



**LEASE AGREEMENT**

**by and between**

**BCORE Westwood Village LLC  
as Landlord**

**and**

**H.F.D. No. 55, Inc.  
d/b/a J Crew Factory  
as Tenant**

**Westwood Village  
Seattle, Washington**

**THIS LEASE AGREEMENT** (this "Lease") is made and entered into as of 5/14/2025 | 1:14:36 PM CDT (the "Effective Date"), by and between **BCORE Westwood Village LLC**, a Delaware limited liability company, herein called "Landlord", and **H.F.D. No. 55, Inc.**, a Delaware corporation, herein called "Tenant".

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

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

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

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

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

**Shopping Center Address:** 2600 SW Barton Street  
Seattle, WA 98126

**Premises:** Unit No. D-1 and D-2 consisting of approximately 4,624 total square feet in the Shopping Center, as approximately depicted on Exhibit A attached hereto.

**Premises Address:** 2600 SW Barton St, Suites D1 and D2, Seattle, WA 98126

**Landlord's Address for Notices:** BCORE Westwood Village LLC  
c/o ShopCore Properties, L.P.  
Attention: Legal Department  
Two Liberty Place  
50 S. 16th Street, Suite 3325  
Philadelphia, Pennsylvania 19102  
Phone: 215-330-4201

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

**Landlord's Rent Payment Address:** The address set forth below or such other rent payment address established by Landlord from time to time by the delivery of written notice thereof to Tenant.

Make Checks Payable to: BCORE Westwood Village LLC

Via Mail:  
BCORE Four Points Centre LLC  
c/o BCORE Westwood Village LLC  
P.O. Box 511355  
Los Angeles, CA 90051-7910

Via Overnight Delivery:  
BCORE Four Points Centre LLC  
Attn: Lockbox 511355  
16420 Valley View Avenue  
La Mirada, CA 90638

Via Wire/ACH:  
U.S. Bank, N.A.  
633 W. Fifth Street  
Los Angeles, CA 90071  
ABA #: 122235821  
Account #: 157531403564

**Tenant's Name and Invoices/Statements/Year-End Reconciliations/Adjustments:**

J. Crew Lease Services  
752 N. State Street  
PMB #852  
Westerville, OH 43082  
Email: invoices@consultasg.com

W-9s:

H.F.D. NO. 55, Inc.  
c/o J. Crew Group, LLC  
225 Liberty Street, 17th Floor  
New York, NY 10281  
Attn: Lease Compliance

with copies to:

J. Crew Lease Services  
c/o Asset Strategies Group, LLC  
752 N. State Street  
PMB #852  
Westerville, OH 43082

Legal Communications and Notices:

H.F.D. NO. 55, Inc.  
c/o J. Crew Group, LLC  
225 Liberty Street, 17th Floor  
New York, NY 10281  
Attn: General Counsel

with copies to:

H.F.D. NO. 55, Inc.  
c/o J. Crew Group, LLC  
225 Liberty Street, 17th Floor

New York, NY 10281  
Attn: Director – Leasing Services

and

J. Crew Lease Services  
c/o Asset Strategies Group, LLC  
752 N. State Street  
PMB #852  
Westerville, OH 43082

And a copy of any Tenant default notice to:

Morrison Cohen LLP  
909 Third Avenue  
New York, New York 10022

**Tenant's Construction Contact** Name: Jugal Patel  
Phone (951) 757-0616  
E-mail: Jugal.Patel@jcrew.com

**Tenant's Trade Name:** J Crew Factory, subject to change pursuant to Section 7.01(a).

**Tenant's FEIN:** 22-1869438

**Guaranty:** Not Applicable.

**Permitted Use:** Tenant shall use and operate the Premises solely for the purpose of: the retail sale of apparel, accessories, footwear, outerwear, home furnishings, and any other items similar to the foregoing featured in any catalogue or web-site offered by Tenant, its parent(s), affiliate(s) or subsidiary(ies). In addition, Tenant may sell facial and body care products in not more than 499 square feet of space. Tenant shall not use the Premises, or permit the use thereof, for any other use or purpose. In addition, Tenant shall have the right to conduct live promotions and events within the Premises, provided (a) Tenant shall provide Landlord with not less than five (5) business days prior notice of each event; (b) Tenant shall not conduct more than six (6) such events during any Lease Year; (c) Tenant may not unreasonably disturb other tenants of the Shopping Center (such as may arise from loud music) and (c) no event shall exceed four hours. Tenant may serve (but not sell) food and beverages (including alcohol, provided Tenant complies with all applicable laws and carries insurance with respect to the same) for on-premises consumption only, during such events. For avoidance of doubt, no event may violate the restriction set forth in Exhibit F.

**Lease Term:** The Lease Term of ten (10) Lease Years (hereinafter defined) plus the Stub Period (hereinafter defined), if applicable, beginning on the Commencement Date, and any renewal or extension thereof.

**Commencement Date:** The Commencement Date of the Lease Term shall be the earlier of (i) the expiration of the Fixturing Period or (ii) the date upon which Tenant opens for business at the Premises.

The “Fixturing Period” is one hundred eighty (180) days following the Possession Date. The Fixturing Period may be extended for delays caused by Force Majeure, not to exceed thirty (30) days.

**BLACKOUT PERIOD.** Notwithstanding anything in this Lease to the contrary, provided that Tenant has continuously and diligently prosecuted Tenant’s Work, if the expiration of the Fixturing Period falls during one of the Blackout Periods (defined below), Tenant shall have no obligation to initially open for business in the Premises during the applicable Blackout Period. If Tenant elects not to open during the applicable Blackout Period, then the Commencement Date shall be postponed to the earlier of the date Tenant opens in the Premises or the expiration of the applicable Blackout Period. Tenant shall provide Landlord written notice of such election not fewer than five (5) days prior to the expiration of the Fixturing Period. The “Blackout Periods” are (X) the second Sunday in June through the last Monday in July; and (Y) Thanksgiving Day through the first Monday in January.

Notwithstanding the foregoing, if the Premises is not in compliance with all Laws on the Commencement Date (“Existing Non-Compliance Condition”) and such Existing Non- Compliance Condition prevents or delays Tenant from (a) obtaining the Permits, (b) performing Tenant’s Work, or (c) initially opening for business in the Premises, then Tenant shall notify Landlord in writing thereof after Tenant becomes aware of such Existing Non-Compliance Condition and Landlord shall correct or repair, as applicable, such Existing Non-Compliance Condition at no cost to Tenant. The Commencement Date shall be delayed one (1) day for each day until the date that the Existing Non-Compliance Condition is corrected.

**Possession Date:** The date Landlord makes the Premises available to Tenant, provided that Tenant shall have no obligation to accept possession, and the Possession Date shall be postponed to, the date on which all of the following have been satisfied (or deemed satisfied as expressly provided herein) or waived in writing by Tenant (collectively, “Delivery Requirements”):

(a) Receipt by Tenant of Landlord’s written approval of the Final Plans (defined in Exhibit B); provided, however, that if Tenant fails to timely provide Plans (and revisions thereof) when required pursuant to Exhibit B, this requirement shall be deemed to have been satisfied upon expiration of the Missed Deadline Cure Period (defined in Exhibit B)

(b) Receipt by Tenant of an asbestos inspection report indicating that asbestos existing in the Premises in violation of Law, if any, has been removed (“Asbestos Cert”), together with Landlord’s written confirmation that it has no knowledge of any Hazardous

Materials in the Premises.

(c) Physical delivery of the Premises in a broom clean condition, free of the personal property and signage of any previous occupants.

(d) Receipt by Tenant of the Permits (defined in Exhibit B); provided, that (I) if Tenant does not diligently pursue the Permits, this requirement shall be deemed to have been satisfied on the date Landlord tenders possession of the Premises with Delivery Requirements (a)-(c) satisfied (or deemed satisfied as expressly provided above), (II) in all events this requirement shall be deemed satisfied on the 270<sup>th</sup> day after the satisfaction (or deemed satisfaction as expressly provided above) of Delivery Requirement (a)-(c) above, and (III) once available, Tenant shall pick up the Permits within a reasonable period following the availability thereof and if Tenant fails to pick up the Permits within five (5) business days following the date the Permits were available to be picked up, Tenant shall be deemed to have received the Permits on the date that is five (5) business days following the date the Permits were made available for pickup by Tenant. Tenant shall be deemed to be "**diligently pursuing**" the issuance of the Permits if Tenant is in compliance with the following: (1) Tenant submits the Plans to Landlord within the Missed Deadline Cure Period, (2) Tenant applies for the Permits no later than the Permit Application Submission Deadline (as defined in Exhibit B); and (3) Tenant cooperates with the governmental authorities by (a) submitting additional information or documents, as may be required from time to time by such governmental authorities, within a reasonable period following request therefor, and (b) responding to any questions or comments from governmental authorities within a reasonable period following request therefor. Without limiting the requirements set forth in Exhibit B, Landlord agrees to cooperate with Tenant, at no out-of-pocket expense to Landlord, in securing the issuance of the Permits. Tenant shall, following receipt of Landlord's written request, provide Landlord with written notice of (x) the actual filing date for the Permits, together with a date stamped copy of the first page of Tenant's application from applicable governmental agencies showing the actual filing date for the Permits, (y) status of and progress toward obtaining the Permits; and (z) the actual date the Permits are issued, which notice shall be accompanied by a copy of the Permits.

(e) The Premises shall conform to the Existing Conditions set forth in Exhibit G.

Tenant shall take possession of the Premises on the Possession Date, provided, however, Tenant shall have no obligation to accept possession of the Premises prior to the Estimated Delivery Date (hereinafter defined). In the event Tenant has not provided evidence of the insurance required by this Lease, Landlord may choose not to deliver keys to the Premises to Tenant, but the Possession Date will nonetheless be deemed to have occurred provided all other requirements of the Possession Date, including the Delivery

Requirements, have been satisfied.

**Late Delivery Remedies:**

Landlord anticipates that the Possession Date will be on June 2, 2025 (“**Estimated Delivery Date**”). The Estimated Delivery Date shall be postponed for each day Landlord is delayed in delivering possession that is due to Force Majeure or Landlord’s inability to recover possession from the existing tenant in the Premises (provided any such postponement shall not exceed 30 days in the aggregate).

Notwithstanding anything contained in this Lease to the contrary, if (a) Tenant has obtained the Permits and (b) the Possession Date has not occurred on or before the Estimated Delivery Date (as may be extended), Tenant shall receive a credit against the first accruing Rent due under the Lease in the amount of one day of Rent (determined on a per diem basis) for each day thereafter that the Possession Date has not occurred (“**Late Delivery Credit**”); provided, however, that the Late Delivery Credit shall not exceed 180 days of Rent.

Further notwithstanding anything contained in this Lease to the contrary, if (a) Tenant has obtained the Permits and (b) the Possession Date has not occurred by the 180th<sup>th</sup> day following the Estimated Delivery Date (as may be extended) (“**Outside Delivery Date**”), then Tenant may elect to terminate this Lease (“**Termination Right**”) upon written notice to Landlord (“**Termination Notice**”) given at any time thereafter until the Landlord delivers possession of the Premises with the Delivery Requirements satisfied (or deemed satisfied) or waived.

If Tenant duly exercises the Termination Right, then this Lease shall be terminated as of the date of the Termination Notice and Landlord shall reimburse Tenant out of pocket costs incurred by Tenant in connection with this Lease and the preparation and/or review of Tenant’s plans and specifications for Tenant Work, including, without limitation, site-selection, architectural, engineering, and legal costs, in an amount not to exceed \$35,000 within thirty (30) days of Landlord’s receipt of an invoice therefore together with supporting documentation (“**Termination Reimbursement**”).

The above are Tenant’s sole remedies for Landlord’s failure to deliver possession of the Premises; provided, however, that if Landlord has been found by a court of competent jurisdiction to have intentionally and in bad faith delayed delivery of possession in order to provoke Tenant’s exercise of the Termination right, then, as liquidated damages, Landlord shall pay Tenant the amount of the accrued Late Delivery Credits (in addition to the Termination Reimbursement).

**Co-Tenancy:**

Tenant has the right, no more than one time per Lease Year, upon written notice to Landlord, to request the names and square footage of the current tenants which are open and operating in the Shopping Center, which shall be provided on Landlord’s standard form but with reasonable specificity.

Provided that (i) Tenant shall not have been in default of any term or condition of this Lease beyond any applicable cure period and (ii) Tenant is open and operating its business in the Premises as required under this Lease, if a Vacancy Period Event (defined below) shall occur, then Tenant have the right to pay Substitute Rent (defined below) in lieu of Minimum Annual Rent as provided hereinafter. Such Substitute Rent shall be due and payable monthly, in advance, as and when Minimum Annual Rent is payable.

Upon the earlier to occur of (a) the Vacancy Period Event ceases to exist and (b) the expiration of the Sunset Period (defined below), subject to the provisions of this Lease, Tenant shall thereupon commence and thereafter for the balance of the Term pay Minimum Annual Rent as otherwise required under this Lease. For avoidance of doubt, Tenant shall be obligated to pay all Additional Rent and other charges (other than Minimum Annual Rent) under this Lease notwithstanding that the Vacancy Period Event may exist.

If the Vacancy Period Event persists as of the expiration of the Sunset Period, Tenant shall have the right to terminate this Lease by written notice to Landlord delivered within ninety (90) days after the end of the Sunset Period (provided that the Vacancy Period Event has not ceased to exist prior to the delivery of such notice), time being of the essence. If Tenant provides timely notice of termination of this Lease, this Lease shall terminate thirty (30) days from the date of Tenant's notice. If Tenant fails to provide timely notice of termination, such termination right with respect to the applicable Vacancy Period Event only shall be null and void. If Tenant does not exercise its right to terminate this Lease, its right to pay Substitute Rent shall cease no later than the end of the Sunset Period, at which time Tenant shall immediately and without further notice recommence payment of all Rent in full pursuant to Lease. In the event Tenant terminates the Lease as provided above, Tenant shall not be required to reimburse Landlord for any portion of the Construction Allowance.

The foregoing are Tenant's sole remedies in the event a Vacancy Period Event shall occur.

#### DEFINITIONS:

(a) "Sunset Period" means the period of twelve (12) months following the date Tenant's right to pay Substitute Rent commenced.

(b) "Substitute Rent" means fifty percent (50%) of the monthly Minimum Rent then due.

(c) "Vacancy Period Event" means that, at any time during the Term of this Lease:

(i) Less than seventy-five percent (75%) of the gross leasable area of the Shopping Center (excluding the Premises) are open for business; or

(ii) Fewer than three (3) of the Key Tenants (defined below) are open and operating for business for a period.

(d) "Key Tenants" means Ross, Target, Ulta, Marshalls, QFC, and their Like Replacements.

(e) "Like Replacement" means a retail tenant having (A) similar store counts to the Key Tenant for which it is a replacement; (B) similar customer demographics and profile as the Key Tenant for which it is a replacement; (C) similar price point and merchandise of comparable or better quality than the Key Tenant for which it is a replacement.

**Expiration Date:** The last day of the final calendar month of the Lease Term, unless sooner terminated or otherwise extended pursuant to the terms of this Lease, subject to the Stub Period (as hereinafter defined), such that the Lease Term shall always naturally expire on January 31.

**Minimum Annual Rent:** \$16,184.00 per month during the first (1<sup>st</sup>) Lease Year, based on \$42.00 per square foot, per annum.  
\$16,669.52 per month during the second (2<sup>nd</sup>) Lease Year, based on \$43.26 per square foot, per annum.  
\$17,169.61 per month during the third (3rd) Lease Year, based on \$44.56 per square foot, per annum.  
\$17,684.69 per month during the fourth (4<sup>th</sup>) Lease Year, based on \$45.89 per square foot, per annum.  
\$18,215.23 per month during the fifth (5<sup>th</sup>) Lease Year, based on \$47.27 per square foot, per annum.  
\$18,761.69 per month during the sixth (6<sup>th</sup>) Lease Year, based on \$48.69 per square foot, per annum.  
\$19,324.54 per month during the seventh (7<sup>th</sup>) Lease Year, based on \$50.15 per square foot, per annum.  
\$19,904.28 per month during the eighth (8<sup>th</sup>) Lease Year, based on \$51.65 per square foot, per annum.  
\$20,501.41 per month during the ninth (9<sup>th</sup>) Lease Year, based on \$53.20 per square foot, per annum.  
\$21,116.45 per month during the tenth (10<sup>th</sup>) Lease Year, based on \$54.80 per square foot, per annum.

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

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

**Option Term  
Minimum Annual  
Rent:**

The Minimum Annual Rent for the first Lease Year of the Option Term shall be Fair Market Rent, and thereafter subject to three percent (3%) increase per annum each Lease Year during the Option Term. "Fair Market Rent" shall be determined based upon the annual minimum rental rates then being charged in first class shopping centers in the Seattle market area for comparable space and for a lease term commencing on or about the commencement date of the Option Term and equal in duration to the Option Term, taking into consideration the Lease terms, the creditworthiness and quality of Tenant; and any other commercially reasonable relevant term or condition in making such evaluation. In no event, however, shall the Fair Market Rent for the first Lease Year of the Option Term be (i) less than 103% of Minimum Annual Rent in effect as of the expiration of the then-current Lease Term, nor (ii) more than 115% of the Minimum Annual Rent in effect as of the expiration of the then-current Lease Term.

Promptly after Landlord's receipt of the Exercise Notice, Landlord shall notify (the "Notification") Tenant in writing of Landlord's determination of Fair Market Rent for the Option Term ("Landlord's Determination").

If Tenant disputes Landlord's Determination of the Fair Market Rent, Tenant will deliver notice of such dispute together with Tenant's proposed Fair Market Rent ("Tenant's Determination") to Landlord within twenty (20) days after Tenant's receipt of the Notification, time being of the essence ("Tenant's Response Notice"). If Tenant fails to timely deliver Tenant's Response Notice, then Landlord's determination of the Fair Market Rent shall be binding on Tenant. If Tenant accepts Landlord's determination, then Fair Market Rent shall be as determined by Landlord.

If Tenant's Response Notice is timely delivered to Landlord and indicates that Tenant rejects Landlord's determination of the Fair Market Rent, the parties will attempt, in good faith, to agree upon the Fair Market Rent. If the parties cannot agree upon Fair Market Rent within thirty (30) days after Landlord's receipt of the Tenant's Response Notice, then Tenant and Landlord shall each notify the other, in writing, of their respective selections of an appraiser (respectively, "Landlord's Appraiser" and "Tenant's Appraiser"). Landlord's Appraiser and Tenant's Appraiser, within ten (10) additional days after their appointments, shall jointly select a third appraiser ("Third Appraiser"), which Third Appraiser shall be subject to Landlord and Tenant's approval. All of the appraisers selected shall be individuals with at least five (5) years' shopping center brokerage experience in the Seattle market area and, in the case of the Third Appraiser only, shall not have acted in any capacity for either Landlord or Tenant or any affiliate thereof within five (5) years prior to the broker's selection.

The Third Appraiser shall determine whether Landlord's Determination or Tenant's Determination is more correct, and the one determined to be more correct shall be the Fair Market Rent for purposes of this Section. The Third Appraiser shall be empowered to choose only between Landlord's Determination and Tenant's Determination, and

shall reach no other compromise or decision. The Third Appraiser's decision shall be binding on both Landlord and Tenant. The Third Appraiser shall render his or her decision within ten (10) days after its appointment. Each party shall bear the cost of its own appraiser and shall share equally in the cost of the Third Appraiser.

<b>Estimate of Real Estate Taxes [2025]:</b>	\$2.84 per square foot, per annum
<b>Estimate of Operating Costs [2025]:</b>	\$9.13 per square foot, per annum. As more fully provided in Section 6.03, Tenant's Share of Controllable Operating Expenses shall not exceed \$4.69 per square foot during the first Lease Year.
<b>Estimate of Insurance Charge [2025]:</b>	\$0.42 per square foot, per annum
<b>Percentage Rent Rate:</b>	5%
<b>Breakpoint:</b>	For each Lease Year, the "Breakpoint" is the amount determined by dividing Minimum Annual Rent for the applicable period by the Percentage Rent Rate.
<b>Percentage Rent Due Date:</b>	20th of each month after the Breakpoint has been exceeded
<b>Gross Sales Reporting Frequency:</b>	Monthly
<b>Landlord's E-Mail Address for Sales Reporting:</b>	sales@shopcore.com Reference: H.F.D. No. 55, Inc. and Westwood Village
<b>Tenant's Sales Reports:</b>	Landlord requires that Tenant provide an e-mail address for requesting Tenant's Gross Sales statements.  Tenant's e-mail address: leaseadminsales@consultasg.com
<b>Sales Kickout:</b>	Provided that Tenant (i) has not opened a competing store within the Radius Area in violation of Section 4.08 hereof, and (ii) is not then in default hereunder (beyond applicable notice and cure periods), then Tenant may terminate this Lease upon written notice ("Early Termination Notice") to Landlord if Tenant does not achieve Gross Sales of at least \$2,000,000.00 (the "Threshold") during the fifth (5 <sup>th</sup> ) Lease Year ("Early Termination Right"). The Termination Notice must be sent, if at all, prior to the first day of the 63 <sup>rd</sup> full calendar month of the Term. If Tenant timely exercises the Early Termination Right, this Lease shall terminate on the thirtieth (30 <sup>th</sup> ) day following delivery of the Early Termination Notice ("Early Termination Date"). If this Lease is terminated in accordance with the foregoing, Tenant shall pay Landlord

the sum equal to the Unamortized Allowance (the "Termination Payment"). The Early Termination Notice shall be accompanied by (i) a statement, certified by an officer of Tenant, that Tenant is entitled to exercise the Early Termination Right, and (ii) a check for the Termination Payment. Failure to include such documentation and payment shall nullify the termination notice. Landlord shall have the right to conduct an audit to verify Tenant's Gross Sales (but no auditor shall be hired on a contingency fee basis). If Tenant validly exercises its right to terminate the Lease as herein set forth, the Lease shall terminate on the Early Termination Date. If Tenant fails to exercise the Early Termination Right within the aforesaid time period, the Early Termination Right shall be deemed lapsed, null and void.

Notwithstanding the foregoing, if Tenant closes for business in the Premises for more than 15 days during the fifth (5th) Lease Year, the Threshold shall be reduced by an amount equal to the Gross Sales on the same day in the prior Lease Year (or, if the Premises were closed on such day in the prior Lease Year, \$5,479.45) for each day of such closure.

**Shopping Center Prohibited Uses:**

During the Term, provided that Tenant is open and operating in the Premises, Landlord shall not enter into a Lease (or permit the change of use with respect to a Lease, to the extent Landlord's consent is required for such change), for any Shopping Center Prohibited Use as defined and more fully provided in Section 7.10.

Nothing in this Lease shall limit Landlord's ability to lease space adjacent to the Premises for food preparation or restaurant uses. Nonetheless, Landlord agrees to use commercially reasonable efforts to require such space to be properly ventilated and to avoid placing exhaust hoods along the Premises' demising wall.

**Security Deposit:**

Not applicable.

**Rent Deposit:**

Not applicable.

**Construction Allowance:**

\$65.00 per square foot of the Premises (\$300,560.00 based on the above square footage)

Tenant's request for payment of the Construction Allowance must be delivered to Landlord at the following email address: TIA@shopcore.com

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

**Brokers:**

On Behalf of Landlord: First Western Properties

On Behalf of Tenant: Open Realty Advisors

## **Section 1.02. Defined Terms.**

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

**Additional Insured(s)** BCORE Westwood Village LLC; ShopCore Properties TRS Management LLC; ShopCore Properties, L.P.; BREIT Operating Partnership L.P.

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

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

**Assignment Administrative Fee:** Five Thousand and 00/100 Dollars (\$5,000.00).

**Authority:** All federal, state and local governmental or quasi-governmental authorities (including, without limitation, public utility or public utility authority or commission), entities or agencies having jurisdiction over the Shopping Center (each an “**Authority**”, more than one being “**Authorities**”).

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

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

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

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

**Construction Criteria:** The terms, conditions and requirements established by Landlord set forth in Exhibit B-1 and this Lease that govern the completion of Tenant’s Work and any other alteration, modification, change or improvement (including signage) to the Premises to be completed by Tenant in accordance with the terms of this Lease.

**Default Interest Rate:** The lesser of: (i) twelve percent (12%) per annum; or (ii) the highest lawful annual rate of interest permitted under applicable Laws.

**Electronic Copies:** Any signatures to this Lease transmitted by facsimile machine or via e-mail in a “.pdf” format or via document execution computer system or program, such as DocuSign (“Electronic Execution System”).

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

**Excluded Items:** The costs of Tenant’s movable fixtures and equipment, design and architectural fees, interior and exterior signage, inventory and all other costs customarily known as “soft costs”.

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

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

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

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

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

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

**Late Payment(s):** Any payment required to be paid by Tenant to Landlord pursuant to the terms of this Lease that is not paid within seven (7) days after its due date as set forth in this Lease, provided, however, the Late Fee on any such Late Payments shall be waived for the first Late Payment in any calendar year so long as payment of the past due amount is received by Landlord within seven (7) days following written notice thereof to Tenant.

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

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

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

**Major Tenant:** Any tenant or occupant of the Shopping Center using or occupying more than fifteen thousand (15,000) contiguous square feet under one (1) trade name.

**Maximum Deductible/Retention Amount:** Ten Thousand and 00/100 Dollars (\$10,000.00) unless Tenant is H.F.D. No. 55, Inc. or its parent(s), affiliate(s) or subsidiary(ies), in which event the deductible amounts shall be as set forth in Section 15.02.

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

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

**Percentage Rent:** A sum determined by multiplying (a) the amount of Gross Sales which are in excess of the Breakpoint for the applicable Lease Year by (b) the Percentage Rent Rate.

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

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

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

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

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

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

**Stub Period.** If the Option Term is not exercised, then if the expiration of the tenth (10<sup>th</sup>) Lease Year of the Term ("End Date") falls on any day other than January 31, then the "Stub Period" is the period from the End Date through, and including, the following January 31<sup>st</sup>. If the Option Term is exercised, then if expiration date of the Option Term ("Option End Date") falls on any day other than January 31, then the "Stub Period" is the period from the Option End Date through, and including, the following January 31<sup>st</sup>.

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

**Tenant's Records:** The records that Tenant ordinarily maintains for the purposes of evidencing its gross sales from its stores (consistently applied for the majority of Tenant's stores), provided such records must be sufficiently detailed for proper examination by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales (without requiring, however, by implication that such audit be performed by an independent accountant). The records of subtenants, assignees, concessionaires, licensees and any other occupant of the Premises shall similarly be subject to the same review and Tenant's Records pursuant to the terms of this Lease.

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

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

**Unamortized Allowance:** The Unamortized Allowance is calculated by amortizing the actual amount of the Construction Allowance paid to Tenant by Landlord on a straight-line basis over a ten (10) year term commencing on Commencement Date.

**Unamortized Commissions:** The Unamortized Commissions shall be calculated by amortizing the actual amount of the fees and commissions paid by Landlord to Broker(s) on a straight-line basis over the initial Lease Term.

## ARTICLE 2: PREMISES

### Section 2.01. Premises.

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

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

(c) Within thirty (30) days after the date Tenant commences Tenant's Work, Tenant shall have the right to re-measure the Premises to determine the actual GLA of the Premises. Any such re-measurement shall be calculated in accordance with BOMA standards, including measuring from the exterior face of any exterior walls and from the centerline of common walls. In the event the re-measurement discloses that the actual GLA of the Premises is either more or less than the GLA of the Premises as set forth in Section 1.01, then Landlord shall have the right to either (i) accept the re-measurement, or (ii) have the Premises re-measured by a licensed architect mutually acceptable to Landlord and Tenant, the cost and expense of which shall be split by Landlord and Tenant equally, and the results of such re-measurement shall be binding upon Landlord and Tenant. Landlord and Tenant shall execute an amendment to this Lease reflecting the actual GLA of the Premises, adjusting the Minimum Annual Rent, the Breakpoint, Tenant's Share of Real Estate Taxes, Operating Costs and Insurance Charge, Construction Allowance and any other component of Rent that is calculated based on the GLA of the Premises in accordance with the terms of this Section. Notwithstanding the foregoing, if it is determined that the actual GLA of the Premises is more than the GLA of the Premises as set forth in Section 1.01 by three percent (3%) or more, then any

adjustments to the Minimum Annual Rent, the Breakpoint, Tenant's Share of Real Estate Taxes, Operating Costs and Insurance Charge, Construction Allowance and any other component of Rent that is calculated based on the GLA of the Premises shall be by 3% and no more, irrespective of the actual size of the Premises. If the Premises is not timely re-measured by Tenant, then the square footage of the Premises, as set forth in Section 1.01 of this Lease, shall be deemed to be the square footage of the Premises for all purposes in connection with this Lease.

(d) Tenant shall not be required to remodel or relocate the Premises at any time during the Lease Term.

