered and paid for through the internet from a location outside of the Demised Premises, regardless of where delivery is made (including so called “*curbside pickup*”) and (ii) provided Tenant continuously maintains at the Demised Premises a commercially reasonable full inventory of merchandise so that the demised Premises is not a showroom or concept where limited merchandise is kept on the Demised Premises, sales of items not then in the inventory of the Demised Premises, which are ordered and paid for through the internet from a computer or other device that is located in the Demised Premises, (c) refunds to customers for merchandise returned or exchanged in the ordinary course of business at the Demised Premises, (d) sales of the home workout product known as the Mirror and any recurring membership and subscription fees associated therewith (but this exclusion shall not include membership or subscription fees for activities in the Demised Premises (for example, classes that take place in the Premises), which membership and subscription fees shall be included in Gross Sales); and (e) sales, use, luxury, excise, gross receipts tax or similar tax, by whatever name called, imposed by governmental authority and collected from customers and paid out by Tenant.

Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Tenant shall receive payment from its customer (but any interest or carrying charge on such a sale shall be excluded as hereinafter provided). If goods or merchandise shall be rented or leased, each rental transaction shall be deemed a sale and each lease transaction shall be deemed a sale upon credit. All sales originating at the Demised Premises shall be considered as made and completed therein. Tenant shall not adjust its calculation of Gross Sales, and/or its general operating procedures or otherwise institute any policy or program, directly or indirectly, for the purpose of circumventing the spirit or purpose of this **Section 5(d)** to account for Gross Sales or as a means or tool to deprive Landlord of Percentage Rent. In furtherance of the foregoing, Tenant shall not facilitate from the Demised Premises the purchase of merchandise through a mobile application or other technology-based systems, whether now existing or hereafter developed, which circumvents the point of sales system at the Demised Premises or otherwise deprives Landlord of Gross Sales of merchandise from the Demised Premises. Additionally, Tenant shall not promote or advertise from the Demised Premises (whether verbally or through physical advertisements) discounts of merchandise available online but not at the Demised Premises so as to encourage customers to purchase merchandise online and not at the Demised Premises or otherwise deprives Landlord of Gross Sales of merchandise from the Demised Premises.

(v) **Statement of Gross Sales.** Tenant agrees to furnish, or cause to be furnished, to Landlord, statements of the Gross Sales hereinabove described. A monthly statement shall be submitted within fifteen (15) days after the close of each calendar month, and an annual statement shall be submitted

within sixty (60) days after the close of each calendar year. Each such statement shall be certified by a certified public accountant or an officer of Tenant and contain sufficient detail for Landlord to verify Tenant's calculations of Gross Sales including a breakdown of the daily Gross Sales. In addition to said statements, upon request of Landlord, Tenant shall furnish to Landlord a copy of any state and local sales and use tax returns filed with regard to the Gross Sales from the Demised Premises, or reflecting all or any part of such Gross Sales. If Tenant fails to prepare and deliver any statement of Gross Sales required hereunder, within the time or times specified above, then Landlord shall have the right, in addition to the other rights and remedies set forth in this Lease, (a) to collect from Tenant a sum which shall be \$250.00 for each day of delay in delivering such statement for administrative and overhead expenses resulting from such failure, and (b) to estimate Tenant's Gross Sales for any non-reported period and bill Tenant's Percentage Rent accordingly.

(vi) **Maintenance of Records.** Tenant shall record, at the time of sale, all receipts from sales or other transactions, whether cash or credit, in a cash register, or in cash registers, having a cumulative total which shall number consecutive purchases. Tenant shall utilize, and cause to be utilized, an accounting system in accordance with good retail (or restaurant, as applicable) practice which will accurately record all Gross Sales, and Tenant shall keep on the Demised Premises, or such other location as may be approved by Landlord in writing, for at least thirty six (36) months after the expiration of each Lease Year, records conforming to such accounting systems showing all Gross Sales for such calendar year, including without limitation all tax reports, sales slips, sales checks, bank deposit records, cash register tapes (if any are customarily used in Tenant's business), sales journals, general ledgers, records of internet sales, and other supporting data, including any advanced data or metrics, which may be required to accurately document any Gross Sales. If upon examination of Tenant's accounting system or records Landlord's accountant or representative determines reasonably that sufficient documentation is not maintained, retained, recorded or available to verify Tenant's actual Gross Sales, Tenant shall pay for the cost of such examination and, in addition, should Landlord deem it necessary to cause a reconstruction of records for the determination of Gross Sales for any period being audited, Tenant shall pay such additional fees as may be incurred for such reconstruction. The receipt by Landlord of any statement, or of any payment of Percentage Rent for any period, shall not bind Landlord as to the correctness of such statement or of such payment.

(vii) **Examination by Landlord.** From time to time upon reasonable advance notice, Landlord shall have the right, by its accountants or other representatives, to audit all statements of Gross Sales, and in connection with such audit to examine Tenant's accounting system and all of Tenant's records (including supporting data, sales and use tax returns, and income tax returns) of Gross Sales. If any such audit discloses a deficiency in the payment of Percentage Rent, Tenant shall forthwith pay to Landlord the amount of the deficiency, together with interest at the Default Rate (as defined in this Lease), from the date when such Percentage Rent should have been paid. In addition, if such examination or audit discloses a liability for Percentage Rent three percent (3%) or more in excess of the Percentage Rent paid by Tenant for any period, or if Tenant's Gross Sales cannot be verified due to the insufficiency or inadequacy of Tenant's records, or if Tenant shall have failed to furnish Landlord any monthly statement of Gross Sales during any Lease Year, then, in addition to all other rights and remedies of Landlord under this Lease, Tenant shall promptly pay Landlord the cost of said audit (including, without limitation, all reasonable travel expenses incurred by Landlord).

(viii) **Failure to Operate.** In addition to all other rights and remedies of Landlord, if Tenant fails to operate its business in the Demised Premises for any reason, then, for the purpose of computing the Percentage Rent for such Lease Year affected by Tenant's failure to operate, the Sales Breakpoint for such Lease Year shall be adjusted by multiplying the Sales Breakpoint otherwise applicable

for such Lease Year by a fraction, the numerator of which shall be the actual number of days in such Lease Year during which Tenant was open for business and operating in accordance with **Section 8** of the Lease, and the denominator of which shall be 365.

(e) **Fixed CAM Fee.** In consideration of Landlord's operation, management, maintenance and repair of the Shopping Center as provided herein, Tenant shall pay to Landlord, as additional rent, the Fixed CAM Fee. Such payment shall be made in equal monthly installments of one-twelfth (1/12) of the Fixed CAM Fee in advance on the first day of each calendar month included in the Term beginning with the Rent Commencement Date; provided, however, if Tenant's Fixed CAM Fee liability for any calendar month shall commence on a day other than the first day of such calendar month, the Fixed CAM Fee installment due for such partial month shall be paid on the first day of the next succeeding calendar month for which a full month's installment of the Fixed CAM Fee is due hereunder.

(f) **Real Estate Taxes.**

(i) The term "**Real Estate Taxes**" shall mean any form of assessment (general or special), including, without limitation, taxes on rents, income and any assessment or fee levied pursuant by any property owners association or other governmental or quasi-governmental authorities (including, but not limited to any Texas margin taxes paid by Landlord with respect to rental revenue of the Shopping Center under Chapter 171 of the Texas Tax Code, as amended) having jurisdiction over the Shopping Center. The term "**Tenant's Share of Real Estate Taxes**" means the product of the total amount of Real Estate Taxes multiplied by a fraction, the numerator of which is the Gross Area of the Demised Premises and the denominator of which is the Gross Area of the Shopping Center in a calendar year, including the Demised Premises, which is leased and occupied by tenants (but no less than 90% of the total Gross Area of the Shopping Center leasable to tenants); provided that if any tenant leases a portion of the Shopping Center or a third party buys a portion of the Shopping Center and thereby creates a parcel separate from the remainder of the Shopping Center or for purposes of Real Estate Taxes a portion of the Shopping Center is separately platted, then Landlord shall have the option of decreasing the denominator by the Gross Area of the building located on such separate parcel. In addition, the fraction referred to in the preceding sentence is sometimes referred to in this Lease as "**proportionate share**" or "**Proportionate Share**."

(ii) **Definitions.** The term "**Initial Year**" means the calendar year in which the Rent Commencement Date occurs. The term "**Subsequent Year**" means any calendar year during the Term hereof after the Initial Year.

(iii) **Payment of Real Estate Taxes.** Tenant shall pay to Landlord the following amounts in the manner specified:

(a) Commencing on the Rent Commencement Date and continuing on a monthly basis until any adjustment as hereinafter provided, Tenant shall pay, as and for Real Estate Taxes, one-twelfth (1/12) of the amount set forth as Tenant's Share of Real Estate Taxes in **Section 1** hereof. Said sum is Landlord's reasonable estimate of the monthly amount of Tenant's Share of Real Estate Taxes during the Initial Year. Landlord may reasonably revise such estimate at the end of any calendar quarter, and Tenant shall pay Real Estate Taxes on the basis of such revised estimate after notice thereof as herein provided. Each determination of estimated Real Estate Taxes hereunder shall be made by Landlord based upon Landlord's experience with the historical costs incurred by Landlord in the Shopping Center and/or reasonable projections for such costs in the event no such historical costs exist.

(b) For each Subsequent Year, Landlord shall submit to Tenant, prior to April 30 of such Subsequent Year or as soon thereafter as practicable, a reasonably detailed statement showing the estimated Real Estate Taxes for such Subsequent Year. Tenant shall pay to Landlord as Real Estate Taxes a monthly amount equal to one-twelfth (1/12) of the estimated Tenant's Share of Real Estate Taxes for such Subsequent Year. If Landlord does not submit said statement to Tenant prior to April 30 of any such Subsequent Year, Tenant shall continue to pay Real Estate Taxes at the then existing rate until such statement is submitted, and, thereafter at the monthly Rent payment date next following the submittal of such statement, shall pay Real Estate Taxes based on the rate set forth in such statement. Landlord may reasonably revise such estimated Real Estate Taxes at the end of any calendar quarter, and Tenant shall pay Real Estate Taxes on the basis of such revised estimate after notice thereof as herein provided.

(c) Each Subsequent Year, or as soon thereafter as Landlord has sufficient data, Landlord shall submit to Tenant a reasonably detailed statement showing the actual Real Estate Taxes paid or incurred by Landlord during the previous calendar year, and the estimated Tenant's Share of Real Estate Taxes theretofore paid by Tenant shall be compared therewith. If pursuant to such comparison it is determined that there has been an overpayment by Tenant for such calendar year, then Landlord shall credit the amount of such difference against the next succeeding payment of Tenant's Share of Real Estate Taxes (based on estimated and/or actual figures). If pursuant to such comparison it is determined that there has been an underpayment by Tenant for such calendar year, then Tenant shall, within ten (10) days after the submittal of such statement to Tenant, pay to Landlord the full amount of such difference.

(g) **Landlord's Insurance.** The term "*Tenant's Share of Landlord's Insurance*" means the product of the total amount of Landlord's Insurance (as defined in **Section 17**) plus any deductible or self-insured retention actually paid in connection with Landlord's Insurance, multiplied by Tenant's Proportionate Share.

(i) Commencing on the Rent Commencement Date and continuing on a monthly basis until any adjustment as hereinafter provided, Tenant shall pay, as and for Tenant's Share of Landlord's Insurance, one-twelfth (1/12) of the amount set forth as Tenant's Share of Landlord's Insurance in **Section 1** hereof. Said sum is Landlord's reasonable estimate of the monthly amount of Tenant's Share of Landlord's Insurance during the Initial Year. Landlord may reasonably revise such estimate at the end of any calendar year, and Tenant shall pay Tenant's Share of Landlord's Insurance on the basis of such revised estimate after notice thereof as herein provided. Each determination or estimated costs of Landlord's Insurance hereunder shall be made by Landlord based upon Landlord's experience with the historical costs incurred by Landlord in the Shopping Center and/or reasonable projections for such costs in the event no such historical costs exist.

(ii) For each Subsequent Year, Landlord shall submit to Tenant, prior to April 30 of such Subsequent Year or as soon thereafter as practicable, a reasonably detailed statement showing the estimated costs of Landlord's Insurance for such Subsequent Year. Tenant shall pay to Landlord as Tenant's Share of Landlord's Insurance a monthly amount equal to one-twelfth (1/12) of the estimated Tenant's Share of Landlord's Insurance for such Subsequent Year. If Landlord does not submit said statement to Tenant prior to April 30 of any such Subsequent Year, Tenant shall continue to pay Tenant's Share of Landlord's Insurance at the then existing rate until such statement is submitted, and, thereafter at the monthly Rent payment date next following the submittal of such statement, shall pay Tenant's Share of Landlord's Insurance based on the rate set forth in such statement.

(iii) Each Subsequent Year, or as soon thereafter as Landlord has sufficient data, Landlord shall submit to Tenant a reasonably detailed statement showing the actual costs of Landlord's Insurance paid or incurred by Landlord during the previous calendar year, and the estimated Tenant's Share of Landlord's Insurance theretofore paid by Tenant shall be compared therewith. If pursuant to such comparison it is determined that there has been an overpayment by Tenant for such calendar year, then Landlord shall credit the amount of such difference against the next succeeding payment of Tenant's Share of Landlord's Insurance (based on estimated and/or actual figures). If pursuant to such comparison it is determined that there has been an underpayment by Tenant for such calendar year, then Tenant shall, within ten (10) days after the submittal of such statement to Tenant, pay to Landlord the full amount of such difference.

(h) **Promotion Fund.** Commencing on the Rent Commencement Date, Tenant shall pay the Promotion Fund Charge set forth in **Section 1**. The Promotion Fund Charge will be used by Landlord for the creation and maintenance of a common promotion fund (the "**Promotion Fund**") for the marketing, advertising, promotion, events and decoration of the Shopping Center. Landlord may use the Promotion Fund to defray the cost of the administration of the promotional activities so engaged in by Landlord, including, but not limited to, the salary of a promotion or advertising director or related personnel.

(i) **Late Charge.** If Tenant shall fail to pay any installment of Rent, including Percentage Rent or any item of Expenses on the date the same became due and payable, then, in addition to all other rights and remedies of Landlord, Tenant shall pay to Landlord a late payment service charge ("**Late Charge**") covering administrative and overhead expenses equal to the greater of (a) \$250.00 or (b) 5¢ per each dollar so overdue. Provision herein for payment of the Late Charge shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the times herein stipulated.

## 6. INTENTIONALLY OMITTED

## 7. SIGNS

Subject to applicable governmental requirements and Landlord's approval, which shall not be unreasonably withheld provided that Tenant complies with any tenant design criteria hereafter adopted by Landlord and furnished or made available to Tenant either before or after full execution of this Lease including without limitation the Tenant Design Criteria included in the Rice Village Tenant Handbook and provided Tenant follows the Signage Submittal Requirements (herein so called) set forth on **Exhibit E** (collectively, the "**Signage Criteria**"), Tenant shall be entitled to erect the maximum interior and exterior building signage consistent with Tenant's prototypical signage requirements. Tenant shall not be entitled to erect any pylon sign and Tenant shall have no right to require that its sign panel be placed on any Shopping Center pylon sign. Tenant shall have the right to use any visual window displays which are not attached to the Demised Premised Premises on the storefront of the Demised Premises, and in and around the areas surrounding the storefront located within the Demised Premises (collectively, "**Displays**") for marketing purposes in a manner that is consistent with a majority of other lululemon stores in the United States, subject to applicable Legal Requirements. Landlord acknowledges and agrees that the Displays are of critical importance to Tenant's success from the Demised Premises, and without the freedom to use such Displays as set forth herein, Tenant would not enter into this Lease. If Landlord objects to any Displays ("**Storefront Objection**"), Landlord shall not take any action under this Lease prior to sending a written notice to Tenant's corporate office pursuant to the notice address and requirements of the Lease. Tenant acknowledges and agrees that Tenant must obtain all necessary governmental and quasi-governmental permits and approvals with respect to its signage in compliance with all Legal Requirements.

## 8. USE

(a) **Permitted Use.** Tenant shall use the Demised Premises solely for the purposes stated in **Section 1** and for no other purpose. Tenant's business in the Demised Premises shall be conducted under the Permitted Trade Name set forth in **Section 1** unless another name is previously approved in writing by Landlord and in such manner as shall assure the transaction of a maximum volume of business in and at the Demised Premises. Tenant shall not use the Common Areas for the purposes of selling any products or advertising its business (including any handbills on cars). Tenant shall not use the roof areas above the Demised Premises for any purpose. Notwithstanding the foregoing, Tenant shall not use the Demised Premises for a use which is in violation of the Demised Premises Use Restrictions or is in conflict with a then existing exclusive or prohibited use granted by Landlord to another tenant/owner/occupant in the Shopping Center.

(b) **Continuous Operations.** Tenant shall be required to open for business on the Rent Commencement Date, and thereafter to continuously operate its business for the use specified above throughout the Lease Term. Tenant shall be required to keep its store open for business to the public during all days and hours of operation of the Shopping Center as designated by Landlord in the Rice Village Tenant Handbook, provided that Tenant shall only be required to open the Premises during the same days and hours that at least eighty five percent (85%) of the Gross Area of the Shopping Center occupied by retail tenants are also required under their leases to be, or actually are, open for business. The parties agree that the foregoing provision is only intended to govern Tenant's hours of operation and in no way operate as a cotenancy clause, nor does it obviate Tenant's obligation to continuously operate in the Demised Premises during the entire Term of this Lease as required hereunder. Landlord reserves the right to alter the days and hours of operation of the Shopping Center from time to time. Notwithstanding the foregoing, closures as a result of a Permitted Closure shall not be deemed a violation of the foregoing. "**Permitted Closure**" shall mean closure of the Demised Premises (i) for an aggregate of up to thirty (30) days for the purpose of remodeling and/or making alterations or repairs to the Demised Premises in accordance with the provisions of **Section 15** below, provided that such closure shall not occur more than once within a sixty (60) month period, (ii) on Easter Sunday, Thanksgiving, and Christmas Day, (iii) in connection with a closure resulting from casualty pursuant to **Section 18**, condemnation pursuant to **Section 19**, or force majeure pursuant to **Section 34(J)** (provided Tenant notifies Landlord of the event of force majeure preventing Tenant from operating within two days of the occurrence thereof), and (iv) for up to five (5) days during a given Lease Year for the purpose of taking inventory in the Demised Premises; provided that with respect to remodeling or planned maintenance or repairs, Tenant notifies Landlord of its intent to do so at least five (5) days prior thereto.

(c) **Sales and Dignified Use.** Tenant shall continuously and without interruption, throughout the Lease Term in good faith, actively use, occupy and operate the entire Demised Premises, with fixtures and decor, an inventory of goods and merchandise and a staff of sales personnel adequate, sufficient and appropriate to operate the Demised Premises as a "*first-class*", "*high-quality*", "*fashionable*" store or business (as opposed to a "*general*", "*promotional*" or "*self-service*" store or business) as those standards of operation may be interpreted from time to time during the Lease Term. The foregoing description is intended only as a description of the general quality of the merchandise or services Tenant may sell and the general quality of customer service, merchandising, fixturing and decor Tenant must maintain in the operation of the Demised Premises. The foregoing description is not intended by Landlord and will not be enforced to affect the retail selling price of Tenant's merchandise or services. Tenant shall operate its business at the Demised Premises in a respectable, reputable, tasteful, competent and dignified manner in order to enhance the image of the Shopping Center as a whole and its reputation as a dignified and desirable place to shop.



(d) **Hazardous Substances.** Tenant shall not use the Demised Premises or any other portion of the Shopping Center for the storage, use treatment, or disposal of any hazardous or toxic substances or petroleum products (collectively, “**Hazardous Substances**”), except for those used in normal commercial and retail applications or sold as retail consumer products. Tenant agrees to indemnify, defend and hold Landlord and its officers, partners, directors, shareholders, employees and agents harmless from any claims, judgments, damages, fines, penalties, reasonable costs, liabilities (including sums paid in settlement of claims) or loss including reasonable attorneys’ fees, consultants’ fees, and expert fees which arise during or after the Term of this Lease in connection with the presence or suspected presence of Hazardous Substances in the soil, groundwater, or soil vapor on or under the Shopping Center caused by the acts or omissions of Tenant, its officers, employees or agents. Without limiting the generality of the foregoing, the covenants and indemnification of Tenant set forth in this paragraph shall survive the expiration of this Lease. Without limiting the foregoing, if the presence of any Hazardous Substances on or about the Demised Premises or the Shopping Center caused or permitted by Tenant results in any contamination of the Demised Premises or the Shopping Center, Tenant shall, at its sole expense, promptly take all actions and expense as are necessary to return the Demised Premises and/or the Shopping Center to the condition existing prior to the introduction of any such Hazardous Substances to the Demised Premises or the Shopping Center; provided, however, that Landlord’s approval of such actions shall first be obtained in writing. If Tenant fails to do so, Landlord, without notice, may, but shall not be obligated to, perform Tenant’s obligations or perform the work herein and invoice Tenant for the costs of such work, plus an administrative fee of fifteen percent (15%) of the total of all costs and expenses, which the parties acknowledge and agree represents a reasonable estimate of Landlord’s cost for overhead and administration.

Landlord represents to Tenant, as of the Effective Date, to Landlord’s current actual knowledge, without further inquiry or investigation, the Demised Premises contain no reportable quantities of any Hazardous Substances, the encapsulation, removal or remediation of which is required by applicable law in effect as of the Effective Date. In the event (i) any Hazardous Substances are found in the Demised Premises, (ii) such Hazardous Substances were placed or installed in the Demised Premises by Landlord or were otherwise present in the Demised Premises prior to the Delivery Date and in violation of applicable law in effect as of the Effective Date, and (iii) the release or disturbance (if legally encapsulated) of such Hazardous Substances was not caused by Tenant (collectively, “**Pre-Existing Conditions**”), Landlord, at its sole cost and expense, shall take such action as required by applicable law or code to remove, remediate, abate or encapsulate such Pre-Existing Conditions.