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

No representations, except as expressly contained herein, have been made to Tenant respecting the condition of the Premises or the Shopping Center. Tenant hereby acknowledges and agrees that except as specifically set forth herein to the contrary, there is no work of any sort to be performed by Landlord and no representation or warranty by Landlord as to the fitness of the Premises, or any equipment servicing the Premises, or as to any use permitted herein. **LANDLORD AND TENANT EXPRESSLY DISCLAIM ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR TENANT'S INTENDED COMMERCIAL PURPOSE, AND TENANT'S OBLIGATION TO PAY RENT HEREUNDER IS NOT DEPENDENT UPON THE CONDITION OF THE PREMISES OR THE PERFORMANCE BY LANDLORD OF ITS OBLIGATIONS HEREUNDER, AND, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, TENANT SHALL CONTINUE TO PAY THE RENT, WITHOUT ABATEMENT, DEMAND, SETOFF OR DEDUCTION, NOTWITHSTANDING ANY BREACH BY LANDLORD OF ITS DUTIES OR OBLIGATIONS HEREUNDER, WHETHER EXPRESS OR IMPLIED.**

Tenant's Work shall be Tenant's obligation to perform, at Tenant's sole cost and expense but without limiting Landlord's obligation respecting the payment of the Construction Allowance. Subject to injury, loss or damage caused by the negligence or willful misconduct of Landlord for which Landlord is legally liable, Tenant shall indemnify, defend with legal counsel selected by Landlord, and save harmless Landlord from and against any and all claims, actions, suits at law or equity, judgments, expenses, costs, liabilities, fines and debts in connection with any injury, loss or damage during any period of Tenant's Work.

Landlord and Tenant hereby agree to observe and comply with the provisions set forth in **Exhibit B** attached hereto with respect to any Landlord's Work and/or Tenant's Work. Landlord and Tenant shall each comply with all Laws affecting their respective covenants and obligations with respect to any Landlord's Work or Tenant's Work. There shall be no charge-backs to Tenant for the cost of any item included in Landlord's Work and/or performed prior to delivery of the Premises to Tenant (i.e., so-called "back charges") and Tenant shall not be obligated to pay any additional construction charges or fees such as, without limitation, barricade charges, freight elevator fees, dumpster or other trash fees, sprinkler system shut-down fees, in connection with Tenant's Work. Tenant is responsible for the cost of all construction related trash removal and shall dispose of all construction debris in containers provided by Tenant's contractor and in no event shall place construction debris in any other trash facilities located in the Shopping Center.

In no event shall Tenant or its contractors be required to post a performance bond or any other security in connection with any work performed by Tenant, nor shall Landlord charge any review fees in connection with any work performed by Tenant.

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

At the Expiration Date, Tenant shall quit and surrender exclusive possession of the Premises to Landlord, in "broom clean" condition and in good condition, reasonable wear and tear and damage

by casualty and/or condemnation excepted, and shall surrender all keys for the Premises to the Shopping Center's property manager and shall inform the property manager of all combinations of locks, safes and vaults, if any, in the Premises. Any alterations, additions, improvements and fixtures permanently attached to the Premises and installed by or on behalf of Tenant upon the interior or exterior of the Premises (whether or not approved by Landlord), other than unattached moveable trade fixtures, decorations, Tenant's signage and Tenant's other personal property, shall become the property of Landlord upon installation, and shall remain in and upon the Premises following the Expiration Date. Tenant shall not leave any personal property in the Premises upon the Expiration Date, and all such personal property shall be removed by Tenant. At the Expiration Date, Tenant shall remove all of its exterior signs from the storefront, fascia and/or canopy and shall repair all damage caused by the initial installation and subsequent removal of such signage. Tenant's obligation to observe or perform the covenants contained in this Section shall survive the Expiration Date.

Notwithstanding the foregoing, Tenant may remove from the Premises all items and non-structural characteristics installed by Tenant that are indicative of Tenant's business and may otherwise "de-identify" the Premises, as Tenant reasonably believes necessary or appropriate for the protection of Tenant's interest in Tenant's trademarks, tradenames or copyrights. Tenant shall repair any damage to the Premises caused by such removal, including patching and filling holes. In no event shall Tenant remove or be required to remove any restrooms, walls, flooring, ceilings, utility or electrical components located inside the walls or HVAC systems.

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

As an inducement to the execution and delivery of this Lease and the performance by Tenant of all obligations hereunder, Landlord agrees to pay to Tenant, in consideration therefor, to be applied only toward the cost of the build-out of leasehold improvements (specifically excluding the costs of the Excluded Items) in an amount up to the Construction Allowance in two (2) installments as follows:

(a) First Installment. The first Installment in an amount equal to 50% of the Construction Allowance within thirty (30) days after satisfaction of the following:

- (i) Tenant shall have submitted a written request for payment of the first installment of the Construction Allowance to Landlord;
- (ii) Tenant is not then in monetary or non monetary default of its obligations under this Lease beyond all applicable notice and cure periods, and the Lease is in full force and effect (payment may be suspended until such time as such default is cured);
- (iii) Tenant's Work has been completed in accordance with plans and specifications approved in writing by Landlord;
- (iv) Tenant has delivered to Landlord Tenant's Form W-9; and
- (v) Tenant is open for business.

(b) Second Installment. The second Installment in the amount of the unpaid amount of the Construction Allowance (provided, however, that in no event shall the Construction Allowance exceed the cost of Tenant's leasehold improvements (specifically excluding the costs of the Excluded Items)) within thirty (30) days after satisfaction of the following:

- (ii) Tenant has satisfied the requirements for the payment of the First Installment.
- (iii) Tenant shall have submitted a formal written request on Tenant's letterhead for payment of the second installment of the Construction Allowance to Landlord in writing;

(iv) Tenant is not in default of any term, covenant or condition of the Lease after notice and the expiration of any applicable cure period, and the Lease is in full force and effect (payment may be suspended until such time as such default is cured);

(v) Tenant has delivered to Landlord proof reasonably satisfactory to Landlord that the cost of Tenant's build-out of leasehold improvements (specifically excluding the costs of the Excluded Items) is not less than the amount of the Construction Allowance;

(vi) Liens:

(1) Tenant shall have delivered a signed and notarized affidavit of Tenant's General Contractor listing all subcontractors and material suppliers and amounts owed to each;

(2) Tenant has delivered final unconditional lien waivers for all work and materials performed or supplied with respect to Tenant's Work from Tenant's general contractor and every subcontractor and material supplier with aggregate requisitions in excess of \$7,500.

(vii) Tenant shall have delivered a copy of final as-built plans for the Premises (or, in lieu thereof, Tenant's Plans, as defined in Exhibit B, as finally approved by Landlord, marked as "final" with such notations as are required to render such plans as accurate a representation of the built-out Premises as would be shown in "as-built" plans);

(viii) Tenant's insurance, as required by the Lease, remains in full force and effect.

(c) In the event that Landlord fails to pay the Construction Allowance when due and such failure continues for fifteen (15) days after receipt of the Deduction Notice (defined herein), and provided that Tenant has complied with all of the requirements set forth above and applicable to such installment, Tenant shall be entitled to offset such unpaid amount, plus interest on a per annum basis calculated as the prime rate set forth in the Wall Street Journal plus four percent (4%), against all Rent next coming due until paid or such offset is equivalent to the unpaid amount, whichever is earlier. The "Deduction Notice" shall be a notice, given by Tenant to Landlord, containing in bold face and capitalized typeface stating: "THIS IS A SECOND DEMAND FOR PAYMENT OF CONSTRUCTION ALLOWANCE. IF LANDLORD FAILS TO PAY THE AMOUNT DUE, TENANT INTENDS TO OFFSET SUCH UNPAID AMOUNT AGAINST THE NEXT INSTALLMENT(S) OF RENT, WITH INTEREST THEREON, AS SET FORTH IN THE LEASE".

(d) If and to the extent that Tenant owes any monies to Landlord under this Lease at the time when Landlord is obligated to pay the Construction Allowance to Tenant, then Landlord may deduct those monies owed to Landlord by Tenant from the Construction Allowance. If Tenant has not satisfied all conditions for payment of the Construction Allowance within eighteen (18) months after the Commencement Date, unless such delays were caused by Landlord, then, as of such day, Tenant waives any and all rights to the payment of the Construction Allowance, notwithstanding anything contained in this Lease to the contrary.

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

## ARTICLE 3: LEASE TERM

### Section 3.01. Lease Term.

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

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

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

(b) Although Rent does not commence until the applicable date(s) identified in Section 3.02(a), the parties hereby acknowledge and agree that all other rights and obligations of the parties commence as of the Effective Date, including, but not limited to, Landlord's obligation to deliver the Premises in the condition required under this Lease and Tenant's obligations to thereafter take possession and construct the Premises as required herein, Tenant's obligation, to obtain insurance as of the Possession Date, the indemnification obligations of each party, and Tenant's obligation to pay for all utilities consumed in the Premises on and after the Possession Date; and the parties agree to be bound by all of such obligations as of the Effective Date.

(c) Landlord shall not under any circumstances be subject to any liability whatsoever to Tenant for any delay in Landlord's delivery of the Premises to Tenant, and Tenant shall not under any circumstances be entitled to rescind or terminate this Lease, for any delay in Landlord's delivery of the Premises to Tenant, except as set forth in this Lease.

(d) Following the Commencement Date, within ten (10) business days after Landlord's written request to Tenant (which may be delivered by email), Tenant shall execute and return to Landlord the Acknowledgement of Commencement Date attached hereto as Exhibit H and made a part hereof, provided, however, failure to execute same shall not affect the actual Commencement Date or Expiration Date, nor shall such failure be a default under this Lease. However, if Tenant fails to timely return an executed counterpart to Landlord, the information contained in the Acknowledgement of Commencement Date shall be deemed to be correct.

(e) If the Possession Date has not occurred within two (2) years after the Effective Date, then this Lease may be terminated by Landlord or Tenant at any time thereafter prior to the occurrence of the Possession Date by written notice given to the other party, and thereafter, neither party hereto shall be obligated or liable to the other under this Lease.

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

Tenant shall not have the right to remain in possession of the Premises after the Expiration Date without obtaining Landlord's written consent. If Tenant remains in possession of the Premises thereafter, such possession shall be a default under the Lease and Tenant shall be deemed a holdover tenant on the following terms and conditions: Tenant's holdover Minimum Annual Rent shall be equal to, for the first one hundred fifty (150) days, 150%, and thereafter, 200%, of the Minimum Annual Rent as was due during the final month of the Lease Term, plus all Additional Rent due in accordance with the terms of the Lease calculated on a per diem basis; Tenant shall be fully obligated to perform all of the terms and conditions contained in the Lease, except as expressly modified by this Section; during such holdover, any co-tenancy rights, exclusive use rights and/or use restrictions applicable to Landlord's leasing of premises in the Shopping Center shall not apply; Tenant shall not be deemed a "month-to-month" tenant and shall be considered a tenant at sufferance. By continuing to use and occupy the Premises after the Expiration Date, Tenant agrees that such use and occupancy is subject to and pursuant to all of the terms, covenants and conditions set forth in this Lease, excepting only as specifically modified by this Section. If Tenant has remained in possession of the Premises after the Expiration Date, Tenant shall vacate and surrender the Premises to Landlord within three (3) days after written notice to Tenant. Tenant shall indemnify, defend with legal counsel selected by Landlord, and hold harmless Landlord from and against any

loss or liability Landlord incurs resulting from Tenant's delay in surrendering the Premises within thirty (30) days after Landlord's written notice to vacate the Premises. The provisions of this Section shall survive the Expiration Date.

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

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

### **ARTICLE 4: RENT**

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

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

#### **Section 4.02. Percentage Rent.**

In addition to the Minimum Annual Rent and all other sums specified herein, Tenant shall pay to Landlord the Percentage Rent for each Lease Year, if any. Tenant agrees to pay the Percentage Rent when due, without any offset, abatement or deduction whatsoever and without any prior demand therefor, except as otherwise set forth in this Lease.

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

"Gross Sales" means the dollar aggregate received by Tenant, its sublessees, licensees or concessionaires of: (a) the price of all goods, wares and merchandise, and/or food and beverages, as applicable based on Tenant's Permitted Use, sold, leased or rented, and the charges for all services performed, by Tenant or otherwise, from all business conducted on, in, at or from the Premises, whether made for cash, by check, on credit or otherwise, without reserve or deduction for inability or failure to collect for the same, except as set forth herein, including, but not limited to, such sales, leases, rentals and services (i) where the orders therefor originate at and are accepted by Tenant in the Premises and paid for through Tenant's point of sales system in the Premises (which shall include sales made through Tenant's cash register or any Tenant-furnished handheld device, kiosk or other means while the customer is in the Premises), but delivery or performance thereof is made from or at any other place; (ii) where the orders therefor originate by mail, telephone, computer, internet or other electronic means, or other similar means, but picked up at, or shipped from the Premises, and in any case which are paid for through Tenant's point of sales system in the Premises;

(iii) by means of mechanical or other vending devices, excluding any such devices reserved for use by Tenant's employees only; (iv) as a result of transactions originating from whatever source, and which Tenant in the normal and customary course of its operations would credit or attribute to its business at the Premises; (b) intentionally deleted; and (c) all sales by any subtenant, licensee or concessionaire of Tenant or any other occupant of the Premises.

Gross Sales shall not include (or shall have deducted therefrom, as the case may be): (a) the exchange of merchandise between stores of Tenant where such exchanges are made solely for the convenient operation of Tenant's business; (b) returns to shippers or manufacturers; and (c) sales of fixtures or other personal property after use thereof, sold other than in the ordinary course of business.

In addition, Tenant may deduct from Gross Sales: (a) cash or credit refunds, subject to the limitation set forth below with respect to Excluded Internet Sales (defined below); and (b) the amount of any City, County, State or Federal sales, luxury or excise tax, which is added to the selling price of sales included in Gross Sales, and also paid to the taxing authority directly by Tenant; provided, however, that no franchise or capital stock tax and no income or similar tax based upon income, profits or gross sales as such, shall be deducted from Gross Sales in any event whatsoever. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which Tenant shall receive payment thereof.

Notwithstanding the foregoing, while Tenant may deduct cash or credit refunds for Excluded Internet Sales, Tenant may not deduct an amount greater than five percent of its Gross Sales for the Lease Year in question for such Excluded Internet Sales refunds or credits.

Further, Gross Sales shall exclude (or have deducted as the case may be): (a) any penalty charged by Tenant for a returned check; (b) amounts for postage, delivery, alterations, gift wrapping, or similar incidental services; (c) sales pursuant to Tenant's or its affiliates standard employee discount plan, provided same does not exceed a total of 2% of Tenant's total Gross Sales, in the aggregate, for the Lease Year in question; (d) gift certificates (whether purchased at the Premises or elsewhere), or like vouchers, until such time as they have been converted into a sale by redemption at the Premises; (e) Excluded Internet Sales; (f) layaway sales until the merchandise is delivered to the customer at the Premises; (g) bad debt expense with respect to merchandise sold on credit or purchased by check, provided that if the amount thereof is subsequently collected, it shall be included in Gross Sales in the year of collection; (h) insurance proceeds received from the settlement of claims for loss of or damage to merchandise, fixtures and other personal property of Tenant; (i) "bulk sales" as defined in the Uniform Commercial Code; (j) service or sales carrying charges, interest or other charges, however denominated, paid by customers for extension of credit on sales; (k) discounts and allowances given to customers in the ordinary course of business; (l) amounts retained by non-affiliated credit card companies as the fee (as a percentage of sales) charged to Tenant by such credit card companies for such service not to exceed one and one half percent (1.5%) of Gross Sales during the Lease Year in question; and (m) sales by temporary, short-term concessions or shop-in-shop vendors where Tenant collects no percentage or profit of such sales shall not be included for these purposes, provided that collectively the same shall not occur more frequently than four (4) times per Lease Year nor last for longer than three (3) days on each occasion.

"Excluded Internet Sales" means internet (including any electronic order of any kind, including, without limitation, through social media platforms or otherwise), phone, or catalogue sales not paid for through Tenant's point of sale system at the Premises but which are shipped from the inventory at the Premises (in contrast to being picked up at the Premises by customers).

#### **Section 4.04. Payment of Percentage Rent.**

Percentage Rent shall be determined and paid, without notice or demand, within twenty (20) days after the end of the month during which Gross Sales exceed the Breakpoint for that Lease Year and after each ensuing month during that Lease Year. The amount of the payment of Percentage Rent for each such month shall be equal to the amount determined by multiplying (a) the Gross Sales during such Lease Year in excess of the Breakpoint by (b) the Percentage Rate, less the amounts theretofore paid for Percentage Rent with respect to such Lease Year. At the end of each Lease Year, the balance of Percentage Rent due, if any, shall be adjusted to a yearly basis. Any Percentage Rent that such adjustment shows is owed to Landlord shall be paid within thirty (30) days after the end of such Lease Year (including after the final Lease Year of the Lease Term); and any Percentage Rent that such adjustment shows was overpaid by Tenant shall be a credit against the next payments of Rent due Landlord (or shall be paid by Landlord to Tenant within thirty (30) days after its determination, if after the Expiration Date), in either case after first deducting therefrom any due and outstanding Rent then owed to Landlord beyond any applicable notice and cure period. Each Lease Year shall be considered as an individual accounting period for the purpose of computing the amount of Percentage Rent, if any. The amount of Gross Sales of any Lease Year shall not be carried over into any other Lease Year. The provisions of this Section shall survive the Expiration Date.

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

Tenant shall record Gross Sales and maintain Tenant's Records in accordance with Tenant's ordinary business practices, consistently applied, for its stores, provided that in all events such records must be sufficiently detailed for proper examination by an independent accountant pursuant to accepted auditing standards in performing an audit of Tenant's sales. Tenant agrees to retain, for not less than three (3) years following the end of each Lease Year, all of Tenant's Records necessary for Landlord to verify Tenant's Gross Sales for such Lease Year in the event Landlord audits Tenant's records as expressly provided below.

#### **Section 4.06. Tenant's Reports.**

Tenant shall submit to Landlord on or before the twentieth (20th) day following each month during the Lease Term (including the twentieth (20th) day of the month following the end of the Lease Term) to Landlord's notice address (as set forth in Article 1) or such other address as directed by Landlord in writing to Tenant, together with a remittance of monthly Percentage Rent, if applicable, a written statement showing the amount of Gross Sales for the preceding month and fractional month, if any, at the commencement of the Lease Term. Tenant shall submit to Landlord, on or before the forty fifth (45th) day following the end of each Lease Year (including the forty fifth (45th) day following the final Lease Year of the Lease Term), to Landlord's notice address (as set forth in Article 1) or such other address as directed by Landlord in writing to Tenant, a written statement of the amount of Gross Sales during the preceding Lease Year, which statement shall be certified by an officer of Tenant. The statements referred to herein shall be in such form and style and contain such details and breakdown as Tenant customarily provides to landlords to report sales in form attached as Exhibit K, or a form substantially similar to such form. The provisions of this Section shall survive the Expiration Date.

#### **Section 4.07. Audit.**

The acceptance by Landlord of payments of Percentage Rent shall be without prejudice to Landlord's right to examine Tenant's Records and to collect the appropriate Percentage Rent as determined by such examinations as set forth herein. At its option, Landlord may cause to be made at any time (but not more than once in any 12 month period), upon fifteen (15) business days' prior written notice to Tenant, an audit of Tenant's Records for the period covered by any statement issued by, or

required to be issued by, Tenant as set forth above. If such audit shall disclose an understatement of Gross Sales as reported by Tenant to the extent of three percent (3%) or more, then Tenant shall promptly pay to Landlord the cost of said audit in addition to the Percentage Rent deficiency, if any, which deficiency shall be payable in any event. The provisions of this Section shall survive the Expiration Date. Landlord may not audit Tenant's Record for any Lease Year more than once. Landlord must submit its request to audit Tenant's Records within three (3) years following the end of the Lease Year in question, failing which, Landlord shall be deemed to have waived its right to audit Tenant's Records for such Lease Year.

Landlord will keep confidential Tenant's Gross Sales information and financial information reviewed in connection with any audit (hereinafter the "GS Confidential Information") and will not, except as permitted hereby, disclose any of the GS Confidential Information to third parties. However, Landlord may disclose GS Confidential Information (a) to the extent that Tenant gives its prior written consent, or (b) to any of Landlord's directors, officers, employees, affiliates, brokers, principals, agents, and advisors, lenders, and prospective purchasers (collectively, the "Interested Parties") who have commercially reasonable reason to know such information, or (c) if Landlord is, in the opinion of its counsel, legally compelled to disclose GS Confidential Information to any tribunal, court, or governmental agency, Landlord or the Interested Party may, without liability hereunder, disclose to such tribunal, court, or governmental agency, such GS Confidential Information, or (d) in litigation between the parties. For purposes hereof, GS Confidential Information shall not include information which (i) at the time of disclosure to a party is in the public domain through no act or omission of that party; (ii) as shown by written records is already known by a party; (iii) is revealed to a party by a third party who does not thereby breach any obligation of confidentiality and who discloses such information in good faith; or (iv) is independently discovered by a party. Landlord shall inform the Interested Parties receiving the GS Confidential Information of this agreement and advise such Interested Parties to act in accordance with this agreement.

Landlord shall promptly provide to Tenant the results of any audit that is performed. Tenant shall have the right, within sixty (60) days after Tenant receives the written report of the audit performed by Landlord's accountants, to dispute the results of such audit. If (i) Tenant notifies Landlord within such sixty (60) day period that Tenant disputes the results of Landlord's audit, and (ii) Landlord and Tenant, after using commercially reasonable efforts to resolve such dispute, fail to resolve such dispute within forty-five (45) days after the date that Tenant gives written notice to Landlord, then Landlord and Tenant shall hire an independent, third party, certified public accountant (whose fee shall be split between Landlord and Tenant) to evaluate Tenant's Records with respect to the period of time in question, whose determination as to the Gross Sales of Tenant shall be binding and conclusive on the parties.

#### **Section 4.08. Radius.**

In the event that during the first five (5) Lease Years, either Tenant, or any person or entity controlled by Tenant, any person or entity controlling Tenant (directly or indirectly), owns or operates any other store under the Trade Name then being used in the Premises within the Radius Area, then, as Landlord's sole and exclusive remedies, the Gross Sales of any such competing store(s) shall be included in the Gross Sales made from the Premises to determine the Percentage Rent due under this Lease, as fully as though such other location's Gross Sales had actually been made from the Premises (and all of the provisions of this Article 4 applicable to Gross Sales shall be applicable to the Gross Sales of, and all of the books and records pertaining to, such competing store(s)), and Tenant's right to terminate based on Gross Sales as set forth in Section 21.24 below shall be rendered null and void and of no further force or effect. The foregoing restriction shall not apply to any of Tenant's stores existing as of the date of this Lease. Tenant hereby acknowledges that it has no such stores open within the Radius Area as of the date of this Lease.

#### **Section 4.09. Additional Rent.**

(a) Unless a payment due date is otherwise specified in this Lease, Additional Rent shall be due and payable within thirty (30) days after written demand is made therefor. Tenant agrees to pay the Additional Rent when due, without any offset, abatement or deduction, unless otherwise expressly permitted herein. Landlord shall have the same remedies for failure to pay Additional Rent as for a non-payment of Minimum Annual Rent.

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

(c) Unless otherwise specifically stated herein or except as otherwise directed by written notice from Landlord, all payments of Rent shall be made to Landlord at Landlord's Rent Payment Address or to such other address as to which Landlord has given Tenant written notice. Tenant shall note any identifying information requested by Landlord on all checks delivered in payment of Rent. In the event that Tenant makes any payments by credit card, credit card fees incurred by Landlord shall be payable by Tenant as Additional Rent. Tenant shall have the option of paying by wire or ACH if it so wishes.

(d) Tenant shall have two hundred seventy (270) days from the receipt of any Fiscal Year-end Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and/or Insurance Charge Reconciliation Statement from Landlord within which to object to such statement in whole or in part. Tenant waives any right it may have to dispute any Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and/or Insurance Charge Reconciliation Statement after such two hundred seventy (270) day period and waives any right to make any claims against Landlord for any errors not disputed within such two hundred seventy (270) day period. Additionally, with respect to all other Rent payments, Tenant shall be deemed to have waived the right to dispute any matter relating to Tenant's obligation to pay such other Rent payments, unless Tenant provides written notice of any such dispute to Landlord within two hundred seventy (270) days after the date Tenant receives Landlord's billing statement setting forth the exact amount of such Rent charge.

(e) Landlord shall have three hundred sixty five (365) days from the end of any Fiscal Year to deliver to Tenant the Fiscal Year-end Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and/or Insurance Charge Reconciliation Statement for such Fiscal Year. Landlord waives any right it may have to collect any amounts which might otherwise have been owed by Tenant for Real Estate Taxes, Operating Costs or Insurance Charges for any particular Fiscal Year if Landlord fails to deliver the Fiscal Year-end Real Estate Tax Reconciliation Statement, Operating Costs Reconciliation Statement and/or Insurance Charge Reconciliation Statement within such three hundred sixty five (365) day period.

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

(a) If any check from Tenant delivered in full or partial payment of any amounts due hereunder is not honored because of insufficient funds, uncollected funds, or any other reason, then Tenant shall pay to Landlord an administrative charge of Seventy Five and 00/100 Dollars (\$75.00) per dishonored check.

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

(c) All Late Payments shall bear interest at the Default Interest Rate until received by Landlord. The default interest on such Late Payments shall be Additional Rent and shall be payable within thirty (30) days following Tenant's receipt of written demand.

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

(a) Landlord shall provide or designate a service for picking up refuse and garbage, the cost of which shall be included in Tenant's Share of Operating Costs. For avoidance of doubt, Landlord is not responsible for providing janitorial services to the Premises.

(b) Tenant shall comply with all Laws respecting the storage and removal of garbage and refuse. If Landlord supplies a common dumpster for use by Tenant and other tenants, Tenant shall use such dumpster only for the types of garbage and refuse authorized by Landlord (prohibiting, by way of example only, the disposal of Hazardous Materials in such dumpster).

#### **Section 4.11. Payment Under Protest.**

All Rent payable hereunder by Tenant to Landlord shall be payable without abatement, offset or deduction, except as otherwise set forth in this Lease. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions of this Lease, then Tenant shall make such payment "under protest" and under no circumstances shall Tenant be entitled to withhold any payment due hereunder, except as otherwise set forth in this Lease. If Tenant makes a payment "under protest" and it is subsequently determined that Tenant was not obligated to pay all or a portion of an amount paid "under protest" then Landlord shall, within thirty (30) days following such determination, refund to Tenant the portion of the payment made "under protest" that Tenant was not obligated to pay.

#### **Section 4.12. Payment by Third Party.**

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

#### **Section 4.13. Intentionally Deleted.**

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

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

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

(a) "Real Estate Taxes" shall mean all taxes, margin taxes, assessments, possessory interest taxes, government property lease excise taxes, personal property taxes, excise taxes, levies, license and permit fees, payments in lieu of taxes and assessments, both ad valorem and non-ad valorem, or any other assessments, charges or fees levied, assessed or imposed at any time by any governmental or quasi-governmental authority (including but not limited to any political subdivision having jurisdiction, or any school, agricultural, lighting, drainage, management, roadway, water, levee, utility or other improvement or special assessment district entity that may have an interest in or levy taxes, fees or assessments against the Premises or Shopping Center), upon or against all or a portion of the land and/or buildings in the Shopping Center of which the Premises forms a part, or any adjacent lands solely to the extent that they provide services to the Shopping Center (based on a pro-rata share of the portion of such lands which provide services to the Shopping Center) such

as a retention area or public improvement facilities, including site impact fees, water drainage and/or solid waste disposal levies and assessments, if any. If any Real Estate Taxes are permitted to be paid in installments, then all references in this Section to the dates on which Real Estate Taxes are payable shall be deemed to refer to the dates on which the installments are payable. Notwithstanding the foregoing, Real Estate Taxes shall expressly exclude, and Tenant shall not be obligated to pay: (a) any state, local, federal, personal or corporate income tax, measured by the income of Landlord from all sources or from sources other than rent alone; (b) any estate or inheritance taxes; (c) any succession, recordation or transfer taxes; (d) interest on taxes or penalties/late fees resulting from Landlord's failure to pay taxes; (e) any taxes based on the gross receipts of Landlord related to the Shopping Center regardless of how captioned or titled, or (f) any taxes which are essentially payments to a governmental agency for the right to make improvements to the Shopping Center or charges or impositions of whatever nature which are substitutes for financing of Landlord's obligation to pay for onsite or offsite improvements as a condition to the initial construction of or expansion of the Shopping Center.

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

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

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

(e) Intentionally deleted.

(f) If Tenant's obligation to pay Tenant's Share of Real Estate Taxes commences on a date other than the first day of a Fiscal Year, Tenant shall pay a proportionate share of the Real Estate Taxes for the Fiscal Year in which the Additional Rent Commencement Date occurs, which share shall be based upon the length of time that this Lease shall have been in existence during such first Fiscal Year. At any time throughout the Lease Term, Landlord shall have the right, on not

less than thirty (30) days' prior written notice, to recalculate the estimated Real Estate Taxes coming due from Tenant, which computations shall be a reasonable estimate based upon the most recent actual Real Estate Taxes and Tenant's Share of Real Estate Taxes shall be adjusted accordingly.

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

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

(i) Notwithstanding anything contained in this Lease to the contrary, prior to calculating Real Estate Taxes, Landlord shall have the right to exclude from the Shopping Center, and the denominator used to calculate Tenant's Share of Real Estate Taxes, the square footage of any portions thereof that are: (i) separately assessed and taxed or are the subject of records maintained by the taxing authority from which the amount of tax fairly allocable to such portions may be determined; (ii) billed to an entity other than Landlord or paid directly by an entity other than Landlord even though billed to Landlord; (iii) Intentionally Deleted ; (iv) Intentionally Deleted; and/or (v) a kiosk, electric charging stations, rooftop facilities (cellular communications, etc.), , basement or mezzanine area, storage area, garden area, outdoor sales area, patios/outdoor seating area, temporary or seasonal sales area, Shopping Center management office, and/or decommissioned space within the Shopping Center.

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

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

## **ARTICLE 6: COMMON AREAS**

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

The Common Areas are intended for the common use of all tenants of the Shopping Center. Subject to the terms of this Lease, if the amount of such areas be diminished or their locations changed, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of Rent, nor shall such revocation or diminution of such areas be deemed a constructive or actual eviction.

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

(a) All parking areas, sidewalks, access roads and facilities furnished, made available or maintained by Landlord in or near the Shopping Center, including employee parking areas, truck ways, driveways, loading docks and areas, delivery areas, multi-story parking facilities (if any), package pickup stations, elevators, escalators, pedestrian sidewalks, malls, courts and ramps,

landscaped areas, roofs, retaining walls, stairways, bus stops, first-aid and comfort stations, lighting facilities, sanitary systems, utility lines, water filtration and treatment facilities and the areas and improvements provided by Landlord for the general use in common of tenants and others in the Shopping Center and their customers (all herein called "Common Areas") shall at all times be subject to the exclusive control and management of Landlord, subject to the terms of this Lease.

(b) The purpose of the site plan attached hereto as **Exhibit A** is to show the approximate location of the Premises and is not to be deemed to be a warranty, representation or agreement on the part of Landlord that the Shopping Center will be exactly as depicted thereon or that tenants depicted thereon (if any) are now in occupancy or will be in occupancy at any time during the Lease Term. Landlord shall have the right from time to time to, subject in all respects to the terms of this Lease: change or modify, add to or subtract from, include in or exclude from the GLA of the Shopping Center any buildings, separately assessed parcels, non-retail office space, separately maintained parcels, separately owned parcels and premises; change or modify and add to or subtract from the sizes, locations, shapes and arrangements of parking areas (but the minimum amount of parking required by law, subject to variance, shall always be provided), entrances, exits, parking aisle alignments and other Common Areas; retain revenue from income producing events in the Common Areas; designate areas of the Common Areas as limited Common Areas for the use by only some tenants and their agents, employees and/or customers and/or exclusive Common Areas for the use only by a specific tenant and its agents, employees and/or customers; restrict parking by Tenant's officers, agents and employees, to designated areas; install electric car charging stations for use by guests of the Shopping Center; construct surface, sub-surface or elevated parking areas and facilities; construct, maintain and operate lighting facilities on all said areas; police the same; establish and from time to time change the level or grade of parking surfaces; enforce parking charges (by meters or otherwise), with appropriate provisions for free parking ticket validating by tenants; close all or any portion of said areas or facilities to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; add to or subtract from the land, buildings and/or other improvements included within the Shopping Center; make alterations or additions to and to build additional stories on the building in which the Premises are contained and to build adjoining the same; to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking; and do and perform such other acts in and to said Common Areas as Landlord in its sole discretion deems advisable for the use thereof by tenants and their customers. Landlord will operate and maintain the Common Areas in a manner and condition consistent with similar shopping centers in Seattle, Washington. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ and discharge all personnel and to make all reasonable rules and regulations pertaining to and necessary for the proper operation and maintenance of the Common Areas, provided same shall not be discriminately applied against Tenant.

Notwithstanding the foregoing to the contrary, in no event shall Landlord in exercising its rights under this Section or any other section of this Lease place or allow to be placed any kiosk, cart, automated teller machine, or telephone booth within the areas shown on Exhibit A-1 as the "No Kiosk Area." If Landlord violates the foregoing restriction and such violation persists for longer than five (5) days after Tenant's written notice to Landlord of such violation, then from and after the fifth (5<sup>th</sup>) day of continued violation, Rent shall abate on a per diem basis until the violation has ceased. If Landlord violates the foregoing restriction more than two times in any consecutive twelve (12) month period, then on the third (or subsequent violation) Rent shall abate immediately (without the need of written notice or opportunity to cure) on a per diem basis until the respective violation has ceased. The foregoing are Tenant's sole remedies for a violation by Landlord of the No Kiosk Area restriction.

Further, notwithstanding the foregoing to the contrary, in no event (except on a temporary basis in connection with repair or replacement activities), in exercising its rights under this Section or any other section of this Lease Landlord will not (i) make changes to the Shopping Center that will materially adversely obstruct or materially adversely affect access to and from the Premises, nor (ii) make changes to the Shopping Center that would materially adversely affect the visibility of Tenant's storefront identification sign, entrance and display windows. Without limiting the foregoing, Landlord agrees that if Landlord installs scaffolding in front of the Premises, Landlord, Landlord shall notify Tenant at least thirty (30) days prior to erecting any such scaffolding; however, Landlord's failure to provide such notice to Tenant shall in no way prevent the construction of the scaffolding and the performance of the work related thereto. Notwithstanding the foregoing, no such notification shall be required from Landlord to Tenant in the event of an emergency. To the extent permitted by any Law, if the scaffolding substantially affects the visibility of Tenant's storefront signage, Landlord, at Tenant's request but at Landlord's cost and expense, shall install a professionally prepared sign identifying Tenant's business on such scaffolding. Landlord agrees that any work necessitating any such scaffolding shall be performed with commercially reasonable diligence (however, nothing contained in this Section shall be deemed to impose upon Landlord any obligation to employ contractors or labor at so-called overtime or other premium pay rates), and such scaffolding shall be removed in a timely manner. Without limiting the foregoing, if the scaffolding is not required in connection with an emergency or government-mandated repairs, Landlord shall cause the removal of the scaffolding within thirty (30) days after its erection.

(c) Notwithstanding the foregoing, Landlord shall not construct additional stories above the Premises. Nothing herein, however, shall prevent Landlord from installing or using the roof, including, without limitation, for the installation of piping, conduits, antennae, mechanical systems and equipment or solar electricity facilities, on the roof of the Premises, provided the performance of any such work shall be subject to the terms of this Lease, including, without limitation, this Section 6.02.

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

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

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

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

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

- (iv) gardening, landscaping and maintenance of grass, trees and shrubbery;
- (v) personal property taxes on equipment and systems in, pertaining to, or used in maintaining or operating the Common Areas;
- (vi) utility charges and other costs of lighting the Common Areas, the vehicle areas, Shopping Center signs and other similar facilities;
- (vii) removal of snow and ice (including, when necessary, removing snow and ice from the roof);
- (viii) collection and removal of trash, garbage and other waste from all Common Areas, including without limitation, the sweeping and cleaning of the parking lot and other paved areas;
- (ix) equipment, machinery and supplies used in the operation and/or maintenance of the Common Areas (including cleaning and snow removal equipment) and of Shopping Center signs, fixtures, furnishings (including the cost of inspection);
- (x) power and fuel for operating the Common Areas' equipment and systems, and for operating vehicles and equipment used for cleaning, maintenance or snow removal;
- (xi) salaries of personnel engaged in operating, cleaning and maintaining the Common Areas and/or the Shopping Center (including security personnel and parking attendants) and all related payroll charges, fringe benefits and taxes;
- (xii) intentionally deleted;
- (xiii) loud speakers, public address and musical broadcasting systems and any telephone answering service used in or serving the Common Areas of the Shopping Center,
- (xiv) costs for repairing, resealing, striping, painting and paving the parking areas and other paved areas;
- (xv) policing, security, supervision and traffic control;
- (xvi) cost of providing additional parking or other Common Areas for the benefit of the Shopping Center;
- (xvii) heating, ventilating and air conditioning of the Common Areas if applicable;
- (xviii) all capital and non-capital repairs and replacements to and maintenance and operation of the Shopping Center and the Common Areas, which shall be amortized over the useful life of the improvement in question with respect to capital improvements, in accordance with generally accepted accounting principles;
- (xix) a management fee for the management of the Shopping Center not to exceed four percent (4%) of the Rent.

(b) Tenant's payment of Tenant's Share of Operating Costs shall be paid in equal monthly installments simultaneously with the Minimum Annual Rent payable hereunder. The foregoing amount shall be adjusted annually at the end of each Fiscal Year, which adjustment shall be based upon Landlord's reasonable estimation of the then current Operating Costs and Tenant's Share thereof.

CAM Cap. Notwithstanding the foregoing, commencing after the first Fiscal Year of the Lease Term, any increase in Tenant's Share of Operating Costs (with the exception of utility charges, costs for security, snow and ice removal, and costs arising from extraordinary weather-related events [such as hurricane cleanup, and replacement of drought-damaged plantings], collectively, "Non-Controllable Expenses") shall be limited to a non-cumulative annual increase of no more than five percent (5%) ("CAM Cap"). In determining each Fiscal Year's CAM Cap, "non-cumulative annual increase" means that such year's CAM Cap is calculated based on the lesser of (a) the prior Fiscal Year's actual Operating Costs (without regard to the first year limitation set forth below), or (b) the prior Fiscal Year's Operating Costs as limited by the CAM Cap (but without regard to the first year limitation set forth below). Increases in Non-Controllable Expenses shall not be subject to the

foregoing limitation. Furthermore, during the first Lease Year, Tenant's Share of Operating Costs attributable to controllable costs shall not exceed the rate of \$4.69 per square foot per annum.

(c) Within one hundred eighty (180) days after the end of each Fiscal Year, Landlord shall provide Tenant with a statement of the prior Fiscal Year's Operating Costs ("Operating Costs Reconciliation Statement"), which shall include a statement of the total deposits Tenant made toward such Fiscal Year's Operating Costs and the total share of the actual Operating Costs. There shall be an appropriate adjustment made between Landlord and Tenant based thereon. If such adjustment shows a balance due to Landlord, such balance shall be payable by Tenant within thirty (30) days after delivery of the annual Operating Costs Reconciliation Statement; if such adjustment shows a balance due to Tenant, then Tenant shall have a credit against the next payments of Minimum Annual Rent due Landlord in the amount of the balance due (or such shall be paid within thirty (30) days after its determination if after the Expiration Date), in either case after first deducting therefrom any due and outstanding Rent then owed to Landlord. The foregoing shall survive the Expiration Date. At any time throughout the Lease Term, Landlord shall have the right on not less than thirty (30) days prior written notice to recalculate Landlord's estimate of Operating Costs due from Tenant pursuant to the terms of this Lease, which computations shall be a reasonable estimate based upon the most recent actual annual statements of Operating Costs and Tenant's Share of Operating Costs shall be adjusted accordingly.

(d) Notwithstanding anything contained in this Lease to the contrary, prior to calculating Operating Costs, Landlord shall have the right to exclude from the Shopping Center, and the denominator used to calculate Tenant's Share, the square footage of any portions thereof that are: (i) owned, leased or occupied by parties that self-maintain all or any portion within the Shopping Center; (ii) Intentionally deleted; (iii) Intentionally deleted (iv) a kiosk, electric charging stations, rooftop facilities (cellular communications, etc.), basement or mezzanine area, storage area, garden area, outdoor sales area, patios/outdoor seating area, temporary or seasonal sales area, Shopping Center management office, and/or decommissioned space within the Shopping Center.

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

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

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

Without limiting the requirements regarding special events as set forth in Section 1.01, if Tenant desires to operate its business in the Premises outside the hours of 8:00 am to 10:00 pm, Tenant shall have the right to, subject to compliance with all applicable laws, provided that Tenant has notified Landlord thereof at least five (5) business days in advance. Thereafter, Tenant shall notify Landlord of any changes in the times or dates of the extended hours of operation. Landlord will provide during those extended hours services that it deems reasonably necessary and Tenant shall reimburse Landlord for the increased costs incurred by Landlord for such extended hours services including, without limitation, lighting, security, and utilities, provided such amount shall be split proportionately by all tenants open during such hours. Tenant shall pay its share of such increased costs as Additional Rent within thirty (30) days following its receipt of written demand together with reasonable documentation of such costs.

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

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

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

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

(a) Tenant shall use and operate the Premises solely for the Permitted Use and in full compliance with all applicable Laws, including, without limitation, obtaining and maintaining any and all licenses, permits and approvals necessary for the operation of Tenant's business at the Premises. Tenant shall not use, or permit the use, of the Premises for any other use or purpose whatsoever, except as otherwise expressly set forth in this Lease. Tenant shall open for business under the Trade Name set forth in Section 1.01. Thereafter, without Landlord's consent Tenant may change the Trade Name to (i) J. Crew, (ii) Madewell or (iii) the trade name used by 50% of Tenant's stores operating in the State of Washington. All other changes in the trade name shall require Landlord's consent, not to be unreasonably withheld, conditioned or delayed. In connection with such change in trade name, Tenant shall, at Tenant's sole cost and expense, change the façade signage and any other signage which may exist on or about the Premises and/or the Shopping Center no more than twenty (20) business days from the change date. Tenant shall provide Landlord's construction manager with plans and specifications for the new signage in accordance with Landlord's current signage criteria and any applicable codes and ordinances, and upon approval of such plans and specifications (not to be unreasonably withheld, conditioned or delayed) shall proceed with such sign replacement.

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

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

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

Tenant shall not perform any acts or carry on any practice which may or do cause a nuisance or disturbance to other tenants and business invitees or the general public. If Tenant's business operation is producing noise, vibrations and/or odors, which is causing or may cause a nuisance and/or disturbance to other tenants and business invitees or the general public, then Tenant agrees upon written notice from Landlord to immediately take actions reasonably necessary to cease any

such condition. Tenant expressly acknowledges and agrees that Landlord's review and/or approval of any plans and specifications for improvements to the Premises to be completed by Tenant as part of Tenant's Work or any other alterations to the Premises will not ensure that Tenant will be in compliance with the terms of this Section, and Tenant agrees and acknowledges that Tenant is solely responsible for ensuring that it is in compliance with the terms of this Section.

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

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

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

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

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

(a) Subject to Permitted Closures and the Go Dark Right provided hereinbelow, Tenant shall continuously operate and keep open to the public one hundred percent (100%) of the Premises (excluding any reasonable portion thereof used by Tenant for storage or office purposes) during the entire Lease Term, commencing not later than one hundred twenty (120) days after the Commencement Date. Tenant shall keep its premises adequately staffed with employees and shall carry an adequate stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum volume of Gross Sales. Tenant shall conduct its business in the Premises in a manner typical for such type of business in the city or trade area in which the Shopping Center is located consistent with the business practices of the majority of other stores operating under the Trade Name in the State of Washington.

GO DARK. Following Tenant's initial opening and operation for at least twenty-four (24) months, upon thirty (30) days prior written notice to Landlord, Tenant may cease operation of business from the Premises. ("Go Dark Right"). For avoidance of doubt, notwithstanding any closure of business, Tenant shall continue to be obligated to (i) pay to Landlord all Rent in the amounts and at the times due and payable as provided under the Lease , and (ii) fully perform all of the other terms and provisions of the Lease.

If Tenant ceases operations for a period of more than sixty (60) days (other than if due to Permitted Closures or Force Majeure), then Landlord shall have the right, but not the obligation, to terminate this Lease and recapture the Leased Premises at any time thereafter by providing Tenant with written notice of Landlord's election to do so (the "Recapture Notice"). In such event, (i) the Lease shall terminate on the date specified in the Recapture Notice (the "Recapture Date"), which date shall not be earlier than seventy-five (75) days nor later than ninety (90) days after delivery of the Recapture Notice; and (ii) Tenant shall, on or before the Recapture Date surrender the Premises to Landlord in accordance with the surrender provisions of the Lease. Notwithstanding the foregoing, Tenant may nullify the recapture by (a) notifying Landlord in writing of its intent to re-open in the Premises, which notice shall be delivered, time being of the essence, within sixty (60) days after receipt of the Recapture Notice and (b) reopening the Premises within ninety (90) days after receipt of the

Recapture Notice, time being of the essence. If Tenant fails to re-open within said 90 days, Tenant's nullification of the recapture shall be void and the Lease shall terminate as set forth above. If Tenant re-opens, Tenant's Go Dark Right shall be suspended for remainder of the Term, or twenty four (24) months, whichever first occurs.

(b) Tenant will keep the Premises open for business during hours designated by Landlord, from time to time, as the Shopping Center's hours of operation provided Tenant shall not be required to open for any hours in excess of the hours that at least seventy five percent (75%) of the other tenants in the Shopping Center are open for business. Meaning, if the Shopping Center hours are 9AM to 8PM but 75% or more of the tenants in the Shopping Center are only open from 10AM to 6PM, Tenant may open for such reduced hours. Notwithstanding the foregoing, Tenant shall keep the Premises open for business at least fifty (50) hours per week.

(c) Tenant shall not display any merchandise immediately next to the storefront windows of the Premises (i.e., within one (1) foot of the windows) without obtaining Landlord's prior written approval thereof, not to be unreasonably withheld, conditioned or delayed. In no event shall any paper signs be displayed in, on or about the storefront windows of the Premises. Tenant shall keep the display windows and signs, if any, in the Premises well lighted during the hours from sundown to 12:00 midnight provided at least 85% of the other tenants in the Shopping Center are doing the same.

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

(e) Tenant's obligation to continuously operate its business in the Premises shall not apply if the Premises are closed and the business of Tenant is temporarily discontinued therein due to a remodeling or alterations (but not to exceed ninety (90) days in any 5 year period), a subletting or an assignment (but not to exceed sixty (60) days), repairs (but not to exceed the reasonable period necessary to perform said repairs), casualty, condemnation, an event of Force Majeure, for New Year's Day, Easter Sunday, Earth Day, Juneteenth, July 4th, Thanksgiving Day, Christmas, up to five (5) non-consecutive days each year for inventory, and up to two (2) days in any year as Tenant wishes in connection with the closure of other stores of Tenant in support of social movements (each event being a "Permitted Closure").

### **Section 7.06. Intentionally Deleted.**

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

Tenant agrees to abide by the rules and regulations of the Shopping Center, attached hereto as **Exhibit C**. Landlord may, from time to time, reasonably amend or add to the rules and regulations for the use and care of the Premises, the buildings of which the Premises are a part, and the Common Areas, and Tenant agrees to comply with such amendments or additions immediately upon receipt of notice thereof, so long as such rules and regulations are not discriminately applied, other than with respect to a Major Tenant.

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

Tenant, so long as Tenant is not in default of this Lease beyond all applicable notice and cure periods, shall peaceably and quietly enjoy the Premises subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease or agreements to which this Lease is subordinated.

## **Section 7.09. Environmental.**

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

(b) Tenant shall notify Landlord promptly of any Hazardous Materials released at or suspected to emanate from the Premises, whether it is released by Tenant or otherwise and shall immediately upon knowledge of a known or suspected release of any Hazardous Materials, investigate and fully remediate all such Hazardous Materials which were released at the Premises by Tenant, its sublessees, assignees, agents, employees, contractors or invitees ("Tenant Parties") in compliance with law, and subject to Landlord's prior review and approval of Tenant's remediation measures, not to be unreasonably withheld, conditioned or delayed. Landlord shall be responsible to remediate all such Hazardous Materials to the extent required by Law released by a party other than Tenant, or the Tenant Parties.

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

(d) Tenant expressly acknowledges its understanding and agreement that, during the Lease Term or at or after the Expiration Date, certain notices, filings (and, possibly, sampling plans, remediation plans and remediation work) may be required by law and, if this occurs, then Tenant shall in its own name or, if required, in the name of Landlord, comply, at Tenant's sole cost and expense, with all such applicable notices, filings and other required actions, and defend, indemnify and hold Landlord harmless from all costs and expenses related to the same. However, Landlord shall also have the right to file such documents or take such action instead or on behalf of Tenant (but still at Tenant's sole cost and expense), and Tenant shall cooperate with Landlord in so doing. Tenant shall (i) provide Landlord with copies of any documents filed by Tenant pursuant to any environmental law; (ii) permit Landlord to be present at any inspection, on or off site, and at any

meetings with government environmental officials; and (iii) provide Landlord with an inventory of materials and substances dealt with by Tenant at the Premises, as well as such additional information for government filings or determinations as to whether there has been compliance with an environmental law. In the event that Tenant uses any underground storage tanks, Tenant shall remove the underground storage tanks and sample the ground around and under the tanks prior to the Expiration Date. Tenant shall provide Landlord with at least thirty (30) days' prior written notice of the removal of the underground storage tanks and the sampling around and under the tanks.

(e) Landlord shall have the right to enter the Premises in accordance with the terms of this Lease governing Landlord entry into the Premises to inspect the Premises or to conduct tests to discover the facts of any alleged or potential environmental condition or violation by Tenant.

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

(g) Tenant agrees to comply fully with all applicable Laws and all conditions and restrictions with regard to the use and condition of the Premises and with regard to Tenant's activities thereon. Without limiting the foregoing, Tenant must comply with all requirements of federal, state, and local occupational, health and safety agencies, and environmental protection agencies, concerning the receipt, storage, handling, use, sale and dispensing of petroleum based products or any other Hazardous Materials, the disposal of waste materials, and Tenant's other activities on the Premises, including those governing recovery of vapors. Notwithstanding the foregoing, Tenant shall not be required to perform any structural work to comply with any such laws unless the need for same was caused by Tenant's particular manner of use of the Premises (as opposed to retail use generally) or alterations performed by Tenant.

(h) Notwithstanding the foregoing, if Hazardous Materials are located in, on or about the Premises on the date Landlord delivers possession of the Premises to Tenant and such Hazardous Materials, pursuant to applicable Laws, require remediation and the presence of such Hazardous Materials prevents or delays Tenant from (x) obtaining the Permits, (y) performing Tenant's Work or (z) initially opening for business to the public in the Premises, the Commencement Date shall be delayed one (1) day for each day that the presence of such Hazardous Materials and/or Landlord's remediation prevents or delays Tenant from obtaining Tenant's Permits or performing Tenant's Work or initially opening for business to the public in the Premises, as applicable.

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

## **7.10. Prohibited Uses.**

Landlord agrees that, during the Lease Term, Landlord will not lease space in the Shopping Center that would permit an occupant to engage in any of the Prohibited Uses set forth below. Provided, however, that such restrictions shall not apply to apply to: (i) any existing tenants at the Shopping Center which presently have the right to engage in the Shopping Center Prohibited Use, or their successors, assigns or replacements, or (ii) any existing leases at the Shopping Center as same may be renewed, extended, modified or amended (except that no such renewal, extension, modification or amendment shall grant a tenant the right to engage in the Shopping Center Prohibited Use where such tenant did not previously have that right).

In furtherance of the immediately preceding paragraph (but without limiting such paragraph), Landlord will not lease any space in the Shopping Center to any business for the following uses (the "Shopping Center Prohibited Uses"):

- (a) any second-hand store (except that store selling used goods typically found in a first class shopping center such as antiques stores, vintage clothing stores and stores selling estate merchandise, "upscale merchandise", consignment merchandise or recycled, but like-new merchandise shall be permitted)
- (b) any mobile home or trailer court, labor camp, junkyard, or stockyard;
- (c) any animal raising operation (which, for avoidance of doubt, does not include routine or emergency veterinary offices or animal groomers);
- (d) arcade within 300 feet from the front door of the Premises (unless within a restaurant or bar or a business otherwise found in first class shopping centers);
- (e) any facility for the repair of trailers, mobile homes, or boats;
- (f) any dumping, disposal, incineration, or reduction of garbage or refuse;
- (g) any mortuary, funeral parlor, or mausoleum;
- (h) any firearms shooting range;
- (i) any adult bookstore, video store, or establishment selling, exhibiting, or distributing pornographic or obscene materials (materials shall be considered "pornographic" or "obscene" if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); the parties acknowledge and agree the sale of books, magazines, videos and other publications by a national bookstore of the type normally located in first-class projects (such as, for example, Barnes & Noble, as that store currently operates) shall not be deemed a "pornographic" or "obnoxious" use);
- (j) gas station (except that a gas station shall be permitted in the area shown on Exhibit A as "Rite Aid");
- (k) any facility for the sale or display of paraphernalia for use with illicit drugs or for any use that is illegal, constitutes a nuisance, or is inconsistent with an integrated, community-oriented retail and commercial shopping center;
- (l) industrial manufacturing operations or any other industrial use; (m) warehouse, processing or rendering plant;
- (n) establishment where men or women are engaged in salacious activities or sexually oriented business including, without limitation, mud wrestling, table dancing, or topless, bottomless or nude servers, waitresses, waiters, dancers, hostesses or hosts;
- (o) gambling establishment except that the sale of lottery tickets shall be permitted;
- (p) auto supply store within 300 feet of the front door of the Premises
- (r) the sale of vehicles except for automobile showrooms shall be permitted so long as no inventory is parked in the Common Areas. The foregoing shall not prevent home improvement stores, tool supply stores, or sporting goods stores to park vehicles (by way of example only, lawn mowers, snow blowers, trailers, rental vans) in the Common Areas, provided that the same is located 300 feet from the front door of the Premises.
- (s) any use that permits music or sound to be heard inside of the Premises when all doors to the Premises are closed, except to an infrequent and de minimis degree.
- (t) any use that permits vibrations to be felt inside of the Premises except to an infrequent and de minimis degree.

## ARTICLE 8: TENANT'S CONSTRUCTION AND MAINTENANCE

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

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

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

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

(b) Tenant may not perform any structural alterations to the Premises and/or any other repairs, renovations, remodeling or alterations to the Premises without having first received Landlord's written consent thereto. Tenant shall, before performing any major repairs, renovations, remodeling or alterations to the Premises, submit complete architectural and engineering plans and specifications of the Premises, prepared by reputable and licensed architects and engineers, describing all of the major repairs, renovations, remodeling or alterations which Tenant proposes. Upon approval by Landlord of Tenant's final plans and specifications therefor, only a reputable and licensed contractor and sub-contractors may be engaged by Tenant to perform the repairs, renovations, remodeling or alterations in accordance with the said approved plans and specifications and in accordance with the other terms and provisions of this Lease. Landlord reserves the right to require Tenant to use Landlord-required contractors for work pertaining to or impacting the roof, sprinkler system and other life safety systems (including fire and alarm panels), and building-wide systems, provided the rates charged by such contractors are reasonable and competitive within the geographic area of the Shopping Center. Notwithstanding the foregoing, Tenant may, without the prior written consent of Landlord, make non-structural, cosmetic alterations to the interior of the Premises, such as painting of the interior walls of the Premises or installing new flooring within the Premises, that do not, in the aggregate, exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) in any Lease Year, so long as such cosmetic alterations do not affect any of the utility or other systems servicing the Premises or other premises within the Shopping Center and do not include the construction of any additional demising or other walls within the Premises.

In the event Landlord fails to timely respond to Tenant's plans and specifications within twenty (20) days after Landlord's receipt of such plans, then if such failure continues for more than five (5) business days after Tenant's subsequent delivery of a "Deadline Letter" (as hereinafter defined), Tenant's plans submitted to Landlord shall be deemed approved. For purposes hereof, the term "Deadline Letter" shall be defined as a letter which states in bold letters the following: "Landlord is obligated to respond to the attached plans and specifications within five (5) business days after receipt. If Landlord fails to respond to this Deadline Letter within such five (5) business day period, then the plans shall be deemed approved by Landlord". For avoidance of doubt, the Deadline Letter shall be sent to Landlord's notice address set forth in Section 1.01 of the Lease.

(c) Tenant may not (i) perform or allow to be performed any work that uses an open flame or that generates sparks or heat sufficient to cause combustion including, without limitation, cutting, welding and brazing nor (ii) shutdown any fire-protection systems within the Premises without having first received Landlord's prior written consent and approval thereto, not to be unreasonably withheld, conditioned or delayed.

(d) Tenant agrees that Tenant's Work and any other alteration, modification, change or improvement to the Premises completed by Tenant in accordance with the terms of this Lease shall not be done in a manner that would create a Conflict. Tenant shall immediately stop any work or other activity if such work or activity causes a Conflict. Tenant shall indemnify, defend with legal counsel reasonably approved by Landlord or selected by Landlord and hold harmless Landlord from any loss, cost or liability suffered or incurred by Landlord as a result of Tenant's violation of the provisions of this paragraph. Tenant's violation of the terms hereof beyond the applicable notice and cure period shall constitute a default hereunder and shall entitle Landlord to exercise any remedies that are available to Landlord at law, in equity or hereunder, including, without limitation, seeking an injunction.

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

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

(a) Tenant shall not place or suffer to be placed or maintain any sign, awning or canopy outside the Premises or in the Shopping Center, nor shall Tenant place in the display windows any sign, decoration, lettering or advertising matter of any kind, without first obtaining Landlord's written approval and consent in each instance. So long as Tenant's sign plans are prepared in accordance with the signage criteria attached hereto as Exhibit D, Landlord's approval shall not unreasonably withheld, conditioned or delayed. For avoidance of doubt, however, Tenant shall be entitled to one (1) storefront sign of the maximum size permitted by Law on each of three of the Premises' facades (in recognition that the Premises is an end-cap space) and Landlord's signage criteria on the designated sign band of the Premises. Tenant shall maintain any such sign or other installation as may be approved in good condition and repair. All signs, awnings and canopies shall comply with all applicable Laws and the applicable terms set forth in the Construction Criteria, shall be consistent with the general design of the Shopping Center, shall be in appropriate proportion to the size of Tenant's storefront. Subject to Tenant's compliance with Law and the signage criteria, Tenant shall have the right to place up any signage within the interior of the Premises provided same is professionally prepared and consistent with Tenant's other locations.