(e) **Exclusive.**

(i) During the Primary Term and any Option Term, provided Tenant is not in default beyond any applicable notice and cure period, and so long as Tenant is continuously open and operating in the Demised Premises for the Permitted Use in accordance with the Lease and actually primarily selling yoga athletic wear as provided for in **Section 1**, Landlord agrees that it will not voluntarily execute a lease for, or voluntarily permit, any in line space located in the area shown on **Exhibit A-2** (the “**Exclusive Area**”) to be used by a Competitor of Tenant or a Nike Store (the “**Exclusive Use**”). The term “**Competitor**” shall mean (i) any tenant currently doing business under the following trade names: Vuori, Prana, Athleta, Title Nine, Victoria’s Secret Sport, Lole, Kit and Ace, Lorna Jane, Sweaty Betty, Bandier, Yogasmoga, Spiritual Gangster, Rhone, Alo Yoga, Outdoor Voices, Zobha, Lily Lotus, Carbon38, Hill City, Beyond Yoga, Gymshark, OnPoint, Reining Champ, Fabletics, Lucy, or Offline, and (ii) any business in the future that sells yoga athletic apparel in more than 15% of its total Gross Area or five hundred (500) square feet of Gross Area (whichever is less). The term “**Nike Store**” means any retail store operating under the Nike trade name and owned by Nike, Inc., or one of its affiliates. The foregoing exclusive rights shall not apply (i) during any special events conducted in the Shopping Center, (ii) to occupants under agreements executed

as of the date hereof, their successors or assignees, sublessees, franchisees, licensees or replacements (provided, however, Landlord shall not voluntarily consent to any amendment to any existing lease which would expand the use provisions of such lease so as to permit the Exclusive Use (except as allowed herein), and such use was not theretofore already allowed or voluntarily consent to an assignment of the Lease to any assignee that Landlord is aware will operate for the Exclusive Use and the time it voluntarily issues such consent), or (iv) to any affiliate, franchisee, licensee or subsidiary of Tenant, (v) to any land located outside the present boundaries of the Shopping Center. This exclusive right (a) is personal to the named Tenant as of the date of this Lease and shall not be transferable to any other party, (b) shall not be operative during the last six (6) months of the Primary Term (unless Tenant exercised an Option Term) or any Option Term, (c) shall not create any liability from Landlord to Tenant for breach of this provision if the Exclusive Use is prohibited by law or a court order allows for or causes the breach of the Exclusive Use and (d) shall no longer apply and shall become null and void if, at any time, Tenant's primary use and business is not the same as the Exclusive Use or if Tenant fails to continuously conduct business from the Demised Premises or a Default on Tenant's part occurs.

(ii) Notwithstanding anything to the contrary contained herein, Landlord shall not be in violation of the terms of this **Section 8(e)** (and no violation of the exclusive shall be deemed to have occurred) for any period prior to the date that Landlord has received written notice of the alleged violation from Tenant ("**Exclusive Violation Notice**"). If Tenant sends an Exclusive Violation Notice to Landlord, Landlord shall have thirty (30) days within which to dispute or cure such notice, failing which Landlord will be deemed to have confirmed the existence of the Exclusive Use violation and Tenant's right to pay Alternate Rent (defined in **Section 33(d)**) as of Landlord's receipt of the Exclusive Violation Notice (the "**Exclusive Violation Date**"). In the event of a violation of the Exclusive Use which is not disputed by Landlord as aforesaid, then, as Tenant's sole and exclusive remedies, commencing on the Exclusive Violation Date, (1) Tenant shall have the right to pay, in lieu of Minimum Rent and Percentage Rent, Alternate Rent (as defined in **Section 33(d)**), until the earlier to occur of (x) the date such violation is cured, and (y) the date ("**Exclusive Termination Date**") twelve (12) calendar months following the Exclusive Violation Date, and (2) in the event such violation is not cured on or before the Exclusive Termination Date, Tenant, shall have the right to terminate this Lease, upon thirty (30) days' prior written notice to Landlord, given within thirty (30) days of the Exclusive Termination Date and prior to the date such violation is cured. Failure of Tenant to exercise its termination right under this **Section 8(e)** within the 30-day period prescribed above shall constitute a waiver of such right. If Tenant waives, or is deemed to have waived, its termination right set forth in this **Section 8(e)**, Tenant shall revert-back to paying Minimum Rent, and Percentage Rent on the date that is ninety (90) days after the Exclusive Termination Date, and the provisions of this **Section 8(e)** shall thereafter no longer apply and shall be null, void and of no further force or effect for the remainder of the Term. Notwithstanding the abatement of Percentage Rent under this subsection, any Gross Sales made during the period of any such abatement shall be counted towards the annual Sales Breakpoint and the calculation of Percentage Rent for that Lease Year.

(iii) Notwithstanding the foregoing or anything contained herein to the contrary, Landlord shall not be in violation of the terms of this **Section 8(e)** (and no violation of the exclusive shall be deemed to have occurred), and Tenant shall not be entitled to pay Reduced Rent, if another tenant or occupant in the Exclusive Area utilizes its premises for the Exclusive Use in violation of the terms hereof, and such use is in violation of such tenant's own lease agreement (a "**Rogue Tenant**"). In the case of a Rogue Tenant, Landlord agrees, after Landlord's receipt of Exclusive Violation Notice, to use commercially reasonable efforts to cause such Rogue Tenant to cease violating its lease. If not resolved within ninety (90) days, Landlord shall commence an action (or arbitration, if required by such lease) against such other tenant or occupant, and thereafter shall use good faith efforts to enforce its rights under

such lease and to obtain Judicial Relief. For purposes hereof, “Judicial Relief” shall mean a temporary restraining order, preliminary injunction, or other court order, or order resulting from an arbitration proceeding, enjoining the lease violation; provided, however, Landlord shall not be required to appeal any adverse decision denying Judicial Relief. Notwithstanding the foregoing, if such Rogue Tenant violation continues for more than one hundred eighty (180) days after Landlord’s receipt of the Exclusive Violation Notice, then commencing on such date, Tenant shall be entitled to the remedies set forth in **Section 8(e)(ii)** subject to the provisions thereof.

(iv) If Tenant relocates from the Demised Premises at the request of Landlord to a different premises within the Shopping Center during the Primary Term or any Option Term, then the Exclusive Use set forth herein shall nevertheless continue for a period of one (1) year after Tenant opens for business in the new premises, except the Exclusive Area shall be limited to the former Demised Premises leased by Tenant hereunder. After such one (1) year period, the Exclusive Use and the provisions of this **Section 8(e)** shall no longer apply and shall be null, void and of no further force or effect.

(f) **Intentionally Omitted.**

(g) **Sponsorship.** Tenant shall comply with the terms of all sponsorship agreements applicable to the Shopping Center which Landlord may enter into from time to time, on the conditions that (i) Landlord gives Tenant written notice of the same, including the terms with which Tenant is to comply, and (ii) the terms of such sponsorship agreement do not materially increase Tenant’s obligations or materially reduce Tenant’s rights under this Lease.

## **9. OTHER TAXES**

In addition to the Minimum Rent, Percentage Rent, the Fixed CAM Fee and Tenant’s Share of Real Estate Taxes to be paid by Tenant, Tenant shall, prior to delinquency, pay the full amount of all taxes, assessments, impositions, levies, charges, excises, fees, licenses and other sums levied, assessed, charged or imposed, by any governmental authority or other taxing authority upon Tenant’s leasehold interest under this Lease and all alterations, additions, fixtures (including removable trade fixtures), inventory and other property installed or placed or permitted at the Demised Premises by Tenant. Tenant’s fixtures, equipment and furnishings in the Demised Premises and Tenant’s real property, repairs, alterations, additions and improvements to the Shopping Center (all of the foregoing being, collectively, the “**Tenant Fixtures**”) and Tenant’s merchandise and other contents shall all remain the property of Tenant throughout the Term of this Lease and insured by Tenant pursuant to this Lease.

## **10. COMMON AREAS**

(a) **Tenant’s Non-Exclusive Right.** Subject to the requirements of applicable governmental and quasi-governmental authorities, Tenant shall have the non-exclusive right during the Term of this Lease to use the Common Areas for itself, its employees, agents, customers, invitees and licensees. The term “**Common Areas**” shall mean the portions of the Shopping Center which have at the time in question been designated and improved for common use by or for the benefit of more than one tenant or concessionaire of the Shopping Center. Landlord shall have the right to designate certain portions of the Common Areas for the exclusive use of Landlord or for the exclusive use of other tenants in the Shopping Center for customer pickup, loading of items purchased in the Shopping Center, valet parking, short-term parking or other similar uses that are incidental to a retail tenant’s business operations; provided, however, the expenses associated with such portions of the Common Areas shall be borne by the tenant using the applicable portion of the Common Area. All Common Areas shall be subject to the exclusive control and

management of Landlord or such other persons or nominees as Landlord may have reasonably delegated or assigned to exercise such management or control. Landlord shall have the right to close, if necessary, all or any portion of the Common Areas to such extent as may in the reasonable opinion of Landlord's counsel be legally necessary to prevent a dedication thereof or the accrual of any rights of any person or of the public therein; to close temporarily all or any portion of the Common Areas to discourage non-customer use; to use portions of the Common Areas while engaged in making additional improvements or repairs or alterations to the Shopping Center, and to do and perform such other acts in, to and with respect to, the Common Areas as in the use of good business judgment Landlord shall determine to be appropriate for the Shopping Center.

(b) **Changing the Common Areas.** Landlord shall have the right from time to time to change or modify the Common Areas; to increase the size of the Common Areas, including the expansion thereof to adjacent property; to reduce the Common Areas; to rearrange the parking spaces and improvements on the Common Areas; and to make such changes therein and thereto from time to time which in its reasonable opinion are deemed to be desirable and for the best interests of all persons using the Common Areas. Tenant agrees that it and its concessionaires, agents, employees, and vendors, suppliers, and other independent contractors will use such access roads and will operate trucks and trailers in delivering merchandise to and from the Demised Premises upon and over such access roads as are designated therefor by Landlord as a means of ingress to and egress from the Demised Premises.

(c) **Rules and Regulations.** Tenant agrees that its use and occupancy of the Demised Premises, and the Common Areas shall at all times be subject to, and Tenant agrees to comply with, the reasonable rules and regulations from time to time promulgated by Landlord, including but not limited to the rules and regulations set forth in the "*Rice Village Tenant Handbook*" as may be amended from time to time by the Shopping Center management. Landlord shall provide a copy of the Rice Village Tenant Handbook to Tenant upon execution of this Lease and shall advise Tenant of any material changes thereto on a quarterly basis or otherwise from time to time. From time to time such rules and regulations may provide, without limitation, the hours during which the Common Areas shall be open for use, the hours and location designated by Landlord for deliveries to be received by Tenant and such other rules and regulations designated by Landlord for the operation of the Demised Premises, the Common Areas and/or the Shopping Center. In addition, Tenant's General Contractor and subcontractors shall comply with the Construction Rules & Regulations as outlined in the Rice Village Tenant Handbook. Should Tenant or Tenant's General Contractor or subcontractors fail to properly comply with any such rules and regulations, and should such continue for twenty-four (24) hours after notice, such shall be an Event of Default and, in addition, Tenant shall pay to Landlord an administrative fee of Five Hundred and 00/100 Dollars (\$500.00) per day until such violation is discontinued.

(d) **Parking.** Landlord shall have the right to charge a fee for parking in any covered parking, garage, or other parking facility constructed or maintained by Landlord (including uncovered surface parking) within the Common Areas. In the event Landlord elects (in its sole discretion) to establish a validation program for such parking, Tenant may request to participate in such program upon at least 14 days prior written notice to Landlord, in which event Tenant shall pay or reimburse Landlord on demand (unless the validations are pre-paid by Tenant) for any parking charges (and applicable taxes) that would have been imposed on the validated customers, and shall otherwise comply with Landlord's rules and procedures established for such validation program including without limitation the means of such validation specified by Landlord. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty as to the suitability of the parking areas, or as to the availability of parking spaces, for the conduct of Tenant's business.

(e) **Employee Parking.** Tenant agrees that the employees of Tenant shall not be permitted to park their automobiles in the automobile parking areas which may from time to time be designated by Landlord for patrons of the Shopping Center. Landlord shall have the right to designate space for employee parking either within the Shopping Center parking area or in an area reasonably close thereto, which may be areas on the public streets if allowed by the City in which the Demised Premises are located. If Landlord designates employee parking areas, Tenant and its employees shall park their vehicles only in the parking areas so designated. Landlord shall have the right to charge Tenant or its employees a reasonable fee for employee parking in any designated parking area within the Shopping Center. Landlord shall have the right to change the designated parking areas from time to time in Landlord's sole discretion. In particular, Landlord reserves the right to modify or relocate employee parking areas during the holiday shopping season or other occasions of high customer parking demand, or in the event of a redevelopment or repurposing of such employee parking area for any reason. As of the Effective Date, the designated employee parking area is the Greenbriar lot shown on **Exhibit J** attached hereto and made a part hereof (the "**Current Designated Employee Parking Area**"). Tenant covenants that it will inform its employees of the foregoing parking requirements and institute reasonable enforcement procedures. Tenant shall pay Landlord, upon demand, \$25.00 for each day on which a car of Tenant, a concessionaire, employee or agent of Tenant is parked outside any area designated by Landlord for employee parking. Tenant shall furnish Landlord with its and its employees' automobile license numbers within ten (10) days of Landlord's written request and within ten (10) days of the hiring of any new employee for work at the Demised Premises. Landlord shall have the right to enforce such parking by any lawful means, including towing of vehicles at Tenant's expense. Landlord shall have no liability with respect to any such towing. Tenant further agrees to hold harmless Landlord and defend Landlord, its agents and employees against any and all claims of the employee and/or owner of the vehicle towed.

(f) **Special, Community Events.** Landlord shall have the right, from time to time, to hold or cause to be held "**special events**" or "**community events**" (as so designated by Landlord) or portions of such events within the Common Areas. Landlord shall also have the right to grant rights of access and parking within the Common Areas in connection with any such "**special events**" or "**community events**" (as so designated by Landlord) from time to time held outside the Common Areas; provided, however that Landlord agrees to implement such measures as Landlord deems reasonable to alleviate, to the extent possible, disruption to the flow of pedestrian and vehicular traffic to and within the Shopping Center during such events.

## **11. COMMON AREA EXPENSES**

During the Term of this Lease, Landlord shall keep or cause the Common Areas to be kept in a neat, clean and orderly condition, lighted and landscaped, and shall repair any damage to the facilities thereof, but all costs and expenses incurred by Landlord in connection therewith shall be charged in the manner previously set forth. The Fixed CAM Fee shall be applied toward all sums expended by Landlord for payment of all work deemed necessary by Landlord for the operation, maintenance, replacement, repair and management of the Common Areas, and for the cost of operating, managing and leasing the Shopping Center.

## **12. UTILITIES AND OTHER SERVICES.**

(a) **Payment for Utility Services.** Tenant shall pay, prior to delinquency, all separately metered charges for utility service to the Demised Premises, including, but not limited to, water, gas (which, if Landlord elects to make the same available at the Shopping Center, shall be for cooking purposes only where expressly permitted), electricity, telephone, trash removal, and all other like services used by Tenant in, on or about the Demised Premises from and after the delivery of possession of the Demised Premises

by Landlord, together with any taxes thereon. Tenant shall at Tenant's expense, install one or more separate meters for the Demised Premises, so as to measure the amount of water, electrical current or other resource consumed at the Demised Premises, in accordance with **Exhibit D**. Tenant shall be responsible for all service charges and deposits associated with establishing an account with the local utility service provider. Within thirty (30) days after the Delivery Date, Tenant shall arrange with such local utility service provider to change over any existing accounts to be in Tenant's name. If Tenant fails to pay any utility company, Landlord may pay the amount owed, and Tenant shall reimburse Landlord on demand for such payment plus an additional administrative charge of fifteen percent (15%) of the total of all such costs and expenses paid by Landlord on behalf of Tenant, which the parties acknowledge and agree represents a reasonable estimate of Landlord's cost for overhead and administration. LANDLORD SHALL NOT BE LIABLE IN DAMAGES OR OTHERWISE FOR ANY FAILURE OR INTERRUPTION OF ANY UTILITY SERVICE BEING FURNISHED TO THE DEMISED PREMISES OR ANY PORTION OF THE SHOPPING CENTER.

If Tenant installs any electrical equipment that overloads the electrical lines in the Demised Premises or the building in which the Demised Premises are located, Tenant will, at its own cost and expense, promptly make whatever changes are necessary to remedy such condition and to comply with all requirements of Landlord and the Board of Fire Insurance Underwriters and any similar body and any governmental authority having jurisdiction thereof. If Tenant engages in the preparation of food or packaged foods, or engages in the use, sale or storage of inflammable or combustible material, Tenant will install chemical extinguishing devices (such as Ansul devices) and will keep such devices under service at Tenant's sole cost and expense. If gas is used in the Demised Premises, Tenant will install at its expense gas cut-off devices (manual and automatic).

(b) **Trash Removal.** Tenant shall deposit its trash and refuse only in those areas and in such manner as designated by Landlord. In no event will Tenant cause or permit its trash receptacles to remain within the interior of the Demised Premises. Landlord shall provide and designate the trash receptacles for Tenant and Tenant shall cause all trash and rubbish of Tenant to be deposited within such receptacles. The cost of the maintenance of the trash receptacles and the cost of regular removal of trash and rubbish is included as a part of the Fixed CAM Fee.

(c) **Water/Sewer.** The supply of water to the Demised Premises shall be measured by a water CoH meter or submeter ("**water meter**") installed within the Demised Premises at Tenant's expense or in such other location proximate to the Demised Premises as is designated by Landlord. Tenant shall pay as Expenses for all water supplied to the Demised Premises as measured by the water meter installed for the Demised Premises, upon being billed therefor by Landlord. Tenant shall also pay for sewer service to the Demised Premises promptly upon being billed therefor by Landlord. The amounts payable by Tenant for water and sewer service supplied to the Demised Premises shall be calculated at the rates charged to Landlord by the respective utility providers. Additionally, an administrative charge of fifteen percent (15%) of each of the foregoing water and sewer charges shall be added to such charges as Landlord's administrative fee, which the parties acknowledge and agree represents a reasonable estimate of Landlord's cost for overhead and administration. Tenant acknowledges that the components comprising the rates charged to Landlord (and payable by Tenant) by the respective utility providers for water and sewer service to the Demised Premises may change from time to time

### **13. ENTRY BY LANDLORD**

Landlord and its authorized representatives shall upon reasonable prior notice to Tenant have the right to enter the Demised Premises at all reasonable times during normal business hours and at any time without

prior notice in case of an emergency (i) to determine whether the Demised Premises are in good condition and whether Tenant is complying with its obligations under this Lease, (ii) to maintain or to make any repair or restoration to the Demised Premises that Landlord has the right or obligation to perform, (iii) to install any meters or other equipment which Landlord may have the right to install, (iv) to serve, post, or keep posted any notices required or allowed under the provisions of this Lease, (v) to post “*for sale*” signs at any time during the Term and to post “*for rent*” or “*for lease*” signs and to exhibit the Demised Premises to prospective tenants during the last three (3) months of the Term, (vi) to show the Demised Premises to prospective brokers, agents, buyers, or persons interested in an exchange, (vii) to shore the foundations, footings, and walls of the Demised Premises and to erect scaffolding and protective barricades around and about the Demised Premises, but not so as to prevent entry into the Demised Premises, and (viii) to do any other act or thing reasonably necessary for the safety or preservation of the Demised Premises or the Shopping Center. Landlord shall have the right to use any and all means which Landlord may deem proper to gain entry in an emergency, and any entry to the Demised Premises obtained by Landlord by any of said means shall not be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Demised Premises, or an eviction of Tenant from the Demised Premises or any portion thereof. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant’s business and any loss of occupancy or quiet enjoyment of the Demised Premises by reason of Landlord’s exercise of its rights of entry in accordance with this **Section** and Tenant shall not be entitled to an abatement or reduction of Rent in connection therewith.

#### **14. MAINTENANCE AND REPAIR**

(a) **Landlord’s Obligations.** Landlord shall maintain or cause to be maintained in good order, condition and repair (including replacements if necessary) the roof, load bearing walls and foundation of the Demised Premises (except to the extent of damage caused by Tenant, its agents, employees or contractors, which shall be repaired by Landlord at Tenant’s expense). The cost of Landlord’s obligation to repair under this **Section** shall be included as a part of the Fixed CAM Fee.

(b) **Tenant’s Obligations.** Tenant, at its sole cost and expense, except for services expressly furnished by Landlord above, shall keep in good order, condition and repair the Demised Premises and every part thereof (regardless of whether the need for such repairs occurs as a result of Tenant use, any prior use, the elements, or the age of such portion of the Demised Premises, or otherwise) including, without limiting the generality of the foregoing, all plumbing; electrical and lighting facilities and equipment serving the Demised Premises (including any heating, ventilation and air conditioning system exclusively serving the Demised Premises); fixtures; interior walls; floors; ceilings; windows; doors; plate glass; skylights; entrances and vestibules, storefront, and signage located within the Demised Premises. If replacement of equipment, fixtures and appurtenances thereto is necessary, Tenant shall replace the same with new or completely reconditioned equipment, fixtures and appurtenances, and repair all damages done in or by such replacement. If Tenant fails to perform its obligations hereunder or if repairs to any part of the Demised Premises and/or the Shopping Center are necessitated as a result of any act or omission (negligent or otherwise) of Tenant or any of its agents, employees, contractors, Landlord without notice may, but shall not be obligated to, perform Tenant’s obligations or perform work resulting from Tenant’s acts, actions or omissions and add the cost of the same, in addition to an administrative fee equal to fifteen percent (15%) of the total of all such costs and expenses, which the parties acknowledge and agree represents a reasonable estimate of Landlord’s cost for overhead and administration, to the next installment of Minimum Rent due hereunder. Further, in the event that any act or omission of Tenant or any of its agents, employees or contractors causes any warranty held by Landlord to be voided or limited, Tenant shall be responsible for the cost of any repair, maintenance, and/or replacement that would have been covered by the applicable warranty but for the act or omission by Tenant or its agents or contractors causing

such warranty to be voided or limited. Tenant, at its expense, shall change all air conditioning filters as necessary and shall have the air conditioning system professionally inspected and generally serviced at least quarterly by a recognized maintenance company. If requested by Landlord, Tenant shall provide a copy of its maintenance contract and quarterly inspection reports.