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

(c) Tenant shall have the right to place its identification panel on that area of the Shopping Center pylon sign ("Pylon Sign") identified on crosshatched on Exhibit D attached hereto and made a part hereof. Tenant shall not install Tenant's identification panel on the Pylon Sign until plans and specifications for Tenant's identification panel have been approved in writing by Landlord, which

approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall, at Tenant's expense, perform all work and supply all installations necessary to install Tenant's identification panel in accordance with the plans and specifications approved by Landlord. No changes to Tenant's identification panel plans and specifications will be made without the prior written consent of Landlord, not to be unreasonably withheld, conditioned or delayed. In the event Tenant fails to install Tenant's identification panel on the Pylon Sign within ninety (90) days following the Commencement Date (subject to delays due to Force Majeure, delays caused by Landlord, casualty, condemnation or any other cause beyond the control of Tenant, including, without limitation, delays in the manufacturing of Tenant's signage), or thereafter Tenant's identification panel shall be removed by Tenant (other than in connection with repairs being performed to the Pylon Sign or Tenant's signage) and not replaced with another identification panel reasonably acceptable to Landlord for a period of ninety (90) consecutive days (subject to delays due to Force Majeure, delays caused by Landlord, casualty, condemnation or any other cause beyond the control of Tenant, including, without limitation, delays in the manufacturing of Tenant's signage), then, if such failure continues for more than sixty (60) days (subject to extension for Force Majeure, including due to delays in manufacturing such sign) following Tenant's receipt of written notice from Landlord of such failure (which notice must state in bold face, 14 point font on the first page of the notice, that Tenant's failure to place (or replace, as the case may be) Tenant's identification panel within 60 days following its receipt of Landlord's notice will result in a forfeiture of Tenant's right to place its identification panel on the Pylon Sign), Tenant shall not have any further right to place Tenant's identification panel on the Pylon Sign and such right shall be deemed waived. Tenant agrees, at its sole cost and expense, to promptly repair Tenant's identification panel in the event of any casualty or other damage thereto. Tenant further agrees to repair any damage to the Pylon Sign resulting from Tenant's installation or removal of Tenant's identification panel. In the event Tenant fails to remove Tenant's identification panel within ten (10) days after the expiration or earlier termination of this Lease, Landlord shall have the right to remove and dispose of Tenant's identification panel at Tenant's sole cost and expense, and Tenant shall reimburse Landlord upon demand for all actual, third-party costs incurred by Landlord in removing and disposing of Tenant's identification panel, plus a sum equal to ten percent (10%) of such cost to reimburse Landlord for its administrative overhead. If Tenant fails to repair any damage caused by the installation or removal of Tenant's identification panel, and such failure continues for more than ten (10) days after written notice from Landlord, then Landlord shall have the right to perform same on Tenant's behalf, and Tenant shall pay the actual, reasonable, third-party cost thereof to Landlord within fifteen (15) days of Landlord's written demand, together with the sum of ten percent (10%) of said costs for overhead. Tenant's obligations set forth in this Subsection shall survive the termination of this Lease. Tenant further agrees that in no event shall Landlord be liable to Tenant for failure or interruption of any illumination of the Pylon Sign or Tenant's identification panel, or for any damage to Tenant's identification panel, and Tenant hereby waives any and all such claims against Landlord. The foregoing right of Tenant to place Tenant's identification panel on the Pylon Sign is personal to, and for the sole benefit of Tenant, and shall not be transferable to any third party, including without limitation to any assignee of Tenant's rights under this Lease or any sublessee of all or a portion of the Premises, without the express prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Tenant agrees that any such attempted assignment or transfer shall be null and void. Tenant's rights under this provision shall be subject and subordinate to the requirements of all applicable Laws, including any modifications to the Pylon Sign required by the foregoing. Therefore, in the event any modifications to the Pylon Sign required by Law require that Tenant's sign be removed from the Pylon Sign, then Landlord may terminate Tenant's rights to have signage on the Pylon Sign, provided Landlord is simultaneously terminating the right to place signage on the Pylon Sign of all other tenants with signage on the Pylon Sign, and in the event of such termination, Tenant shall remove Tenant's identification panel and repair any damage caused by such removal in accordance with the terms of

this Subsection. Following Landlord's modifications to the Pylon Sign required by Law, Tenant shall have the same rights set forth herein to place identification signage on the modified Pylon Sign (subject to the rights of those tenants who had priority on the Pylon Sign prior to modification).

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

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

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

Tenant shall not permit to be attached or recorded against the Premises, or any other portion of the Shopping Center, any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or material supplier for or at the request of Tenant. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises is filed against the Premises or any part of the Shopping Center, then Tenant shall, within twenty (20) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, letter of credit or other adequate security, as approved by Landlord in its reasonable discretion. If Tenant fails to cause such lien or notice of lien to be discharged within such period, then Landlord may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Tenant shall, within thirty (30) days following its receipt of written demand, reimburse Landlord for any and all reasonable costs and expenses incurred by Landlord to discharge such lien including, without limitation, all reasonable attorneys' fees, court costs and similar expenses, plus an administrative fee equal ten percent (10%) of such costs and expenses incurred by Landlord. Additionally, Tenant shall indemnify, defend with counsel approved by Landlord, acting reasonably, and hold harmless Landlord from and against all loss, cost, expense and liability whatsoever resulting or occurring by reason of any claims or causes of actions that may arise as a result of any lien, notice of lien or, claim relating to work and/or materials furnished to the Premises at the request of Tenant or its contractors. Upon prior notice to Tenant, Landlord or Landlord's representatives shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in the filing of a mechanics' or materialmen's lien, give Landlord written notice of Tenant's intention to do so in sufficient time to enable the posting of such notices.

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

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

(a) Tenant shall at all times, at its own expense, keep the non-structural portions of the Premises (including exterior entrances, the storefront, and all glass and show windows) and all partitions, doors and doorframes, walls, ceilings, fixtures, equipment and appurtenances thereof (including lighting, heating and plumbing fixtures, and the electrical and mechanical systems, including, without limitation, the sprinkler and fire alarm system exclusively serving the Premises),

utility meters, pipes and conduits exclusively serving the Premises, and non-structural components of the storefront, in good order, first class condition and repair, regardless of whether such repairs or replacements are ordinary or extraordinary, foreseen or unforeseen; provided, however, if Tenant is required to maintain or repair any of the foregoing by reason of the negligent acts or omissions of Landlord, its employees, agents, or contractors, then Landlord shall pay on demand, Tenant's reasonable costs for making such maintenance or repairs, together with an administrative fee of ten percent (10%) of such costs, subject however to the mutual waiver of subrogation set forth in this Lease. All aforesaid maintenance, repairs, restorations and replacements shall be in quality and class equal to the original work or installations. Furthermore, Tenant, at its expense, shall maintain a preventative maintenance contract for the heating, ventilating and air conditioning systems exclusively servicing the Premises, with a vendor approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall provide Landlord with a copy of the maintenance reports prepared by its vendor no later than thirty (30) days after receipt of Landlord's written request for same. The preventative maintenance contract shall provide for the inspection and maintenance of the heating, ventilating and air conditioning system on not less than a bi-annual basis.

(b) Landlord shall, subject to the other provisions of this Lease, maintain, repair and replace or cause to be maintained, repaired and replaced, in good order, first class condition and repair, all utility lines, pipes conduits and other systems and equipment serving the Premises up to the point of connection with the Premises, and within the Premises to the extent serving areas of the Shopping Center outside of the Premises, the structure of the Shopping Center, including without limitation, the foundations, exterior walls (excluding the storefront), slab, roof, roof membrane, bearing walls and structural columns and structural beams of the Shopping Center; provided, however, if Landlord is required to maintain or repair any structural portions or any other portion of the Premises or the Shopping Center by reason of the negligence or willful misconduct of Tenant, its employees, agents, invitees, contractors, licensees, concessionaires, assignees or subtenants, then Tenant shall pay within thirty (30) days following its receipt of written demand, as Additional Rent, Landlord's reasonable costs for making such maintenance or repairs, together with an administrative fee of ten percent (10%) of such costs, subject however to the mutual waiver of subrogation set forth in this Lease.

(c) Notwithstanding anything to the contrary in this Lease, as of the Possession Date and continuing through the Expiration Date, in the event there are repairs to the Premises (other than *de minimis* repairs) that (i) are outside of Tenant's repair and maintenance obligations for the Premises; and (ii) directly result from Landlord's repair obligations as they relate to the foundation of the Shopping Center ("Related Repairs"), then upon written notice from Tenant, Landlord shall within fifteen (15) days of such notice conduct an inspection of the Premises to determine if the repairs to the Premises are Related Repairs. If the reasonable conclusion of such inspection is that the repairs are Related Repairs, then Landlord shall complete such repairs in a timely fashion at its sole cost and expense. Notwithstanding the foregoing, Landlord's responsibility to conduct Related Repairs shall be limited to no more than two (2) times per year, except in the event of an emergency threatening life or property.

(d) Notwithstanding anything to the contrary in the lease or herein, in the event repairs to the Shopping Center foundation are required, the determination of which shall be at Landlord's sole discretion ("Foundation Repair"), and said Foundation Repair necessitates that Tenant vacate the Premises for a period of time, Landlord shall notify Tenant, upon not less ninety (90) days written notice, of the date upon which Tenant shall vacate the Premises ("Vacation Date"), and Tenant shall vacate the Premises upon said Vacation Date. Prior to the Vacation Date (i) Landlord and Tenant shall meet to photograph the Premises ("Condition Date") and (ii) Tenant shall confirm the then current condition of the Premises. Upon the Repair Possession Date, as defined herein, (i) Landlord

and Tenant shall inspect the Premises, (ii) if applicable, during said inspection, Tenant shall create a punch list and provide to Landlord, (iii) if punch list is provided to Landlord, Landlord shall complete said punch list within five (5) days or as reasonably required to complete said punch list, and (iv) Landlord shall return the Premises to Tenant in the condition as confirmed to Landlord by Tenant on the Condition Date notwithstanding the punch list items as referenced herein. Landlord shall use commercially reasonable efforts to complete the Foundation Repair within the time period provided to Tenant by Landlord's construction department prior to the Vacation Date. Landlord and Tenant agree that beginning as of the Vacation Date through the date upon which possession of the Premises is returned to Tenant ("Repair Possession Date") (collectively the "Repair Closure Period"), Landlord shall abate all Minimum Rent and Additional Rent. During the Repair Closure Period, the Lease shall remain in full force and effect. Upon the Repair Possession Date (i) Tenant shall resume the operation of Tenant's business within the Premises, and (ii) all Minimum Rent, Additional Rent, and other payments due to Landlord shall resume per the terms of the Lease. For the avoidance of doubt, Tenant hereby acknowledges and agrees that at no time during the Term shall Landlord have any obligation to Tenant for the Foundation Repair other than as provided pursuant to this Section 9.01 (c) and (d).

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

(a) Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon, around and under the Premises as may be necessary for the service of the Premises and other portions of Landlord's property and Landlord (for itself and other tenants in the Shopping Center) hereby reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, utilities and structural elements leading through, under and over the Premises in locations which will not unreasonably interfere with Tenant's use thereof so long as same are installed below the finished floor, within or along a wall or column, or above or along the finished ceiling. Landlord shall also have the right to enter the Premises at all reasonable times, on reasonable advanced written notice, but not less than 24 hours (other than in the event of an emergency), to inspect or to exhibit the same to prospective purchasers, mortgagees, ground lessors and tenants, and to make such repairs, additions, alterations or improvements as Landlord may deem necessary, provided in no event shall Landlord be permitted to reduce the square footage of the Premises or otherwise reconfigure the Premises. Landlord shall be allowed to take all material in, to and upon the Premises that may be reasonably required in connection with such repairs, additions, alterations or improvements without the same constituting an eviction of Tenant in whole or in part and the Rents reserved herein shall in no way abate while said work is in progress by reason of loss or interruption of Tenant's business or otherwise and Tenant shall have no claim for damages. If Tenant shall not be personally present to permit an entry into the Premises when for any reason an entry therein shall be permissible, Landlord may enter the same without rendering Landlord liable therefor and without in any manner affecting the obligations of Tenant under this Lease. The provisions of this Section shall in no way be construed to impose upon Landlord any obligation whatsoever for the maintenance or repair of the building or any part thereof except as otherwise herein specifically provided. Landlord shall have the exclusive right to use all or any part of the roof and exterior side walls of the Premises for any purpose.

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

Notwithstanding the foregoing, in exercising Landlord's rights set forth herein, Landlord shall use commercially reasonable efforts to not unreasonably interfere with Tenant's business in the Premises. Notwithstanding the foregoing, in the event that Landlord's exercise of its rights under this Article 9 materially adversely interferes with Tenant's operation from the Premises to the extent that Tenant is reasonably unable to operate its business in the Premises for more than forty eight (48) hours following written notice to Landlord of such interference, which notice shall set forth with particularity the exact nature of Landlord's interference, and Tenant has actually closed for business as a result of same, then all Rent due under this Lease shall be abated from and after the end of such 48 hour period and continuing until the date the interference cited in Tenant's notice ceases.

## **ARTICLE 10: UTILITIES**

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

(a) Except for water and trash removal, which shall be included in Tenant's Share of Operating Costs, Tenant shall be solely responsible for contracting directly with all utility providers and promptly paying all charges for utilities (including meter and sub-meter fees, impact fees and tap fees associated with Tenant's occupancy), including, without limitation, heat, electricity, sewers and/or any other utility used or consumed in or for the Premises commencing from the Possession Date; provided, however, if any utility is sub-metered, then Tenant shall pay the applicable utility charge directly to Landlord based upon the actual meter reading of the submeter. Tenant shall also pay to Landlord any charges incurred by Landlord for meter or sub-meter readings, and Tenant, at its sole cost and expense, shall be responsible for having all utilities transferred into Tenant's name as of the Possession Date. If Landlord elects to supply or to designate a supplier of the water, gas, heat, electricity, trash removal or any other utility used or consumed in the Premises, then Tenant agrees to purchase and pay for the same as Additional Rent at the then applicable rates charged by local suppliers to similar users but in no event shall Tenant pay more than it would have had it contracted directly with the applicable utility provider, and, Landlord shall, at its cost, install a submeter to measure such utility consumption. Where Landlord provides a service to a limited number of users, Landlord shall have the right to reasonably determine the charge to such users based on the square footage (provided that reasonable allocations shall be made for uses that are not reasonably similar in utility demand, such as a restaurant demand for water) of each such tenant or based on usage estimates, provided any such allocation shall be done in good faith and Tenant shall have the right to challenge, in good faith, any such determination.

(b) As of the Effective Date, the Shopping Center and the Premises are receiving electric service from one or more suppliers. Landlord shall have the right at any time, and from time to time, during the Lease Term to either contract for service from a different company or companies providing electricity service or continue to contract for service from the electric service provider(s) existing as of the Effective Date, provided there shall be no interruption of service to the Premises.

(c) Tenant shall reasonably cooperate (at no cost to Tenant) with Landlord, the existing electric service provider(s), and any alternate service provider selected by Landlord, at all times and shall allow Landlord and any such electric service provider, to access the electric lines, feeders, risers, wiring, and any other equipment or machinery within the Premises, subject in all respects to the terms of this Lease regarding any entry into the Premises or any work performed in the Premises.

(d) In no event shall Landlord be liable for an interruption or failure in the supply of any utilities to the Premises or for the character of such service. Additionally, Landlord shall in no way be liable or responsible for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption or defect in the supply or character of the electric energy furnished to the Premises, or if the quality or character of the electric energy supplied by any

electric service provider or alternate service provider selected by Landlord is no longer available or suitable for Tenant's requirements and no such change, failure, defect, unavailability or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease.

Notwithstanding the foregoing or anything to the contrary contained in this Lease, if any utility or service is interrupted due to the negligence or willful misconduct of Landlord, its agents, employees or contractors, and such interruption continues for a period in excess of forty eight (48) hours following written notice from Tenant, and as a result of such interruption Tenant is unable to operate its business in the Premises, and in fact does not operate, all Rent shall thereafter abate on a per diem basis until such interruption has ceased.

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

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

(a) Except as expressly provided in Section 11.01(h) below, and notwithstanding any references to assignees, subtenants, concessionaires or other similar entities in this Lease, Tenant shall not (i) without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed: (a) assign this Lease, (b) sublet the Premises or any part thereof, or permit the use of the Premises or any part thereof by any persons other than Tenant or its agents or (c) permit the assignment or other transfer of this Lease, or any of Tenant's rights hereunder, by operation of law or otherwise; nor (ii) without Landlord's prior written consent, which consent shall be in Landlord's sole discretion, mortgage or encumber this Lease or any of its rights hereunder. Any such attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest therein and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Premises in violation of the foregoing, whether voluntary or involuntary, or by operation of law or otherwise, in addition to being a default under this Lease (subject to applicable notice and cure periods), shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee or occupant. Tenant acknowledges that the factors governing the granting of Landlord's consent to any transfer may include, without limitation, (i) the restrictive clauses entered into with other tenants by Landlord (but no such restrictions entered into after the Effective Date shall be applicable to the extent they would act as a restriction on the use of the Premises for the Permitted Use), (ii) the financial background, business history and the capability of the proposed transferee considering the financial responsibility involved, and (iii) the nature of the business practices of the proposed transferee.

(b) Notwithstanding anything to the contrary contained in Section 11.01(a) above, Tenant shall have the right to grant concessions, licenses or subleases for the sale of merchandise within or from the Premises as part of the normal business of Tenant provided not more than twenty five percent of the Premises shall be subject to such concessions, licenses or subleases at any time.

(c) Except as otherwise expressly set forth in this Lease, the consent by Landlord to any assignment, transfer or subletting to any party shall not be construed as a waiver or release of Tenant under the terms of any covenant or obligation under this Lease or as a waiver or release of the non-assignability covenants in their future application, nor shall the collection or acceptance of Rent payments from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant from any covenant or obligation contained in this Lease. If this Lease is transferred or assigned, as aforesaid, or if the Premises, or any part thereof, be sublet or occupied by any person or entity other than Tenant, whether as a result of any act or omission by Tenant, or by operation of law, or otherwise, then Landlord may in addition to, and not in lieu of, any other rights and remedies under this Lease or pursuant to law to which Landlord may be entitled as a result thereof, collect

Rent payments from the transferee, assignee, subtenant or occupant and apply the net amount collected to the Rent herein reserved, but no such transfer, assignment, subletting, occupancy or collection shall be deemed a waiver of the covenants contained herein or the acceptance of the transferee, assignee, subtenant or occupant as tenant under this Lease, or release Tenant from the performance of the covenants required of it as set forth in this Lease.

(d) Without conferring any rights upon Tenant not otherwise provided in this Article, if Tenant desires to enter into any assignment, sublease or transfer of this Lease or Tenant's rights hereunder, Tenant shall request in writing Landlord's consent thereto (which consent shall not be unreasonably withheld, conditioned or delayed as provided above). Without limiting any other reasonable basis for withholding consent, it shall not be unreasonable for Landlord to withhold its consent if: (i) an "Event of Default" (as hereinafter defined) exists; (ii) the use of the Premises would not comply with the provisions of this Lease; or (iii) in Landlord's reasonable judgment, the proposed transferee does not have the financial capability to perform its obligations under this Lease with respect to the Premises which are the subject of the assignment or sublease. At least sixty (60) days before the proposed effective date of any such proposed transfer, Tenant shall submit to Landlord the following: (i) the material particulars of the proposed assignment, sublease or transfer, including its nature, effective date, material terms and conditions and copies of any letters of intent; and (ii) a description of the identity, tangible net worth and previous business experience of the proposed assignee, subtenant or transferee including, without limitation, copies of the proposed assignee's, subtenant's or transferee's latest income, balance sheet and changes in financial position statements (with accompanying notes and disclosures of all material changes thereto) in audited form, if available, and certified as accurate by the proposed assignee, subtenant or transferee; and (iii) any further information and documentation relevant to the proposed assignment, sublease or transfer which Landlord shall request after receipt of Tenant's request for consent including, without limitation, a written assumption agreement from the assignee or transferee. Tenant shall pay to Landlord the Assignment Administrative Fee and shall reimburse Landlord for all reasonable out-of-pocket expenses (including, without limitation, reasonable attorney's fees) incurred in connection with processing any proposed assignment or sublease, not to exceed in the aggregate, \$5,000.00. The Assignment Administrative Fee shall be payable by Tenant to Landlord together with Tenant's written request for Landlord's consent to the assignment, transfer or sublease and shall be non-refundable, whether or not Landlord grants or denies its consent. If such payment does not accompany Tenant's request, then Landlord shall have the right to treat the request as null and void and improperly delivered until such time as the payment is received. Landlord shall, within thirty (30) business days after receiving the information required herein (and the Assignment Administrative Fee) notify Tenant of its approval or disapproval of the proposed sublease or assignment, with a reasonably detailed explanation for any disapproval.

(e) Intentionally deleted.

(f) Without conferring any rights upon Tenant not otherwise provided in this Article, in the event of an assignment or transfer of Tenant's interest in this Lease, or a sublease of all or a portion of the Premises, other than in connection with a Permitted Transfer, fifty percent (50%) of any monthly Rent or other payment accruing to Tenant as the result of any such assignment, transfer or sublease, including any lump sum or periodic payments in any manner relating to such assignment, transfer or sublease, which is in excess of the Rent payable by Tenant hereunder (excluding, however, amounts allocated in good faith to goodwill and/or going business value, but not excluding amounts allocated to the leasehold, fixtures or other improvements or personality) shall be paid by Tenant to Landlord as Additional Rent in lump sum or monthly, as the case may be, when actually received by Tenant, after first deducting therefrom any reasonable amounts incurred by Tenant in connection with any such assignment, transfer or sublease, including, without limitation, brokerage commissions, alteration costs, etc. Landlord may require a statement from Tenant

specifying the full amount of any such payment of whatsoever nature evidencing any excess consideration.

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

(h) Notwithstanding anything to the contrary in this Lease, Tenant shall have the right to assign this Lease or sublet all or any portion of the Premises, without having to obtain Landlord's consent, for any of the following: (a) a public offering or any sale or exchange of Tenant's stock or interests on a national exchange; (b) any merger or consolidation of Tenant with any other company; (c) any assignment or subletting to any parent, affiliate, subsidiary (or of Tenant's parent); (d) any exchange of stock between Tenant's parent company, if any, or a subsidiary; (e) the sale of substantially all of Tenant's assets (including the assignment of this Lease); or (f) the transfer of substantially all of the ownership interest in Tenant (each of the foregoing, a "Permitted Transfer").

In no event shall Tenant be permitted to use a series of one or more Permitted Transfers to "spin-off" this Lease to independent third parties. As an example of the foregoing, Tenant shall not assign this Lease to an affiliate corporation whose assets consist solely of this Lease and the rights granted herein and thereafter sell the stock of such affiliate corporation to an independent third party. The result of what would otherwise be two, independent Permitted Transfers would become a transfer of this Lease to an independent third party. Any such transfer is prohibited by the terms of Section 11.01(a). above.

In the event of a Permitted Transfer, the following shall apply: (i) in case of an assignment, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefor along with Tenant; (ii) A signed counterpart of all such instruments relative thereto, executed by all parties to such transaction with the exception of Landlord shall be submitted by Tenant to Landlord within thirty (30) days of execution of same; and (iii) unless Tenant is the disappearing entity following a merger or consolidation of Tenant with any other company, Tenant shall remain directly and primarily liable for the performance of all of the covenants, duties and obligations of Tenant hereunder (including, without limitation, the obligation to pay all rent and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this instrument against the undersigned Tenant and/or any assignee without demand upon or proceeding in any way against any other person; and (iv) the use and operation being conducted in the Leased Premises shall remain substantially unaffected. No such assignment shall be deemed to be binding on Landlord until such time as Landlord has received an original counterpart of the documents used to effect the assignment signed by both the assignor and the assignee, provided, however that such assignment shall be effective as of the date such original documents were fully executed so long as Landlord receives a copy of such documents within thirty (30) days after their effective date.

Notwithstanding anything to the contrary which may be contained in this Lease, in the event this Lease is assigned to, and assumed by, any assignee (other than pursuant to a Permitted Transfer) that has a tangible net worth of at least \$100,000,000.00 then, Tenant shall be released from all further liability accruing under this Lease following the date of such assignment.

Within ten (10) business days after completion of a Permitted Transfer, Tenant or the transferee shall deliver (i) written notice to Landlord identifying the transferee (including, without limitation, revisions to Tenant's notice address, if any); and (ii) revised insurance certificates evidencing the transferees' compliance with the insurance requirements under this Lease.

## **ARTICLE 12: RELOCATION**

### **Section 12.01. Intentionally Deleted.**

## **ARTICLE 13: REIT**

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

The Shopping Center is, or after the Effective Date may be, owned, indirectly, by a REIT. As long as any portion of the Shopping Center is owned directly or indirectly by a REIT, this Lease, and the Rent provided hereunder, shall be interpreted in a manner so that the Rent qualifies as "rents from real property" within the meaning of Section 856(d) of the Code, and the U.S. Department of Treasury Regulations promulgated thereunder (the "Regulations"). If the Code, or the Regulations, or interpretations thereof by the Internal Revenue Service contained in the Revenue Rulings, be changed so that any Rent no longer qualifies as "rent from real property" for the purposes of Section 856(d) of the Code and the Regulations, other than by reason of the application of Section 856(d)(2)(B) or 856(d)(5) of the Code or the related Regulations, such Rent shall be adjusted so that it will so qualify; provided, however, that any adjustments required pursuant to this Section shall be made so as to produce the equivalent (in economic terms) Rent as payable prior to such adjustment and that such adjustments shall not result in any increase in Tenant's Rent.

## **ARTICLE 14: NOTICES**

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

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

(b) Any notice by Landlord to Tenant must be served by certified mail, return receipt requested, postage prepaid, or by FedEx or other nationally recognized overnight delivery service, addressed to Tenant at the address (es) set forth in Section 1.01, or at such other address as Tenant shall designate by written notice. Notwithstanding the foregoing to the contrary, Landlord's notice of the Possession Date may be sent to Tenant via electronic mail which shall be deemed proper delivery of same so long a copy of such electronic notice is sent to Tenant in accordance with the first sentence of this Section 14.01(b).

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

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

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

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

From and after the Possession Date or such earlier date that Tenant or its agents, employees or contractors are permitted to access the Premises, except only as to the extent of injury, death or property damage proximately caused by the negligence or willful misconduct of Landlord or that of its agents, employees or contractors, Tenant shall indemnify, defend with legal counsel reasonably approved by Landlord, acting reasonably, and hold harmless Landlord, Landlord's property manager, employees, servants, licensees, lessors, partners, officers, shareholders, members, trustees, principals, agents and any ground lessor, and holders of a mortgage or lien on all or any portion of the Shopping Center from and against any suits, actions, damages, claims, judgments, costs, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising from, or out of, any occurrence in, upon, at or from the Premises, or the occupancy or use by Tenant of the Premises, or any part thereof, or occasioned wholly, or in part, by the willful misconduct or negligent act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, (including use of the sidewalks and Common Areas within the Shopping Center. Tenant's indemnification obligations shall not be limited by the provisions of any Workers' Compensation Act or similar statute.

Except only as the extent of injury, death or property damage proximately caused by the negligence or willful misconduct of Tenant or that of its agents, employees or contractors, Landlord shall indemnify, defend, and hold harmless Tenant, from and against any suits, actions, damages, claims, judgments, costs, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising from, or out of, any occurrence in, upon, at or from the Common Area or occasioned wholly, or in part, by the willful misconduct or negligent act or omission of Landlord, its agents, contractors or employees.

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

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

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

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

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

Dollars per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) Dollars in the aggregate;

(4) An umbrella liability policy or excess liability policy having a limit of not less than Three Million and 00/100 Dollars (\$3,000,000.00), which policy shall be in "following form" and shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. Such umbrella liability policy or excess liability policy shall include coverage for Additional Insureds.

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

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

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

(8) Workers' compensation and occupational disease or similar insurance affording statutory coverage and containing statutory limits in accordance with applicable law, and employer's liability insurance with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; and

(9) if food and/or beverages are sold, provided and/or consumed on the Premises, product liability coverage, including, without limitation liquor liability coverage, if applicable, and coverage for liability arising out of the consumption of food and/or alcoholic beverages on or obtained at the Premises of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence for personal injury and death and property damage.

Landlord and the other designated Additional Insureds shall be named or included as an additional insured with tenant's coverage applying on a primary and non-contributory basis under the policy providing the coverage as set forth above in this Section. Landlord shall have the right to update, modify or revise the designated Additional Insureds from time to time by delivering written notice thereof to Tenant, which Additional Insureds may include, without limitation, any successor-in-interest to Landlord, Landlord's subsequent or additional lender(s) and/or a subsequent property manager of the Shopping Center. If Tenant fails to procure the required insurance, and such failure continues for more than five (5) days following written notice from Landlord, Landlord may, but shall not be required to, obtain the same for Tenant and Tenant shall reimburse Landlord, within thirty (30) days of written demand, for the cost thereof as Additional Rent. If Tenant provides the insurance required herein under a policy covering multiple locations, which Tenant is permitted to do, then Tenant's insurance covering the Premises shall include a general aggregate per location endorsement in the minimum required amount of coverage set forth herein. Landlord shall be a loss payee on Tenant's property insurance in regards to the leasehold improvements as its interests may appear.