(c) **Compliance with Law.** Tenant shall do all acts required to comply with all applicable Legal Requirements relating to its maintenance obligations as set forth herein. In addition, Tenant shall be responsible for causing Tenant's Work to comply with all applicable Legal Requirements.

## **15. ALTERATIONS AND ADDITIONS**

(a) Tenant shall make no alterations, additions or improvements, or utility installations (which for purposes of this **Section 15** shall be defined to mean ducting, power panels, lighting fixtures, space heaters, conduits and wiring), to the Demised Premises or any part thereof without obtaining the prior written consent of Landlord in each instance. Such consent may be granted or withheld at Landlord's reasonable discretion; provided, however, all alterations must be architecturally harmonious with the rest of the Shopping Center and Landlord may impose as a condition to such consent such requirements as Landlord may deem necessary in its reasonable discretion, including (without limitation) the requirement that Landlord be furnished with working drawings before work commences, and requirements relating to the manner in which the work is done and the times during which it is accomplished, as well as the requirement that upon written request of Landlord prior to the expiration or earlier termination of this Lease, Tenant will remove at its expense any and all of its movable partitions, counters, personal property, equipment, fixtures and furniture. In addition to the foregoing and not in limitation thereof, Tenant shall comply with all Legal Requirements, the Rice Village Tenant Handbook including without limitation the Tenant Design Criteria and Construction Rules & Regulations and **Exhibit D** with respect to the performance of all alterations and/or work within the Demised Premises. Any alterations and/or work within the Demised Premises, including but not limited to Tenant's Work, shall be performed using only contractors, subcontractors and/or mechanics first approved by Landlord in writing in each instance. Also, if requested to do so by Landlord, Tenant will remove any and all alterations, additions or improvements which shall have theretofore been constructed or installed by Tenant. Any damage done to the Demised Premises in connection with any such removal shall be repaired at Tenant's sole cost and expense. Landlord may, in connection with any such removal which might involve damaging the Demised Premises, require that such removal be performed by a contractor or other person reasonably acceptable to Landlord. Unless so removed, all such permanent improvements or additions to the Demised Premises shall at the expiration or earlier termination of this Lease become the property of Landlord and remain upon the Demised Premises. Tenant shall remove all other fixtures and personal property from the Demised Premises on or before the termination of this Lease and any such fixtures and other personal property remaining in the Demised Premises after the expiration of this Lease may be removed by Landlord and disposed of by Landlord in Landlord's absolute discretion.

## **16. INDEMNITIES AND WAIVERS**

(a) **Indemnification by Tenant.** TENANT SHALL INDEMNIFY, DEFEND, AND HOLD LANDLORD, LANDLORD ENTITIES [AS DEFINED IN **SECTION 17(a)**], THE MEMBERS, SHAREHOLDERS AND OTHER OWNERS OF DIRECT AND INDIRECT INTERESTS IN ANY OF LANDLORD ENTITIES, LANDLORD'S MORTGAGEES AND MASTER LESSORS (IF ANY), THE LANDLORD ENTITIES' OFFICERS, DIRECTORS, TRUSTEES, PARTNERS, ADVISORS, BENEFICIARIES, EMPLOYEES, AGENTS, LANDLORD'S EMPLOYEES, AGENTS, MEMBERS, PARTNERS, ADVISORS, BENEFICIARIES, OFFICERS, DIRECTORS, AND TRUSTEES (FOR



PURPOSES OF THIS **SECTION 16, "LANDLORD PARTIES"**), HARMLESS OF AND FROM ANY LOSS, ATTORNEY'S FEES, EXPENSES, CLAIMS, FINES, DAMAGES, ACTIONS, SUITS, COSTS AND LIABILITY OF EVERY KIND THAT (1) ARISE FROM OR ARE IN CONNECTION WITH THE OPERATION OF TENANT'S BUSINESS AT THE SHOPPING CENTER, INCLUDING INJURY TO TENANT'S EMPLOYEES; (2) ARISE FROM OR ARE IN CONNECTION WITH ANY ACTS, OMISSIONS, OR NEGLIGENCE OF TENANT OR TENANT'S AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES, CONCESSIONAIRES OR INVITEES; (3) RESULT FROM ANY DEFAULT, BREACH, VIOLATION OR NON-PERFORMANCE OF ANY PROVISION OF THIS LEASE BY TENANT; (4) RESULT FROM INJURY TO PERSON OR PROPERTY OR LOSS OF LIFE SUSTAINED IN OR ABOUT THE DEMISED PREMISES; or (5) RESULT FROM THE VIOLATION OF APPLICABLE LEGAL REQUIREMENTS BY TENANT OR TENANT'S AGENTS, EMPLOYEES, CONTRACTORS, LICENSEES, CONCESSIONAIRES OR INVITEES. TENANT SHALL DEFEND ANY AND ALL CLAIMS, ACTIONS, SUITS AND PROCEEDINGS THAT MAY BE BROUGHT AGAINST ANY LANDLORD PARTY WITH RESPECT TO THE MATTERS DESCRIBED IN THIS LEASE. TENANT SHALL PAY, SATISFY AND DISCHARGE ANY AND ALL JUDGMENTS, ORDERS AND DECREES THAT ARE ENTERED AGAINST ANY LANDLORD PARTY WITH RESPECT TO THE MATTERS DESCRIBED IN THIS LEASE. NOTWITHSTANDING THE FOREGOING, ANY LANDLORD PARTY SHALL HAVE THE RIGHT, IN ITS SOLE DISCRETION, TO DEFEND OR MOVE TO INTERVENE IN ANY ACTION TO PROTECT ITS INTEREST. SHOULD ANY LANDLORD PARTY ELECT TO DEFEND OR TO INTERVENE, TENANT SHALL CONTINUE TO HOLD HARMLESS THE LANDLORD PARTY AND SHALL PAY ALL COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED OR PAID BY THE LANDLORD PARTY IN CONNECTION WITH THE ACTION. THIS INDEMNITY SURVIVES THE EXPIRATION OR TERMINATION OF THIS LEASE.

EXCEPT WITH RESPECT TO ANY DAMAGES RESULTING FROM LANDLORD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, LANDLORD SHALL NOT BE LIABLE TO TENANT FOR, AND TENANT HEREBY RELEASES THE LANDLORD PARTIES OF AND FROM, ANY DAMAGE, LOSS, COMPENSATION, ACCIDENT, OR CLAIMS ARISING OUT OF (A) NECESSARY REPAIR OF THE SHOPPING CENTER; (B) ANY INTERRUPTION OF TENANT'S USE OF THE DEMISED PREMISES; (C) THE USE OR OPERATION OF ANY ELEVATORS, HEATING, COOLING, ELECTRICAL OR PLUMBING EQUIPMENT; (D) THE TERMINATION OF THIS LEASE BY REASON OF THE DESTRUCTION OF THE DEMISED PREMISES OR THE SHOPPING CENTER; (E) ANY FIRE, ROBBERY, THEFT, OR ANY OTHER CASUALTY; (F) ANY LEAKAGE IN ANY PART OR PORTION OF DEMISED PREMISES OR THE SHOPPING CENTER; (G) ANY WATER, WIND, RAIN OR SNOW THAT MAY LEAK INTO, OR FLOW FROM PART OF THE DEMISED PREMISES OR THE SHOPPING CENTER; (H) ANY ACTS OR OMISSIONS OF ANY OTHER TENANT IN THE SHOPPING CENTER; (I) ANY EXPLOSION, CASUALTY, UTILITY FAILURE OR MALFUNCTION, OR FALLING OBJECTS; (J) THE BURSTING, STOPPAGE, LEAKAGE OR OTHER DEFECTS OF ANY PIPES, DRAINS, SPRINKLERS, CONDUITS, APPLIANCES OR PLUMBING WORKS; (K) ANY DEFECTS, LATENT OR OTHERWISE, IN ANY BUILDINGS OR IMPROVEMENTS IN THE SHOPPING CENTER OR ANY OF THE EQUIPMENT, MACHINERY, UTILITIES, APPLIANCES OR APPARATUS THEREIN; (L) ANY DEFECT OR NEGLIGENCE IN THE OCCUPANCY, CONSTRUCTION, OPERATION OR USE OF ANY BUILDINGS OR IMPROVEMENTS IN THE SHOPPING CENTER, INCLUDING THE DEMISED PREMISES, OR ANY OF THE TENANT FIXTURES, MACHINERY, APPLIANCES OR APPARATUS THEREIN; (M) THE TRANSMISSION OR CONTRACTION OF ANY INFECTIOUS OR CONTAGIOUS DISEASE OR OTHER ILLNESSES FROM VIRUS, BACTERIA OR OTHER

ORGANISMS (SUCH AS INFLUENZA AND COVID-19) INCURRED, SUSTAINED OR SUFFERED IN OR UPON THE DEMISED PREMISES, OR ANY OTHER PART OF THE SHOPPING CENTER, AND/OR (N) ANY OTHER CAUSE WHATSOEVER. ALL PROPERTY OF TENANT KEPT IN THE DEMISED PREMISES SHALL BE SO KEPT AT TENANT'S RISK ONLY AND TENANT SHALL SAVE LANDLORD HARMLESS FROM CLAIMS ARISING OUT OF DAMAGE TO THE SAME, INCLUDING SUBROGATION CLAIMS BY TENANT'S INSURANCE CARRIER. LANDLORD PARTIES SHALL NOT BE LIABLE TO TENANT FOR LOSSES DUE TO DAMAGES ARISING OUT OF WRONGFUL ACTS OF THIRD PARTIES.

(b) **Indemnification by Landlord.** LANDLORD SHALL INDEMNIFY, DEFEND, AND HOLD TENANT, ITS MEMBERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (FOR PURPOSES OF THIS **SECTION 16, "TENANT PARTIES"**), HARMLESS OF AND FROM ANY CLAIM ARISING BECAUSE OF ANY BODILY INJURY, DEATH AND/OR DAMAGE TO TANGIBLE PERSONAL PROPERTY OCCURRING IN THE COMMON AREA OF THE SHOPPING CENTER, BUT OUTSIDE THE DEMISED PREMISES RESULTING FROM ANY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD PARTIES OCCURRING DURING THE TERM AND ANY HOLDOVER PERIOD EXCEPT TO THE EXTENT OF ANY COSTS, EXPENSES, CLAIMS OR OTHER LIABILITIES OCCASIONED BY THE NEGLIGENCE OR WRONGFUL ACTS OR OMISSIONS OF TENANT PARTIES. IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST TENANT PARTIES IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, LANDLORD, ON NOTICE FROM TENANT PARTIES, SHALL DEFEND SUCH ACTION OR PROCEEDING, AT LANDLORD'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO TENANT PARTIES. THE PROVISIONS OF THIS **SECTION** SHALL APPLY TO ALL ACTIVITIES OF LANDLORD WHETHER OCCURRING BEFORE OR AFTER THE DELIVERY DATE OF THE TERM AND LANDLORD'S OBLIGATIONS UNDER THIS **SECTION** SHALL NOT BE LIMITED TO THE LIMITS OR COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY LANDLORD UNDER THIS LEASE. NOTWITHSTANDING THE FOREGOING, THIS INDEMNIFICATION SHALL NOT APPLY TO COSTS, EXPENSES, LOSSES, DAMAGE OR CLAIMS TO PROPERTY TO THE EXTENT SAME ARE WAIVED PURSUANT TO **SECTION 16(a)** AND **SECTION 17(k)** BELOW. THE OBLIGATIONS OF LANDLORD SET FORTH IN THIS SUBSECTION SHALL SURVIVE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

(c) **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Lease, the liability of Landlord (and of any successor Landlord) to Tenant (or any person or entity claiming by, through or under Tenant) shall be limited to the unencumbered interest of Landlord in the Demised Premises. Tenant shall look solely to Landlord's unencumbered interest in the Demised Premises for the recovery of any judgment or award against Landlord. No Landlord Entity shall be personally liable for any judgment or deficiency. Before filing suit for an alleged default by Landlord, Tenant shall give Landlord and the Mortgagees (defined in **Section 17(a)**) whom Tenant has been notified hold mortgages on the Demised Premises, Shopping Center or Project, notice and reasonable time to cure the alleged default. Tenant hereby waives all claims against all Landlord Parties for consequential, special or punitive damages allegedly suffered by any Tenant Parties, including lost profits and business interruption. Except for any damages which Landlord may suffer because of Tenant's holding over in the Demised Premises following the expiration of the Term pursuant to **Section 24(b)**, or in connection with any Tenant default with respect to Hazardous Substances pursuant to **Section 8(d)** (for which Landlord may recover consequential damages from Tenant), Landlord hereby waives all claims against Tenant Parties for consequential, special or

punitive damages allegedly suffered by any Landlord Parties, including lost profits and business interruption.

## 17. INSURANCE

(a) **General Tenant Insurance Obligations.** All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies properly licensed to do business in the State of Texas and reasonably acceptable to Landlord and the holders of any deed of trust secured by any portion of the Demised Premises (hereinafter referred to as “*Mortgagees*”). All policies of insurance required to be carried by Tenant shall be (i) issued by insurance companies with general policyholder’s rating of not less than A XII by A.M. Best Company’s insurance reports (or such other rating service reasonably selected by Landlord), and customarily carried in retail projects similar in geographic location, size, function and character to the Shopping Center, (ii) be evidenced by an insurance certificate reasonably acceptable to Landlord in form and content, (iii) be written as primary policy coverage and not contributing with or in excess of any coverage which Landlord or the Landlord Entities may carry, (iv) include a waiver of subrogation or permission to waive recovery rights prior to a loss by the insurance company in favor of Landlord, Landlord Entities, Landlord’s agents and employees, and Landlord’s Mortgagees and master lessors (if any), (v) provide that, and any certificate evidencing the existence of each insurance policy shall certify that, unless Landlord receives thirty (30) days’ prior written notice [or at least ten (10) days’ prior written notice of such cancellation or termination due to non-payment of premiums]: (1) the insurance policy shall not be canceled and shall continue in full force and effect, (2) the insurance carrier shall not fail to renew the insurance policy, and (3) no material changes may be made in the insurance policy, (vi) include a cross-liability or severability of interests clause [except this clause (vi) shall not apply to workers’ compensation and employer’s liability policies] and (vii) name Landlord, Landlord Entities, and Landlord’s Mortgagees and master lessors (if any) as additional insureds as their interests may appear [except this clause (vii) shall not apply to workers’ compensation and employer’s liability policies], and (viii) contain deductible limits not higher than those approved by Landlord. Tenant shall deliver certificates of insurance to Landlord, evidencing the existence and amounts of such insurance required in this Article, at least ten (10) days prior to Tenant’s occupancy in the Demised Premises or prior to commencement of Tenant’s Work, or before any such insurance policy shall expire. Failure to make such delivery shall constitute an Event of Default by Tenant under this Lease. Neither the issuance of any insurance policy required hereunder, nor the minimum limits specified herein with respect to Tenant’s insurance coverages, shall be deemed to limit or restrict in any way Tenant’s liability arising under or out of this Lease. “*Insurance policy*” or “*policy*”, as used in this Article, includes any extensions or renewals of the insurance policy. Landlord shall be notified in writing immediately by Tenant of claims against Tenant that might cause a reduction below seventy-five percent (75%) of any aggregate limit of any policy. In addition to the specific coverages required of Tenant hereunder, and in view of the fact that this Lease may encompass a period of substantial number of years in duration, Tenant agrees to procure and maintain such other and/or further insurance limits/coverages as Landlord (or Landlord’s Mortgagees) may from time to time reasonably request and which are consistent with those coverages then being required by Landlord for other tenants/occupants of the Shopping Center or which are the then current insurance coverages which are typically required for similar retail properties. Tenant agrees that if Tenant does not procure and maintain any insurance required of it hereunder (including, without limitation, any that may be required of Tenant pursuant to the preceding sentence), Landlord may (but shall not be required to) obtain such insurance on Tenant’s behalf and charge Tenant the premiums therefor together with a fifteen percent (15%) handling charge, payable upon demand. Tenant may carry such insurance required under this Lease under a blanket policy covering the Demised Premises and other locations of Tenant, on a per location basis, provided such blanket policy expressly affords the coverage required by this Lease by a Landlord’s protective liability

endorsement or otherwise. Tenant shall not do or permit to be done any act which will invalidate or be in conflict with Landlord's insurance policies covering the Shopping Center or any other insurance referred to in this Lease, or cause an increase in the premiums of any of Landlord's insurance policies. Tenant will promptly comply with all rules and regulations relating to such policies. If any act or omission of Tenant, its agents, employees or contractors causes an increase in Landlord's insurance premiums or results in other increased costs to Landlord in connection with Landlord's insurance policies, Tenant shall reimburse Landlord on demand as Rent the amount of any costs or increased premiums. In addition, Tenant shall require that all contractors and subcontractors engaged in the performance of any alterations, repairs, additions or improvements, including suppliers, service providers, moving companies and others performing work of any type, for or on behalf of Tenant in the Demised Premises or the Shopping Center to comply with the insurance requirements in **Exhibit D-1**.

Without limiting the foregoing, the following Landlord-affiliated entities, and/or such other entities as Landlord may designate by notice to Tenant from time to time ("**Landlord Entities**") in addition to Landlord's Mortgagees and master lessors (if any), shall be named additional insureds under clause (c), (d), (f) and (i) of this **Article 17**: William Marsh Rice University, Rice Management Company, and REIS Associates, LLC.

(b) **Property Insurance.** At all times during the Term hereof, Tenant shall, at its own cost and expense, obtain and maintain in effect "**all risk**" or "**special form**" policies of property insurance covering (i) Tenant Fixtures, merchandise and other personal property from time to time in, on or upon the Demised Premises in an amount equal to one hundred percent (100%) of the full replacement value thereof without deduction for depreciation with no co-insurance clause, and with a deductible amount of not more than \$10,000, (ii) business interruption coverage on a one hundred percent (100%) (twelve [12] month) actual loss sustained basis and (iii) builder's risk insurance in accordance with the provisions in **Exhibit D** and **Exhibit D-1**. Such policies shall be in the broadest available "**special form**" or "**all risks**" coverage under insurance industry practices in effect from time to time in the jurisdiction in which the Shopping Center is located, and which shall include, but not necessarily be limited to, coverage against wind (and including cost of demolition and debris removal). The proceeds of such insurance shall be used for the repair or replacement of the property so insured [per **Section 18**].

In furtherance of Landlord's rights set forth in **Section 18(a)**, Tenant hereby presently and irrevocably assigns to Landlord any insurance proceeds now and in the future payable to Tenant pursuant to this Lease to the extent relating to Tenant Fixtures that belong or will belong to Landlord in accordance with **Section 24(a)** and Tenant agrees to pay to Landlord any and all insurance proceeds received by Tenant relating to such Tenant Fixtures immediately upon receipt of any such proceeds. This provision shall survive expiration or termination of this Lease.

(c) **Liability Insurance.** Tenant shall at all times during the Term hereof, and at its own cost and expense, obtain and maintain commercial general liability insurance in connection with the activities of Tenant in, on or about the Demised Premises, the Common Areas or other portions of the Shopping Center, or in connection with the use, operation or condition of the Demised Premises (covering, without limitation, Tenant's contractual liability under this Lease and, if the use and occupancy of the Demised Premises include any activity or matter that is or may be excluded from coverage under a commercial general liability policy, Tenant shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter in such amounts as Landlord may reasonably require), which policy shall be in an amount of not less than Three Million Dollars (\$3,000,000.00) per occurrence, Five Million Dollars (\$5,000,000.00) in the aggregate, Three Million

Dollars (\$3,000,000.00) with respect to personal injury and advertising injury, and Three Million Dollars (\$3,000,000.00) with respect to property damage.

(d) **Product Liability.** Tenant shall, at all times during the Term hereof, and at Tenant's own cost and expense, obtain and maintain product liability insurance for merchandise offered for sale or rental from the Demised Premises, including (if this Lease covers Demised Premises in which food and/or alcoholic beverages are sold and/or consumed) liquor liability coverage and if food and/or beverages are sold and/or consumed, coverage for liability arising out of the consumption of food and/or alcoholic beverages on or obtained at the Demised Premises of not less than Five Million Dollars (\$5,000,000.00) per occurrence for personal injury and death and property damage.

(e) **Workers' Compensation Insurance and Employer Liability Coverage.** Tenant shall also, at all times during the Term hereof, and at Tenant's own cost and expense, procure and continue in force workers' compensation insurance per statutory requirements and employer's liability with the following minimum limits: One Million Dollars (\$1,000,000.00) each accident for bodily injury by accident, One Million Dollars (\$1,000,000.00) policy limit for bodily injury by disease, and One Million Dollars (\$1,000,000.00) each employee for bodily injury by disease.

(f) **Business Automobile Liability.** Tenant shall, at all times during the Term hereof, and at its own cost and expense, obtain and maintain business automobile liability insurance, including "**non-owned**" automobiles, against bodily injury, including death resulting therefrom, and property damage, to the minimum limits of One Million Dollars (\$1,000,000.00) per accident covering owned, leased, hired and non-owned vehicles used by or on behalf of Tenant.

(g) **Business Interruption Insurance.** Tenant shall, at all times during the Term hereof, and at its own cost and expense, obtain and maintain Business Interruption coverage on an actual-loss basis.

(h) **Plate Glass.** Tenant shall, at all times during the Term hereof, and at Tenant's own cost and expense, obtain and maintain insurance coverage on all plate glass on the Demised Premises. The proceeds of such insurance shall be paid to Landlord upon termination of this Lease following a casualty as set forth in **Section 18(a)** and **24(a)** hereof.

(i) **Excess.** Tenant shall, at all times during the Term hereof, and at Tenant's own cost and expense, obtain and maintain Excess general liability, business automobile liability and employer's liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence on a following form basis.