(ii) All companies providing Tenant's insurance shall have and maintain a minimum AM Best rating of A-VIII. Tenant may not self-insure any part of the required liability insurance coverages (other than plate glass insurance), nor may the total of Tenant's deductibles and self-insurance retentions exceed commercially reasonable amounts.

(iii) If any portion of the Shopping Center is currently, or at any time in the future, located in a federally designated "special flood hazard area", Landlord may require flood hazard insurance in an amount that reasonably approximates the replacement cost of Tenant's improvements.

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

(b) From and after Additional Rent Commencement Date, Tenant shall pay, as Additional Rent, to Landlord, without any deduction, abatement or setoff whatsoever, except as otherwise expressly provided for in this Lease to the contrary, an amount equal to Tenant's Share of the "Insurance Charge", which is defined as any and all costs and expenses of every kind and nature as may be paid or incurred by Landlord directly, or through an operating and easement agreement or other encumbrances upon the Shopping Center, in insuring the Shopping Center buildings, Common Areas and other improvements, including without limitation, the cost and expense of providing or causing any or all of the following to be provided (but Landlord shall be required to provide no less than the coverage set forth in (i) and (ii) below):

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

(ii) commercial general liability insurance with regard to the Common Areas with minimum limits of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, Two Million and 00/100 Dollars (\$2,000,000.00) general aggregate, for bodily injury, death and property damage liability. Landlord shall have the right to carry its insurance under "blanket" and/or "umbrella" policies covering the Shopping Center and other properties. Any insurance policies maintained by Landlord may include deductibles, self-insured retentions or the like in amounts determined by Landlord, in

Landlord's sole discretion. Landlord shall have the right, but not the obligation, to maintain commercial insurance policies covering some or all of the deductibles, self-insured retentions or the like which are provided in any of Landlord's other insurance policies;

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

(iv) Intentionally deleted.

(c) Tenant's payment of Tenant's Share of Insurance Charge shall be paid in equal monthly installments simultaneously with the Minimum Annual Rent payable hereunder. The foregoing amount shall be adjusted annually at the end of each Fiscal Year, which adjustment shall be based upon Landlord's estimation of the then current Insurance Charge and Tenant's Share thereof.

(d) Following the end of each Fiscal Year, Landlord shall provide Tenant with a statement of the prior Fiscal Year's Insurance Charge ("Insurance Charge Reconciliation Statement"), which shall include a statement of the total deposits Tenant made toward such Fiscal Year's Insurance Charge and the total share of the actual Insurance Charge. There shall be an appropriate adjustment made between Landlord and Tenant based thereon. If such adjustment shows a balance due to Landlord, such balance shall be payable by Tenant within thirty (30) days after delivery of the annual Insurance Charge Reconciliation Statement; if such adjustment shows a balance due to Tenant, then Tenant shall have a credit against the next payments of Minimum Annual Rent due Landlord in the amount of the balance due (or such shall be paid within thirty (30) days after its determination if after the Expiration Date), in either case after first deducting therefrom any due and outstanding Rent then owed to Landlord. The foregoing shall survive the Expiration Date. At any time throughout the Lease Term, Landlord shall have the right to recalculate Landlord's estimate of Insurance Charge due from Tenant pursuant to the terms of this Lease, which computations shall be an estimate based upon the most recent annual statements of Insurance Charge and Tenant's Share of Insurance Charge shall be adjusted accordingly.

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

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

and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

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

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

Notwithstanding anything contained in this Lease to the contrary, Tenant shall not stock, use or sell any article, or do anything in or about the Premises, which may be prohibited by Landlord's insurance policies or any endorsements or forms attached thereto, or which will increase any insurance rates and premiums on the Premises, the building of which it is a part and/or any other buildings in the Shopping Center. Tenant shall pay on demand any increase in premiums for Landlord's insurance, or that of any other tenant in the Shopping Center, resulting from Tenant's use, occupancy or vacancy of the Premises or the Shopping Center, whether or not Landlord has consented to the same. In determining whether increased premiums are the result of Tenant's use, occupancy or vacancy of the Premises, a schedule issued by the organization making the fire insurance, extended coverage, vandalism and malicious mischief, special extended coverage or any all-risk insurance rates for said Premises or any rule books issued by the rating organization or similar bodies or by rating procedures or rules of Landlord's insurance companies shall be conclusive evidence of the several items and charges which make up the insurance rates and premiums on the Premises and the Shopping Center. If, due to Tenant's occupancy (or failure to occupy) or abandonment of the Premises, any insurance shall be cancelled by the insurance carrier, or if the premium for any such insurance shall be increased, then, in any of such events, Tenant shall indemnify and hold Landlord harmless and shall pay on demand the increased cost of such insurance. Tenant also shall pay in any of such events any increased premium on the rent insurance that may be carried by Landlord.

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

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

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

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

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

Tenant shall give prompt written notice to Landlord, which shall in no event be more than fifteen (15) days after any case of fire or accidents in the Premises, or of any defects therein or in any fixtures or equipment. Promptly following any fire or accident, Tenant shall give written notice to Landlord of any damage claimed. Tenant shall not be entitled to any abatement or diminution of Minimum Annual Rent pursuant to Section 17.01 hereof for any period during which it prevents Landlord from repairing that portion of the damages, if any, which it is Landlord's obligation to repair.

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

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

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, TENANT AGREES THAT IT SHALL LOOK SOLELY TO THE EQUITY INTEREST OF LANDLORD IN THE SHOPPING CENTER (INCLUDING PROFITS AND PROCEEDS OF SAME), SUBJECT TO PRIOR RIGHTS OF ANY MORTGAGEE OR TRUSTEE OF THE SHOPPING CENTER, FOR THE COLLECTION OF ANY JUDGMENT (OR OTHER JUDICIAL PROCESS) REQUIRING THE PAYMENT OF MONEY BY LANDLORD IN THE EVENT OF ANY DEFAULT OR BREACH BY LANDLORD WITH RESPECT TO ANY OF THE TERMS, COVENANTS AND CONDITIONS OF THIS LEASE TO BE OBSERVED AND/OR PERFORMED BY LANDLORD AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCEDURES FOR THE SATISFACTION OF TENANT'S REMEDIES. IN THE EVENT LANDLORD TRANSFERS THIS LEASE, EXCEPT AS COLLATERAL SECURITY FOR A LOAN, UPON SUCH TRANSFER LANDLORD WILL BE RELEASED FROM ALL LIABILITY AND OBLIGATIONS HEREUNDER, TO THE EXTENT THAT THE TRANSFeree ASSUMES THE OBLIGATIONS OF THIS LEASE. IF THIS LEASE IS EXECUTED ON LANDLORD'S BEHALF BY A MANAGER, A MANAGING MEMBER OR A MANAGING AGENT, SUCH PARTY'S EXECUTION HEREOF IS FOR THE SOLE PURPOSE OF EVIDENCING LANDLORD'S AGREEMENT TO BE BOUND BY AND TO ALL OF THE TERMS, COVENANTS AND CONDITIONS CONTAINED HEREIN. NO SUCH MANAGER, MANAGING MEMBER OR MANAGING AGENT SHALL BE LIABLE OR OBLIGATED TO TENANT UNDER THIS LEASE.**

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

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

### **Section 16.03. No Partnership.**

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

#### **Section 16.04. Consent Clause.**

Unless either party's consent or approval is required by the express terms of this Lease not to be unreasonably withheld, conditioned or delayed such consent or approval may be withheld or delayed by such party in its sole and arbitrary discretion. If in this Lease it is provided that either party's consent or approval as to any matter will not be unreasonably withheld, conditioned or delayed, and it is established by a Court or other body having final jurisdiction that such party has been unreasonable, the sole effect of such finding shall be that such party shall be deemed to have consented to or approved the matter for which its consent or approval was requested. Neither party shall be liable to the other in any respect for money or money damages by reason of withholding or delaying its consent or approval.

#### **Section 16.05. Successors.**

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of the said parties. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as provided in Article 11 hereof unless Landlord's approval is not required. Notwithstanding the foregoing, in the event Landlord or any successor owner shall convey or otherwise dispose of the Premises, all liabilities and obligations on the part of Landlord or successor owner under this Lease arising or accruing after such conveyance shall cease and terminate and thereupon all such liabilities and obligations shall automatically be binding upon the new owner.

### **ARTICLE 17: DAMAGE CLAUSE**

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

If the Premises and/or a material portion of the Shopping Center, including, without limitation, the parking lot is damaged by any event of damage or destruction covered by the insurance policies that Landlord carries or is required to maintain pursuant to this Lease, then such damage shall, except as hereinafter provided, be promptly repaired by Landlord, at Landlord's expense; provided, however that in no event shall Landlord be required to repair or replace any of Tenant's property or improvements identified in Sections 15.02(a)(i)(1), (2) and (5), which shall be the obligation of Tenant to replace to at least equal condition immediately prior to such damage. If (i) the Premises are damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, (ii) the building(s) within the Shopping Center are damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damages to the Premises, (iii) the building containing the Premises is damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damage to the Premises, or (iv) any damage to the Premises occurs during the last Lease Year of the then current Lease Term, then Landlord may elect either to repair or rebuild the Premises or the building(s) within the Shopping Center, as the case may be, or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the event causing the damage, however, Landlord is only permitted to terminate this Lease if it is terminating the leases of all tenants in the building in which the Premises are located and that are similarly affected by the casualty. If the casualty, repairing, or rebuilding shall render the Premises untenantable, in whole or in part, a proportionate abatement of the Rent in proportion to the leasable area of the Premises rendered untenantable shall be allowed until the date that is ninety (90) days after Landlord completes the repairs or rebuilding, provided, if only a portion of the Premises is rendered untenantable but if Tenant determines in its reasonable business judgment that the entire Premises must be closed, and Tenant closes the entire Premises, then all Rent shall abate.

## **17.02. Tenant's Right to Terminate.**

In the event Landlord elects to repair and restore the Leased Premises, then, within sixty (60) days after the date of the casualty, Landlord shall submit a statement from Landlord's contractor (the "Contractor") estimating the length of time required to complete the repair and reconstruction of the Leased Premises ("Estimated Repair Period"). In the event the Contractor's statement reflects that repair and reconstruction of the Leased Premises will require more than three hundred sixty (360) days after the date of such casualty, then for a period of fifteen (15) days after the date of Landlord's notice, Tenant shall have the right to terminate this Lease upon written notice to Landlord. If Tenant fails to terminate this Lease within the aforesaid fifteen (15) day period, Tenant shall be deemed to have waived its right to terminate this Lease in accordance with this Section 17.02.

In the event the Landlord should fail to complete its repairs on or before the expiration of the Estimated Repair Period (subject to delays caused by Force Majeure), then, at any time following the expiration of the Estimated Repair Period, but in all events prior to the date Landlord completes repairs, Tenant shall have the right to terminate this Lease upon seven (7) days prior written notice to Landlord.

Additionally, in the event that 50% or more of the Premises or a substantial portion of the Center are damaged by fire or other casualty: (i) during the last Lease Year of the then current Lease Term and (ii) such damage was not caused by one or more acts or omissions of Tenant, then Tenant shall have the right to terminate this Lease upon written notice to Landlord.

## **ARTICLE 18: CONDEMNATION**

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

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

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

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

(d) Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, and although Tenant hereby expressly waives all claims against Landlord, Tenant shall have the right to claim and recover from the condemning authority, not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment. Under no circumstances shall Tenant's claim for such award reduce or diminish Landlord's award nor shall Tenant have a claim for loss of its leasehold estate.

## ARTICLE 19: PRIORITY OF LEASE

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

Tenant has been informed and understands that Landlord is now, or may be in the future, a tenant under a lease of the land and/or entire building of which the Premises forms a part. This Lease is and shall be automatically subject and subordinate to all ground or underlying leases and to all mortgages, deeds of trust or liens resulting from any other method of financing or refinancing which now or hereafter affects such leases or the real property of which the Premises forms a part and to all renewals, modifications, consolidations, replacements and extensions thereof. This Section shall be self-operative and no further instrument of subordination shall be necessary; provided, however, if requested by Landlord's ground lessor or any mortgagee, Tenant shall execute a subordination, non-disturbance and attornment agreement in form reasonably satisfactory to Tenant and such mortgagee, with commercially reasonable terms, within twenty (20) days after Tenant's receipt of written request by Landlord. Additionally, in confirmation of such subordination, Tenant shall execute promptly any other certificate or document that Landlord may reasonably request related to this Lease. In the event that any ground or underlying lease is terminated, or any mortgage or deed of trust is foreclosed or title transferred as a result of a deed-in-lieu of foreclosure, this Lease shall not be terminable by Tenant (and shall not terminate unless Tenant is specifically named in any termination or foreclosure judgment or final order), and Tenant shall attorn to any such successor lessor and recognize such lessor as Landlord under this Lease. In the event of a sale or assignment of Landlord's interest in the building of which the Premises forms a part, Tenant shall attorn to the purchaser and recognize such purchaser as Landlord under this Lease provided such purchaser has assumed, in writing, Landlord's obligations under this Lease. In the event that any ground or underlying lease is terminated as aforesaid or any mortgage foreclosed or the property transferred by deed-in-lieu of foreclosure, Tenant agrees, at Landlord's, master landlord's, trustee's or mortgagee's option, to enter into a new lease covering the Premises for the remaining Lease Term and otherwise on the same terms, conditions and rentals as herein contained. Notwithstanding anything contained in this Lease to the contrary, if the holder of any mortgage or deed of trust elects to have this Lease superior to its mortgage or deed of trust, then, upon Tenant being notified to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage or deed of trust, whether this Lease is executed prior to or subsequent to the date of said mortgage or deed of trust.

Without limiting the foregoing, upon Tenant's request, Landlord agrees to request that its current mortgagee provide a subordination and non-disturbance agreement in favor of Tenant on such mortgagee's current form; provided, however, non-receipt of the subordination and non-disturbance agreement shall not constitute a breach or default by Landlord under this Lease nor shall the effectiveness of this Lease be conditioned upon receipt of the same. Tenant shall reimburse Landlord, as Additional Rent, any and all fees or charges imposed by such mortgagee in connection

with such request and Landlord's reasonable, out of pocket legal fees incurred by Landlord in attempting to secure such agreement. If such lender will not agree to receive or review such request without prior payment of fees or charges (such as a retainer), Landlord reserves the right to condition any effort to obtain the subordination, non-disturbance and attornment agreement on Tenant's delivery to Landlord of the requisite sums.

Notwithstanding the foregoing, this Lease, and Tenant's right of possession of the Premises, shall not be subordinate to any future ground or underlying lease or mortgage, unless and until Tenant receives a fully executed subordination, non-disturbance and attornment agreement, in commercially reasonable form from the overlessor or mortgagee, as the case may be.

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

Each party hereto shall, from time to time, but not more than once in any 12 month period, (unless Landlord's request for an estoppel is as a result of a potential sale or financing of the Shopping Center, in which event no such limitation shall apply) as requested by the other party, execute and deliver to the requesting party (or to a party designated), within twenty (20) days of written demand therefor, a written statement which shall: (i) certify that this Lease is unmodified and in full force and effect (or if there have been modifications, setting forth all modifications and certifying that the same is in full force and effect as so modified); (ii) confirm that there is no default under this Lease (or specifying any default); (iii) set forth the Minimum Annual Rent and Additional Rent currently due under the Lease and state the date to which Minimum Annual Rent and Additional Rent have been paid or received; (iv) confirm whether there are any subleases affecting the Premises; and (v) contain such other information or confirmations as may reasonably be required. The failure by either party to comply with its obligation in this Section 19.02 shall be a default hereunder if such failure is not cured within seven (7) business days after the defaulting party receives notice of the default.

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

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

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

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

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

(a) Tenant shall be in default in the payment of any Rent and such default shall continue for a period of five (5) consecutive days after written notice thereof from Landlord, except as expressly set forth below to the contrary.

(b) With respect to a non-monetary violation of this Lease, failure of Tenant to cure the same within the minimum time period within which Tenant is required by the terms of this Lease to cure the violation after Landlord has sent to Tenant notice of such violation (or if no such time period is specified, within thirty (30) days after Landlord has sent Tenant written notice of such violation), or, in the event such violation cannot reasonably be cured by Tenant within such thirty-day period, such additional time as is reasonably necessary to promptly and diligently cure the failure, provided Tenant has commenced to cure same within such thirty (30) day period and has diligently and continually pursued such cure to completion, except as expressly set forth below to the contrary.

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

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

(e) If Tenant shall close for business in violation of this Lease, or if Tenant shall abandon or vacate the Premises, and in any such case, Tenant fails to cure same within ten (10) days following written notice from Landlord.

(f) If Tenant shall fail to open for business within thirty (30) days after the Commencement Date, and Tenant fails to cure same within thirty (30) days following written notice from Landlord.

(g) Notwithstanding anything to the contrary set forth in this Lease, if Tenant shall be in default of the same term, condition or requirement of this Lease, and if any such default shall be repeated twice in any period of twelve (12) consecutive months, then, notwithstanding that such default shall have been cured within the period after notice, as provided above, any further similar default within said twelve (12) month period shall be deemed to be an automatic Event of Default, at Landlord's option, Tenant shall not have any right to cure the same, and Landlord, without giving Tenant any notice and without affording Tenant any opportunity to cure such default, may exercise any rights or remedies available to Landlord as set forth in this Lease, including, without limitation, the right to terminate this Lease, provided Landlord must have provided Tenant with written notice of the first two (2) such defaults in such 12 month period.

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

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

(a) Elect to re-enter or take possession of the Premises pursuant to legal proceedings or any notice provided for herein and may either terminate this Lease or, without terminating this Lease, (i) remove all persons and property from the Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby and (ii) make such alterations and repairs as may be necessary in order to re-let the Premises for a term, rental rate and conditions as Landlord, in its sole discretion, may deem advisable. Upon re-letting, rentals received by Landlord from such re-letting shall be applied first to the payment of any indebtedness other than Minimum Annual Rent due hereunder from Tenant; second to the payment of any costs and expenses of such re-letting, including brokerage fees (not to include commissions covering any period beyond the Lease Term), reasonable attorneys' fees and costs of alterations and repairs; third to the payment of the most current Minimum Annual Rent owed at that time; and the residual, if any, shall be held by Landlord and applied in payment of future Minimum Annual Rent as the same may become due and payable hereunder from Tenant. If such rentals received from such re-letting are less than that to be paid by Tenant, Tenant shall be liable for the deficiency to Landlord. Any such deficiency shall be calculated and due monthly. No such re-entry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease or to accept a surrender thereof.

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

(c) Cure such default for the account of Tenant (without waiving any claim for breach of this Lease); said right to cure shall include, without limitation, the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event Landlord shall, at its election, pay such sums or do such acts requiring the expenditure of monies, Tenant agrees to pay Landlord, upon demand together with reasonable documentation of such costs, all such sums and the sum so paid by Landlord, plus ten percent (10%) thereof for overhead and supervision and interest thereon at the Default Interest Rate, shall be deemed Additional Rent and be payable as such.

(d) In addition to all other amounts set forth above, Tenant shall promptly pay to Landlord the Unamortized Allowance and Unamortized Commissions.

(e) Landlord shall use commercially reasonable efforts to mitigate its damages by making "reasonable efforts" to relet the Premises. Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished, because of Landlord's failure to actually relet the Premises or collect Rent

due with respect to such reletting so long as Landlord has fulfilled its duty under this Section. Landlord shall be deemed to have made a "reasonable efforts" to relet the Premises by doing the following: (i) posting a "For Lease" sign on the Premises that includes Landlord telephone contact number; and (ii) showing the availability of the 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 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 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 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 Premises). In no event shall Tenant be entitled to any excess of Rent (or Rent plus other sums) obtained by reletting the Leased Premises over and above the Rent herein reserved.

(f) Landlord's rights hereunder shall survive the termination of the Lease.

Notwithstanding anything to the contrary which may be contained in this Lease, in no event shall Tenant ever be liable pursuant to this Lease for lost profits or consequential, speculative or punitive damages, other than in connection with Tenant's holding over in the Premises for more than thirty (30) days after Landlord's notice to vacate and Tenant's violation of any exclusive or prohibited uses in the Shopping Center existing as of the date of this Lease as set forth on Exhibit F attached hereto.

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

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

#### **Section 20.04. Disposition of Tenant's Property.**

Landlord hereby waives any statutory or common law lien right Landlord might have to Tenant's personal property by virtue of its role as "landlord," Tenant's trade fixtures, equipment and inventory within the Premises ("Tenant's Property") and Tenant shall have the right to remove same at any time, subject to repairing any damaged caused by such removal. In no event shall Tenant's Property be deemed to include any component of the HVAC system or electrical system, any plumbing fixture, or any pipes, paneling, wall or floor covering, ceiling tiles or lighting fixtures. Upon the expiration or termination of this Lease, the Premises shall be left in the condition required under Section 2.03 of this Lease. In the event that Landlord shall have taken possession of the Premises in connection with an Event of Default or for any other lawful reason, and provided Landlord has first given Tenant ten (10) days' written notice to remove all of Tenant's Property from the Premises, any property remaining after the expiration of such ten (10) day period shall be deemed abandoned and Landlord shall have the right to remove from the Premises and Shopping Center (without the necessity of

obtaining a distress warrant, writ of sequestration or other legal process) all or any portion thereof and dispose of same in any manner acceptable to Landlord. In such event, Tenant shall be liable to Landlord for reasonable costs incurred by Landlord in connection with such removal and/or disposal and shall indemnify and hold Landlord harmless from all loss, damage, cost, expense and liability in connection with such removal and disposal.

**Section 20.05. Redemption; Reinstatement.**

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future Laws in the event Tenant is evicted or dispossessed for any cause, or in the event Landlord obtains possession of the Premises. No receipt of monies by Landlord from or for the account of Tenant or from anyone in possession or occupancy of the Premises after the termination of this Lease or after the giving of any notice of termination shall reinstate, continue or extend the Lease Term or affect any notice given to Tenant prior to the receipt of such money.

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

**LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY.**

**Section 20.07. Accord and Satisfaction.**

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

**Section 20.08. No Waiver.**

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

### **Section 20.09. Merger.**

The parties each expressly waive any right of defense which it may have to claim a merger and neither the commencement of any action or proceedings nor the settlement thereof or entering of judgment therein shall bar the other from bringing subsequent actions or proceedings from time to time for independent claims under this Lease.

### **Section 20.10. Legal Fees.**

In any action or proceeding to enforce any provision hereof which proceeds to final judgment in a court of law, the prevailing party shall be entitled to reasonable attorney's fees.

## **ARTICLE 21: MISCELLANEOUS PROVISIONS**

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

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

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

The submission of this Lease for examination does not constitute a reservation of or option for the Premises. Both parties hereby waive and are estopped from asserting any rights with respect to Lease which may arise from any alleged oral agreement; oral lease; any acts or expenditures (including without limitation the return of this Lease to Landlord executed by Tenant and the payment of any sums on account hereof, or Landlord expending any sums of money to prepare the Premises for Tenant) or series of same taken or made by either party in reliance on the anticipated full execution hereof by the parties; or any letter from either party or its attorneys sent prior to the full execution and delivery hereof by Landlord to Tenant; it being expressly understood and agreed that both parties shall under no circumstances have any such rights until said execution and delivery hereof by Landlord. This Lease shall have no force and effect until (i) it is executed and delivered by Tenant to Landlord, and (ii) it is executed by Landlord and delivered to Tenant.

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

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

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

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

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

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

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

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

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

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

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

Landlord and Tenant shall be excused for the period of any delay in the performance of any of its obligations hereunder (and any time period obligations consequently affected by such delays, including any required delivery date, shall be likewise extended) when prevented from doing so by a cause or causes beyond its reasonable control which shall include, without limitation, all labor disputes, pandemic, epidemic, or other public health emergency officially recognized by the World Health Organization or by the Centers for Disease Control and Prevention (or by any other applicable governmental agency) that cause public health emergencies and result in the issuance of mandatory government quarantine restrictions, work-from-home orders, shelter-in-place orders, stay-at-home orders, or any other mandatory government isolation orders affecting the location of the Leased Premises, riots, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, failure of power, governmental regulations or controls, government closures or moratoria, fire or other casualty, difficulty or delay to obtain any material, equipment or services (including supply chain delays), acts of God, and failure to obtain or delay, through no fault of its own, in obtaining any licenses, permits or approvals required by any governmental authority. Notwithstanding the foregoing, the provisions of this Section shall not apply to the payment of Rent payable by Tenant under this Lease or work to delay the Commencement Date by more than thirty

(30) days.

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

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

**Section 21.10. Intentionally Deleted.**

**Section 21.11. Counterparts.**

This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart. In order to facilitate the agreements contemplated by this Lease, signatures to this Lease transmitted as Electronic Copies may be used in place of original signatures on this Lease. Landlord and Tenant each (i) intends to be bound by Electronic Copies of this Lease, (ii) is aware that the other party is relying on the Electronic Copies, and (iii) hereby waives any defenses to the enforcement of this Lease based upon the Electronic Copies. In the case of execution via an Electronic Execution System, this Lease shall not be deemed delivered to either party until the Electronic Execution System has certified the completion of the execution process (in the case of DocuSign, for example, by issuance of Certificate of Completion) or delivery is acknowledged by such party.

**Section 21.12. Confidentiality.**

Landlord and Tenant agree that this Lease is confidential and neither party shall, without obtaining the other party's prior written consent, disclose to any third party the contents of this Lease or any information related to this Lease, including but not limited to (a) Rent-related information, and/or (b) the modification of any terms originally included, but subsequently modified, in this Lease ("Confidential Information").

However, the parties may disclose Confidential Information (a) to the extent that the other gives its prior written consent, or (b) to any of Landlord's or Tenant's directors, officers, employees, affiliates, brokers, principals, agents, and advisors (collectively, the "Interested Parties") who need to know such information for the purpose of administering this Lease, or (c) if a party is, in the opinion of its counsel, legally compelled to disclose Confidential Information to any tribunal, court, or governmental agency, Landlord, Tenant or their Interested Party may, without liability hereunder, disclose to such tribunal, court, or governmental agency, such Confidential Information, or (d) in litigation between the parties. For purposes hereof, Confidential Information shall not include information which (i) at the time of disclosure to a party is in the public domain through no act or omission of that party; (ii) as shown by written records is already known by a party; (iii) is revealed to a party by a third party who does not thereby breach any obligation of confidentiality and who discloses such information in good faith; or (iv) is independently discovered by a party. Landlord and Tenant shall inform the Interested Parties receiving the Confidential Information of Section 21.12 and advise such Interested Parties to act in accordance with this Section.

Neither Landlord nor any of its brokers, agents, employees or representatives shall issue any press release or make any public announcement (including commentary to the news media) of same or of Tenant's potential tenancy at the Shopping Center until Tenant has issued a press release announcing such opening. Any press release by Landlord shall be subject to Tenant's prior review and reasonable comments.

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

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

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

Landlord and Tenant acknowledge and agree that the following "State or Property Specific Provisions" apply to the Shopping Center, and to the extent that the terms of the State or Property Specific Provisions conflict with the other terms and conditions of the remainder of this Lease, including, without limitation, the Exhibits attached hereto, the terms of the Property Specific Provisions shall govern and control. The "Property Specific Provisions" are as follows:

#### **WASHINGTON**

Indemnity (Limitations). In compliance with RCW 4.24.115 as in effect on the date of this Lease, all provisions of this Lease pursuant to which Tenant agrees to indemnify Landlord against liability for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Premises, (i) shall not apply to damages caused by or resulting from the negligence of the Landlord, its agents or employees, and (ii) to the extent caused by or resulting from the concurrent negligence of (a) the Landlord or Landlord's agents or employees, and (b) the Tenant or Tenant's agents or employees, shall apply only to the extent of Tenant's negligence; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section shall automatically and without further act by either Landlord or Tenant be deemed amended so as to remove any of the restrictions contained in this Section no longer required by then applicable law, and in such case, the express terms of this Lease shall thereafter control with respect to such matters.

Waiver of Jury Trial. Tenant and Landlord agree and intend that the waiver of jury trial set forth in Section 20.06 of the Lease constitutes a written consent to waiver of trial by jury within the meaning of RCW 4.48.010. Tenant hereby authorizes and empowers Landlord to file this Lease with the clerk or judge of any court of competent jurisdiction as a written consent to waiver of jury trial.

#### **Seattle**

Seattle Ordinance 126982. In the event any of the financial requirements in this Lease or in any required Guaranty violate any Law or exceed the amounts permitted by Law, the parties agree that such violation shall not violate the entire Lease or Guaranty, and the Tenant and/or Guarantor shall be liable for only such amounts as are permitted by Law (not to exceed the specific amounts due under this Lease). Tenant hereby acknowledges receipt (at the time of, or prior to, Lease offering) a copy of the Summary of Seattle Ordinance 126982 prepared by

(or at the direction of) the Seattle Director Finance and Administrative Services and attached as Exhibit I.

### **Section 21.15. Green Lease Rider**

The provisions of Exhibit J ("Green Lease Rider") attached hereto are incorporated into and made a part of this Lease. To the extent that the terms of the Green Lease Rider conflict with the other terms and conditions of the remainder of this Lease, including, without limitation, the Exhibits attached hereto, the terms of the Green Lease Rider shall govern and control, except to the extent any such conflicting term would materially increase any of Tenant's obligations under this Lease or decrease Tenant's rights under this Lease.

### **Section 21.16. Intentionally Deleted.**

### **Section 21.17. Binding Authority.**

If Tenant is a corporation, partnership or limited liability company, the corporation, partnership or limited liability company represents, covenants and warrants to Landlord as of the date Tenant executes and delivers this Lease that the signatories signing on behalf of Tenant have the requisite authority to bind Tenant. If Landlord is a corporation, partnership or limited liability company, the corporation, partnership or limited liability company represents, covenants and warrants to Tenant as of the date Landlord executes and delivers this Lease that the signatories signing on behalf of Landlord have the requisite authority to bind Landlord.

### **Section 21.18. Exhibits.**

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

- Exhibit A - Site Plan
- Exhibit A-1- No Kiosk Area
- Exhibit B - Landlord's Work and Tenant's Work
- Exhibit B-1 Signage and Construction Criteria
- Exhibit C - Rules and Regulations
- Exhibit D - Depiction of Pylon/Monument Sign
- Exhibit E - Estoppel
- Exhibit F - Use Restrictions
- Exhibit G - Existing Conditions
- Exhibit H - Acknowledgement of Commencement Date
- Exhibit I - Seattle Finance and Administrative Services Summary of Commercial Lease Requirements
- Exhibit J - Green Lease Rider
- Exhibit K - Gross Sales Statement Form

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

**LANDLORD:**  
**BCORE Westwood Village LLC**, a Delaware limited liability company

DocuSigned by:  
By:   
Name: Peter Maggio  
Title: Authorized Signatory

**TENANT:**  
**H.F.D. No. 55, Inc.**, a Delaware corporation

DocuSigned by:  
By:   
Name: Stacy Siegal  
Title: EVP, Chief Legal Officer and Corporate Secretary

## EXHIBIT A SITE PLAN

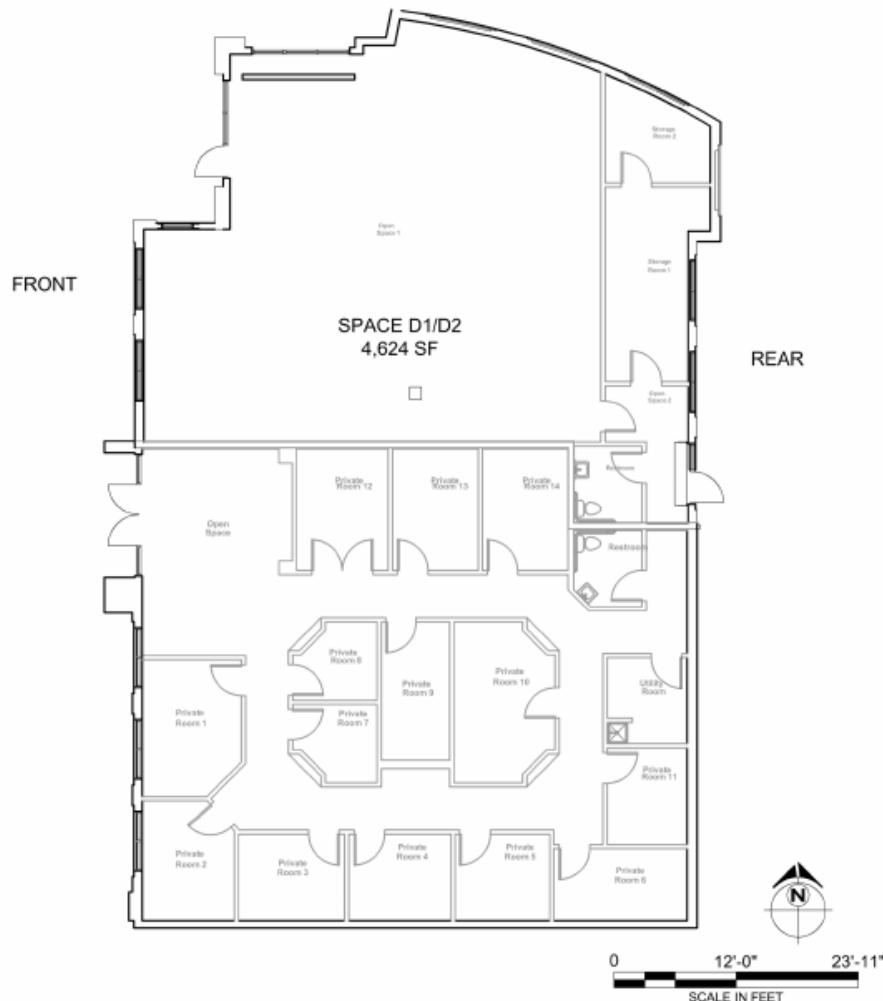
### Location of Premises



This Site Plan is Not to Scale

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

## LOD



	<b>SHOPCORE</b> PROPERTIES
DOCUMENT & LINKS FOR INFORMATIONAL PURPOSES ONLY. TENANT/TENANT'S FPO RESPONSIBLE TO VERIFY EXISTING CONDITION.	
Space no:	Date: 5/16/2024
1	Drawn by: NRG

**SPACE D1/D2  
COMBINED LOD  
WESTWOOD VILLAGE  
SEATTLE WA**

This Site Plan is Not to Scale

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

**EXHIBIT A-1  
NO KIOSK AREA**

**Site Plan**



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

**Landlord's Work:** None. Tenant acknowledges that (i) it is familiar with the Premises, (ii) Tenant or its representative has visited the Premises, or was given the opportunity to visit the Premises prior to the Effective Date, (iii) except as otherwise expressly set forth in the Lease, there is no work to be performed by Landlord, no delivery conditions required, and no representation or warranty has been made by Landlord, its brokers, agents, employees, or representatives, as to the fitness of the Premises, or any equipment servicing or improvement within the Premises, for any use permitted herein, and (iv) it is taking possession of the Premises on the Possession Date in its "AS IS/WHERE IS" condition, except the Premises shall be delivered with the Delivery Requirements satisfied.

Notwithstanding the foregoing Landlord represents that, to its knowledge, as of the Effective Date the roof is structurally sound and watertight.

**Tenant's Work:** Excluding Landlord's Work, if any, any and all improvements to the Premises desired by, Tenant to use and operate its Permitted Use in the Premises, to be identified on the plans and specifications for such improvements prepared by Tenant and approved by Landlord in accordance with the terms of this Exhibit, are herein referred to as "**Tenant's Work.**" Tenant shall perform Tenant's Work in accordance with the following.

**1. Plans and Specifications.**

a. Within sixty (60) days after the Effective Date (the "**Plans Submission Deadline**"), Tenant shall submit complete architectural, mechanical, electrical and structural drawings and specifications for Tenant's Work (the "**Plans**") to Landlord.

i. The Plans shall be prepared by architects, engineers and other design professionals who are licensed in the state in which the Shopping Center is located ("State").

ii. The Plans shall (a) conform with all applicable Laws, (b) include a coordinated set of all mechanical, plumbing and electrical drawings, showing locations and elevations by system, (c) satisfy, at a minimum, the Submission Requirements set forth below, and (d) reflect that (i) all mechanical and/or structural drawings and specifications have been stamped by an engineer licensed in the State; (ii) all engineer drawings and specifications (including life safety and fire safety) have been stamped by an electrician licensed in the State; and (iii) all Plans have been stamped by Tenant's approved architect.

The "Submission Requirements" are:

- (A) Floor plan to scale.
- (B) Reflected ceiling plan to scale.
- (C) Storefront and show window elevation and sections to scale.
- (D) Storefront and show window details to scale.
- (E) Interior elevations to scale.
- (F) Interior finishing schedule.
- (G) Sign shop drawings prior to fabrication and related lighting and equipment.
- (H) Any other special facilities or installations that affect the building.
- (I) Sprinkler and other fire protection devices, including the fire alarm system for the Premises.
- (J) Plumbing plan to include single line diagram.
- (K) Lighting plan and electrical plan to include single line diagram and under floor electric.
- (L) Mechanical plan showing RTU location(s) and tonnage and designed to maintain a negative 10 % air balance in the Premises.

- (M) Ductwork for connection to the air conditioning system, toilet exhaust system and any other ventilation system required by Tenant.
- (N) Any necessary structural drawings to include rooftop support to be prepared by a licensed structural engineer.

iii. The Plans shall be submitted for Landlord review and approval in electronic PDF format.

b. After receipt of complete Plans, Landlord shall either approve or disapprove the Plans within ten (10) business days, stating with specificity the reasons for disapproval. Landlord's approval shall not be unreasonably withheld, provided, however, that Landlord's approval of portions of Tenant's Work impacting the Premises' exterior, base building systems (such as electrical, mechanical, and life safety systems), and structural elements of the Premises, shall be within Landlord's sole discretion. Within ten (10) business days after receipt of Landlord's disapproval of the Plans, Tenant shall revise and resubmit the Plans to Landlord. The foregoing procedure shall be repeated until Landlord has approved the Plans (as approved, the "**Final Plans**"). Any changes to the Final Plans requested by Tenant shall be subject to Landlord's approval and any costs incurred by Landlord to review such requested changes shall be reimbursed by Tenant upon Landlord's written demand.

In the event Landlord fails to timely respond to Tenant's plans and specifications within twenty (20) days after Landlord's receipt of such plans, then if such failure continues for more than five (5) business days after Tenant's subsequent delivery of a "Deadline Letter" (as hereinafter defined), Tenant's plans submitted to Landlord shall be deemed approved. For purposes hereof, the term "Deadline Letter" shall be defined as a letter which states in bold letters the following: "Landlord is obligated to respond to the attached plans and specifications within five (5) business days after receipt. If Landlord fails to respond to this Deadline Letter within such five (5) business day period, then the plans shall be deemed approved by Landlord". For avoidance of doubt, the Deadline Letter shall be sent to Landlord's notice address set forth in Section 1.01 of the Lease.

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

2. **Permits.** Tenant shall apply for, and diligently seek, all permits and licenses necessary for the performance of Tenant's Work ("**Permits**") within seven (7) days after the date Tenant receives Landlord's approval of Tenant's Plans (the "**Permit Application Submission Deadline**"). Tenant shall use best efforts to secure the Permits promptly, including the use of an expeditor. If Landlord's signature is required by the authority having jurisdiction for any application for any Permit, or for the issuance of any Permit, Landlord shall not assume or be deemed to assume any liabilities, obligations or costs as a result thereof, all of which shall remain Tenant's responsibility. If Tenant misses either the Plans Submission Deadline or Permit Application Submission Deadline, then Landlord shall deliver a notice to Tenant stating that Tenant has missed the Plans Submission Deadline or Permit Application Submission Deadline, as applicable (each, a "**Missed Deadline Notice**"). Tenant shall have 5 business days after the date of its receipt of a Missed Deadline Notice ("Missed Deadline Cure Period") to submit its Plans to Landlord in accordance with this Lease or file its Permit application in accordance with this Lease, as the case may be.

Notwithstanding the foregoing, Landlord acknowledges that (i) Tenant timely submitted the Plans to Landlord; (ii) on January 10, 2025, Landlord approved Tenant's Plans (as noted therein) dated December 30, 2024 (described therein as "Landlord's Review Set"), such Landlord approved Plans being the Final Plans; and (iii) Tenant timely applied for the Permits (prior to the Permit Application Submission Deadline) on December 30, 2024.

**3. Prosecution of Tenant's Work.**

- a. Tenant's Work may not proceed unless and until:
  - i. Landlord has approved the Final Plans;
  - ii. Tenant has obtained all Permits and delivered copies thereof to Landlord (or Tenant has satisfied Landlord that such permits or licenses are not required);
  - iii. Tenant has delivered to Landlord Tenant's general contractors' certificates of general liability insurance and automobile liability insurance evidencing insurance to Landlord and naming the Additional Insureds as additional insureds, as required by the Lease;
  - iv. Tenant has delivered to Landlord evidence of Tenant's general liability insurance, workers' compensation insurance and automobile liability insurance, as required by the Lease; and
  - v. If Landlord determined, in its sole discretion, that Tenant must obtain, or cause its general contractor to obtain, builders risk insurance, then Tenant has delivered builders risk insurance for construction that covers special risk perils including earthquake, flood, fire, and theft of materials stored at or within 1,000 feet of the Premises. The builders risk insurance shall be on a completed value form including for all insurable hard and soft costs of construction.
- b. Tenant shall complete or cause the completion of Tenant's Work:
  - i. in accordance with all applicable Laws;
  - ii. diligently;
  - iii. in accordance with the Final Plans, the Construction Criteria, and such other reasonable rules and regulations as Landlord may impose;
  - iv. in such manner as will not unreasonably interfere with work being done by Landlord upon the Premises or any other portion of the Shopping Center and as will not cause a Conflict; Tenant shall immediately stop work or other activity if Landlord notifies Tenant that continuing such work or activity would cause a Conflict. Tenant shall indemnify, defend with legal counsel selected by Landlord and hold harmless Landlord from any loss, cost or liability suffered or incurred by Landlord as a result of Tenant's violation of the provisions of this paragraph. Tenant's violation of the terms hereof shall constitute a default hereunder and shall entitle Landlord to exercise any remedies that are available to Landlord at law, in equity or hereunder, including, without limitation, obtaining an injunction.
  - v. by competent workers under the supervision of one or more professional contractor(s) and designer(s);
  - vi. using only new materials and workmanship of a uniformly high quality;
  - vi. maintaining the Premises in a reasonably clean and orderly manner.Tenant shall be responsible for the cost of removing from the Shopping Center all excess materials, trash and cartons resulting from Tenant's Work and stocking of the Premises. Should Tenant fail to regularly clean up construction material, trash and cartons, Landlord may remove such materials and charge the reasonable costs to Tenant, plus an administrative overhead charge of ten percent (10%) thereon.
- c. In no event may Tenant, its employees or contractors:
  - i. perform any work that may cause unreasonable levels of noise or vibration to adjacent premises during the hours of 9:00 a.m. through 7:00 p.m.

ii. enter onto any roof of the Shopping Center or make any opening in the roof without Landlord's consent and approval, not to be unreasonably withheld, conditioned or delayed.

iii. impose a greater load on any concrete floor than the design live load of 100 pounds per square foot uniformly distributed. No unusual loads may be suspended from the underside of roof structure;

iv. permit objectionable odors to emanate from the Premises.

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

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

d. Any damage to the Premises or the Shopping Center caused by Tenant or any of its employees, agents or contractors shall be repaired forthwith by Tenant, or, at Landlord's option, by Landlord at Tenant's expense (which shall include an administrative overhead charge of ten percent (10%)).

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

i. all applicable certificates of completion and occupancy;

ii. final Certificate of Occupancy for the Premises and all other licenses, permits and approvals required by Authorities to operate Tenant's business, unless and for so long as Tenant is unable to obtain such final Certificate of Occupancy solely as a result conditions that are the responsibility of Landlord;

iii. final as-built plans for the Premises;

iv. final notarized lien waivers from Tenant's general contractor waiving any right to file a construction lien for unpaid work or services performed or materials supplied (Landlord reserves the right to request final lien waiver(s) from subcontractor(s) to Tenant's general contractor);

v. affidavit from Tenant's general contractor listing all subcontractors and all materialmen and suppliers for all work, labor and materials in excess of \$7,500 to Tenant's general contractor and that they have been paid in full; and

vi. evidence that all permits obtained by Tenant have been closed out in accordance with the requirements of the local municipality.

4. **Miscellaneous.**

a. In the event that Tenant requests or requires that Landlord obtain material or equipment from a particular supplier and Landlord is delayed in obtaining such material or equipment, then (i) any time periods affected by such delays, including any required delivery date, shall be likewise extended and (ii) Landlord shall have the right to substitute such material or equipment with substantially similar material and equipment in Landlord's reasonable discretion, subject to Tenant's approval, which approval shall not be unreasonably withheld, conditioned, or delayed. If any improvements made by Tenant are located outside of the Premises (including, without limitation, HVAC units and ductwork) in accordance with the approved Plans, Landlord reserves the right to require Tenant to relocate such equipment, at Landlord's cost and expense, within a reasonable time after written request; provided that Landlord shall afford Tenant with commercially reasonable alternatives for the location of the same.

b. Tenant shall switch all utilities to its name on the Possession Date.

## **EXHIBIT B-1 CRITERIA**

### **SIGN CRITERIA / WESTWOOD VILLAGE**

These criteria have been established for the purpose of controlling the size, type, design and location of all signage, so as to enhance the image of the Shopping Center and create a mutual benefit to all tenants. Conformance will be strictly enforced, and any installed non-conforming or unapproved signs must be brought into conformance at the expense of Tenant.

#### **1. ADMINISTRATION**

- (a) All tenants shall provide fascia signage in accordance with these criteria.
- (b) Tenant shall submit to Manager one (1) print of detailed drawings showing location of the sign on the storefront or designated space, size, layout, and color of the proposed sign, including all lettering and/or graphics, materials, attachment devices, construction and fabrication details. Tenant must receive a copy of the sign drawing approved in writing by Landlord or Manager prior to fabrication and installation of the sign.
- (c) Tenant's sign contractor must provide written certification that the sign installation conforms to all applicable codes and ordinances, and that it has been inspected and approved by the controlling agency.
- (d) Tenant or its agent shall obtain a sign permit from the reviewing jurisdiction for the sign and the installation thereof.
- (e) Tenants shall pay for the installation, including transformers, final connections, and maintenance of all signs.
- (f) The Landlord will provide primary electrical service terminating at the point shown on the plans.
- (g) Tenant shall provide primary electrical from tenant service panel, to the exterior blade sign location, by a licensed electrical contractor. Exterior termination to be in a weather proof junction box.
- (h) Tenant shall provide all other installation, including photo cells or astronomical time clocks.
- (i) Upon vacaton of the premises, Tenant shall arrange for removal of fascia sign and filling of holes with appropriate material so as to create a waterproof assembly. Tenant is responsible to patch and paint the exterior panel per Landlords approval. Any damage caused by removal of sign or failure to make construction waterproof shall be Tenant's responsibility. The same would hold true if the tenant were upgrading and/or replacing their existing signage.
- (j) In the event of any conflict between Tenant and Landlord as to the application of these criteria, Landlord's decision shall be final and binding.

#### **2. CONSTRUCTION REQUIREMENTS**

- (a) All signs, bolts, fastenings and clips shall be of glass, plastic, hot dipped galvanized iron, stainless steel, aluminum, brass or bronze. No black iron of any type will be permitted.
- (b) A maximum of 3/4" boring per letter may penetrate the fascia to serve the electrode leads. It is recommended that a "P.K. Housing" or approved equal be utilized. It shall be the sign contractor's responsibility to secure sign to fascia in a method so as not to create a hazard to the public.
- (c) All penetration of the fascia shall be made waterproof by using gaskets and sealant.

- (d) Tenant shall be responsible for any damage caused by the sign contractor, including roof and wall leaks, and parapet wall damage.
- (e) No labels will be permitted on the exposed surface of signs except those required by local ordinance and, if required, shall be in an inconspicuous location.
- (f) No exposed conduit, tubing or raceways will be permitted.
- (g) All electrical signs shall bear the U. L. label.
- (h) Electrical service to all signs shall be from Tenant's service.

**3. DESIGN REQUIREMENTS FOR FASCIA SIGNS, BLADE SIGNS, ENTRANCE AND SERVICE DOOR SIGNS.**

- (a) All fascia signs shall be mounted on the sign fascia and be restricted to the sign area.
- (b) Fascia signs shall not project more than six inches (6") beyond the face of sign fascia and shall conform in size and location to the criteria established in this section.
- (c) Wording of signs shall not include the product sold (i.e. shoes, dresses, etc.), except where identification of Tenant is impossible without same. Landlord shall be the sole judge in its discretion as to conformance in accordance herewith.
- (d) Signs may be of the following types:
  - i. Illuminated plastic-faced individual channel letters with plastic or sheet metal sides and return to match a dark bronze anodized aluminum finish.
  - ii. LED illuminated plastic faced blade sign, aluminum construction, painted Gray per design specifications.
- (e) Signs shall be of the following size:
  - i. In length, not more than seventy-five percent (75%) of the storefront on the elevation facing the primary road.
  - ii. Sign height shall not exceed thirty-six inches (36"). More than one row of letters shall be permitted as long as the maximum height of 36" is not exceeded.
  - iii. Blade sign cabinet to be 30" x 18" + rod support dimension (see design specifications)
- (f) Suggested type face is "Helvetica Medium". Other type faces may be submitted for approval. No script will be allowed except where Tenant has an established, publicly recognized logo or store signature. At the discretion of Landlord, such logo or signature may be used, provided it conforms to all other sign criteria.
- (g) Crests, shields or symbols as required by law (i.e. banks, etc.) will be permitted, but shall be limited to six inches (6") high, the center of which shall be five feet (5') above the floor line, and shall be in gold or silver leaf or in one color on the glass storefronts only.
- (h) Reverse cut white or gold lettering only, shall be permitted on glass doors within the limits set forth herein: 144 square inches per entrance in lettering not to exceed two inches (2") in height, indicated hours of business, emergency telephone numbers, ADT sticker, etc.
- (i) Service Doors:

- i. All lettering shall be painted on face of door.
  - ii. Door is typical non-customer type for receiving merchandise and generally occurs at the rear of premises. (Verify door location with lease plan.)
- (j) The following types of signs are prohibited unless specifically approved by Landlord or Manager and the reviewing jurisdiction on an individual basis:
- i. Illuminated logos, non-illuminated letters, numerals, or symbols.
  - ii. Signs employing moving or flashing lights.
  - iii. Signs employing exposed conduit, conductors, ballast boxes, transformers or other equipment.
  - iv. Signs employing luminous vacuum-formed plastic letters.
  - v. Fascia signs of box or cabinet type employing luminous plastic panels.
  - vi. Signs employing unedged or uncapped letters with no returns and exposed fastenings.
  - vii. No sign or any type other than those described above will be allowed to become attached to or temporarily placed within the display windows of any store except where they are constructed of self-supporting material.
  - viii. Pylon Signs.
  - ix. Moving Signs.
  - x. Signs with exposed neon or fluorescent tubing.
  - xi. Paper, cardboard or painted signs.
  - xii. Audible Signs.
  - xiii. Portable signs, including, but not limited to auto, truck or trailer mounted signs and breadboard type signs.



## Westwood Village

Tenant General Contractor Rules & Regulations

April 2024

2600 SW Barton Street

Seattle WA 98126



Seattle WA

## INTRODUCTION

This package will be given to each Tenant's General Contractor (TGC) prior to the start of any construction in the Tenant's Premises under contract. The TGC is responsible to read the entire package and must familiarize himself with Lease requirements. The General Contractor Data Form must be signed by the TGC and recorded with the Landlord Construction Manager, stating that the contractor has read and understands this package and will comply with the requirements as set forth in the Lease and within the following pages.

This package is typical in nature for project field applications and does not alter and/or amend the Tenant's Lease Agreement.

Prior to entering the project or starting construction all Tenant Contractors must check-in with Landlord Construction Manager or Property Manager and provide a completed Preconstruction Package. The Landlord reserves the right to refuse the use of any substance, tool, or material that Property Management believes may be hazardous when used in the Premises. The Landlord reserves the right to require the Tenant to provide a Bond prior to commencement of construction.

Milestones **MUST** occur prior to construction:

- The Lease Agreement has been fully executed.
- Landlord has notified the Tenant in writing of the date the leased Premises are ready for commencement of Tenant's work, and upon which date the Tenant is to physically take possession.
- Tenant has submitted a full set of stamped construction documents to Landlord for review.
- Tenant has transferred all utility accounts into their name.
- Tenant has received required permits from the local jurisdiction.



## Pre-Construction Requirements

The following are required by Landlord's Construction Manager prior to the start of Tenant Improvements. For your convenience, the items can be sent via email to [cberg@shopcore.com](mailto:cberg@shopcore.com).

- Tenant Contractor's Certificate of Insurance (COI). A sample COI is included in this package and lists the minimum policy requirements set by the Landlord as well as verbiage for the Additional Insured parties and Certificate Holder. (See Exhibit D & D-1)
- A copy of the Building Permit from the local jurisdiction, as well as a set of approved plans from the local jurisdiction and governing Fire Department.
- A full set of final Construction Plans approved by the Landlord and approved and stamped by the local jurisdictional authorities.
- Completed and signed General Contractor/Sub-Contractor Contact Information Form (See Exhibit E & F)
- Complete list of Sub-Contractors and Suppliers, their associated trade, contact name and phone numbers. The General Contractor and all Sub-Contractors must be bondable and meet all the licensing and insurance requirements by Washington State and the City of Seattle.
- A Construction Schedule detailing the work schedule and anticipated completion date of Tenant's improvements and projected open for business.
- Proof of provision and placement of portable restrooms for workers and a construction dumpster.
- Utility transfer – natural gas, water and electricity must be transferred to the Tenant or Tenant Contractor's name. (See Exhibit H)
- Pre-construction meeting scheduled with Landlord's Construction Manager a minimum of 48 hours prior to the start of construction. ADVANCE NOTICE MUST BE PROVIDED IN ORDER TO ACCOMMODATE ALL TENANTS.
- Pre-construction punch walk conducted by Tenant and Tenant Contractor at least 48 hours prior to the start of construction. Failure to submit a "punch list" will constitute Tenant's acceptance of premises "As-Is".
- Copy of the Tenant's Notice of Commencement and the Tenant's Contractor Notice of Furnishing if required.
- Upon the Tenant General Contractor's (TGC) signature on the attached "Tenant GC Acceptance of Premises" and "Tenant GC Sign-In Form" and compliance with the requirements, TGC will be deemed acceptable by the Landlord. The TGC must visit the site and note any items that are not provided per the terms of the lease.



### **Job Familiarity/Existing Conditions**

Prior to commencement of construction, Tenant's contractor shall thoroughly review the Contractor's Rules and Regulations, verify dimensions, utility locations both above and below slab, perform a GPR scan if required, and familiarize themselves with the jobsite conditions. Tenant's GC must field verify any and all service lines feeding adjacent Tenants in other areas of the building, running through the proposed area of construction. These would include but not be limited to HVAC controls, water lines, sprinkler lines, fire alarm, gas pipes, phone, data and electrical. Tenant's GC is responsible for any service lines which are severed or any damage resulting to any adjacent Tenant as a result of demolition/construction activities.

### **Approved Design**

Tenant's construction shall be performed with the plans and specifications (including finish and color selections if requested) that have been reviewed and approved by the Landlord's Construction Manager. . Landlord must be provided with all revisions for review and approval. All improvements and renovations must be designed and constructed in compliance with all federal, state, county, city or local rules, ordinances, fire codes and regulations relating thereto. If the store has not been constructed with such plans, the Tenant will not be permitted to occupy the Premises based on the obligations under the Tenant's lease. A copy of the "As Built" drawings shall be provided to Landlord upon completion of the work and as part of Tenant's close out package.

### **Permits/Fees/Approvals**

The Tenant (or their contractor) shall apply for all permits, coordinate Building Department submittal and pay all associated fees. Tenant shall apply for and obtain all approvals and permits from the local health department or other entities or agencies as required. Building permits shall be posted in the Tenant's space (within clear sight) before any work starts (i.e. rough framing, plumbing or electrical). A copy of the permit must be on file with the Landlord's Construction Manager prior to the start of construction.

### **Code Compliance and Inspections**

The Tenant's contractor is responsible for scheduling inspections by the Building Department and other inspectors as necessary and to comply with their requirements, and all codes and regulations. A copy of all inspection reports and the Certificate of Occupancy must be submitted to the Landlord upon completion of the work. In the event Tenant's GC is notified of any violations of codes by the jurisdictional authorities or by Landlord, Tenant's contractor shall correct such violations within seven (7) calendar days from such date of notification. Construction shall comply in all respects with applicable federal, state, county and/or local statutes, ordinances, regulations, laws and codes. A copy of the Temporary Certificate and Certificate of Occupancy, or written approval from the local jurisdiction to open for business must be submitted to Landlord prior to Tenant opening for business and upon completion of work.

### **Security**

Tenant is responsible to ensure the security of the Tenant's premises. When working after normal business hours, it is the responsibility of the Tenant to ensure that the building remains locked and secure at all times. Duplication of Landlord keys to the building or tenant spaces is strictly prohibited.



### **Sign Posting**

As per the planned signage program for ShopCore no contractor or tenant temporary signage shall be posted to the premises at any time without prior approval from Property Management. The Landlord reserves the right to post a Notice of Non-Responsibility on any entry into space as required by Tenant's lease.

### **Tool Loan**

Contractor and subcontractors must always use their own tools and equipment. At no time will the Landlord rent or loan tools or equipment to contractor or subcontractor. If Landlord's tools or equipment (i.e. Gray Whales, Trash Bins, Trash Can, Flat Carts or Ladders) are found in the possession of contractor or subcontractor, a fine may be assessed.

### **Restroom Facilities**

The Tenant's contractor will be responsible to provide their own portable toilets within the space or as designated by Landlord, as there are no public restroom facilities available. Tenant's contractor will be responsible to maintain portable toilets in a manner satisfactory to Landlord.

### **Trash Disposal**

Absolutely no disposal of waste products (paint, chemicals, concrete, etc.) is allowed into the common area drains or storm drains. Any contractor or subcontractor caught or identified will be permanently expelled from the jobsite and be financially liable for any damages, cleanup or required mitigation.

### **Quality of Workmanship**

Tenant's work shall be performed in a thorough, first class and workmanlike manner and shall be in good and usable condition at the date of completion thereof. If in the Landlord's judgment, the Tenant's work is not completed in a first class and workmanlike manner or in compliance with Landlord approved plans; the Tenant will not be allowed to open until said discrepancies are corrected.