(j) **Landlord's Insurance.** Landlord shall at all times from and after substantial completion of the Demised Premises maintain, or cause to be maintained, insurance as it may elect in full force and effect (i) a property insurance policy or policies covering Landlord's owned buildings in the Shopping Center in an amount equal to at least eighty percent (80%) of the full replacement cost of above-ground elements of Landlord's buildings in the Shopping Center, together with endorsements insuring against fire and such other risks as Landlord deems appropriate and in such amounts, with such terms and with such insurers, all as Landlord deems appropriate in Landlord's sole discretion (it being understood that such insurance shall specifically exclude Tenant's improvements in, on or to the Demised Premises above building shell, Tenant's trade fixtures, merchandise and other personal property of Tenant); and (ii) commercial general liability insurance for bodily injury, personal injury or damages to third-party property occurring in or upon the Common Areas of the portions of the Shopping Center owned by Landlord with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars

(\$2,000,000.00) general aggregate. Landlord shall have the right to carry its insurance under “**blanket**” and/or “**umbrella**” policies covering the Shopping Center and other properties or Landlord may self-insure for same. If Landlord chooses to self-insure as provided herein, such self-insurance shall exist as though Landlord had obtained an insurance policy as set forth herein. 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. The insurance policies maintained by Landlord pursuant to this **Section 17** are individually and collectively referred to herein as “**Landlord’s Insurance.**”

(k) **Waiver of Subrogation; Waiver of Property Claims.** Landlord and Tenant each waives any claim it might have against the other for any damage to or theft, destruction, loss, or loss of use of any property, to the extent the same is insured against under any insurance policy of the types described in this Lease that covers the Shopping Center, the Demised Premises, Landlord’s or Tenant’s fixtures, personal property, leasehold improvements, or business, or is required to be insured against under the terms hereof, regardless of whether the negligence of the other party caused such loss. Each party shall cause its insurance carrier to endorse all applicable policies waiving the carrier’s rights of recovery under subrogation or otherwise against the other party. Notwithstanding any provision in this Lease to the contrary, Landlord, its agents, employees and contractors shall not be liable to Tenant or to any party claiming by, through or under Tenant for (and Tenant hereby releases Landlord and its servants, agents, contractors, employees and invitees from any claim or responsibility for) any damage to or destruction, loss, or loss of use, or theft of any property of any Tenant Parties located in or about the Shopping Center, caused by casualty, theft, fire, third parties or any other matter or cause, **regardless of whether the negligence of any party caused such loss in whole or in part.** Tenant acknowledges that Landlord shall not carry insurance on, and shall not be responsible for damage to, any property of any Tenant Parties located in or about the Shopping Center.

## **18. DAMAGE AND DESTRUCTION**

(a) **Damage and Destruction.** In the event that the Demised Premises are damaged or destroyed by fire or other casualty insured under Landlord’s Insurance and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence to the extent of available insurance proceeds to rebuild and repair the core and shell of the Demised Premises. (A) If the Demised Premises shall be destroyed or substantially damaged by a casualty (i) not covered by Landlord’s Insurance; or (ii) Landlord is not be able to obtain governmental approval for rebuilding; or (iii) be damaged to such extent that the remaining Term of this Lease is not sufficient, in Landlord’s reasonable judgment, to amortize the cost of reconstruction, or if the Shopping Center shall be destroyed or substantially damaged by a casualty and rendered untenable to an extent in excess of twenty-five percent (25%) of the Gross Area of the Shopping Center (excluding department stores and non-retail uses) by a casualty covered by Landlord’s Insurance; then Landlord may elect to either terminate this Lease as hereinafter provided or to proceed to rebuild and repair the damage to the core and shell of the Demised Premises. Should Landlord elect to terminate this Lease it shall give written notice of such election to Tenant within ninety (90) days after the occurrence of such casualty or after Landlord determines that it cannot obtain governmental approval to rebuild, whichever is later. If Landlord should not elect to terminate this Lease, Landlord shall proceed with reasonable diligence, to the extent of available insurance proceeds, to rebuild and repair the damage to the core and shell of the Demised Premises, subject to the other provisions of this **Section 18**. In the event of any damage or destruction to the Demised Premises, Tenant shall, upon notice from Landlord, forthwith remove, at Tenant’s sole cost and expense, such portion or all of Tenant’s shelves, bins, machinery and other trade fixtures and all other property belonging to Tenant or Tenant’s licensees from such portion or all of the Demised Premises as Landlord shall request. Upon termination of this Lease

pursuant to this **Section**: (1) the entire proceeds of the insurance provided for in **Section 17(j)** shall be paid by the insurance company or companies directly to Landlord and shall belong to Landlord; (2) the portion of the proceeds of the insurance provided for in **Sections 17(b)** and **17(h)** that is allocable to the Tenant Fixtures and that belong to the Landlord upon the termination of this Lease under the terms of this Lease shall be paid by the insurance company or companies directly to Landlord and shall belong to Landlord, and any balance of the proceeds shall be paid to Tenant; and (3) Landlord and Tenant shall be relieved from any and all further liability or obligation accruing under this Lease after the date of the termination. Further, Tenant waives all rights that it may have pursuant to law to terminate this Lease by reason of damage to the Demised Premises or to the Shopping Center by fire or other casualty and agrees that the provisions of this **Section 18** shall control in the event of fire or other casualty.

(b) **Restoration Obligation.** Landlord's obligation to rebuild and repair under this **Section 18** shall in any event be limited to restoring the core and shell of the Demised Premises (and not within the scope of Tenant's improvements or alterations as defined in **Exhibit D** to this Lease) to substantially the condition in which the same existed prior to the casualty, and shall be further limited to the extent of the insurance proceeds available to Landlord for such restoration, and Tenant agrees that promptly after completion of such work by Landlord, it will proceed with reasonable diligence and at its sole cost and expense to rebuild, irrespective of the amount of actual insurance proceeds available or paid to Tenant, repair and restore its improvements and alterations to the Demised Premises, signs, fixtures and equipment and other items of Tenant's Work as described in **Exhibit D** to at least the condition existing immediately prior to the damage, or (if comparable or better in nature and quality, and if approved by Landlord in accordance with the provisions of this Lease and **Exhibit D** concerning approval of Tenant designs for initial construction and alterations) to Tenant's then-current national prototype standards. In such event, Tenant shall commence repairs within ten (10) days following Landlord's notice to Tenant that Landlord's repairs to the Demised Premises have been completed as set forth in this **Section** and shall diligently pursue the completion of the repairs and cause them to be completed as soon as possible, but in any event within thirty (30) days following the substantial completion of any of Landlord's repair work. In making repairs or reconstruction, Tenant, at its expense, shall comply with all laws, ordinances and governmental rules or regulations, shall perform all work or cause such work to be performed with due diligence and in a first-class manner, and shall obtain all necessary permits. Tenant shall ensure that anyone repairing Tenant's improvements to the Demised Premises shall do so in accordance with Tenant's plans and specifications originally approved by Landlord pursuant to **Exhibit D** and in accordance with subsequent working drawings and specifications previously approved by Landlord, or, at Tenant's election, with new drawings prepared by Tenant and approved in writing by Landlord. Landlord shall not be required to repair or replace Tenant's improvements or Tenant's merchandise or other contents. Except as provided in this **Section**, Landlord shall not be liable or obligated to Tenant by reason of any fire or other casualty damage to the Demised Premises, or any damages suffered by Tenant or the deprivation of Tenant's possession of all or any part of the Demised Premises.

(c) **Intentionally Omitted.**

(d) **Continuous Operation.** Tenant agrees that during any period of reconstruction or repair of the Demised Premises it will continue the operation of its business within the Demised Premises to the extent practicable. During the period from the occurrence of the casualty until Landlord's repairs are completed, the Rent shall be reduced in proportion to the floor area of the Demised Premises rendered unusable. Resumption of full payment of Rent shall occur, and Tenant shall be obligated to reopen all of the Demised Premises for business, by the fifteenth (15th) day after Landlord notifies Tenant that the Demised Premises have been repaired. If Tenant opens at an earlier time in the damaged area or remains

open in the damaged area, then there shall be no reduction in Rent for those days Tenant is open in the damaged area.

(e) **Landlord's Mortgagees.** Notwithstanding anything herein to the contrary, in the event any Mortgagee requires that the insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon all rights and obligations hereunder shall cease and terminate.

## **19. CONDEMNATION**

If all or any part of the Demised Premises is taken or appropriated for public or quasi-public use by the right of eminent domain or otherwise by a taking in the nature of inverse condemnation, with or without litigation, or is transferred by agreement in lieu thereof (any of the foregoing being referred to herein as a "**taking**"), either party hereto may, by written notice given to the other within thirty (30) days of receipt of notice of taking, elect to terminate this Lease as of the date possession is transferred pursuant to the taking; provided, however, that before Tenant may terminate this Lease for a taking, such taking shall be of such an extent and nature as to materially and adversely affect Tenant's business in the Demised Premises. If any part of the Shopping Center other than the Demised Premises shall be so taken, Landlord may elect to terminate this Lease. No award for any partial or entire taking shall be apportioned, and Tenant hereby assigns to Landlord any and all rights of Tenant now or hereafter arising in or to the same or any part thereof; provided, however, that nothing contained herein shall be deemed to give Landlord any interest in, or to require Tenant to assign to Landlord, any award made to Tenant for the taking of personal property belonging to Tenant provided Landlord has been paid all of the then unamortized portion of the Tenant Improvement Allowance (computed on a straight-line basis over the Primary Term of this Lease). In the event of a partial taking which does not result in a termination of this Lease, Rent shall be equitably reduced to the extent Tenant's business in or use of the Demised Premises is materially and adversely affected and impaired as described above. No temporary taking of the Demised Premises or any part of the Shopping Center shall terminate this Lease, except at Landlord's election, or give Tenant any right to any abatement of Rent hereunder, except that Rent shall be equitably reduced as described above during that portion of any temporary taking lasting more than thirty (30) days. Each party hereto waives the provisions of any applicable law allowing either party to petition the court to terminate this Lease for a partial taking, it being the intent of the parties that this **Section** shall govern.

## **20. LIENS**

Tenant shall keep the Demised Premises and the Shopping Center free from any liens arising out of work performed, materials furnished, or obligations incurred by Tenant, and shall indemnify, hold harmless and defend Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Tenant. Landlord shall have the right at all times to keep posted on the Demised Premises any notices permitted or required by law, or which Landlord shall deem proper for the protection of Landlord and the Demised Premises, and any other party having any interest therein, from mechanics' and materialmen's liens. If any claim of lien is filed against the Demised Premises or any similar action affecting title to such property is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof. If Tenant fails, within twenty (20) days following the imposition of any lien, to cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all costs and expenses incurred



by it in connection therewith (including reasonable attorneys' fees) shall be payable to Landlord by Tenant on demand, with interest at the Default Rate from the date of expenditure.

## 21. DEFAULTS BY TENANT

The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease ("*Event of Default*") by Tenant:

(a) **Monetary Default.** The failure by Tenant to make any payment of Rent or of any other sum required to be made by Tenant hereunder, as and when due.

(b) **Non-Monetary Default.** The failure by Tenant to observe or perform any other covenant, condition or provision of this Lease to be observed or performed by Tenant (other than the terms, provisions, conditions and covenants set forth elsewhere in this **Section 21**), beyond any notice and cure periods set forth in this Lease, or if no cure period is so specified, if such failure is not cured within twenty (20) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that it cannot be cured solely by payment of money and more than twenty (20) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commences such cure within the twenty (20) day period and thereafter diligently prosecutes such cure to completion; provided, further, that violations by Tenant of the Rules and Regulations promulgated by Landlord shall be cured by Tenant within forty-eight (48) hours after written notice thereof from Landlord, failing which Landlord may (but need not) cure same, in which event Tenant shall pay Landlord, within ten (10) days after written notice thereof by Landlord, the amount expended by Landlord to effect such cure together with an administrative charge of fifteen percent (15%) of the amount thereof, which the parties acknowledge and agree represents a reasonable estimate of Landlord's cost for overhead and administration.

(c) **Failure to Submit Tenant's Plans.** The failure by Tenant to submit any portion of Tenant's Plans in form to permit approval by Landlord within the time periods set forth in this Lease and/or in the Rice Village Tenant Handbook including without limitation the Tenant Design Criteria and Construction Rules & Regulations and **Exhibit D**, for more than ten (10) days after written notice of such failure.

(d) **Failure to Apply for Tenant's Permits.** The failure by Tenant to apply for any necessary approvals and/or permits including, but not limited to occupancy and health department permits from the jurisdictional authorities, the Liquor License, or building permits, within the time periods set forth in this Lease and/or in the Rice Village Tenant Handbook including without limitation the Tenant Design Criteria and Construction Rules & Regulations and **Exhibit D**, for more than ten (10) days after written notice of such failure.

(e) **Failure to Open and Operate.** The failure of Tenant to open for business in the Demised Premises on the Rent Commencement Date, or to thereafter continuously operate its business at the Demised Premises throughout the Lease Term.

(f) **Abandonment.** If Tenant shall abandon, desert or vacate, or shall commence to abandon, desert or vacate, the Demised Premises.

(g) **Anticipatory Breach.** Any communication, advisement, or representation by Tenant of Tenant's intention not to perform or observe any of the terms, provisions, conditions or covenants of this Lease.

(h) **Prohibited Transfer.** If the Demised Premises come into the hands of or are Transferred to any person other than expressly permitted under this Lease.

(i) **Subordination and Estoppel.** Any failure by Tenant to perform or observe any of the terms, provisions, conditions and covenants of **Sections 28 or 29** of this Lease within the time periods required.

(j) **Bankruptcy or Insolvency.** The making by Tenant or any guarantor of Tenant's obligations under this Lease of any general assignment for the benefit of creditors, the filing by or against Tenant or any guarantor of Tenant's obligations under this Lease of a petition to have Tenant or such guarantor adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant or such guarantor, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's or any such guarantor's assets located at the Demised Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; or Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, or shall admit in writing its inability to pay its debts as they become due, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(k) **Liens.** Tenant shall not do or permit to be done anything which creates a lien upon the Demised Premises or upon all or any portion of the Shopping Center and fails to remove such lien in accordance with **Section 20** above.

(l) **Repeated Default.** If Tenant shall be given three (3) written notices of default under the preceding clauses above within any twelve (12) month period, notwithstanding any subsequent cure of such defaults as identified in such notices.

## **22. LANDLORD'S REMEDIES**

This Lease and the Term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, Landlord may, at its option, in addition to all other rights and remedies given hereunder or by law or equity, do any one or more of the following:

(a) Terminate this Lease or Tenant's right to possession of the Demised Premises; in either event, Tenant shall immediately surrender possession of the Demised Premises to Landlord;

(b) Enter upon and take possession of the Demised Premises and expel or remove Tenant and any other occupant therefrom, with or without having terminated this Lease;

(c) Alter locks and other security devices at the Demised Premises as provided under Section 93.002 of the Texas Property Code. In the event Landlord exercises its rights to alter the locks at the Demised Premises, Landlord shall only be required to provide Tenant with a new key during Landlord's regular business hours, provided that in no event shall Landlord be required to provide Tenant a new key until such time as Tenant cures all defaults under this Lease and, if required by Landlord, Tenant pays to Landlord as a Security Deposit an amount equal to twice the monthly Minimum Rent and Expenses due hereunder; or

Exercise by Landlord of any one or more remedies granted or otherwise available shall not be deemed to be an acceptance of surrender of the Demised Premises by Tenant, whether by agreement or by operation

of law, it being understood that such surrender can be effected only by the written agreement between Landlord and Tenant.

Upon the occurrence of an Event of Default, provided Landlord has given the notice required in this Lease, Landlord shall not be obligated to give any additional notice prior to exercising any available remedy. Tenant hereby waives any and all notices required under statutory or common law in favor of the notices set forth herein. To the extent of any inconsistency between this Lease and any statutory or common law this Lease shall prevail.

If Tenant should fail to make any payment or cure any default hereunder within the time herein permitted, Landlord, without being under any obligation to do so and without thereby waiving such default, may make such payment and/or remedy such other default for the account of Tenant (and enter the Demised Premises for such purpose), and thereupon Tenant shall be obligated to, and hereby agrees to pay Landlord, upon demand, all costs, expenses and disbursements incurred by Landlord in taking such remedial action.

In the event Landlord elects to terminate this Lease due to an Event of Default, Tenant shall be liable for all Rent and other indebtedness accrued to the date of such termination, plus such future Rent and other indebtedness as would otherwise have been required to be paid by Tenant to Landlord during the balance of the Lease Term discounted to present value at a per annum rate equal to (a) the "**Prime Rate**" as published on the date this Lease is terminated by The Wall Street Journal, Southwest Edition, in its listing of "Money Rates" minus one percent, minus (b) the then present fair rental value of the Demised Premises for such period, similarly discounted.

In the event Landlord elects to terminate Tenant's right to possession of the Demised Premises, or recapture possession of the Demised Premises without terminating this Lease, Tenant shall be liable for all Rent and other amounts accrued hereunder to the date of termination of possession, and all Rent and other net sums required hereunder to be paid by Tenant during the remainder of the Term, diminished by any net sums thereafter received by Landlord through reletting the Demised Premises during such period, after deducting all reasonable costs incurred by Landlord in reletting the Demised Premises as hereinafter set forth. Actions to collect amounts due may be brought from time to time during the aforesaid period, on one or more occasions, without the necessity of waiting until expiration of such period.

Additionally, in case of an Event of Default, Tenant shall be liable for and shall pay to Landlord, in addition to all other amounts due under this Lease: (i) broker's fees incurred by Landlord in connection with reletting the whole or any part of the Demised Premises; and (ii) the costs of repairing or otherwise putting the Demised Premises into condition acceptable to a new tenant or tenants including any tenant improvement allowance or rent credit provided to such new tenant or tenants; and (iii) all reasonable expenses incurred by Landlord in enforcing Landlord's remedies including attorney's fees. Tenant's obligation to reimburse Landlord for attorneys' fees as referred to in this Lease shall include all legal costs, fees and expenses arising out of (i) Tenant's default in the performance or observance of any of the terms, covenants, conditions or obligations contained in this Lease and Landlord places the enforcement of all or any part of this Lease, the collection of any rent due or to become due or the recovery of possession of the Demised Premises in the hands of an attorney or (ii) Landlord's incurring any fees or out of pocket costs in any litigation, negotiation or transaction in which Tenant causes Landlord to be involved or concerned, in either event regardless of whether or not suit is actually filed.

Additionally, in case of an Event of Default, Tenant shall repay the Tenant Improvement Allowance, and any rent credit, rent abatement or other rent concession granted during the Term in cash upon termination. Nothing herein contained, however, shall limit or prejudice the right of Landlord to prove and obtain as

damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved.

Any rights and remedies reserved by, or granted to, Landlord under this Lease, at law or in equity, are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Landlord's right to exercise any or all others. Tenant expressly waives any right to assert a defense based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein, shall bar Landlord from bringing any subsequent actions or proceedings from time to time.

Notwithstanding anything contained in this Lease to the contrary, Tenant may not assert any remedies (whether set forth in this Lease or otherwise under applicable law or in equity) with respect to any failure of Landlord to perform if Tenant is in default of any of its obligations under the Lease and, in addition to Landlord's other rights and remedies hereunder, any Landlord performance dates set forth in this Lease shall be extended by one (1) day for each day that Tenant is in default plus such additional time as reasonably determined by Landlord based upon the specific instance of default.

In the event Landlord shall have recaptured possession of the Demised Premises due to an Event of Default Landlord, shall have a duty to make a "**reasonable attempt**" to relet the Demised Premises. Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished, because of Landlord's failure to actually relet the Demised Premises or collect Rent due with respect to such reletting so long as Landlord has fulfilled its duty under this **Section 22**. Landlord shall be deemed to have made a "**reasonable attempt**" to relet the Demised Premises by showing the availability of the Demised Premises for lease on Landlord's internal computer system so as to alert Landlord's leasing executives. Landlord shall not be required to give any preference or priority to the leasing of the Demised Premises over any other space that Landlord may have available in the Shopping Center. Landlord shall not be required to: (a) accept any proposed tenant unless such tenant has a credit-worthiness acceptable to Landlord in its sole discretion; or (b) accept any proposed tenant unless such tenant leases the entire Demised Premises upon terms and conditions satisfactory to Landlord, in Landlord's sole discretion, having taken into consideration all expenditures for requested tenant improvements, broker's commissions and any other leasing cost. Any proceeds received from reletting the Demised Premises shall first be applied toward any costs or expenses incurred by Landlord as a result of the Event of Default, including but not limited to leasing and brokerage fees (including expenses to third party brokers, to Landlord's affiliates or employees of Landlord and its affiliates), attorney fees, and construction expenses (whether paid to a third party contractor or given as a construction allowance to the successor occupant of the Demised Premises). In no event shall Tenant be entitled to any excess of Rent (or Rent plus other sums) obtained by reletting the Demised Premises over and above the Rent herein reserved.

### **23. DEFAULTS BY LANDLORD**

In the event of any default by Landlord, Tenant's exclusive remedy shall be either: (i) an action for damages; or (ii) an action for specific performance in connection with Landlord's repair responsibilities affecting the Demised Premises, or repair responsibilities affecting the Common Area adjacent to the Demised Premises if as a result of Landlord's action (or inaction), Tenant, its employees and customers cannot gain access to or use the Demised Premises during regular business hours. Prior to commencing any legal action Tenant shall give Landlord written notice specifying any alleged default in reasonable detail, and Landlord shall thereupon have a reasonable period of time, but in no event less than thirty (30) days, in which to commence to cure such default. If Landlord fails to commence to cure such default or, having so commenced, thereafter fails to exercise reasonable diligence to complete such curing, Tenant

may exercise any remedy set forth in this **Section 23**. All obligations of Landlord hereunder will be construed as independent covenants, not conditions; and all such obligations will be binding upon Landlord only during the period of its possession of the Shopping Center and not thereafter.

## **24. SURRENDER OF DEMISED PREMISES**

(a) **Surrender.** Upon the expiration or termination of this Lease, Tenant shall surrender the Demised Premises in vacant, broom clean condition and otherwise in the same condition as it was required to be in on the Rent Commencement Date, reasonable wear and tear and damage by unavoidable casualty excepted, and deliver all keys for, and all combinations on locks, safes and vaults in, the Demised Premises to Landlord, de-identify the Demised Premises and remove any signage in the manner required by the Rice Village Tenant Handbook or as otherwise designated by Landlord, and remove from the Demised Premises all furniture, trade fixtures, equipment, inventory and other personal property installed or placed or permitted at the Demised Premises by Tenant; however, Tenant may not remove any improvements or fixtures which are attached to the Demised Premises, including without limitation, any component of the HVAC system or electrical system, any plumbing fixture, or any pipes, paneling, wall or floor covering, millwork, ceiling tiles or lighting fixtures. Notwithstanding the foregoing, Landlord shall have the right to require that Tenant remove any designated improvements or alterations including, but not limited to, improvements which cannot reasonably be reused by a succeeding tenant for a like use and/or would be unusually costly to remove including, but not limited to: millwork, murals, cabling, water fountains or water features, safes and/or staircases. Tenant shall repair all damage caused by such removal. The Demised Premises shall be left weather tight and secure from any unauthorized entrant. Tenant shall concurrently repair any damage caused by any such removal pursuant to this **Section 24(a)**, and restore the Demised Premises to the condition which existed prior to the installation of the property so removed. In the event Tenant fails to surrender the Demised Premises as aforesaid, Landlord, at Tenant's expense, shall have the right, but not the obligation, to remove therefrom all or any part of the property located therein (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) and such property shall be deemed to have been abandoned by Tenant, and, at Landlord's election, may be retained, stored, or disposed of by Landlord, at Tenant's expense, as Landlord shall desire. In such event, Tenant shall be liable to Landlord for costs incurred by Landlord in connection with such removal, storage and/or disposal and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and liability in connection with such removal, storage and/or disposal. Tenant's obligation to observe or perform the covenants set forth in this **Section 24(a)** shall survive the Expiration Date or earlier termination of this Lease.

(b) **Holding Over.** If Tenant fails to vacate the Demised Premises at the end of the Term, then Tenant shall be a tenant at sufferance and (a) in such case Rent shall be payable at a rental in the amount of two hundred percent (200%) of the Rent in effect as of the last month of the Term hereof and at the time specified in this Lease, and (b) Tenant shall otherwise continue to be subject to all of Tenant's obligations under this Lease. The provisions of this **Section 24(b)** shall not be deemed to limit or constitute a waiver of any other rights or remedies of Landlord provided herein or at law. If Tenant fails to surrender the Demised Premises upon the termination or expiration of this Lease, in addition to any other liabilities to Landlord accruing therefrom, Tenant shall protect, defend, indemnify and hold Landlord harmless from all loss, costs (including reasonable attorneys' fees) and liability resulting from such failure, including any claims made by any succeeding tenant founded upon such failure to surrender, and any lost profits to Landlord resulting therefrom.

## 25. TRANSFER OF LANDLORD'S INTEREST

Landlord shall have the right to assign its interest in this Lease to any party in Landlord's sole discretion. If Landlord sells or transfers its interest in the Demised Premises (other than a transfer for security purposes) Landlord shall be released from all obligations and liabilities accruing thereafter under this Lease, if Landlord's successor has assumed in writing Landlord's obligations under this Lease. Any prepaid Rent or other funds of Tenant in the hands of Landlord at the time of transfer shall be delivered to such successor. Tenant agrees to attorn to the purchaser or assignee, provided all Landlord's obligations hereunder are assumed in writing by such successor. Notwithstanding the foregoing, Landlord's successor shall not be liable to Tenant for any such funds of Tenant which Landlord does not deliver to the successor.

## 26. ASSIGNMENT AND SUBLETTING

(a) Notwithstanding any provision herein to the contrary, Tenant shall not, directly or indirectly, (i) sell, assign, or in any other manner transfer this Lease or any interest therein, in whole or in part, by express assignment or by operation of law or by any other means, or (ii) sublet all or any part of the Demised Premises, by express sublet or by operation of law or by any other means, or (iii) license concessions or lease departments therein, or (iv) permit the Demised Premises to be occupied by any other person or entity other than Tenant (any of the foregoing events in clauses (i) through (iv) and any "**pledge**" (as defined below) being referred to herein as a "**Transfer**" or derivatives thereof), without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld, conditioned or delayed in connection with any assignment of this Lease or subletting of the Premises. Under no circumstances shall Tenant mortgage, pledge, encumber, hypothecate or otherwise collaterally transfer its interest in this Lease (any of the foregoing being referred to herein as a "**pledge**" or derivatives thereof), without Landlord's prior written consent which may be given or withheld in Landlord's sole discretion. Consent by Landlord to any Transfer shall not waive the necessity for consent to any subsequent Transfer. Any attempted or purported Transfer of this Lease in violation of this **Section 26**, whether voluntary or involuntary or by operation of law or otherwise, shall be null and void and shall not confer any rights upon any purported assignee, sublessee, licensee, pledgee, occupant or other transferee (each, a "**Transferee**") and shall, at Landlord's option, constitute an Event of Default which may result in the termination of this Lease without relieving Tenant of any of its obligations hereunder for the balance of the stated Term.

Without limiting any other reasonable basis for withholding consent, it shall not be unreasonable for Landlord to withhold its consent if: (i) the proposed use is not for the retail sale of apparel in conformity with the Permitted Use; (ii) the proposed use would violate any exclusive or other restriction on use granted to a then-existing tenant of the Shopping Center; (iii) the proposed Transferee would violate any provision of this Lease; (iv) the proposed use would violate any of the Demised Premises Restricted Uses, (v) the proposed Transferee does not have a net worth (exclusive of residential real estate and personal household property) of at least the greater of the net worth of Tenant at the time of the execution of this Lease or at the time of the proposed Transfer but in any event not less \$5,000,000.00; (vi) the proposed Transferee is not a store operator with at least three (3) or more locations having the same Permitted Use serving similar customer demographics, customer profiles, similar price points at the same or better quality services as Tenant, and with an operating history with such three (3) or more locations of at least three (3) years prior to such Transfer; (vii) Tenant is in default under any provision of this Lease at the time of its request; (viii) intentionally omitted; (ix) Tenant proposes the Transfer of less than this entire Lease or the sublease of less than the whole of the Demised Premises; or (x) the proposed Transferee or any affiliate thereof is an occupant of the Shopping Center or has negotiated to lease space in the Shopping Center from Landlord during the prior six (6) months.

If Landlord consents to a proposed Transfer, then the proposed transferee shall deliver to Landlord a written agreement whereby it expressly assumes Tenant's obligations hereunder; however, any transferee of less than all of the space in the Demised Premises shall be liable only for obligations under this Lease that are properly allocable to the space subject to the Transfer for the period of the Transfer. No Transfer shall release Tenant from its obligations under this Lease, but rather Tenant and its transferee shall be jointly and severally liable therefor. Notwithstanding the foregoing to the contrary, (i) in the event Landlord consents to an assignment of this Lease, (ii) the assignee enters into a written assumption agreement with Landlord pursuant to which such assignee agrees to assume all obligations of Tenant under this Lease from and after the date of such assignment, and (iii) the tangible net worth (computed in accordance with generally accepted accounting principles exclusive of goodwill) of any assignee after such transfer is greater than \$10,000,000, then in such event, and subject to such conditions, Tenant shall be released of its obligations and liabilities accruing hereunder from and after the date of such assignment, effective as of the date of such assignment.

(b) If Tenant or the Guarantor is a corporation, then any transfer of this Lease from Tenant by merger, consolidation or dissolution or any change in ownership or power to vote a majority of the voting stock in Tenant outstanding at the time of execution of this Lease (or at any future time) including by operation of law shall constitute an assignment for the purpose of this Lease. For purposes of this **Section 26(b)**, the term “**voting stock**” shall refer to shares of stock regularly entitled to vote for the election of directors of the corporation involved. The conversion of Tenant to a limited liability company, a limited liability partnership or other business entity shall be deemed an assignment for the purpose of this Lease. If Tenant or the Guarantor is a joint venture, partnership, limited liability company or other association, then for all purposes of this **Section 26**, the sale, issuance or transfer, cumulatively or in one transaction, including by operation of law, of either voting control or of a twenty-five percent (25%) interest, or the termination of any joint venture, partnership, limited liability company or other association, shall constitute a Transfer, except any such transfer by inheritance or testamentary disposition to Tenant's heirs at law.

(c) In the event of any Transfer as provided above, Tenant shall pay to Landlord, in addition to the Rent and other charges due Landlord pursuant to this Lease, such consideration as shall be received by Tenant for the Transfer, together with the excess, if any, of the rent and other charges payable by the Transferee to Tenant per square foot of Gross Area over the Rent and other charges payable under the Lease to Landlord by Tenant per square foot of Gross Area. Such additional Rent shall be paid to Landlord concurrently with the payments of Minimum Rent required under this Lease.

(d) If this Lease is Transferred or occupied by anybody other than Tenant, Landlord may nevertheless collect all Minimum Rent and other amounts due under this Lease from the Transferee or other occupant and apply the net amount collected to the amounts payable hereunder, but no such transaction or collection or application thereof by Landlord shall be deemed a waiver of the provisions of this Section or a release of Tenant from the performance by Tenant of its covenants, duties and obligations hereunder.

(e) Tenant shall be permitted, without Landlord's consent, but with 30 days prior notice to Landlord, to enter into the following transactions (each a “**Permitted Transfer**”):

(i) the assignment of this Lease to any of Tenant's wholly-owned subsidiaries, to a parent entity that owns at least a majority of Tenant's ownership interests, or any wholly-owned subsidiary of such a parent entity, provided that (i) Tenant shall not at the time of such assignment be in default under any of the terms, covenants and conditions of this Lease, (ii) the Demised Premises continues to be used for the Permitted Use, (iii) the transferor Tenant and the Transferee shall at all times remain jointly and severally liable and primarily obligated for the performance of

the terms, covenants and conditions of this Lease, (iv) after consummation of the Transfer, the Transferee shall have a net worth of at least the greater of the net worth of Tenant at the time of the execution of this Lease or at the time of the proposed Transfer but in any event not less \$10,000,000.00, (v) the Transferee shall agree in writing (in form and substance satisfactory to Landlord and its Lender(s)) to assume and perform all of the terms, covenants and conditions of this Lease, and (vi) Tenant shall provide to Landlord an executed copy of the Transfer documents within ten (10) days following execution (the foregoing clauses (i) to (vi) referred to herein as the “**Permitted Transfer Requirements**”);

(ii) the merger or consolidation of Tenant into or with another entity, provided that (i) the Permitted Transfer Requirements are met, and (ii) such merger or consolidation is not principally for the purpose of transferring Tenant’s interest in this Lease; and

(f) the assignment of Tenant’s entire interest under this Lease in connection with the sale of all or substantially all of the assets of Tenant, provided that (i) the Permitted Transfer Requirements are met, (ii) such sale of all or substantially all of the assets of Tenant is not principally for the purpose of transferring Tenant’s interest in this Lease, and (iii) the number of stores and/or units being transferred must consist all of the stores of Tenant and its affiliates in the United States operating under the trade name then being used by Tenant, and (iv) the proposed Transferee is a store operator with at least three (3) or more locations having the same Permitted Use serving similar customer demographics, customer profiles, similar price points at the same or better quality services as Tenant, and with an operating history with such three (3) or more locations of at least three (3) years prior to such Transfer.

(g) If Tenant proposes to Transfer this Lease Landlord may, at its option, upon written notice to Tenant given within thirty (30) days after its receipt of written notice by Tenant of Tenant’s proposal to Transfer, elect to recapture the Demised Premises and terminate this Lease. If Tenant proposes to sublease all or part of the Demised Premises, Landlord may, at its option upon written notice to Tenant given within thirty (30) days after its receipt of said notice, elect to recapture such portion of the Demised Premises as Tenant proposes to sublease and upon such election by Landlord, this Lease shall terminate as to the portion of the Demised Premises recaptured. In the event a portion only of the Demised Premises is recaptured, the Rent payable under this Lease shall be proportionately reduced based on the gross square footage retained by Tenant and the gross square footage leased by Tenant hereunder immediately prior to such recapture and termination, and Landlord and Tenant shall thereupon execute an amendment of this Lease in accordance therewith. If Landlord recaptures only a portion of the Demised Premises, it shall construct and erect at its sole cost such partitions as may be required to sever the space retained by Tenant from the space recaptured by Landlord; provided, however that said partitions need only be finished in paint grade condition. Landlord may, without limitation, lease the recaptured portion of the Demised Premises to the proposed subtenant or Transferee without liability to Tenant. Notwithstanding the foregoing, Landlord’s right to recapture under this subparagraph shall not apply to Permitted Transfers.

(h) **Fees for Review.** Simultaneously with the submission of the proposed transfer described above, Tenant shall pay to Landlord or Landlord’s designee a non-refundable fee in the amount of One Thousand Dollars (\$1,000.00) as reimbursement for expenses incurred by Landlord in connection with reviewing each such transaction. In addition, Tenant shall be responsible to reimburse Landlord for any reasonable third-party attorney’s fees incurred by Landlord in connection with such Transfer, including for the preparation of any required Transfer documents as reasonably determined by Landlord.



## **27. ATTORNMEN**

If any proceeding is brought for default under or termination of any ground or underlying lease to which this Lease is subject, or in the event of foreclosure or the exercise of the power of sale under any mortgage or deed of trust made by Landlord covering the Demised Premises, Tenant shall attorn to the successor landlord and recognize that successor as “**Landlord**” under this Lease, provided such successor expressly agrees in writing to be bound to all future obligations by the terms of this Lease, and, if so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

## **28. SUBORDINATION**

Tenant agrees that its interest under this Lease shall be subordinate to any mortgage, deed of trust or similar device now or hereafter placed upon the Demised Premises or all or any portion of the Shopping Center by Landlord if the mortgagee or beneficiary under said deed of trust or lender for whose benefit any other security device is created so elects, and, upon notice to Tenant of such election. The provisions of the first sentence of this **Section 28** are self-operative and require no further instruments to give effect hereto. However, Tenant agrees that within fifteen (15) days after request of Landlord or any lender, Tenant shall execute whatever reasonable instruments may be required to carry out the intent of this **Section 28**. Landlord agrees to use reasonable efforts to obtain for Tenant by no later than the Delivery Date a subordination, non-disturbance and attornment agreement in Lender’s customary form and with changes acceptable to Lender. In no event shall any such document be recorded and in no event shall Landlord’s failure to so obtain affect the validity of this Lease or any terms herein. As used herein, “**reasonable efforts**” of Landlord shall not require Landlord to incur any cost, expense or liability to obtain any such agreement, it being agreed that Tenant shall be responsible for any fee or review costs charged by the Lender.

## **29. ESTOPPEL CERTIFICATE**

Landlord and Tenant shall execute and deliver to each other, at such time or times as either Landlord or Tenant may request, a certificate stating: (i) whether or not this Lease is in full force and effect; (ii) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments, if any; (iii) whether or not there are any existing defaults under this Lease to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any; and (iv) such other information as may be reasonably requested. The aforesaid certificate(s) shall be delivered to Landlord or Tenant, as the case may be, promptly upon receipt of a written request therefor, but in no event more than ten (10) days following receipt of such request. At Landlord’s option, Tenant’s failure to deliver any requested certificate as aforesaid within such time as hereinabove specified shall be conclusive upon Tenant: (i) that this Lease is in full force and effect, without modification except as may be represented by Landlord in such certificate; (ii) that there are no uncured defaults in Landlord’s performance; and (iii) that not more than one month’s Rent has been paid in advance to Landlord.

## **30. QUIET ENJOYMENT**

So long as Tenant pays all Rent and other sums due under this Lease, performs its covenants and obligations under this Lease and recognizes any successor to Landlord in accordance with the terms of this Lease, Tenant shall lawfully and quietly have, hold and enjoy the Demised Premises without hindrance or molestation by Landlord or anyone claiming by, through or under Landlord, subject, however, to all the provisions of this Lease.

### 31. LANDLORD'S LIEN

To secure the payment of all Rent due and to become due hereunder and the faithful performance of this Lease by Tenant and to secure all other indebtedness and liabilities of Tenant to Landlord now existing or hereafter incurred, Tenant hereby grants to Landlord an express first and prior contract lien and security interest on all property which may be placed in the Demised Premises, and also upon all proceeds of any insurance which may accrue to Tenant by reason of destruction of or damage to any such property and also upon all of Tenant's interest as lessee and rights and options to purchase fixtures, equipment and chattels placed in the Demised Premises (in case of fixtures, equipment and chattels leased to Tenant which are placed in the Demised Premises). This lien and security interest are given in addition to Landlord's statutory lien and shall be cumulative thereto.

### 32. NOTICES

Any notice, demand or communication required or permitted to be given hereunder shall be personally served, deposited in the United States mails, duly registered or certified with postage fully prepaid thereon or by Federal Express or other reputable overnight courier service, addressed to the other party at the Address for Notice set forth in Article 1, or to such other address requested in writing by either party upon thirty (30) days' notice to the other party. Notices shall be deemed to have been given upon the date same is post-marked if sent by registered or certified mail or the day deposited with Federal Express or such reputable overnight courier or the day sent if by personal service, but shall not be deemed received until one (1) business day following deposit with Federal Express or other reputable overnight courier or three (3) days following deposit in the United States Mail if sent by certified or registered mail or upon receipt if by personal service.

### 33. SPECIAL PROVISIONS

#### (a) Redevelopment Termination Option.

(i) Tenant acknowledges that it has been advised by Landlord that Landlord may elect to demolish, redevelop, reconfigure or renovate all or a portion of the Building or the area of the Building in which the Demised Premises is located. The parties understand and agree that if Landlord has a bona fide intention to demolish, redevelop, reconfigure or renovate all or a portion of the Building or the area of the Building in which the Demised Premises is located, then and in such event, Landlord may cancel the then unexpired portion of the Term of the Lease, upon not less than twelve (12) months prior written notice to Tenant (the "**Termination Notice**") which may be given at any time during the term of the Lease. If the Lease is so canceled: (a) it shall cease and come to an end on the date set forth in the Termination Notice (the "**Redevelopment Termination Date**") which date shall not be earlier than January 31, 2034, with the same force and effect as though that were the original date set forth in the Lease for the expiration of its term, (b) Tenant shall vacate the Demised Premises and surrender possession thereof on or before the Redevelopment Termination Date in accordance with the provisions of the Lease as though the Redevelopment Termination Date was the original date set forth in the Lease for the expiration of its term, (c) Tenant shall execute any documents reasonably required by Landlord in connection with such cancellation, (d) Tenant shall remain liable to cure any default under and to fulfill any of the terms, covenants and conditions of the Lease existing on or accruing prior to the later of the Redevelopment Termination Date and the date Tenant vacates and surrenders possession of the Demised Premises to Landlord in accordance with the terms of the Lease which liability shall survive such cancellation, (e) Landlord shall be relieved of all obligations under the Lease except for those accruing prior to the Redevelopment Termination Date, and (f) if Landlord sends the Termination Notice during the Tenant's

second Option Term, provided Tenant has complied with all of the terms and conditions of this **Section 33(a)**, then within thirty (30) days following the Redevelopment Termination Date Landlord shall pay Tenant the Redevelopment Termination Payment (as such term is hereinafter defined). The “**Termination Payment**” shall mean \$300,000.00.

(ii) Tenant agrees it shall indemnify and save Landlord harmless against all costs, claims, loss or liability resulting from delay by Tenant in so surrendering the Demised Premises. Additionally, the parties recognize and agree that the damage to Landlord resulting from any failure by Tenant timely to surrender possession to Landlord of the Demised Premises, will be substantial, will greatly exceed the amount of rents payable hereunder, and will be impossible of accurate measurement. Tenant therefore agrees that if possession of the Demised Premises is not surrendered to Landlord on or before the Redevelopment Termination Date specified in Landlord's aforescribed notice, then, in addition to all other remedies available hereunder or at law or equity, Tenant will pay to Landlord for each day or for each portion of any day beyond the Redevelopment Termination Payment during which Tenant holds over in the Demised Premises (in addition to all Rent provided to be paid under the Lease), as liquidated damages, an agreed-upon sum equal to three (3) times the quotient obtained by dividing (i) the sum of the Rent then payable under the Lease; by (ii) 30. The aforesaid obligations shall survive the expiration or sooner termination of the term of the Lease.

(iii) The Redevelopment Termination Payment shall only be due in the event of a voluntary cancellation of the Lease by Landlord pursuant to a Termination Notice sent during Tenant's second Option Term and in accordance with the terms of this **Section 33(a)**. It is understood and agreed that the Redevelopment Termination Payment shall not be due in the event that the Lease is terminated or canceled by Landlord because of Tenant's failure to perform pursuant to the terms of this Lease.

(iv) In the event Landlord terminates the Lease pursuant to this **Section 33(a)**, and Landlord's redevelopment is expected to include ground floor retail, prior the Redevelopment Termination Date, Landlord agrees to notify Tenant of terms under which it would consider entering into a lease for space on the hard corner in a similar position to the Demised Premises following such redevelopment. Such notice shall not impose any obligation on Landlord to enter into a lease with Tenant for any space on any terms, nor impose any obligation to negotiate a new lease with Tenant or prevent Landlord from offering such space to any other tenant.

**(b) Ongoing Co-Tenancy.**

A. Subject to **Subsection B** below, the “*Ongoing Co-Tenancy Condition*” means that occupants of at least eighty percent (80%) of Gross Area of the ground floor of the Shopping Center as shown on the attached **Exhibit A-3** (the “*Co-Tenancy Zone*”) are open for business, excluding, however, the Gross Area of the buildings in the “*Exclusion Zone*” indicated on **Exhibit A-3** for the Exclusion Period (as hereinafter defined). The parties agree that for the period from the Effective Date until the date which is twelve (12) months after Landlord completes any redevelopment and obtains a CO on the buildings located within the Exclusion Zone (the “*Exclusion Period*”), the Gross Area of the buildings in the Exclusion Zone shall be excluded from the Gross Area of the Shopping Center for purposes of determining the Ongoing Co-Tenancy Condition. Landlord shall, within thirty (30) days after receipt of Tenant's written request (but not more than one time in any twelve (12) month period), verify in writing the names and Gross Area of all occupants that are open and operating in the Co-Tenancy Zone.