### **Supervision**

Tenant's contractor shall provide a full-time supervisor or representative on-site at all times (for answering questions, meeting with City Officials, Tenant Coordination, etc.) whenever construction is being performed in Tenant's space.

### **Storefront Windows/Barricade**

If Tenant's work includes Landlord approved modifications to the storefront, then the center's barricade policy, as set out below, must be observed by all Tenants during the construction or renovation of their premises. A barricade plan including proposed graphics must be submitted to Landlord for approval. *ONCE THE BARRICADE IS IN PLACE*, Tenant GC must complete the storefront in four weeks.



If required, barricade shall be constructed of finished plywood on metal stud (not rough cut), and painted Landlord specified color. Barricade walls are to be located a maximum of three feet (3'0") in front of the closure line, yet must not impede pedestrian traffic and shall be equal in height to the full storefront opening. The barricade shall be securely braced. No mechanical sealed fasteners are to be used to secure the barricade to the Landlord's floor finish/hardscape or demising caps. A door with appropriate locking must be installed. The barricade is to be sealed at the top to prevent any transmission of dust, debris and noise.

Once the barricade is removed or it is determined a barricade is not needed, construction should not be visible from the outside to shopping center patrons. Options to screen construction are: Glass Mask in white or gray, white back-painting, professionally printed vinyl wrap or brown paper installed on the inside face of storefront glass. If paper is used, this must be hung from top to bottom in a continuous run, neatly taped, and not pieced together. Any tears must be repaired immediately!

All temporary and permanent signage must be approved by the Landlord Construction Manager in advance.

Handwritten and Contractor's signs are prohibited. If they are seen on property, they will be removed by security.

Any damage to the property during removal of barricade from the storefront shall be repaired immediately by the Tenant's Contractor. The Landlord may repair such damages and charge back the Tenant.

### Hardscape Protection/LL Finishes

In the event that common area hardscape is already installed in front of the premises, a non-polyethylene landscape fabric "slip sheet" shall be provided by the Tenant contractor, over which  $\frac{3}{4}$ " plywood is also to be laid – there shall be no screws connecting the plywood overlayment to prevent penetration and damage of the hardscape. This overlayment is to run the full width and depth of the storefront barricade over the finished hardscape for the duration of Tenant's construction. The overlayment shall be extended into the parking lot during and transportation of materials to the building and during any concrete pouring. The Tenant shall return all concrete trucks to the batch plant for "washing out" as no onsite concrete washout will be provided. An "Eco Pan" onsite washout system will be allowed but protection underlayment in the form of plastic and plywood shall be placed under the washout system at all times.

Tenant's contractor shall at all times protect existing common areas and building exterior from any damage. This includes parking areas, sidewalks, building roof, landscaping, and the facade.

### Work Areas

Tenant's contractor shall contain all operations within the premises of their space and such other spaces as Landlord may specifically permit. Common areas, public corridors, service corridors and exterior of Landlord's building must be kept clear of Tenant's equipment, merchandise, fixtures and trash at all times.



Any construction activity incorporating excessive noise (laying track, concrete sawing, coring, etc.) shall be performed after normal business hours. Any construction activity (i.e shutting off power, water, core drilling, etc.) that would affect another building tenant shall be coordinated through the Landlord Construction Manager and Property Management. All precautions will be taken to ensure that dust and fumes from construction remain in the Tenant work area shall not accumulate into the common area. Contractors are required to place walk off mats to prevent the spread of construction dust.

It is the Tenant GC's responsibility to ensure sprinkler heads are bagged, fire alarm has been taken off line and filter media in place on all air intakes prior to the start of any construction.

No construction process (concrete core drilling, concrete sawing, etc.) shall be employed in the work area that uses water without obtaining approval.

Work requiring access to a different Tenant's space requires a minimum of forty-eight (48) hours notice and must be coordinated with Landlord Construction Manager and Property Manager.

Employees of the Tenant's GC and their subcontractors shall not be permitted to enter any of the adjoining areas without specific authorization of the Landlord's Construction Manager and Property Manager, and then only when necessary to complete work under this contract. It shall be the Tenant GC's responsibility to see that their employees do not violate this provision.

#### Tenant's Workers

All of the Tenant's work is to be performed by competent workers, whose labor affiliations or non-affiliations are compatible with those of the Landlord's workers. If any labor affiliations or non-affiliations of the workers performing the Tenant's work are incompatible with Landlord's workers or contractors, the Tenant shall remove from the work-site immediately, upon the Landlord's request, all workers whose labor affiliations or non-affiliations are so incompatible.

Tenant shall be responsible for all actions of its contractors, subcontractors and suppliers including damage to persons and property and shall so inform each of them of the material contained herein.

#### Temporary Construction Power

Permanent power is available in all buildings. Temporary power is not available. Tenant GC must expedite the completion of the electrical in order to switch over to use of permanent power. Tenant GC may not assume they can plug into existing electrical outlets for temporary power.

#### Deliveries

Deliveries will be made through rear doors, even if rear egress is present. If rear egress is not present, then deliveries will be made through the main storefront entry. Deliveries to be coordinated with Property Security/Property Management with a minimum of 72hrs notice.



Rear delivery service areas are to be used for loading and unloading only. Any vehicle left unattended will be towed away at the Owner's expense. Workmen are to park in designated areas.

Companies receiving materials regardless of subcontractor or tenant will dispose of their own packing, dunnage, crating, binding and other debris in dumpsters designated for construction use.

Excess concrete and wash-off must be completed off property.

Tenant GC will be required to provide their own flagmen, barricades, traffic directors, etc. to control vehicular and pedestrian traffic required by a delivery or other operation.

Any/all Tenant GC staging requirements (i.e. areas), to be located outside the Tenant's building footprint, must be submitted in writing to the Landlord Construction Manager for site logistic compliance and approval.

Tenant GC will provide a proposed scheme for hoisting, which shall be accompanied by drawings and sketches indicating location and configuration of hoisting equipment. Proposal shall be submitted in advance of Tenant GC's requirements in order to permit review.

### **Construction Noise**

Per the local city noise ordinance, noisy work cannot be performed from 7 AM until 9 PM, weekdays, and 8 AM to 5 PM on weekends. Non-noise producing activity can be done during normal business hours provided these concerns are not violated. Work such as core drilling, laying track, jack-hammering, etc. must be coordinated with Landlord's Construction Manager / Property Manager.

### **Trash Removal**

The Tenant Contractor is responsible for all trash removal from the Premises. Trash is to be removed from and around the premises on a daily basis and will not be allowed to accumulate in the Tenant space or any surrounding areas.

All disposal of hazardous waste shall be in accordance with all local, state and federal regulations. Any contractor using the Center's trash bins for the disposal of hazardous waste will be charged a fine of \$1000.00. Contractor will be held obligated for all cleanup as the result of that dumping.

It is the Tenant GC's responsibility to coordinate dumpster locations with Landlord Construction Manager or Property Manager. Dumpster locations to be approved on a tenant by tenant basis. If instructed to remove dumpster by Landlord's Construction Manager or Property Manager, it must be done within a 24 hr time period. All dumpsters are to be protected from damaging pavement/parking lot asphalt with a plywood underlayment and plastic protection. Tenant GC is responsible to monitor their dumpster and frequency of swap out as well as make sure the area around and the path to the dumpster is kept clean. Use of any ShopCore Property common area dumpsters for construction debris is strictly prohibited.



### Public Safety / Safety

Tenant should comply with all applicable safety regulations. Tenant's contractor shall take all necessary precautions to safeguard all workmen and the public from accident, and to preserve all private and public property. Landlord reserves the right to stop all work until such conditions or practices are resolved. Tenant GC is responsible to maintain a safe working environment which meets all local, state, and federal OSHA requirements. The most stringent provisions will prevail on this project.

Contractors or subcontractors are prohibited from consuming or being under the influence of alcohol, drugs, marijuana or any intoxicant while on ShopCore Property (including Tenant's premises, eating areas, or vehicles parked on ShopCore Property).

Routine inspections may be performed by the Landlord's representative, with regards to accurate performance of contractor's, general safety requirements, and to ensure adherence to the "Contractors Rules and Regulations":

- Hard hats, eye protection and general PPE gear must be worn while performing work on the jobsite, especially during demo and overhead work.
- Construction Industry Standard/appropriate foot protection is required - No loafers, sandals, tennis shoes.
- Construction Industry Standard work clothing - No tank tops, net shirts, shorts, cut-off, etc.
- Building permit, bilingual safety and hazard signage must be posted on the job site.
- Headsets may not be worn at any time while on site. Portable radios are permitted with noise level kept to a minimum.
- Housekeeping: Deposit all trash and debris in Dumpster daily. Work, storage and break areas to be broom cleaned daily.
- Note: A fire extinguisher must always be on-site during the construction buildout. Landlord may halt construction at any time if a fire extinguisher is not on site.
- Heavy Equipment: The Tenant, its officers, agents, servants, employees, contractors, customers, invitees or licensees shall not bring in or take out, position, construct, install or move any safe or other heavy equipment or furniture without first obtaining the consent in writing of the Landlord. In giving such consent, the Landlord shall have the right in its sole discretion, to prescribe the weight permitted and the position thereof, and the use and design of planks, skids or platforms to distribute the weight thereof. All damage done to the Shopping Center by moving or using any such safe, heavy equipment or furniture shall be repaired at the expense of the Tenant. The moving of all equipment and furniture shall occur only during those hours when the Shopping Center shall not be open for business or any other time consented to by the Landlord and the persons employed to move the same in and out of the Leased Premises shall be acceptable to the Landlord.
- All installation of HVAC equipment must be coordinated/scheduled with Property Management (510) 430-0133. This includes the use of a crane or site to hoist equipment.
- Tenant GC is responsible to provide a barricade, flagman, and required permit if closing a road.



## Hot Work

Hot work is broadly defined as activities which involve flame, spark production and heat.

Hot work operations include, but are not limited to brazing, cutting, grinding, open flames soldering, welding, burning, using a torch during roofing, or similar operations capable of initiating fire or explosion.

For ALL Hot Work, the Tenant's GC shall:

- Obtain a hot work permit from the local jurisdiction and forward a copy to Landlord Construction Manager.
- Plan to be on-site to supervise all hot work
- Ensure that the contractor is familiar with the requirements of Hot Work Permitting where applicable
- Maintain a fire watch
- During the course of all welding, and at all times during construction, a fire extinguisher must be in the premises.
- Monitor the hot work area for 3 ½ hours after completion of the work
- The provisions of the National Fire Code shall be adhered to at all times.
- *If the local jurisdiction does not require a hot work permit, Tenant GC must still submit paperwork to Landlord as if a permit is required.*

## Electrical

At no time shall the meter switchboard be left unattended or the covers on the switchboard be left off while work is being performed. It is the responsibility of the electrical contractor to maintain the area while working and maintain safety standards for all individuals.

Tenant's Contractor is responsible for enforcing Lock Out / Tag Out procedures to ensure that dangerous machines or equipment are properly shut off and not started up again prior to the completion of the maintenance or service work. Any hazardous power sources must be isolated and rendered inoperative before any repair procedure is started. "Lock and tag" works in conjunction with a lock usually locking the device or power source from being turned on until the maintenance or service work is complete.

Upon completion, the meter switchboard shall be clear of all debris. All covers and associated hardware shall be replaced in their original location or position.

All conductors are to be copper installed in conduit. Tenant contractor shall install a round brass tag on exterior switchboard, permanently engraved with Tenant's suite number.

Keep all piping as close to walls and as high to underside of roof framing as possible.

ALL electrical shutdown affecting the building or adjacent Tenants must be scheduled with Landlord's Construction Manager and Property Manager a minimum of 72 hours in advance of the event. Shutdowns must take place during off hours.



### **Grease Trap**

It is Tenant and Tenant's architect/engineer responsibility to initially locate Tenant's grease trap on construction permit plans AND Tenant GC's responsibility to coordinate the FINAL location of Tenant's grease trap with Landlord Representative. Tenant GC is responsible to verify existing conditions and locate any underground utilities which may be impacted as a result of grease trap installation. Open pits will not be tolerated for more than two weeks and must be properly barricaded for safety. All OSHA safety standards must be implemented. Tenant GC assumes all liability for onsite work and situations which may arise as a result thereof.

### **Roof Access**

Walk pads are required between the roof hatch and roof mounted equipment. Grease roof pads and grease guards are required around all restaurant use grease exhaust equipment, installed on the roof.

Access to the Center's roof is restricted to Landlord's personnel and Landlord's designated contractors only (see Exhibit C). No Tenant contractor or subcontractor will be permitted on the roof without prior written authorization, and thereafter, only when arranged in advance with the Landlord and. Tenant contractor must check in and out with Property Management and/or ShopCore Property Security.

Roof area must be kept clean of all debris. All excess materials, flashing, sheet metal screws, etc., must be removed.

There shall be no penetrations of the roof without prior written approval of the Landlord's Construction Manager. Any and all roof penetrations and roof patching required by Tenant shall be at Tenant's expense and will be performed by Landlord's roofing contractor. Roofing contractor will bill his work directly to the Tenant's GC.

All rooftop installations (crane/helicopter) must be submitted to Landlord for approval no less than two weeks in advance of setting the equipment.

Prior to Tenant GC leaving the premises, Landlord roofer will inspect the roof within 48 hours to ensure compliance.

### **Fire Protection – Sprinklers**

*All sprinkler work must be completed by Landlord's required sprinkler contractor at Tenant expense.*

At no time will the sprinkler system be shut down without first notifying Property Management. Any work requiring draining the fire sprinkler system must be performed Monday through Friday 9:00 am – 5:00 pm. A forty-eight (48) hour notice of intent must be given to Property Management prior to performing the above-mentioned work. Fire sprinkler work may be completed on a Saturday or Sunday with prior approval from Property Management.

*NOTE: Any sprinkler work impacting another tenant system will have to be performed after center hours and will require a fire watch by a licensed security company. This is mandatory for any, and all drain downs.*

Sprinkler heads are to remain operable during construction (Except during system modification downtime). Extreme caution and awareness must be utilized at all times. Caution should be used when working near



pressurized lines or heads. Sprinkler system/alarm must be taken off line and all heads bagged prior to the start of demolition/construction.

Water supply shut off valves are located throughout the center; consult with Property Management for exact locations and details.

### Knox Box

Should the installation of an exterior knox box be required by the local fire jurisdiction, it is Tenant's responsibility to install the required unit per Fire Department specifications. Tenant shall meet with a representative of the Fire Department to determine correct type of knox box to be installed and correct placement on storefront. All cost will be the responsibility of the Tenant.

### Smoke Detectors/Testing

If required by code, it is the sole responsibility of the Tenant and its contractor to provide a smoke detector system within each space. At no time will Tenant contractor be allowed to tamper with or disconnect any part of the Center's smoke detectors system. Interference with the safety system will automatically make you or your company responsible for any damage that might occur to the equipment.

### Fire Alarm

*All fire alarm work must be completed by Landlord's required alarm contractor at Tenant expense to ensure compatibility with Landlord building system.*

### Work Hours

Tenant Contractors may work six days a week with no restrictions of time as long as the activity does not interfere with adjacent Tenants or violate the local Noise Ordinance. Typical site hours are 7 AM – 11 PM. Any work outside of those hours, or on Saturday must be reported to Property Management.

### Damage Repair

Tenant's contractor shall be responsible for the repair and/or replacement of any damages caused by Tenant's contractor or subcontractor to the Center or surrounding Tenants. All damage must be repaired within a twenty-four (24) hour time period, or the Landlord will complete all necessary repairs at the sole cost and expense of the Tenant.

### Landlord's Punch List

Upon completion of the Tenant's improvement work, the Tenant's GC shall notify the Landlord's Representative of the same. The Landlord's Representative may inspect the premises and surrounding common areas preparing a punchlist of defective items, if any. All defects shall then be repaired prior to Tenant's Contractor departure.

- All construction is complete including all punch list items.
- A complete closeout/compliance package has been submitted to Landlord's Construction Manager.



- All rubbish, debris, packing, storage vessels, transportation items, tools, vehicles, containers and the like whether owned, leased, hired or off-hired by the Tenant or Tenant's GC are removed from the premises and the Center in general.
- Roof is checked by Landlord's roofer for damage, debris or tools left from roof work.
- Landlord roofer must conduct a final inspection upon completion of all Tenant roof related work. Inspection costs to be paid by Tenant/Tenant's GC.

### Compliance/Closeout Paperwork

Tenant shall deliver the following to the Landlord's Representative within ten (10) days of completion of Tenant's work or Tenant's opening for business whichever first occurs:

- BUILDING PERMIT – copy indicating inspection and approval by all Governmental Agencies.
- TDLR - Proof that construction has been conducted pursuant to and in compliance with the Texas Architectural Barriers Act and the regulations promulgated thereunder.
- NOTICE OF SUBSTANTIAL COMPLETION – Tenant shall obtain and record a Notice of Substantial Completion promptly upon completion of Tenant's work and shall promptly forward a Certified copy to Landlord.
- CERTIFICATE OF OCCUPANCY – The original Certificate of Occupancy.
- LIEN RELEASES – Original copies of all final unconditional mechanic's lien releases or other lien releases on account of Tenant's work, shall be submitted in a Landlord approved form, signed and notarized by an officer of the company.
- CERTIFIED STATEMENT OF MERCHANTS LEASEHOLD IMPROVEMENT COSTS – A report that gives a complete itemized cost of the build out of the Tenant's space.
- ARCHITECTURAL AS-BUILT PLANS – The Record set of what was constructed at the site.
- MECHANICAL AS-BUILT PLANS – The Record set of the Mechanical system constructed.
- PLUMBING AS-BUILT PLANS – The Record set of the Plumbing system constructed.
- FIRE PROTECTION AS-BUILT PLANS – The Record set of what was constructed at the site.
- ELECTRICAL AS-BUILT PLANS – The Record set of what was constructed at the site.
- ANY OTHER PERTINENT AS-BUILT PLANS FOR THE PROJECT - Any other plans or documents, cut sheets, etc, of what was constructed at the site.
- PDF/CAD AND BLUEBEAM – Digital link (Dropbox, Sharefile, USB) containing all of the above construction documents



**SIGN OFF/ACKNOWLEDGEMENT FOR TENANT GC RULES – WESTWOOD VILLAGE, SEATTLE WA**

**Contractor, Subcontractor, Supplier Representative:**

Acknowledged By: \_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Date)

Acknowledged By: \_\_\_\_\_  
(Print Name)

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

\_\_\_\_\_  
(Date)



### Contractor's Exhibits

- Exhibit A - Contractor's Close-Out Checklist
- Exhibit B – Tenant GC Acceptance of Premises
- Exhibit C – Coordination of Roof Related Work
- Exhibit D – General Contractor's Insurance Requirements
- Exhibit D-1 – Sample COI
- Exhibit E – Contractor's Informational Data Form
- Exhibit F – Subcontractor List
- Exhibit G – Project Directory
- Exhibit H – Utility Transfer Information



**EXHIBIT A**  
**Contractor's Close-Out Checklist**

**FOLLOWING COMPLETION OF BUILD-OUT:**

- BUILDING PERMIT
- NOTICE OF COMPLETION
- CERTIFICATE OF OCCUPANCY (10 days after completion)
- LIEN RELEASES Copies of Unconditional Mechanic's Lien Release
- CERTIFIED AIR BALANCE REPORT
- ARCHITECTURAL "AS-BUILT" PLANS
- MECHANICAL "AS-BUILT" PLANS
- PLUMBING "AS-BUILT" PLANS
- FIRE PROTECTION "AS-BUILT" PLANS
- ELECTRICAL "AS-BUILT" PLANS
- CAD AND PDF (BLUE BEAM) AS-BUILTS
- COMPLETED PUNCHLIST – Authorization from Landlord's Representative



**EXHIBIT B**  
**TENANT GC ACCEPTANCE OF THE PREMISES**

*Tenant General Contractor taking possession of Premises shall be conclusive evidence of Tenant's acceptance thereof in good order and satisfactory condition.*

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

Bldg Location/Address \_\_\_\_\_

Initials/Date \_\_\_\_\_ Tenant GC Accepts Premises "As-Is" Condition. No exceptions taken.

Initials/Date \_\_\_\_\_ Tenant GC Accepts Premises Noting Exceptions

Tenant General Contractor as listed below will commence construction within the premises per the Date of Acceptance listed below. All Rules and Regulations are in effect from this date. This acceptance does not alter the requirements of the Tenant or Landlord as listed in the Lease.

Tenant GC Notes:

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Signature of Tenant GC \_\_\_\_\_

Name of Construction Company: \_\_\_\_\_

Date of Acceptance: \_\_\_\_\_ Construction Start: \_\_\_\_\_

Projected Construction Completion: \_\_\_\_\_ Projected Tenant Opening: \_\_\_\_\_

Permit Number: \_\_\_\_\_

## EXHIBIT C

### Coordination of Roof Related Work

All parties requiring roof access must check in and out with Landlord's Representative's Office. Failure to do so may lead to legal action.

Any Tenant improvements to the roof must be coordinated through Landlord Construction Manager for approval. Such improvements will not be allowed until written description of the work along with specifications and drawings, have been submitted to the Landlord's Representative. Landlord's required roof contractor must perform any such work. Any unapproved work will be subject to corrective action by the Landlord at the expense of the Tenant, General Contractor and/or subcontractor.

Landlord's roofer will perform inspection. Any damage to the roof inflicted by Tenant's GC and/or his subcontractors will be corrected at the expense of the responsible party. All roof-related improvements must be installed with flashing applied in a manner acceptable to the manufacturer. Tenant to only use Landlord approved roofer. Contact Property Manager or Construction Manager for vendor information.

The following lists several guidelines pertinent to the placement and flashing of roof-related improvements:

- No improvements should be installed during inclement weather. Tie-in of flashing materials to moist or dusty surfaces should not be attempted. Existing materials, as well as all metal or concrete surfaces, should be cleaned prior to application of new materials.
- The improvements should in no way diminish or interfere with the structural integrity of the building, roof structure, or with roof drainage.
- No improvements should be installed in any roof waterway or area of the roof which ponds water.
- All electrical conduit, metal pipe, or plastic piping should be restrained to appropriate sized wood blocking set into roofing cement. Electrical/gas lines should not be run within condenser lines.
- A licensed structural engineer registered in the state in which the work is being performed must certify the existing structure is adequate to support the load and any rooftop equipment. Any modifications required must be approved by the Landlord before work commences.
- Provide new prefabricated metal weather resistant pipe sleeve flashing to seal any new pipe penetrations through the roof. Flashing flanges should be sealed in a manner acceptable to the roofing manufacturer.
- The installation of antennas or satellite dishes on the roof is only permitted with prior approval.
- See Landlord's Representative to acquire copies of prints and specification sheet for any rooftop work or alterations.
- No curb adaptors permitted.
- All mechanical equipment should be set onto platforms or factory supplied curbs a minimum of 12" in height.
- Landlord roofer must conduct a final inspection upon completion of all Tenant roof related work. Inspection costs to be paid by Tenant/Tenant's GC.

**EXHIBIT D**  
**General Contractor's Insurance Requirements**

**Westwood Village (4221) – Seattle WA - VENDOR COI REQUIREMENTS**

**Certificate Holder:**  
BCORE Westwood Village LLC  
Two Liberty Place, Suite 3325  
Philadelphia PA 19102

**Additional Insured:**  
Must include property address, Westwood Village, 2600 SW Barton Street, Seattle WA 98126, and name the entities below in both the Description of Operations Box AND in a separate Policy Endorsement bearing the current Policy Number.

BCORE Westwood Village LLC  
ShopCore Properties, L.P.  
ShopCore Properties TRS Management LLC  
BREIT Operating Partnership L.P.

**Waiver of Subrogation Policy Endorsement:**

A separate Waiver of Subrogation Policy Endorsement for Workers Compensation, bearing the current policy number, and in favor of BCORE Westwood Village LLC, Shopcore Properties L.P. ShopCore Properties TRS Management LLC, and BREIT Operating Partnership L.P. as Additional Insured.

**Minimum Coverage Limits:**

General Liability  
EACH OCCURRENCE - \$1,000,000  
DAMAGE TO RENTED PREMISES - \$50,000  
MED EXP - \$5,000  
PERSONAL & ADV INJURY - \$1,000,000  
GENERAL AGGREGATE - \$2,000,000  
PRODUCTS – COMP/OP AGG - \$2,000,000

Automobile Liability  
COMBINED SINGLE LIMIT - \$1,000,000

**Umbrella / (Excess Liability for High Risk/Special Circumstance Vendors)**

EACH OCCURRENCE - \$1,000,000 (or \$5,000,000 for High Risk/Special Circumstance Vendors)

Workers Compensation  
E.L. EACH ACCIDENT - \$1,000,000  
E.L. DISEASE – EA EMPLOYEE - \$1,000,000  
E.L. DISEASE – POLICY LIMIT - \$1,000,000

**EXHIBIT D-1**  
**Sample Westwood Village COI**



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(es) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

**PRODUCER** INSURANCE CO

CONTACT NAME TITLE MAILING ADDRESS:	TAX ID/INN:
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**INSURED** (1) CONTRACTOR NAME

INSURER(S) AFFORDING COVERAGE	NAME
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ADDRESS

INSURER A: ABC INSURANCE COMPANY

CITY, STATE ZIP

INSURER B: XYZ INSURANCE COMPANY

INSURER C:

INSURED:

INSURER E:

INSURER F:

INSURER G:

COVERS NUMBER CERTIFICATE NUMBER: MST NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURER	TYPE OF INSURANCE	ADDRESS	PHONE	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS		
							EACH OCCURRENCE	6	1,000,000
A	GENERAL LIABILITY			123456789	10/10/2000	10/10/2000	GENERAL LIABILITY	5	50,000
	X COMMERCIAL GENERAL LIABILITY						GENERAL LIABILITY - OCCURS IN CONTRACTS	7	5,000
	CLAIMS MADE X OCCUR						GENERAL LIABILITY - OCCURS IN CONTRACTS - OCCURS IN CONTRACTS	8	2,000,000
	(5)						GENERAL LIABILITY - OCCURS IN CONTRACTS - OCCURS IN CONTRACTS - OCCURS IN CONTRACTS	9	2,000,000
	GENL AGGREGATE LIMIT APPLIES PER POLICY						GENERAL LIABILITY - OCCURS IN CONTRACTS - OCCURS IN CONTRACTS - OCCURS IN CONTRACTS - OCCURS IN CONTRACTS	10	5
	X PRO-PROT. X LOC						GENERAL SINGLE LIMIT	13	1,000,000
	AUTOMOBILE LIABILITY (10)						BODILY INJURY (Per person)		
A	ANY AUTO			123456789	10/10/2000	10/10/2000	BODILY INJURY (Per accident)		
	ALL OWNED AUTO						BODILY INJURY (Per accident)		
	SCHEDULED AUTO						PROPERTY DAMAGE (DMV LIABILITY)		
	Hired Auto						PROPERTY DAMAGE (DMV LIABILITY)		
	NON-OWNED AUTO						PROPERTY DAMAGE (DMV LIABILITY)		
	(11)						PROPERTY DAMAGE (DMV LIABILITY)		
	AUTO LIABILITY						PROPERTY DAMAGE (DMV LIABILITY)		
	EXCESS LIA						PROPERTY DAMAGE (DMV LIABILITY)		
	X OCCUR (18)						PROPERTY DAMAGE (DMV LIABILITY)		
	CLAIMS MADE						PROPERTY DAMAGE (DMV LIABILITY)		
	(12)						PROPERTY DAMAGE (DMV LIABILITY)		
	UMBRELLA LIA						PROPERTY DAMAGE (DMV LIABILITY)		
A	X OCCUR (18)			123456789	10/10/2000	10/10/2000	EACH OCCURRENCE	5	5,000,000
	EXCESS LIA						AGGREGATE	5	5,000,000
	CLAIMS MADE						5		
	(13)						(15)	X	
	WORKERS COMPENSATION						GENERAL LIABILITY		
	EMPLOYERS LIABILITY						GENERAL LIABILITY		
	OFFICE PREMISES LIABILITY						GENERAL LIABILITY		
	OFFICER/EMPLOYEE EXCLUDED (Mandatory in PA)						E&L EACH ACCIDENT	16	1,000,000
	PAIS DIRECTOR LIABILITY						E&L DISAB - EA EMPLOYEE		1,000,000
	DESCRIPTION OF OPERATIONS/ADDRESS						E&L DISAB - POLICY LIMIT		1,000,000
	DESCRIPTION OF OPERATIONS/LOCATION/VEHICLES (ATTACH ACORD 101, ANNUAL RENEWAL SCHEDULE, IF MORE SPACE IS REQUIRED)								
	RE: LEASED PREMISES AT ADDRESS (3)								
	BCORE Westwood Village LLC; Shopcore Properties, LP.; Shopcore Properties TRS Management LLC; BREIT Operating Partnership L.P. and all affiliates and their directors, officers, employees, partners, and members are included as Additional Insureds.								