B. With respect to determining whether the Ongoing Co-Tenancy Condition has been satisfied: (i) if Tenant or any affiliate of Tenant does not operate under its lease in the Shopping Center,

then each such person or entity will be deemed to be open and operating in the full amount of the Gross Area leased by such person or entity; (ii) any tenant of the Shopping Center that is closed for inventorying, remodeling or renovation of its premises will be deemed to be open and operating in the full amount of the Gross Area leased by such tenant; (iii) any tenant of the Shopping Center that is in bankruptcy or is the subject of any insolvency proceeding will be deemed to be open and operating in the full amount of the Gross Area leased by such tenant; (iv) subject to the provisions of **Section 33(c)** below, the Gross Area of any future development or redevelopment phases, if any, shall be excluded from the Gross Area of the Shopping Center in determining whether the Opening Co-Tenancy Condition has been achieved during the period of such development/redevelopment until such future phases are fully open for business to the public; and (v) Landlord will not be deemed to have failed to satisfy the Ongoing Co-Tenancy Condition because of any casualty or condemnation or because of any event of force majeure.

C. If at any time during the Primary Term or any Option Term after Tenant initially opens for business, (x) Tenant is not then in default of this Lease beyond any applicable notice and cure periods, (y) the Ongoing Co-Tenancy Condition is not satisfied and (z) Tenant is continuously operating for business in accordance with **Section 8(b)** of this Lease, then Tenant shall remain open for business and, in lieu of Minimum Rent and Percentage Rent, Tenant shall have the right to pay Alternate Rent (as defined in **Section 33(d)**) until the first to occur of: (i) the date of a default under this Lease beyond any applicable notice and cure periods; (ii) the satisfaction of the Ongoing Co-Tenancy Condition; and (iii) as set forth in **Subsections C and D** below. Upon the expiration of any such abatement period for any reason under the preceding clauses (i)-(iii), Tenant's obligation to pay Minimum Rent and Percentage Rent shall be automatically reinstated. Notwithstanding the abatement of Percentage Rent under this subsection, any Gross Sales made during the period of any such abatement shall be counted towards the annual Sales Breakpoint and the calculation of Percentage Rent for that Lease Year. Notwithstanding anything to the contrary contained herein, Landlord shall not be in violation of the terms of this Section 33(b) (and no violation of the Co-Tenancy Condition shall be deemed to have occurred) for any period prior to the date that Landlord has received written notice of the alleged violation from Tenant ("**Co-Tenancy Violation Notice**"). If Tenant sends Co-Tenancy Violation Notice to Landlord, Landlord shall have thirty (30) days within which to dispute to such notice, failing which Landlord will be deemed to have confirmed the existence of the Co-Tenancy Condition violation as of the first day of such violation.

D. If Tenant has been paying Alternate Rent due to a failure of the Ongoing Co-Tenancy Condition pursuant to **Section 33(b)(C)** for more than sixty (60) consecutive days (the "**Co-Tenancy Measuring Period**"), is not then in default of this Lease beyond any applicable notice and cure periods, and has been continuously operating for business in accordance with **Section 8(b)** of this Lease during the Co-Tenancy Measuring Period, Tenant shall have the right to cease operating in the Demised Premises for required days and hours under **Section 8(b)** ("**Go Dark**") upon written notice given to Landlord at any time after the Co-Tenancy Measuring Period and the continuance of the failure of the Ongoing Co-Tenancy Condition ("**Go Dark Notice**"). If Landlord does not receive a Go Dark Notice from Tenant, Tenant must continue to comply with Tenant's operating covenant and its obligation to open for business in the Demised Premises as set forth in this Lease under **Section 8(b)**. If Tenant sends a Go Dark Notice, Tenant's right to pay Alternate Rent pursuant to **Section 8(b)(C)** above shall immediately be null and void from the date set forth in the Go Dark Notice and Tenant shall revert back to paying full Minimum Rent and Percentage Rent; provided, however that upon the later of (i) Landlord's receipt of written notice from Tenant confirming that Tenant will commence operating for business in accordance with **Section 8(b)** of this Lease (the "**Re-Opening Notice**") and (ii) Tenant commencing operations for business in accordance with **Section 8(b)** of this Lease, Tenant shall have the right to revert to paying Alternate Rent pursuant to **Section 8(b)(C)** above; provided that thereafter, Tenant shall no longer have any further right to Go Dark.

E. If, at any time during the Term of this Lease, Tenant has been entitled to pay Alternate Rent and/or Go Dark due to a failure of the Ongoing Co-Tenancy Condition for more than twenty four (24) consecutive months (the last day of such twenty four (24) month period, the “**Twenty Four Month Anniversary**”), then Tenant shall have the right to terminate this Lease by sending a written termination notice to Landlord no later than the thirtieth (30<sup>th</sup>) day after the Twenty Four Month Anniversary (the “**Ongoing Co-Tenancy Termination Option**”). If Tenant does not give written notice to Landlord of its election to exercise the foregoing Ongoing Co-Tenancy Termination Option in the manner aforesaid, time being of the essence, then upon the expiration of such thirty (30) day period (x) such Ongoing Co-Tenancy Termination Option shall become null and void and (y) Tenant’s obligation to pay Minimum Rent and Percentage Rent and/or or continuously operate for business in accordance with **Section 8(b)** (if Tenant elected to Go Dark), shall be automatically reinstated as of the first (1st) day following the Twenty Four Month Anniversary. If Tenant exercises the foregoing Ongoing Co-Tenancy Termination Option in accordance with the terms of this **Section 33(b)(E)**, then this Lease shall terminate on, and Tenant shall continue to pay Alternate Rent or full Rent (if Tenant elected to Go Dark), as applicable, through the date specified in such termination notice, provided in no event shall such date be prior to one hundred eighty (180) days (unless Landlord, in its sole discretion, agrees to a shorter period) after the date on which Landlord received written notice of Tenant’s election to exercise the Opening Co-Tenancy Termination Option, with the same effect as if such termination date were the Expiration Date. Notwithstanding the foregoing, if Tenant elects to exercise the Ongoing Co-Tenancy Termination Option but, prior to expiration of the 180-day period referenced above, the Ongoing Co-Tenancy Condition is satisfied and Landlord notifies Tenant of same, then, upon delivery of such notice from Landlord to Tenant, Tenant’s notice of termination shall be null and void and of no further force and effect. If Tenant elects not to terminate the Lease pursuant to the Ongoing Co-Tenancy Termination Option, the Ongoing Co-Tenancy provisions of the Lease shall no longer be applicable to such violation of the Ongoing Co-Tenancy Condition, or for a period of two (2) calendar years to any new violation of the Ongoing Co-Tenancy Condition.

(c) **Redevelopment Impact Provision.** If at any time during the Primary Term or any Option Term after Tenant initially opens for business, (a) Tenant is not then in default of this Lease beyond any applicable notice and cure periods, (b) Tenant did not Go Dark pursuant to **Section 33(b)**, (c) Landlord is performing a redevelopment of at least one “**Quadrant**” of the Shopping Center as shown on **Exhibit A-4** within the Co-Tenancy Zone (other than the Exclusion Zone during the Exclusion Period), (d) such redevelopment involves exterior work, road work, or other work in the Common Areas of the Shopping Center (“**Redevelopment Work**”), (e) Tenant’s Gross Sales over any rolling consecutive ninety (90) day period (the “**Redevelopment Measuring Period**”) during the performance of such Redevelopment Work have declined by the greater of (i) at least twenty percent (20%); or (ii) at least twenty percent (20%) plus the decrease in Tenant’s “**Sales Trend**” (as defined below) during the Redevelopment Measuring Period as compared to Tenant’s Gross Sales for the same period during the prior calendar year, (f) Tenant has continuously operated for business and has maintained its merchandising methods and quality, sales force and floor area for display and sales during such period substantially as it did during comparative period, and (g) Tenant provides written notice to Landlord including documentation reasonably acceptable to Landlord demonstrating satisfaction of all of the conditions set forth in subsections (a)-(f) (collectively, the “**Redevelopment Impact Conditions**”), then Tenant shall remain open for business and, in lieu of Minimum Rent, Tenant shall have the right, beginning on the first day after the satisfaction of the Redevelopment Impact Conditions, to pay Alternate Rent until the first to occur of: (i) the date of a default under this Lease beyond any applicable notice and cure periods; or (ii) the date any of the Redevelopment Impact Conditions are no longer satisfied. Upon the expiration of any such abatement period for any reason under the preceding clauses (i)-(ii), Tenant’s obligation to pay Minimum Rent shall be automatically reinstated. Tenant’s “**Sales Trend**” shall be the average percentage increase or decrease in Tenant’s Gross Sales for

all of its stores operated under the same trade name as the Demised Premises in Texas during the Redevelopment Measuring Period as compared to such Gross Sales for the corresponding period in the prior calendar year. (By way of example, if Tenant's Sales Trend is negative three percent (-3%), then Tenant's Gross Sales must decrease by at least Thirteen Percent (23%) before Tenant qualifies for the payment of Alternate Rent.) At any period that Tenant is paying Alternate Rent pursuant to this **Section 33(c)**, Tenant shall, within thirty (30) days after receipt of Landlord's written request, provide documentation reasonably acceptable to Landlord demonstrating satisfaction of all of the Redevelopment Impact Conditions for such period.

(d) The term "**Alternate Rent**" as used in this Lease shall be equal to fifty percent (50%) of the Minimum Rent set forth **Section 1(i)**. Notwithstanding anything contained in this Lease to the contrary, Tenant's right to pay Alternate Rent under any provision of this Lease is expressly conditioned on Tenant being open and operating in the Demised Premises in accordance with **Section 8(b)**.

(e) **Required Closure Order.** Provided Tenant is not in default of any of the terms, covenants or conditions of the Lease, if after the date Tenant initially opens for business in the Demised Premises, Tenant is mandated to close for business in the entire Demised Premises as a result of the requirements of a Federal, State and/or local COVID-19 order(s) or other pandemic, epidemic or similar disease order(s) or if Landlord voluntarily elects to close the Shopping Center for business as a health safety precaution (collectively, a "**Required Closure Order**"), Minimum Rent shall abate in full from the date Tenant is mandated to so close for business pursuant to such Required Closure Order and actually does close for business, until the date that the then applicable Required Closure Order is lifted or modified permitting Tenant to reopen for business to the public; provided, however, in no event shall such abatement exceed more than one hundred twenty (120) days. Tenant shall provide written notice of any Required Closure Order to Landlord within three (3) days following the occurrence of said Required Closure Order. For purposes of clarification and not limitation, if Tenant's business is deemed an "**essential service**" or "**essential business**" in connection with any such Required Closure Order, then Tenant shall not be entitled to the abatements of Minimum Rent as provided above.

(f) **Permitted Sound Volume.** Tenant shall not play any music or permit any noise in the Demised Premises at levels above 80 decibels (as measured from within the Demised Premises), or which is disturbing to tenants located adjacent to, or above the Demised Premises, or any other tenant premises in the Shopping Center, as reasonably determined by Landlord. As part of Tenant's Work, Tenant shall install, at Tenant's expense, any required soundproofing and sound/vibration attenuation measures in the Demised Premises necessary to comply with Tenant's obligations under this **Section 33(f)**.

(g) **Tenant's Trademarks.** Landlord shall not have the right to use Tenant's Trade Name, trademarks or logo ("**Tenant's Trademarks**"), nor shall the Tenant's Trademarks be used by Landlord in advertising nor in any other manner without the prior written consent of Tenant, which shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding anything in this Lease to the contrary, Landlord shall be permitted to refer to Tenant's Trade Name in directional signage, Shopping Center directories, newsletters, brochures, and joint advertising common to tenants in the Shopping Center, and which are used for leasing purposes related to the Shopping Center, without the necessity of obtaining Tenant's prior consent in each instance.

(h) **Landlord's Website.** Upon Tenant opening for business in the Demised Premises (or earlier if elected by Landlord), Landlord shall, at Landlord's sole cost and expense, include Tenant on Landlord's website under all applicable categories requested or permitted by Tenant including, but not limited to: Unisex, Men's, Women's, Specialty, and Athletic/Fitness. Landlord shall use only lululemon-

provided logo and copy on its website. Notwithstanding anything contained herein to the contrary, upon lease execution, Landlord is permitted to include Tenant on Landlord's site plan for leasing purposes. Any public release announcing the parties having entered into a lease, or Tenant's occupancy at the Shopping Center shall be approved by Landlord and Tenant, which approval shall not be unreasonably withheld, conditioned or delayed.

(i) **Audit of Tenant's Share of Real Estate Taxes and Insurance.** By written notice to Landlord within thirty (30) days after Tenant receives a final statement from Landlord showing the calculation of Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, with respect to a particular calendar year, Tenant may inspect or audit Landlord's records relating to Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, for such calendar year in accordance with the following provisions. If Tenant fails to object to the calculation of Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, on an annual statement within 30 days after the statement has been delivered to Tenant, or if Tenant fails to conclude its audit or inspection within 90 days after the statement has been delivered to Tenant, then Tenant shall have waived its right to object to the calculation of Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, for the year in question and the calculation of Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, set forth on such statement shall be final. Tenant's audit or inspection shall be conducted where Landlord maintains its books and records, shall not unreasonably interfere with the conduct of Landlord's business, and shall be conducted only during business hours reasonably designated by Landlord. Tenant shall pay the cost of such audit or inspection, and shall reimburse Landlord for the cost of any photocopies or other disbursements made or incurred by Landlord in connection therewith, unless the total Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, for the period in question is determined to be in error by more than 7% in the aggregate, in which case Landlord shall pay the audit cost (not to exceed \$1,500.00). Tenant may not conduct an inspection or have an audit performed more than once during any calendar year. Tenant or the accounting firm conducting such audit shall, at no charge to Landlord, submit its audit report in draft form to Landlord for Landlord's review and comment before the final approved audit report is submitted to Landlord, and any reasonable comments by Landlord shall be incorporated into the final audit report. If such inspection or audit reveals that an error was made in the Tenant's Share of Real Estate Taxes and/or Landlord's Insurance, as applicable, previously charged to Tenant, then Landlord shall refund to Tenant any overpayment of any such costs, or Tenant shall pay to Landlord any underpayment of any such costs, as the case may be, within 10 days after notification thereof. Tenant shall maintain the results of each such audit or inspection confidential. Any audit or inspection performed hereunder shall only be made by a third party independent firm of certified public accountants (1) reasonably acceptable to Landlord, (2) which is not compensated on a contingency fee basis or in any other manner which is dependent upon the results of such audit or inspection, and (3) which agrees with Landlord in writing to maintain the results of such audit or inspection confidential.

#### **34. MISCELLANEOUS**

(a) **Brokers.** Except for The Blue Ox Group ("**Landlord's Broker**") and Open Realty Advisors ("**Tenant's Broker**", together with Landlord's Broker, the "**Brokers**"), pursuant to separate written agreements executed by Landlord with Landlord's Broker and Tenant with Tenant's Broker (together, the "**Brokerage Agreements**"), Landlord and Tenant represent and warrant that no brokerage fee is due in connection with this Lease. Each party shall indemnify and hold the other party harmless from all damages (including attorneys' fees and costs) resulting from any claims that may be asserted by any broker, finder, or other person claiming by, through or under the party (except that Landlord shall pay the Brokers in accordance with the Brokerage Agreements).

(b) **Intentionally Omitted.**

(c) **Non-recordability of Lease.** Tenant agrees that in no event shall this Lease or a memorandum hereof be recorded.

(d) **Matters of Record.** This Lease and Tenant's rights hereunder are subject and subordinate in all respects to matters affecting Landlord's title recorded in the official records of the county recorder's office for the county in which the Shopping Center is located prior or subsequent to the date of execution of this Lease. Tenant agrees that as to its leasehold estate it, and all persons in possession or holding under it, will conform with and will not violate any such covenants, conditions and restrictions, or other matters, of record.

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

(f) **Consent.** With respect to any provision of this Lease which provides, in effect, that Landlord shall not unreasonably withhold or unreasonably delay any consent or any approval, Tenant in no event shall be entitled to make, nor shall Tenant make, any claim, and Tenant hereby irrevocably waives any claim, for money damages; nor shall Tenant claim any money damages by way of setoff, counterclaim or defense, based upon any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval; but Tenant's sole remedy shall be an action or proceeding to enforce any such provision, by means of specific performance, injunction or declaratory judgment.

(g) **Interest.** Except as expressly provided otherwise in this Lease, any amount due to Landlord which is not paid when due shall bear interest from the date due at the prime commercial rate of interest published from time to time by The Wall Street Journal as the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation's thirty (30) largest banks, plus two percent (2%) per annum, but not to exceed the maximum rate of interest allowable under the law (the "**Default Rate**"). Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

(h) **Binding Effect; Choice of Law.** Except as expressly provided otherwise in this Lease, all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Lease shall be governed by the laws of the state where the Shopping Center is located. This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, negotiations, brochures, arrangements, or understanding pertaining to any such matter shall be effective for any purpose unless expressed herein. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

(i) **Time; Rights Cumulative.** Time is of the essence of this Lease and each and every provision hereof, except as to the provisions relating to delivery of possession of the Demised Premises to Tenant. All rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.

(j) **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any of its respective obligations during the Lease Term by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations,



pandemic, epidemic, terrorism, acts of god, riots, insurrection, war, environmental remediation work whether ordered by any governmental body or voluntarily initiated or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under this Lease, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay and the delaying party shall not be liable for losses or damages caused by such delays. Notwithstanding the foregoing, the provisions of this **Section 34(j)** shall at no time operate to excuse Tenant from the obligation to open for business on the Rent Commencement Date, except in the event of an industry wide strike, nor any obligations for payment of Rent or any other payments required by the terms of this Lease when the same are due, and all such amounts shall be paid when due.

(k) **Submittal of Financial Statement.** At any time and from time to time during the term of this Lease, within fifteen (15) days after request therefor by Landlord, Tenant shall supply to Landlord and/or any Mortgagee a current financial statement or such other financial information as may reasonably be required by any such party.

(l) **No Partnership.** Nothing herein contained, either in the method of computing Rent or otherwise, shall create between the parties hereto, or be relied upon by others as creating, any relationship or partnership, association, joint venture, or otherwise. The sole relationship of the parties hereto shall be that of landlord and tenant.

(m) **Prevailing Party.** If either party brings action for relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Demised Premises, the unsuccessful party shall pay the successful party its costs incurred in connection with and in preparation for said action, including its attorneys' fees.

(n) **Counterclaim.** If Landlord commences any proceedings for non-payment of rent or any summary proceeding or other action based on termination or holdover, Tenant waives any right to interpose any counterclaims, except for compulsory or mandatory counterclaims required by the applicable procedural rules of the Court or to seek removal of Landlord's proceedings to any other forum. The covenants to pay rent and other amounts hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for default by Landlord or any other reason whatsoever.

(o) **Waiver.** No delay or omission in the exercise of any right or remedy of Landlord for any default by Tenant shall impair such right or remedy or be construed as a waiver. The receipt and acceptance by Landlord of delinquent payments shall not constitute a waiver of any other default, and shall not constitute a waiver of timely payment of the particular payment involved. No act or conduct of Landlord, including, without limitation, the acceptance of keys to the Demised Premises, shall constitute an acceptance of the surrender of the Demised Premises by Tenant before the expiration of the Term. Only an express notice to such effect from Landlord to Tenant shall constitute acceptance of the surrender of the Demised Premises sufficient to terminate this Lease. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not constitute a consent or approval of any subsequent act by Tenant. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

(p) **Prohibited Persons and Transactions.** Tenant hereto represents and warrants to Landlord that it is not, acting, directly or indirectly, for or on behalf of a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury (including those named on the OFAC's Specially

Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, including any trade embargo, economic sanction or other like prohibition, and that Tenant is not engaged in this transaction, directly or indirectly, on behalf of, and is not facilitating this transaction, directly or indirectly, on behalf of, any such person or entity. Tenant also represents and warrants to Landlord that neither it nor its constituents or affiliates are (i) in violation of any laws relating to terrorism or money laundering, including the aforesaid Executive Order and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56), as amended, (ii) identified on OFAC's Specially Designated and Blocked Persons List, or (iii) a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanctions, or other prohibition of United States law, regulations or executive order. Tenant agrees to confirm this representation and warranty in writing on an annual basis if requested by Landlord to do so. Tenant hereby agrees to defend, indemnify and hold harmless Landlord (including any other party of interest) from and against any and all claims, damages, losses, risks, liabilities and expenses (including reasonable attorneys' fees and costs) arising from or related to any breach of the foregoing representations and warranties by Tenant.

(q) **Waiver of Trial by Jury.** LANDLORD AND TENANT HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT LANDLORD OR TENANT MAY HEREAFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS LEASE OR THE DEMISED PREMISES WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

(r) **Method of Calculation.** Tenant is knowledgeable and experienced in commercial transactions and does hereby does acknowledge and agree that the provisions of this Lease for determining charges and amounts payable by Tenant are commercially reasonable and valid and constitute satisfactory methods of determining such charges and amounts as required by Section 93.012 of the Texas Property Code, as amended. TENANT FURTHER VOLUNTARILY AND KNOWINGLY WAIVES (TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS) ALL RIGHTS AND BENEFITS OF TENANT UNDER SUCH STATUTE, AS IT NOW EXISTS OR AS IT MAY BE HEREAFTER AMENDED OR SUCCEEDED.

(s) **Tax Waiver.** Tenant waives all rights pursuant to Section 41.413 of the Texas Property Tax Code, as amended and any other laws to contest any taxes or other levies or protest appraised values or receive notice of appraisal or reappraisal regarding the Shopping Center, irrespective of whether Landlord contests same.

(t) **Confidentiality.** Tenant acknowledges that the terms and conditions of this Lease are to remain confidential for Landlord's benefit, and may not be disclosed by Tenant to anyone, by any manner or means, directly or indirectly, without Landlord's prior written consent; however, Tenant may disclose the terms and conditions of this Lease if required by Law or court order, to its attorneys, accountants, employees and existing or prospective financial partners provided same are advised by Tenant of the confidential nature of such terms and conditions and agree to maintain the confidentiality thereof (in each case, prior to disclosure). Tenant shall be liable for any disclosures made in violation of this Section by Tenant or by any entity or individual to whom the terms of and conditions of this Lease were disclosed or made available by Tenant. The consent by Landlord to any disclosures shall not be deemed to be a waiver on the part of Landlord of any prohibition against any future disclosure. Notwithstanding anything

contained in this Lease to the contrary, Tenant agrees that Landlord may include Tenant's store on the Shopping Center site plan provided to other tenants and potential tenants upon the Effective Date.

[Signature Block is on the Next Page]

IN WITNESS WHEREOF, Landlord and Tenant have signed and sealed this Lease as of the day and year first above written.

**LANDLORD:**

**UNIVERSITY NORTHWEST LLC**, a Texas  
limited liability company

By: \_\_\_\_\_

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

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

Date of Execution: \_\_\_\_\_

**TENANT:**

**LULULEMON USA, INC.**, a Nevada  
corporation

By: \_\_\_\_\_

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

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

Date of Execution: \_\_\_\_\_

**Exhibit A**

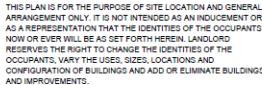
**SITE PLAN OF THE DEMISED PREMISES**

[EXHIBIT TO FOLLOW]

THIS PLAN IS FOR THE PURPOSE OF GENERAL AND APPROXIMATE SITE LOCATION AND ARRANGEMENT ONLY. IT IS NOT INTENDED AS AN INDUCEMENT OR AS A REPRESENTATION THAT THE IDENTITIES OF THE OCCUPANTS NOW OR EVER WILL BE SET FORTH HEREIN OR AS TO DIMENSIONS OR SIZES OR CONFIGURATIONS OF THE BUILDINGS OR PREMISES. LANDLORD RESERVES THE RIGHT TO CHANGE THE IDENTITIES OF THE OCCUPANTS, VARY THE USES, SIZES, LOCATIONS AND CONFIGURATION OF BUILDINGS AND THE BUILDINGS AND IMPROVEMENTS.

UNIVERSITY NORTHWEST LLC / LULULEMON USA, INC.  
RETAIL LEASE

**PROTECTED AREA**



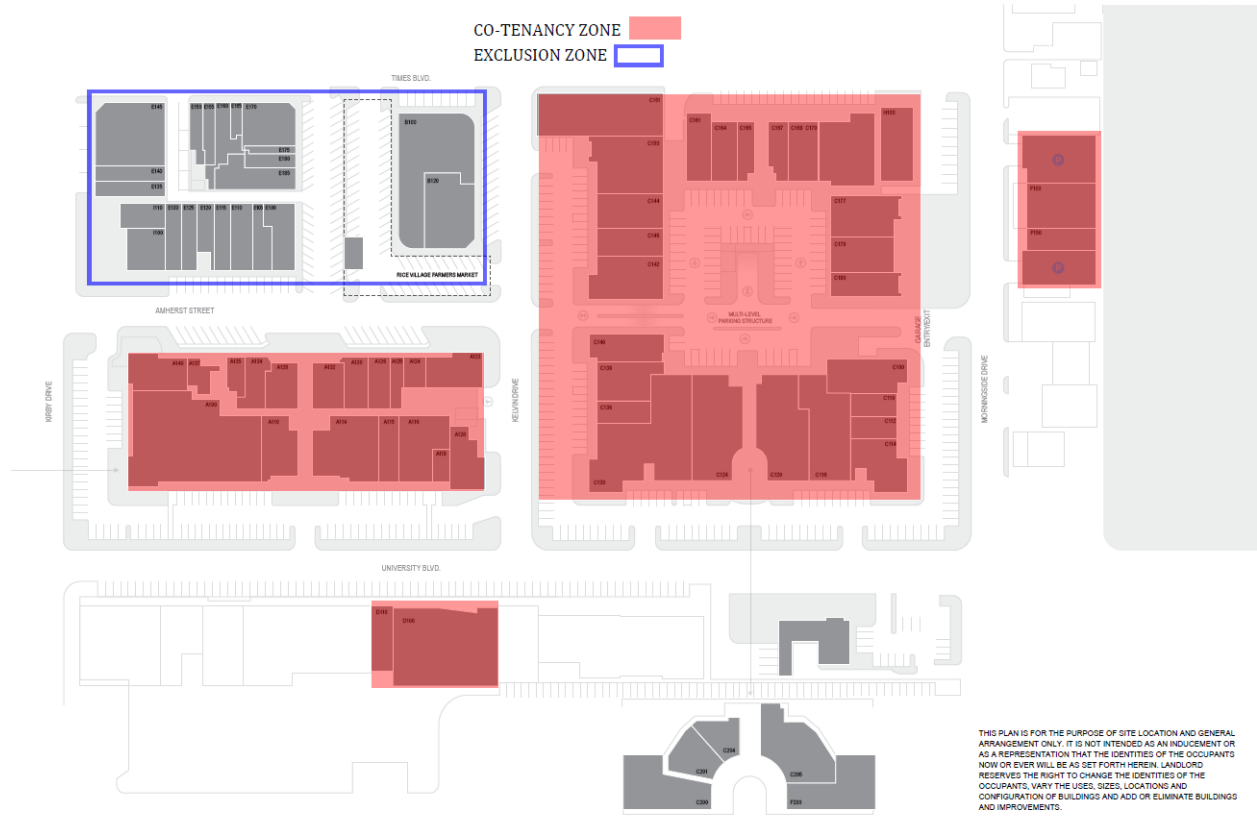
**Exhibit A-2**

**EXCLUSIVE AREA**



### Exhibit A-3

## CO-TENANCY ZONE/EXCLUSION AREA



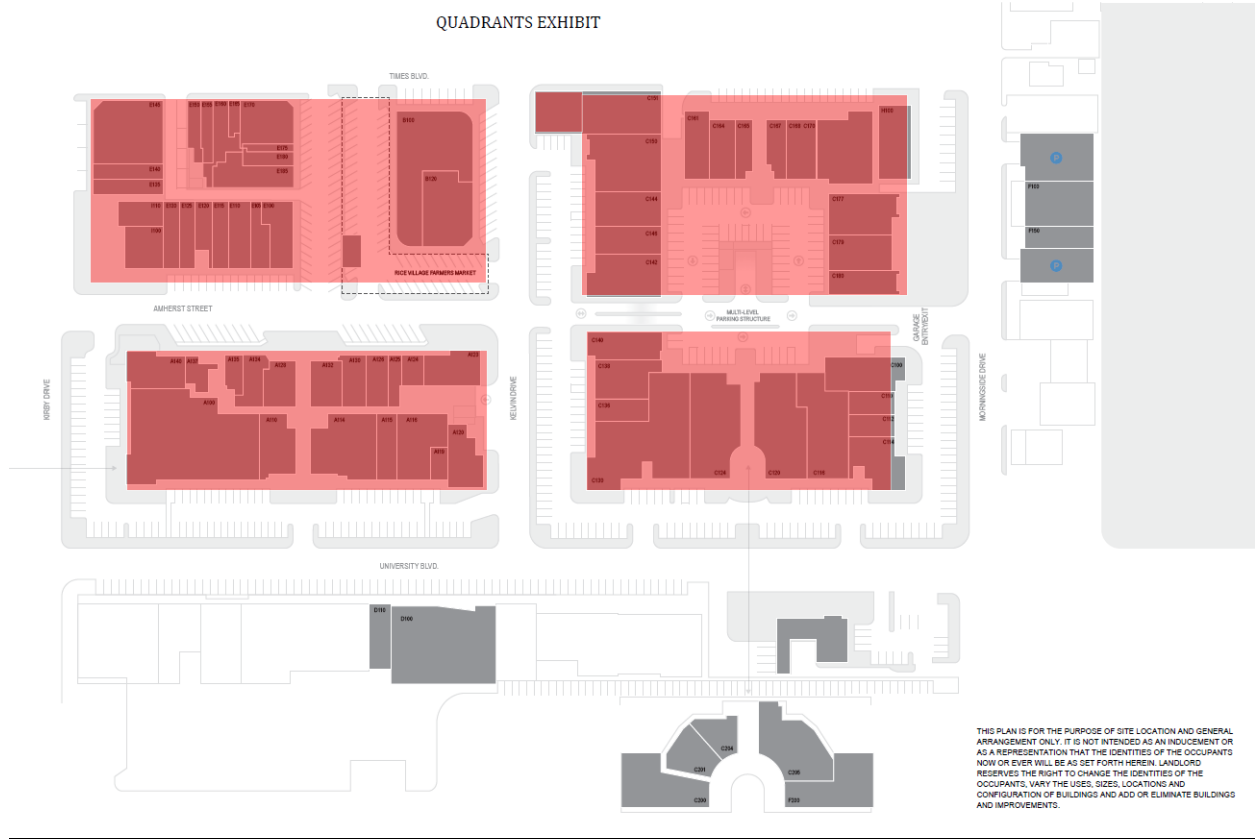
UNIVERSITY NORTHWEST LLC / LULULEMON USA, INC.  
RETAIL LEASE

ACTIVE 683722176v3



## Exhibit A-4

### QUADRANTS EXHIBIT

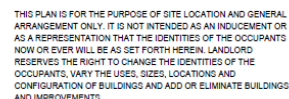


UNIVERSITY NORTHWEST LLC / LULULEMON USA, INC.  
RETAIL LEASE

A-4

ACTIVE 683722176v3

### SITE PLAN OF THE SHOPPING CENTER



B-1

**Exhibit C**

**LANDLORD'S WORK**

**Exhibit D**

**TENANT'S WORK**

## Exhibit D-1

### CONTRACTOR INSURANCE REQUIREMENTS

(a) Prior to the commencement of any Tenant's Work and continuously until the completion and acceptance of Tenant's Work by Landlord, Tenant shall maintain, or cause to be maintained, builder's risk insurance on an "all risk" or "special form" coverage basis, covering Landlord, and Landlord Entities as defined in **Section 17(a)** of the Lease and as shown below, Landlord's Mortgagees and master lessors (if any), Landlord's agents and beneficiaries, Landlord's architect, Landlord's contractors and/or subcontractors, Tenant and Tenant's contractors and/or subcontractors as their interests may appear, upon all Tenant's Work in place or in progress, and all materials in transit and stored at the site of Tenant's Work and all other materials, equipment, supplies and temporary structures of all kinds incidental to Tenant's Work and builder's machinery, tools and equipment, all while forming part of, or contained in, such improvements or temporary structures while on the Demised Premises or when adjacent thereto while on the Shopping Center, drives, sidewalks, streets or alleys, all in the full replacement cost thereof at all times.

The following entities and any other entity designated by Landlord ("**Landlord Entities**") are to be named as additional insureds (except for workers' compensation, employer's liability and professional liability): William Marsh Rice University, Rice Management Company, and REIS Associates, LLC.

(b) In addition, Tenant shall require all contractors and subcontractors engaged in the performance of Tenant's Work to effect, maintain and deliver to Tenant (with copies thereof to Landlord) certificates evidencing the existence of the following insurance coverages, at least ten (10) business days prior to commencement of Tenant's Work and continuing through completion and acceptance thereof (and renewal certificates at least thirty (30) days prior to the expiration dates of certificates previously furnished):

- (1) Commercial General Liability Insurance against bodily injury, including death resulting therefrom, with limits no less than One Million Dollars (\$1,000,000.00) per occurrence, One Million Dollars (\$1,000,000.00) with respect to personal injury and advertising injury liability and Two Million Dollars (\$2,000,000.00) general aggregate including death, broad form property damage, completed operations and products liability (covering, without limitation, contractors' or subcontractors' contractual liability, and, if the use and occupancy of the Demised Premises include any activity or matter that is or may be excluded from coverage under a commercial general liability policy, any such contractor or subcontractor shall obtain such endorsements to the commercial general liability policy or otherwise obtain insurance to insure all liability arising from such activity or matter in such amounts as Landlord may reasonably require). No exclusions shall exist for demolition, excavating, collapse, underground work and blasting. Completed operations coverage is to be continued for ten (10) years for property damage after acceptance of work under contract.
- (2) Business Automobile Liability Insurance, including "**non-owned**" automobiles, against bodily injury, including death resulting therefrom, and property damage, to the limits of not less than One Million Dollars (\$1,000,000.00) per accident covering owned, leased, hired and non-owned vehicles used by or on behalf of such contractors or subcontractors.

- (3) Workers' Compensation Insurance in accordance with the laws of the state in which the Shopping Center is located, and Employer's Liability Insurance, in the minimum amount of One Million Dollars (\$1,000,000.00) with respect to each accident for bodily injury by accident, in the minimum amount of One Million Dollars (\$1,000,000.00) in the aggregate for bodily injury by disease and in the minimum amount of One Million Dollars (\$1,000,000.00) per employee in respect to bodily injury by disease, or such higher limit as may be required by law.
- (4) Excess general, business automobile and employer's liability insurance coverage shall be provided on a following form basis, with not less than Five Million Dollars (\$5,000,000.00), each occurrence.
- (5) To the extent not included in the builder's risk insurance policy obtained pursuant to **Section (a)** above, "**all risk**" or "**special form**" property insurance covering all materials, supplies, equipment, apparatus and any other property of the contractor or subcontractor located, used or stored at the Demised Premises, for the full replacement cost of said items regardless of cause or peril.
- (6) A bond of a minimum of One Million Dollars (\$1,000,000.00) is required for security services.
- (7) Professional Liability (Errors and Omissions Liability): (For consultants only) A professional liability policy to protect Landlord from liability arising out of errors and omissions in the performance of design and/or engineering services by Tenant's consultants or their employees. The professional liability (errors and omissions liability) policy must be:
  - (i) Endorsed to cover economic losses suffered by third parties;
  - (ii) Maintained for two (2) years after Substantial Completion Date; and
  - (iii) Include the following minimum limit: - \$2,000,000 Per Occurrence.

The policies described in this **Section (b)** shall (i) name Landlord, Landlord's Mortgagees and master lessors (if any), Landlord Entities as defined in **Section 17(a)** of the Lease and as shown in **Section (a)**, above and Landlord's construction manager as additional insureds [except this clause (i) shall not apply to workers' compensation policies, employer's liability and professional liability policies]; (ii) be endorsed so that such policies are primary and non-contributory; (iii) include a waiver of subrogation or permission to waive recovery rights prior to a loss in favor of Landlord, Landlord Entities, Landlord's Mortgagees and master lessors (if any), Landlord's agents and beneficiaries, Landlord's architect, Landlord's contractors or subcontractors, as their interests may appear; (iv) be issued by insurance companies authorized to do business in the state in which the Shopping Center is located and having a rating of not less than "A X" by A.M. Best Company's insurance reports; (v) provide, and any certificate evidencing the existence of each insurance policy shall certify, that unless Landlord receives thirty (30) days' prior written notice [or at least ten (10) days' prior written notice of such cancellation or termination due to non-payment of premiums]: (1) the insurance policy shall not be canceled and shall continue in full force and effect, (2) the insurance carrier shall not fail to renew the insurance policy, and (3) no material changes may be made in the insurance policy; (vi) include a cross liability or severability of interests clause [except this clause (vi) shall not apply to workers' compensation policies and employer's liability policies]; and (vii) contain deductible limits

not higher than those approved by Landlord; and shall not contain a sub-contractors exclusion clause. ***“Insurance policy”*** as used in this subsection includes any extensions or renewals of the insurance policy.

Tenant shall require that all contracts with contractors and subcontractors include a waiver of recovery rights/subrogation in favor of Landlord, Landlord Entities, Landlord’s Mortgagees and master lessors (if any), Landlord’s agents and beneficiaries, Landlord’s architect, Landlord’s contractors or subcontractors, as their interests may appear.

Insurance certificates for Landlord are to be sent to:

[Insert Landlord entity]  
c/o REIS Associates, LLC  
Rice Village  
2400 University Blvd., Suite 210  
Houston, Texas 77005  
Attn: General Manager

Written notice must be immediately provided to Insurer or Insurance Agent of all accidents resulting in injury to persons or property occurring on or near the Shopping Center. In the event of death or serious bodily injury to others, or damage to Landlord’s property, Tenant or Contractor/Subcontractor shall report full particulars, by telephone, within 24 hours of the occurrence. Copies of all accident reports should be directed to:

[Insert Landlord entity]  
c/o REIS Associates, LLC  
Rice Village  
2400 University Blvd., Suite 210  
Houston, Texas 77005  
Attn: General Manager

This exhibit must be included in ALL contracts for Tenant’s Work.

Tenant agrees to defend, indemnify and hold Landlord, and any Landlord Entities, Landlord’s Mortgagees and master lessors (if any), Landlord’s and Landlord’s Entities’ agents, members, partners, advisors, beneficiaries, directors, officers and employees harmless against any and all claims for injury to persons or damage to property by reason of the use of the Demised Premises for the performance of Tenant’s Work, and claims, fines, and penalties arising out of the failure of Tenant or its agents, contractors, and/or subcontractors and employees to comply with any law, ordinance, code requirement, regulations or other requirements applicable to Tenant’s Work.

## **Exhibit D-2**

### **Tenant's Plans and Construction Milestones**

1. On or prior to the date that is 30 days after the Effective Date of the Lease, Tenant shall deliver to Landlord Tenant's work plan and schedule for the performance of Tenant's Work.
2. On or prior to the date that is 45 days after the Effective Date of the Lease, Tenant shall deliver to Landlord a list of Tenant's consultants and Tenant's conceptual program for the performance of Tenant's Work.
3. On or prior to the date that is 45 days after the Effective Date, Tenant shall deliver to Landlord 100% complete schematic design drawings for Tenant's Work, including an occupancy load analysis for the Premises for Landlord's review and approval ("***Conceptual Drawings***").
4. On or prior to the date that is 30 days after Landlord approves Tenant's Conceptual Drawings), Tenant shall deliver to Landlord design development drawings for Tenant's Work for Landlord's review and approval ("***Preliminary Drawings***").
5. On or prior to the date that is 30 days after Landlord approves Tenant's Preliminary Drawings), Tenant shall deliver to Landlord complete construction documents for Tenant's Work for Landlord's review and approval ("***Final Drawings***").
6. On or prior to the date that is 10 days after Landlord approves Tenant's Final Drawings), Tenant shall deliver to Landlord a complete permitting set and copies of applications for all Tenant's Permits required for the performance of Tenant's Work for Landlord's review and approval ("***Permit Set Drawings***").
7. With respect to Landlord's review of Tenant's Conceptual Drawings, Preliminary Drawings, Final Drawings and Permit Set Drawings, Landlord shall, in writing, accept or notify Tenant of its objections to said plans and specifications within fifteen (15) calendar days after receipt. Should there be objections, Tenant shall respond to any objections within ten (10) days of receipt of Landlord's written review. Landlord shall, in writing, review the revised plans within ten (10) calendar days after receipt. The process will continue using the above timeframes until Tenant's Plans are approved.
8. On or prior to the date that is 15 days after Landlord approves Tenant's Permit Set Drawings), Tenant shall submit its application to the permitting authority and thereafter use best efforts to pursue the issuance of such permits including utilizing Landlord's expeditor and timely responding to any comments or revisions within no more than 10 days. Tenant shall deliver to Landlord evidence that Tenant's Plans for Tenant's Work have been approved by the Building Department and evidence that Tenant has retained an approved contractor to perform Tenant's Work and copy of Tenant's building permit prior to commencing Tenant's Work.



9. On or prior to the date that is 5 days after the issuance of Tenant's Permits, Tenant shall schedule and attend a pre-construction meeting with Landlord and deliver to Landlord a construction schedule for Tenant's Work.

10. On or prior to the date that is 5 days after the pre-construction meeting and approval of Landlord, Tenant shall commence the performance of Tenant's Work.

11. On or prior to the Required Completion Date, Tenant shall complete construction of Tenant's store and open for business to the general public fully fixture, stocked and staffed.

12. On or prior to the date that is 10 days after Tenant completes construction of the Demised Premises, Tenant shall schedule and attend a post-construction close-out meeting/punch-list with Landlord.

13. On or prior to date that is 30 day after Tenant completes construction of the Demised Premises Tenant shall deliver to Landlord all "as-built" plans for Tenant's Work and all other "close-out" documentation and information required to be delivered pursuant to the Lease including without limitation under **Article III** of **Exhibit D**.

## **Exhibit E**

### **SIGNAGE SUBMITTAL REQUIREMENTS**

#### **1. INTRODUCTION**

The intent of this Signage Submittal Requirements is to provide the guidelines necessary for the submittal and approval of signage at the above mentioned project. All signage must comply with the Tenant Design Criteria established by Landlord. Compliance with the Tenant Design Criteria shall be rigorously enforced and any non-conforming signs shall be removed by Tenant or its sign contractor at its expense, upon demand by Landlord. Exceptions to these standards shall be reviewed by Landlord. Landlord will retain full rights of approval of any sign used in the center.

#### **2. GENERAL OWNER/TENANT REQUIREMENTS**

- (a) Each Tenant shall submit to Landlord, at a minimum, seventy-five (75) days prior to proposed installation, one (1) electronic copy of the detailed shop drawings and elevations of the proposed sign, indicating conformance with the Tenant Design Criteria for review and approval. Drawings should specify the location on the building fascia, size, layout, construction, design and color of the proposed sign. Send to:

Tenant Coordination  
c/o REIS Associates, LLC  
Rice Village  
2400 University Blvd., Suite 210  
Houston, Texas 77005  
Attn: General Manager

Shop drawings will be reviewed for compliance with design intent only. The sign contractor is responsible for all other aspects of fabrication including engineering, procedures, installation techniques and performance as well as compliance with local codes and ordinances.

- (b) Tenant shall submit a sign drawing approved by the Landlord to the appropriate governmental authority for approval prior to the start of any sign construction or fabrication.
- (c) Tenant shall pay for all signs, their installation (including final connection, transformers and all other labor and materials) and maintenance.
- (d) Tenant shall obtain all necessary permits. All signs and their installation must comply with all local building and electrical codes and bear a U.L. label placed in an inconspicuous location. Electrical service to the sign shall be paid for by Tenant.
- (e) Tenant shall be responsible for fulfillment of all requirements of this Sign Criteria Submittal Requirements and the Tenant Design Criteria.
- (f) Tenant shall provide the wired connection from the Tenant's sign to terminate at Tenant's electrical panel. Landlord shall have the right to establish the required hours of illumination of any building sign.

- (g) It is the responsibility of Tenant's sign company to verify all conduit and transformer locations and service prior to fabrication. No penetrations of the roof flashing will be permitted.
- (h) The location of all signs shall be per the Tenant Design Criteria or as otherwise approved by Landlord. Tenant will be responsible for designing and installing the required structural backing for the mounting of its sign on the building. Any damage to the building caused as a result of this work will be the responsibility of Tenant to repair.
- (i) Except as permitted herein any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity, and no sign shall be illuminated by or contain flashing, intermittent, rotating or moving lighting or lights. In no event shall an illuminated sign or light device be so placed or so directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- (j) Banners or theme flags are permitted for special events only and shall be subject to Landlord's prior approval and the approval and permitting requirements of any controlling municipality.
- (k) Temporary window signage for special or seasonal sales shall be subject to Landlord approval and shall be limited to a maximum of twenty-five percent (25%) of the window area per elevation. All such signs shall be professionally prepared. No window painting shall be permitted.
- (l) Tenant shall verify its sign location and size with Landlord prior to fabrication.
- (m) Signs that vary from this Tenant Design Criteria must first be approved by Landlord and the respective governmental authority.
- (n) Tenant is required to maintain its sign in a first class condition and replace bulbs, plex faces, letter material, paint and other components as necessary.
- (o) Tenant's sign contractor is required to protect awnings or other building elements during sign installation. The building site, including the roof, shall be left in broom clean condition with all debris from the sign installation being removed and properly disposed of by Tenant's sign contractor. All work for Tenant's exterior signage shall be performed during hours in which the Shopping Center is not open to the public.
- (p) Tenant, at its sole cost, will design and install graphics, to be approved in advance by Landlord, for "Coming Soon" signage including Tenant's logos, etc. to advertise Tenant's impending opening at the Shopping Center. The "Coming Soon" signage must be professionally prepared and the design and content of such signage are subject to Landlord's written approval prior to fabrication. Tenant shall submit Tenant's proposed signage design and content to Landlord for approval within fourteen (14) days after the Effective Date. The "Coming Soon" signage is required to be installed on Tenant's barricade (required to be installed pursuant to the Lease to shield construction activities) or storefront glass (if no barricade is required) within fourteen (14) days after Landlord's written approval of such signage or ten (10) days after delivery of space to Tenant, at Tenant's expense. Such signage shall be removed immediately at the request of Landlord and should such signage not be timely removed, Landlord may remove same at the expense of Tenant. "Coming Soon" signage shall be of printed vinyl and shall cover 100% of storefront glass or 75% for temporary barricade and shall be removed at Landlord's request. If Tenant fails to timely install said temporary store front barricade, Landlord shall have the right to do so at Tenant's expense.

- (q) Tenant shall be responsible for removing its signage at the termination of the lease and repairing the building including patching and painting.

### 3. PROHIBITED SIGNS

- (a) Signs Constituting a Traffic Hazard: No person shall install or maintain or cause to be installed or maintained any sign which simulates or imitates in size, color, lettering or design any traffic sign or signal, or any other symbols, or characters in such a manner to interfere with, mislead or confuse traffic.
- (b) Immoral or Unlawful Advertising: It shall be unlawful for any person to exhibit, post or display, cause to be exhibited, posted or displayed upon any sign, anything of an obscene, indecent, or immoral nature or unlawful activity.
- (c) Signs on Doors, on Windows: No sign shall be installed, relocated, or maintained so as to prevent free ingress to or egress from any door. No exterior sign shall be placed on the exterior of the Demised Premises except as permitted herein and in the Tenant Design Criteria. No sign of any kind shall be attached to a standpipe except those signs as required by code or ordinance.
- (d) Off-Premise Signs: Any off Demised Premises signs are subject to Landlord's written approval. Any unauthorized off Demised Premises sign may be removed without notice by Landlord at Tenant's expense.
- (e) Vehicle Signs: Signs, on or affixed to trucks, automobiles, trailers, or other vehicles which advertise, identify, or provide direction to a use or activity not related to its lawful making of deliveries of merchandise or rendering of services from such vehicles, are prohibited.
- (f) Freestanding Signs are prohibited.

**Exhibit F**

**RESERVED**

**Exhibit G**

**RESERVED**

## **Exhibit H**

### **DEMISED PREMISES USE RESTRICTIONS**

The following is a list of prohibited uses in the Demised Premises. Tenant shall not use the Demised Premises for any use that is inconsistent with the operation of a first-class, retail development; however, except as specifically permitted in the Lease, Tenant shall not use the Demised Premises as a restaurant or for cooking or baking of any kind or for the sale of alcoholic beverages. In addition, the following uses shall not be permitted in the Demised Premises:

1. Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Shopping Center;
2. Any operation primarily used as a warehouse operation and any assembling, manufacturing, distilling (except that a micro-brewery/restaurant or “brew pub” operation shall not be prohibited), refining, smelting, agricultural, or mining or drilling operation;
3. Any “second hand” store or “surplus” store, except antique stores or a high-end consignment shop;
4. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during period of construction, reconstruction, or maintenance);
5. Any dumping, disposing, incineration, or deduction of garbage (exclusive of garbage compactors located near the rear of any building);
6. Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
7. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located,
8. Any automobile, truck, trailer or recreational vehicles sales, display or repair;
9. Any bowling alley, skating rink, massage parlor (except day spas offering massage services is permitted), or adult book or video store;
10. Any veterinary hospital or animal raising facilities or kennel (except that this prohibition shall not prohibit pet shops)
11. Any mortuary or funeral home;
12. Any establishment selling or exhibiting obscene materials;
13. Any ballroom, dance hall or discotheque (provided, however, that the foregoing shall not prohibit a dance floor within any restaurant or bar or other entertainment-type facility);
14. Any flea market, swap shop, or “outlet store” selling merchandise that is damaged or discontinued;

15. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee and customer training by an occupant incidental to the conduct of its business at the Shopping Center; provided, however, training or educational facilities shall be permitted in the Shopping Center so long as a training or educational facility does not occupy more than 3,000 square feet on the ground floor of the Shopping Center;
16. Any facility for the sale of paraphernalia for use with illicit drugs; off-track betting parlor;
17. Any business operation conducting any storage, sale, display or distribution of cannabinoids, including without limitation cannabidiol or tetrahydrocannabinol (or any products containing any of the foregoing substances), or articles, paraphernalia, or merchandise normally used or associated with the use thereof.
18. Carnival type (i) shows, (ii) rides, (iii) entertainment, (iv) outdoor shows, (v) displays, or the leasing of kiosks related to carnival type shows [provided, however, that the prohibitions set forth in this **Section 18** shall not prohibit Landlord from authorizing the use of the Common Areas for Community Events (as said term is defined in the Lease)];
19. Automobile or other shows, displays, and the leasing of kiosks related thereto [provided, however, that the prohibitions set forth in this **Section 19** shall not prohibit Landlord from authorizing the use of the Common Areas for Community Events (as said term is defined in the Lease)];
20. Any use or manner of operation which is disreputable or immoral or in violation of any Legal Requirements;
21. For the operation of an automated teller machine (ATM) or any other machine or device performing any of the functions typically performed by ATM's;
22. For the operation of one or more antennae or other transmission device for the purpose of distributing wireless frequency into the Common Areas of the Shopping Center.



## **Exhibit I**

### **EXISTING EXCLUSIVES**

Existing Exclusive Uses: *[Subject to update by Landlord prior to full execution of Lease]*

#### **Allbirds**

Landlord shall not enter into any lease, license or any other occupancy agreement for any space located in the area shown on **Exhibit A-1** (the “***Exclusive Area***”) with a competitor of Tenant that permits such tenant to operate a Sustainable Footwear Store (the “***Exclusive Use***”). “***Sustainable Footwear Store***” shall mean a retail footwear store primarily specializing in and selling footwear made from recycled materials and/or eco-friendly materials (such as, but not limited to, marino wool or hemp), each to the extent not used in substantially all of the footwear industry (“***Sustainable Footwear***”), and at least fifty percent (50%) of its total gross sales per year are from the sale of Sustainable Footwear. For illustrative purposes, the following brands are examples of Sustainable Footwear Stores: Ahmisa, Ethletic, Po-Zu and Rothys.

#### **Drybar**

Landlord will not lease, license or otherwise allow occupancy of any portion of the retail space within the specified area of the Shopping Center (other than the specified premises) to any business whose principal and primary use (i.e., more than 10% of annual gross sales) is the sale of wash-and-blow dry hairstyling services.

#### **Glosslab**

Landlord agrees that it will not voluntarily execute a lease for in line space located in the area shown on **Exhibit A-1** (the “***Exclusive Zone***”) with any party that expressly permits such tenant to operate a store whose primary use and business is the operation of a Nail Salon (the “***Exclusive Use***”). “***Nail Salon***” shall mean a salon primarily specializing in nail services, that markets itself primarily as a salon that specialized in nail services, has a reputation primarily as a salon that provides nail services such that the first thing the general consumer would think of and associate with the salon is nail services, and at least fifty (50%) percent of the services or treatments offered relate to nails.

#### **Hopdoddy**

As long as Tenant is not in default beyond any applicable notice and cure periods, and subject to the provisions set forth hereinbelow, Landlord will not after the Effective Date lease, license or allow occupancy of any portion of the Shopping Center (other than the Demised Premises) to any restaurant (including food trucks, carts, stands, kiosks or temporary structures or the like) whose principal and primary use is serving specialty crafted burgers (the “***Restricted Use***”). For purposes of this Section, the Restricted Use shall include any restaurant deriving twenty percent (20%) or more of its gross sales from the sale of specialty crafted burgers and shall include without limitation The Counter: Custom Built Burgers, Umami Burger, Grub Burger Bar or similar concepts thereto. The foregoing exclusive shall not prohibit Landlord from leasing to Shake Shack (whose premises shall be in the same or substantially the same location as the premises leased to Shake Shack as of the Effective Date of this Lease but shall never be within 200 feet from any point of the exterior of the Demised Premises).

#### **Lovesac Company**

Landlord hereby agrees that, during the Term of this Lease, including any renewal or extension term, as long as Tenant is in full compliance with all of the terms and conditions of this Lease, and subject to the provisions set forth hereinbelow, Landlord will not after the Effective Date lease any portion of the area of the Shopping Center designated on Exhibit J attached hereto (other than the Demised Premises) (the “Restricted Area”) to any business where more than fifty percent (50%) of gross sales of such business at the Shopping Center derives from the combined sale of beanbag furniture and “modular furniture” (as herein defined) (the “Restricted Use”). For purposes of this Section 33(v), the term “modular furniture” means pre-made or ready-made furniture of standardized size, design, and construction, which are designed to be arranged or fitted together in a variety of ways.

#### **Mendocino Farms Sandwich Market**

Landlord will not lease any portion of the Shopping Center (other than the Demised Premises) to any business whose principal and business (meaning thirty percent (30%) or more of its menu items or gross sales) is the sale of sandwiches, flat breads and/or wraps, including, but not limited to, restaurants who operates under one of the following trade names: Potbelly, Jimmy John’s, Which Wich, Blimpie, Schlotzsky’s, Subway, Jersey Mikes or East Hampton. Notwithstanding the foregoing, Landlord shall be permitted to lease space in the Shopping Center to Sweetgreen for the operation of a typical Sweetgreen restaurant in such space, and such lease and Sweetgreen’s operation in the Shopping Center as aforesaid shall not be considered a violation of the Restricted Use.

#### **Rice Box**

Landlord hereby agrees that, during the Term of this Lease, as long as Tenant is in full compliance with all of the terms and conditions of this Lease, and subject to the provisions set forth hereinbelow, Landlord will not after the Effective Date, lease any space (other than the Demised Premises) within the area outlined on Exhibit K attached hereto and incorporated herein (the “Exclusive Area”) to any business whose principal and primary use (i.e., more than 30% of gross sales) is offering the sale of Chinese food items for take-out and/or delivery (the “Restricted Use”). The foregoing shall not in any manner act to restrict any other tenant from offering for retail sale any other Asian Cuisine including, without limitation, Thai, Korean, Japanese, Vietnamese, Mongolian, Indian, Pakistani, or other South Asian cuisines nor to restrict any other tenant from operating a sit-down restaurant offering Chinese food items.

#### **Sixty Vines**

Landlord will not lease any portion of the Shopping Center (other than the specified premises) to any business whose principal and primary use is the operation of a restaurant or bar deriving more than thirty percent (30%) of its annual gross sales from the sale of wine. For the sake of clarity, any business in the Shopping Center deriving less than thirty percent (30%) of its annual gross sales from the sale of wine or whose primary use is the operation of a steak house restaurant, seafood restaurant or other fine dining restaurant shall be exempted from the coverage and scope of this Section.

#### **Solidcore**

Landlord agrees that it will not voluntarily execute a lease for in line space located in the area shown on Exhibit A-1 (the “***Exclusive Area***”) with a competitor of Tenant that expressly permits such tenant to operate a store whose primary use and business is the operation of a Reformer and/or Megaformer Pilates Studio (the “***Exclusive Use***”). “***Reformer and/or Megaformer Pilates Studio***” shall mean a group personal training fitness studio primarily offering reformer and/or megaformers Pilate classes, that markets itself primarily as a personal training fitness studio that specializes in reformer and/or megaformers Pilate classes, has a reputation primarily as a personal training fitness studio that offers reformer and/or megaformers Pilate classes such that the first thing the general consumer would think of and associate with the personal

training fitness studio is reformer and/or megaformers Pilate classes, and at least seventy-five (75%) percent of the classes offered are reformer and/or megaformers Pilate classes.

### **Starbucks**

Landlord shall not use or allow any other person or entity (except Tenant) to use any portion of Phase 1 of the Shopping Center as depicted on Exhibit J attached hereto (other than the Premises) for the sale of: (a) whole or ground coffee beans, or (b) espresso, espresso-based drinks or coffee-based drinks. Notwithstanding the foregoing, this shall not prohibit users who sell items (a) and/or (b) as an incidental portion of their sales (the "Restricted Use"). Incidental shall be defined as ten percent (10%), in the aggregate, of annual gross sales or less. Full service, sit-down restaurants with a wait staff and table service serving a complete dinner menu may sell, in conjunction with a sale of a meal, brewed coffee, tea and hot espresso drinks for on-premises consumption only.

### **Sweetgreen**

Landlord will not lease, license or otherwise allow occupancy of any portion of the retail space within the specified area of the Shopping Center (other than the specified premises) to any business whose principal and primary use is the operation of a fast casual restaurant whose primary business (meaning twenty-five percent (25%) or more of its menu items) is the sale of specialty salads, grain-based bowls, bean-based bowls and/or soups (the "Restricted Use").

Further, Landlord will not lease any portion of Phase I and Phase II of the Shopping Center to any restaurant operating under one of the following trade names: Just Salad, Chop't, Greenleaf, Kreation, Tender Greens, Lemonade, Fresh Corn Grill, Veggie Grill, Beaming, Dig Inn, Honeygrow, Beefsteak, Cava Grill, urban plates, LYFE Kitchen, Flower Child, Mixt Greens, Eatsa, Local Foods, Dish Society, Salad Extravaganza, Salata, Snappy Salads, Green Seed Vegan, HS Green or Ruggles Green. For the sake of clarity, any business in the Shopping Center (A) primarily selling Mexican-based bowl items or (B) operating as a Mendocino Farms Sandwich Market (substantially as such business is being operated as of the Effective Date of this Lease) shall be exempted from the coverage and scope of this Section.

### **Tecovas**

Landlord hereby agrees that, during the Term of this Lease, including any renewal or extension term, as long as there is no uncured Event of Default continuing beyond any notice and cure period, and subject to the provisions set forth hereinbelow, Landlord will not after the Effective Date lease any portion of the area of the Shopping Center designated on Exhibit J attached hereto (other than the Demised Premises) to any business whose primary use is the sale of western boots (the "Restricted Use"), where "primary use" means such tenant's revenue generated from the sale of western boots exceeds twenty-five percent (25%) of such tenant's total revenue from the premises.

### **Van Leeuwen Ice Cream**

Landlord hereby agrees that, during the Term of this Lease, including any renewal or extension term, as long as Tenant is in full compliance with all of the terms and conditions of this Lease, and subject to the provisions set forth hereinbelow, Landlord will not after the Effective Date lease any portion of the Shopping Center within the "Tenant Exclusive Area" as designated on Exhibit J attached hereto (other than the Demised Premises) to any business (A) where twenty percent (20%) or more of its annual gross sales is the sale of scooped ice cream and vegan non-dairy frozen desserts and/or (B) who operates under one of the following trade names (or any variations thereof): Jeni's Splendid Ice Cream, McConnell's, Ample Hills Creamery, Salt and Straw, Morgenstern's, Oddfellows, Dolcenza, Big Gay Ice Cream, Scoop deVille, Sweet Rose Creamery Humphrey Slocombe and Bi-Rite Creamery (the "Restricted Use"). Notwithstanding the foregoing, the building shown on Exhibit J as the Politan Row Food Hall (the "Politan Row Building")

is excluded from the Tenant Exclusive Area for all intents and purposes hereunder; provided, however, in the instance that the current tenant occupying the Politan Row Building (including any successor, assignee or transferee of such tenant, whether permitted or otherwise and regardless of trade name) ceases to operate as a food hall, then, so long as Tenant is in full compliance with all of the terms and conditions of this Lease, and subject to the provisions of this section, after such time as the current tenant occupying the Politan Row Building (including any successor, assignee or transferee of such tenant, whether permitted or otherwise and regardless of trade name) ceases to operate as a food hall, then the Politan Row Building shall be included in the Tenant Exclusive Area.

#### **Warby Parker**

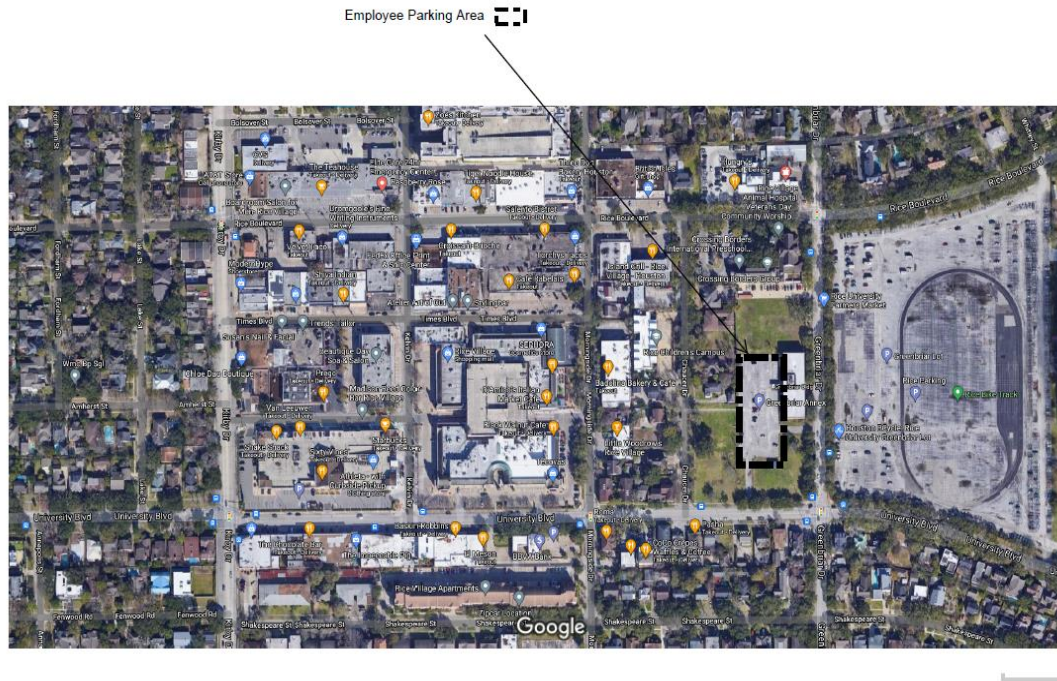
Landlord will not after the Effective Date lease any inline space contained within the specified area of the Shopping Center (other than the specified premises) (the “***Restricted Zone***”) to any business or optometrist whose principal and primary use is the sale of eyewear (the “***Restricted Use***”). Landlord will not lease any space within the Restricted Zone to any business or optometrist for the operation of carts, stands, kiosks, displays or temporary structures or similar sales units for the principal and primary purpose of selling eyewear. For purposes of this Section, the Restricted Use shall include within its scope (x) for premises comprising less than 1,000 square feet of Gross Area, any business or optometrist devoting ten percent (10%) or more of the premises sales area to the Restricted Use, and (y) for premises comprising 1,000 square feet of Gross Area or greater, any business or optometrist devoting five percent (5%) or more of the premises sales areas to the Restricted Use.

#### **White House Black Market**

Subject to the pre-existing rights of other tenants in the Shopping Center, throughout the Term, and provided no default has occurred under this Lease beyond any notice and cure period provided herein, so long as the business conducted upon the Demised Premises is Tenant’s use as a Chico’s, or other permitted Trade Name under the terms of this Lease, subject to temporary periods of damage, destruction, repair, restoration or remodeling of the Demised Premises until such time as same can reasonably be repaired, restored and/or completed, not to exceed sixty (60) days, Landlord shall not lease to or knowingly allow any other person or entity (except Tenant) to operate a business in the Shopping Center [defined as Phase I, Phase II and Phase III] which operates a factory or outlet type store (primarily selling (i) discounted price items that are irregular, outdated or have been produced in excess quantities, or (ii) merchandise at everyday prices reduced from like items for sale at such manufacturer’s non-outlet stores; provided, however, this definition shall not prohibit sales events by a retailer at a price discounted from that retailer’s everyday price, or (iii) merchandise manufactured exclusively for factory or outlet type stores and not sold at such manufacturer’s non-outlet stores) (the “***Restricted Use***”); provided, nothing in the foregoing shall include a tenant conducting a sale or promotion for less than current retail prices or be deemed to apply to a store affiliated with Tenant. Landlord and Tenant further agree that off-price retailers (such as, as of the Effective Date of this Lease, T.J. Maxx, Marshalls and Ross Dress for Less) shall not be considered “factory or outlet type stores” for purposes hereof.

## Exhibit J

### CURRENT DESIGNATED EMPLOYEE PARKING AREA



[LANDLORD] / [TENANT]  
RETAIL LEASE