CERTIFICATE HOLDER	CANCELLATION
(2) BCORE Westwood Village LLC Two Liberty Place, Suite 3325 Philadelphia PA 19102	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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**EXHIBIT E**  
**Contractor's Informational Data Form**

Tenant Name: \_\_\_\_\_ Tenant Suite Address No. \_\_\_\_\_

Contractor's Name: \_\_\_\_\_ Building Permit No. \_\_\_\_\_

Individual in Charge: \_\_\_\_\_

Plan Approved in Writing by Landlord's Representative?  YES  NO

Certificate of Insurance Attached?  YES  NO

List of Subcontractors Attached?  YES  NO

Date Plans Submitted to the Building Department for Permit: \_\_\_\_\_

Construction Start Date: \_\_\_\_\_ Construction Completion Date: \_\_\_\_\_

I certify that I have read and thoroughly understand the attached "Contractor's Rules and Regulations" and Contractor Exhibits and agree to abide by all of the same.

**CONTRACTORS RULES AND REGULATIONS / RECEIVED & ACKNOWLEDGED BY:**

Contractor: \_\_\_\_\_

Superintendent: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

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

24-Hour Emergency Number(s): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**EXHIBIT F**  
**Subcontractor List**

JOB NAME:	<hr/>	
PHYSICAL ADDRESS:	<hr/>	
CLIENT CONTACT:	<hr/>	
<u>TRADES</u>	<u>CONTRACTORS</u>	<u>PHONE NUMBER</u>
DEMO:	<hr/>	<hr/>
FRAMING, DRYWALL:	<hr/>	<hr/>
ELECTRIC:	<hr/>	<hr/>
HVAC:	<hr/>	<hr/>
PLUMBING:	<hr/>	<hr/>
SPRINKLER:	<hr/>	<hr/>
CEILING GRID:	<hr/>	<hr/>
PAINTING:	<hr/>	<hr/>
CARPET:	<hr/>	<hr/>
FLOORING/TILE:	<hr/>	<hr/>
FIXTURES/CARPENTRY:	<hr/>	<hr/>
GLASS, MIRRORS:	<hr/>	<hr/>
SIGN:	<hr/>	<hr/>
CLEANING:	<hr/>	<hr/>
DUMPSTER:	<hr/>	<hr/>
TEMP. PHONE:	<hr/>	<hr/>
SPRINKLER SYSTEM:	<hr/>	<hr/>

## EXHIBIT G Project Directory

### Property Management

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#### **On Site Contacts:**

**Tony Lucero, Jr. – Regional Property Manager**  
Shopcore Properties  
46 Smith Alley Ste 250  
Pasadena, CA 91103  
Office: (626) 564-1066 Ext 2  
[tluccerojr@shopcore.com](mailto:tluccerojr@shopcore.com)

**Pedro Barragan – On-Site Maintenance Manager**  
Cell: (253) 331-6160  
[pbarragan@shopcore.com](mailto:pbarragan@shopcore.com)

**Security – 24/7**  
(206) 276-0579

**Danny Nash – On-Site Security Manager**  
Cell: (425) 761-7133

#### **Construction**

**Cheryl Berg, Senior Manager - Construction**  
Cell: (303) 549-7641  
[cberg@shopcore.com](mailto:cberg@shopcore.com)

### Landlord's Required Subcontractors

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#### **Fire Sprinkler**

Contractor: Viking Automatic Sprinkler  
Property Contact: Rob Hash  
Office: (206) 622-4656  
[rob.hash@vikingsprinkler.net](mailto:rob.hash@vikingsprinkler.net)

**Roofing (for HVAC penetrations, electrical connections via roof)**

Contractor: McDonald Wetle  
Property Contact: John Gwinner  
Office: (253) 589-8999  
Cell: (253) 273-5705  
[jong@mcdonaldwetle.com](mailto:jong@mcdonaldwetle.com)

#### **Fire Alarm**

Contractor: Guardian Security  
Property Contact: Justin Stoddard  
Office: (206) 713-5545  
[jstoddard@guardiansecurity.com](mailto:jstoddard@guardiansecurity.com)

**EXHIBIT H**  
**Utility Transfer Information**

**Electric**

City Light

Mark Holmes – Acct Exec

Phone: (206) 684-5819

Cell: (206) 423-8901

[Mark.Holmes@seattle.gov](mailto:Mark.Holmes@seattle.gov)

Austin Coover – Acct Exec

Phone: (206) 684-3628

**Water/Sewer**

City of Seattle

Mark Holmes – Same as above

**Gas**

City of Seattle

Mark Holmes – Same as above

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

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

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

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

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

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

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

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

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

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

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

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

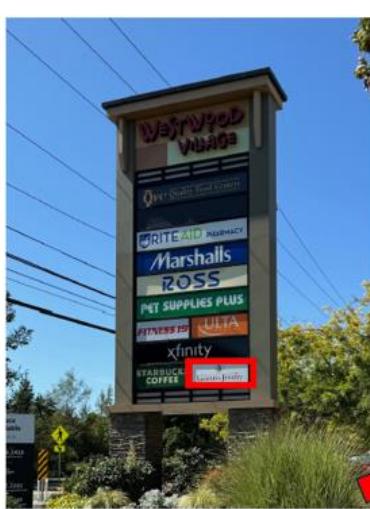
(l) Tenant shall store soiled or dirty linen only in approved fire rating organization containers;

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

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

## EXHIBIT D DEPICTION OF PYLON

Tenant's panels will be both sides where indicated below of the pylon sign located off SW Barton Street:



**EXHIBIT E  
TENANT ESTOPPEL**

**INTENTIONALLY DELETED**

## **EXHIBIT F USE RESTRICTIONS**

Tenant shall use and occupy the Premises for the Permitted Use in accordance with the Permitted Use defined in the Lease. Additionally, but without limiting any other provision contained in the Lease, the Premises may not under any circumstance be used or occupied by Tenant or any permitted subtenant, assignee or other occupant, for any of the uses set forth below in this Exhibit. If Tenant violates the provisions of this Exhibit, and such violation continues following ten (10) days written notice by Landlord, then such shall constitute a material Event of Default under the Lease and Landlord shall be entitled, if it so elects, in addition to any of the other rights or remedies listed for a default in the Lease, to institute and prosecute proceedings in any court of competent jurisdiction to obtain damages, to seek an injunction against the violation of the provisions of this Exhibit and/or to seek the immediate termination of the Lease.

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

### **Superior Title**

WESTWOOD TOWNE CENTER CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, dated July 9, 1990 by and among DAYTON-HUDSON CORPORATION ("Target") and BCE DEVELOPMENT, INC. ("Developer") predecessor in title to BCORE WESTWOOD VILLAGE LLC and MCDONALD'S CORPORATION, as amended by amendments 1-5.

#### 10.2 Operation of the Shopping Center:

(A) Commercial Purposes. The Shopping Center shall be used for retail sales and services and commercial purposes only, which shall be limited to the development, construction, leasing, operation and maintenance of retail commercial business establishments and related facilities such as Common Area.

(1) Prohibited Operations. The entrance of any office use (other than offices incidental to the conduct of permitted activities), entertainment use recreational use, training or educational use, restaurant use, fast food restaurant use, (as such terms are hereinafter defined, or pet shop use shall be located at least one hundred fifty feet (150') from the furthermost southeast corner of the Target Building located closest to Line 2, as shown on the Site Plan.

(2) Theatres. No theatre shall be permitted in the Shopping Center without Target's prior written approval.

(3) Outparcel. Outparcel A shall be subject to the following restrictions:

(a) No use other than a restaurant use or a financial institution use, such as a bank or a savings and loan association, shall be permitted on Outparcel A.

(6) Certain Definitions. As used herein, (i) "fast-food restaurant use" means a so-called "fast-food" or "take-out" restaurant specializing in the rapid preparation and service of food, or any other facility producing, preparing, serving or dispensing any prepared food products primarily for off-premises consumption, or any restaurant or other facility having pedestrian walk-up or vehicular drive-up or drive-thru facilities, for dispensing any prepared food products for off-premises consumption; (ii) "restaurant use" means a so-called "sit-down" restaurant or any other facility serving or dispensing prepared food products primarily for on-premises consumption and not encompassed within the term "fast-food restaurant use";(iii) "entertainment use" or "recreational use" consists of bars, theatres, bowling alleys, skating rinks, pool or billiard rooms, health spas or

studios, discotheques, game arcades, athletic facilities or other places of public amusement, dance halls, flea markets; and (iv) "training or educational use" consists of beauty schools, barber colleges, reading rooms, places of instruction,' or any other operation catering primarily to students or trainees rather than to customers, but excludes employee training by Parties or Occupants incidental to the conduct of their businesses within the Shopping Center.

No "fast-food restaurant use" or "restaurant use" shall be permitted in Building Area A. No restaurant use offering drive-through service shall be permitted within the Permissible Building Area referenced by the number 11 on the Site Plan. No "restaurant use" or "fast-food restaurant use" shall be permitted within the Permissible Building Area referenced by the number 7 on the Site Plan.

(1) Developer will not lease or otherwise consent to the occupancy of any Floor Area in the Developer Parcel by any Occupant whose business creates strong, unusual or offensive noise, odors, fumes, dust or vapors;

(2) Developer shall not at any time permit any Occupant of any portion of the Developer Parcel to: (i) use, or permit to be used, the Mall, for the sale or display of any merchandise or for any other business, occupation, or other commercial undertaking, except as otherwise provided in Section 10.3(A) and 10.3(B) hereof; (ii) use, or permit to be used, any use or advertising medium that might constitute a nuisance such as loudspeakers, sound amplifiers, phonographs or radio or television broadcasts in a manner which can be heard outside of the premises of the Occupant employing such medium; (iii) use or permit the use of any portion thereof for the conduct of any offensive, noisy or dangerous trade, business, manufacturing activity or occupation, including, without limiting the generality of the foregoing, burning of trash, refuse or waste materials; (iv) use or permit the use of any portion thereof for the maintenance of any nuisance; (v) use or permit the use of any portion thereof for any activity which physically interferes with the business of any other Party or Occupant of the Shopping Center; (vi) use or permit the use of any portion thereof in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Shopping Center or any portion thereof; (vii) except for promotions by the Promotion Fund or Merchants Association, use or permit the use of any portion thereof for any "sidewalk sales", sales outside the exterior walls of any Building on any Permissible Building Area, display of merchandise in the Common Area or any similar use, but in no event shall any temporary sale locations be located within the Target Court<sup>1</sup> or in the exterior Common Areas on the Target Parcel without the written consent of Target; (viii) use or permit the use of any portion thereof for any other unreasonable use not compatible with the operation of a first-class retail and commercial shopping center with a balanced and diversified grouping of retail stores, merchandise and services, well maintained in accordance with the standards of this REA, including, without limitation, Occupant advertising media which can be heard or experienced from the exterior of any Building or other improvement from which it emanates, such as search lights, loud speakers, phonographs, radios or televisions; (ix) operate an "adult theatre", "adult bookstore", massage parlor, any establishment selling pornographic material, a mortuary or for living quarters; or (x) park trucks and delivery vehicles so as to unreasonably interfere with, or suffer or permit any other use thereon to interfere with the use of any driveways, walks, roadways, highways, streets, malls or parking area or other Common Area.

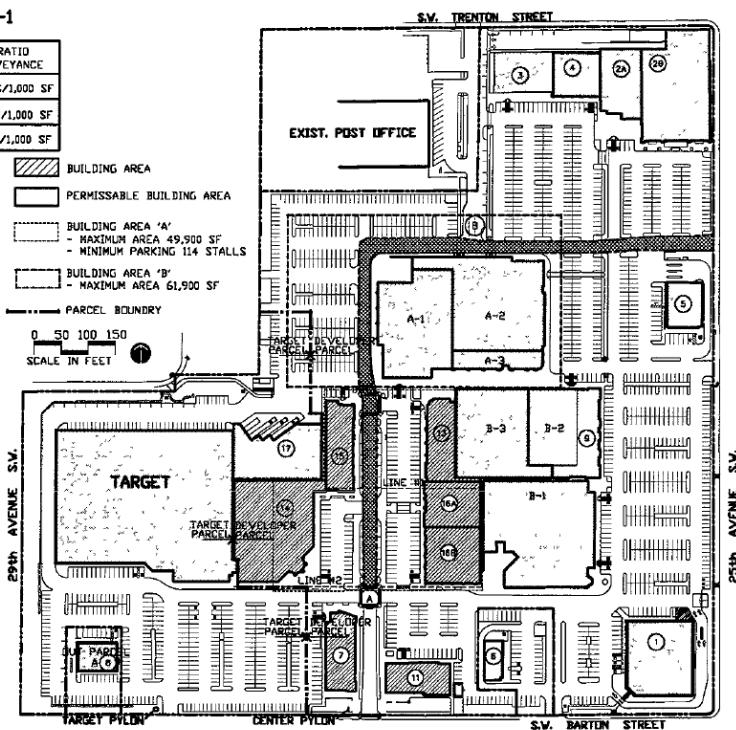
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<sup>1</sup> All references to the "Court" and "Target Court" contained anywhere in the REA are deleted, since the Court was to have been part of the Mall, and the Parties have abandoned the concept of a Mall. (Section 8(b), 3<sup>rd</sup> Amendment)

## EXHIBIT X-1

	PARKING AFTER CONVEYANCE	PARKING RATIO AFTER CONVEYANCE
DEVELOPER PARCEL	1,222 STALLS	4.17 STALLS/1,000 SF
TARGET PARCEL	407 STALLS	4.03 STALLS/1,000 SF
TOTAL	1,629 STALLS	4.13 STALLS/1,000 SF

LOCATION INDEX	TENANT NAME	GROSS LEASABLE AREA
1	RITE AID	16,836 SF
2A	NEW TENANT	8,300 SF
2B	STAPLES	24,210 SF
3	DAVITA	8,000 SF
4	MULTI-TENANT	12,870 SF
5	BANK OF AMERICA	5,000 SF
6	MCDONALDS	2,562 SF
7	HOLLYWOOD VIDEO	7,700 SF
8	WASHINGTON MUTUAL	3,920 SF
A-1	BED BATH & BEYOND	25,165 SF
A-2	MARSHALLS	31,174 SF
A-3	MULTI-TENANT	3,573 SF
9	MULTI-TENANT	7,274 SF
B-1	DFC	37,515 SF
B-2	BIG 5	12,460 SF
B-3	24 HOUR FITNESS	18,460 SF
11	MULTI-TENANT	6,809 SF
13	MULTI-TENANT	8,213 SF
14	BARNES & NOBLE	26,322 SF
15	MULTI-TENANT	8,146 SF
16A	MULTI-TENANT	8,653 SF
16B	PIER ONE IMPORTS	10,015 SF
DEVELOPER PARCEL GLA		292,987 SF

**America's Best**

Exclusive: Landlord will not lease any other premises in the Shopping Center to a person or entity whose primary business is the retail sale or sale of eyeglasses, contact lenses and optometric practice ("Tenant's Exclusive Items/Service").

**ATI Physical Therapy**

Exclusive. Landlord will not lease any space to a tenant, regardless of company affiliation or designation, within the Center, nor allow any of its current tenants within their control including temporary vendors, to engage in physical therapy, work conditioning, aqua therapy or hand therapy (the "Exclusive").

**Bank of America**

Exclusive. Landlord covenants that it will not lease premises in the Center to any party who has the right to operate a banking institution or automated teller machine on the exterior surface of exterior walls of its premises.

**Comcast**

Exclusive. Landlord will not lease any other premises in the Shopping Center to a person or entity whose primary business is the sale of multichannel video services or comparable services for the delivery of video programming (e.g. cable, satellite, or Internet-based video services) wired or wireless Internet access services, and home security systems ("Exclusive Items"). For the purposes of the foregoing, a person or entity shall be deemed to be primarily engaging in such business in such premises only if more than twenty percent (20%) of the sales from the business in such premises derive from the sale of the Exclusive Items.

### **DaVita Dialysis**

Exclusive. Landlord covenants that it will not lease premises in the Center to any party whose proposed principal business is the operation of a medical dialysis facility.

### **Desert Sun**

Exclusive. Landlord covenants that it will not lease premises in the Center to any party whose principal business is the operation of a tanning salon, which includes, but is not limited to, providing UV Tanning, UV Free Tanning, UV Free Spray-On Tanning or services that are a technological evolution of the foregoing and to sell tanning related lotions, products and services. The term "principal business" when used in this Section refers to a tenant who derives at least twenty five (25%) percent of its gross sales from the sale or the services of the products identified above.

### **Fitness 19**

Exclusive Use: Landlord will not lease space in the Shopping Center (or consent to a change in use for any lease already in effect at the time of the execution of this Lease (except where Landlord's consent is not required) to a tenant or occupant whose use will include any membership or fee based physical fitness service(s) (herein "Competing Tenant"). The foregoing provision shall not apply to a business (and such business shall not be a Competing Tenant) that (i) occupies less than 3,000 square feet, or (ii) does not provide a membership or fee based service to (a) use exercise equipment similar to that which is utilized by Tenant (i.e. a physical therapist can have the same equipment as part of its service, but not sell memberships to use it outside of the primary use) and/or (b) provide personal training services to the public.

### **Five Guys**

Exclusive: Landlord agrees that Landlord will not lease space in the Building, to a tenant or occupant who operates a quick-service, fast casual restaurant (i.e., a restaurant where customers order their food at one counter location and receive same at another location but where there is no wait staff) primarily selling hamburgers (herein "Competing Tenant").

### **Highline Medical Center**

Exclusive. Landlord will not lease any other premises in the Shopping Center to a person or entity whose primary business is the operation of (a) a first-class ambulatory, out-patient only, urgent or emergency care medical office, or (b) a primary care clinic owned or operated by Group Health Cooperative, Virginia Mason, University of Washington, Valley Medical Center, Swedish Medical Center or Providence Health and Services, or any of their wholly-owned subsidiaries or affiliates. For purposes of the foregoing, a person or entity shall be deemed to be primarily engaging in such business in such premises only if more than twenty percent (20%) of the fees or sales from the business in such premises derive from the fees or sale of Tenant's Exclusive services.

### **John L. Scott Realty**

Exclusive. Landlord covenants it will not lease premises in the Center to any party whose proposed principal business is the operation of a residential real estate office.

### **Marshalls**

Exclusive. Landlord agrees that no other premises in the Shopping Center shall at any time contain more than fifteen thousand (15,000) square feet of floor area therein used or occupied for, or devoted to, the sale or display of soft goods (as defined by the trade from time to time), including in the computation of such floor area one-half (1/2) of all floor area in any aisles, corridors or similar spaces adjacent to or abutting any racks, gondolas, shelves, cabinets, counters or other fixtures or equipment containing or used for the sale or display of soft goods.

**General Shopping Center Prohibited Uses.** Landlord agrees the Shopping Center shall not be used (a) for any non-retail purposes or (b) for any entertainment purposes such as a bowling alley, skating rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, health club, massage parlor, sporting event, sports or game facility, off-track betting club, or (c) or for any establishment which sells or displays pornographic materials, or (d) for any establishment which sells or displays used merchandise or second hand goods.

### **Massage Envy**

**Exclusive.** Landlord will not directly lease, rent, occupy or permit to be occupied or used any other premises in the Shopping Center (including any expansion thereof) for massage therapy, spa services and/or muscle therapy or by or to a person or entity whose primary business involves such uses. For the purposes of the foregoing, a person or entity shall be deemed to be primarily engaging in such business in such premises only if more than ten percent (10%) of the gross sales from the business in such premises derive from the sale of the aforementioned services.

**General Shopping Center Prohibited Uses:** In addition, Landlord agrees that during the Term of this Lease (and any Option Terms) and so long as Tenant is using the Premises for the Permitted Use, and provided that this Lease is in full force and effect and Tenant is not in default hereunder beyond applicable notice and cure periods, Landlord also will not lease a space that has a shared wall with the Premises to a person or entity that is operating a bar, "night club", restaurant (but a deli or other food service where there is limited cooking performed on the premises shall be permitted), fitness studio, or musical instrument sales or to similar businesses where the noise or odor levels would unreasonably interfere with the quiet enjoyment of the operation of Tenant's use of the Premises for the Permitted Use.

### **Mattress Firm**

**Exclusive.** Landlord covenants that during the Term of the Lease it will not lease premises in the Center to any party whose proposed principal business is the sale, at retail, of mattresses, box springs, bed frames, adjustable beds, futons, sofas, and sofa beds. The expression "principal business" when used in this Section means the sale, at retail, by an occupant of any one (1) or more, or any combination of, the following items, in more than ten (10%) percent of the floor area of the occupants premises: mattresses, box springs, bed frames, adjustable beds, futons, sofas and sofa beds.

### **MOD Pizza**

**Exclusive.** Landlord will not lease, use, or allow any other person or entity to use any other premises in the Shopping Center for the operation of a restaurant serving primarily pizza, either dine-in, take-out or delivery ("Tenant's Exclusive Items/Service"). For the purposes of the foregoing, a person or entity shall be deemed to be primarily engaging in such business in such premises only if more than ten percent (10%) of the sales from the business in such premises derive from the sale of pizza.

### **NK Nails & Spa**

**Exclusive.** Landlord will not lease any other premises in the Shopping Center to a person or entity whose sales of waxing, manicure, pedicure, or artificial nail services are greater than 30% of its Gross Sales.

### **Panda Express**

**Exclusive:** Landlord shall not lease space in the Shopping Center, as existing as of the Effective Date, on or after the Effective Date of this Lease, to a tenant or occupant whose primary use shall be the operation of a fast casual wok prepared Chinese Food (herein "Competing Tenant").

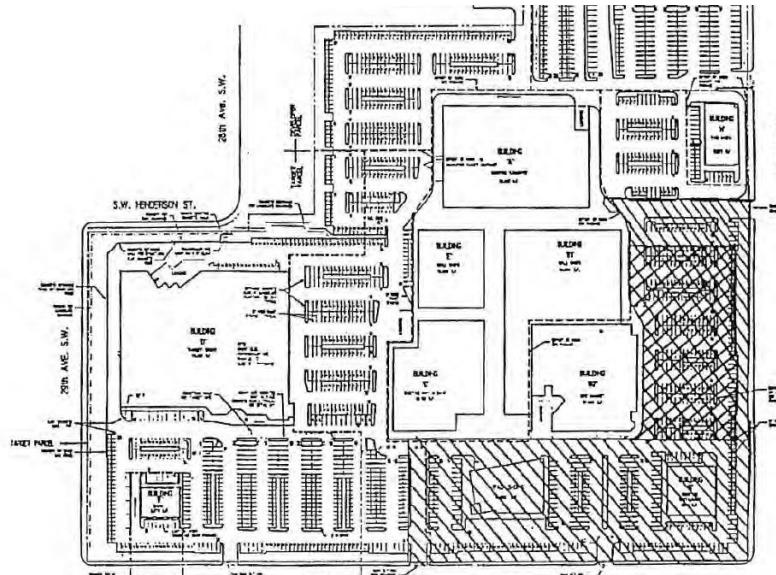
## Pet Supplies Plus

Exclusive. Landlord will not lease any other premises in the Shopping Center to a person or entity whose primary business is for the Pet Use ("Tenant's Exclusive Items/Service"). For the purposes of the foregoing, a person or entity shall be deemed to be primarily engaging in the sale of Tenant's Exclusive Items/Services in such premises only if (i) more than fifteen percent (15%) of the sales from the business in such premises derive from the sale of Tenant's Exclusive Items/Service (ii) or 500 square feet or more of floor space of the tenant's premises is used for the sale of the Tenant's Exclusive Items/Services.

## QFC (Quality Food Centers)

Exclusive. Landlord will not lease any premises in the Shopping Center to any tenant or permit any change of use of any store in the Shopping Center for the purpose of operating a retail supermarket store selling food and related items similar to the other retail supermarket stores operated by Tenant in the Puget Sound Area from time to time, a convenience food store, a butcher shop, a fish store or a produce store (a "Prohibited Business"). The Tenant acknowledges and agrees that this Section shall not apply to the incidental sale of groceries or related items in any other premises in the Shopping Center.

General Shopping Center Prohibited Uses. Landlord shall agree not to lease space in the building to be constructed on the approximately 12,000 square foot pad situated to the south of the Premises as shown on Exhibit D to a tenant having an entrance to such building on any side other than the west side of said pad other than for the uses shown on Exhibit E {Big 5 sporting goods, fashion, footwear, jewelry, books, home decorating and improvement supplies, housewares, computers, fabric, furniture/furnishings, gifts/hobby crafts, photo/cameras, optical, pet shop, stationary/card shop, toys, cleaners, financial/legal, hairstyling, medical/dental, travel} attached hereto or such other use approved by Tenant, which approval shall be granted or withheld at Tenant's sole discretion. Tenant shall respond to Landlord's request for such other use within ten (10) days of such request.



## Rite Aid

Exclusive. No portion of the Shopping Center in which the Leased Premises is situated other than the Leased Premises, shall be occupied or used: (i) for the purposes of a business, trade or profession which requires or has a license or permit to conduct a pharmacy, or which employs or

is required to employ a registered or licensed pharmacist; or (ii) for the conduct of any store, business, trade or profession which is called, labeled, named or is commonly known or referred to as a "drug store", "pharmacy" or "apothecary".

**General Shopping Center Prohibited Uses.** Landlord covenants and warrants that no part of the Shopping Center shall be used for any of the following purposes: (i) an office building, bar, tavern or cocktail lounge; (ii) an adult book store, adult video store or any establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; (iii) a gym, athletic or health club; (iv) a warehouse; (v) a mortuary; (vi) an entertainment or recreational facility; (vii) a training or educational facility; (viii) for industrial purposes; (ix) the sale of second-hand goods; (x) an auction business, or a business selling distressed, fire sale, bankruptcy or going out of business merchandise; (xi) the maintenance, repair, renting, leasing or sale of any motor vehicle, trailer or boat; or (xii) a house of worship. For the purposes of this paragraph, the phrase "entertainment or recreational facility" includes, but is not limited to, a theater, bowling alley, dance hall, skating rink, billiard or pool hall, massage parlor or other similar activity. The phrase "training or educational facility" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction or other operation catering primarily to students or trainees, or similar activities.

### Ross Dress for Less

**Exclusive.** Landlord shall not permit any other tenant or occupant of Landlord's Parcel to use its premises for a Burlington Coat Factory or Burlington Store.

**General Shopping Center Prohibited Uses.** No part of Landlord's Parcel shall be used for office or residential purposes or as a theater, auditorium, meeting hall, school, church or other place of public assembly, "flea market," mortuary or funeral home, veterinary services or pet vaccination clinic or overnight stay pet facilities, gymnasium or health club, dance hall, billiard or pool hall, massage parlor, video game arcade, bowling alley, skating rink, car wash, facility for the sale, display, leasing or repair of motor vehicles, facility offering gambling to the public (including any so-called Internet café that offers gambling to the public, off track betting facility, casino or gaming facility), provided that the incidental sale of lottery tickets shall be permitted, the sale of adult products or adult bookstores or adult audio/video products stores (which are defined as stores in which at least ten percent (10%) of the inventory is not available for sale or rental to children under the age of majority in the state in which the Store is located because such inventory explicitly deals with or depicts human sexuality). Further, no restaurant shall be permitted in Landlord's Parcel within Buildings E, D and Building B spaces B8 through B18. There shall be no restaurant or fast food restaurant in Building C offering drive-through service. The foregoing use restrictions are referred to herein as the "Ross Prohibited Uses."



### **Sally Beauty**

Exclusive. Landlord covenants that it will not lease premises to any party whose proposed principal business is the sale of beauty supplies.

### **Smile Brands / Reflections Dental**

Exclusive. Landlord covenants that it will not lease or consent to a sublease of premises in the Shopping Center to any party whose business is the operation of a dental clinic or dental office.

### **Starbucks**

Exclusive. Landlord shall not use or, to the extent Landlord has the legal right to do so, allow any other person or entity (except Tenant) to use any portion of the Property for the sale of (a) whole or freshly ground coffee beans, (b) espresso, espresso-based coffee drinks or coffee-based drinks, or (c) gourmet, brand-identified brewed coffee; provided, however, that incidental sales of non-brand identified brewed coffee shall be permitted. For purposes of this Section, "Incidental sales" shall mean sales which in the aggregate constitute less than ten percent (10%) of total food and beverage sales from the same premises during any calendar year.

### **State Farm**

Exclusive. Landlord covenants it will not lease premises in the Center to any party whose proposed principal business is the operation of an insurance agency.

### **Ulta**

Exclusive. Landlord will not lease any other premises in the Shopping Center to a person or entity whose primary business is all or any of Tenant's Primary Uses {the retail sale of cosmetics, fragrances, health and beauty products and accessories, hair care products and accessories; personal care appliances; skin care products, and body care products; and (ii) the operation of a full service beauty salon ("full service beauty salon" - the offering of any of or a combination of the following services: hair care (including, without limitation, cutting, styling, hair treatments, highlighting, tinting, coloring, texturizing, smoothing and hair extensions); facials; esthetician services; skin care services (skin treatments for face and body); beauty treatments/services; hair removal (including, without limitation, waxing, threading and tweezing for face and body); eye lash extension services; nail services; and therapeutic massage} ("Tenant's Exclusive"). Tenant's Exclusive shall not apply to incidental sales (i.e., less than five hundred (500) square feet total of such tenant's premises is used to sell any of the products that comprise Tenant's Protected Uses).

General Shopping Center Prohibited Uses. The Prohibited Uses set forth on Exhibit E shall be prohibited throughout the Shopping Center.

### **Exhibit E – Use Restrictions**

**Prohibited Uses.** The following uses (collectively referred to as "Prohibited Uses" and individually as a "Prohibited Use") are prohibited in any portion of the Shopping Center:

A. nuisance; use causing loud noises or offensive odors (including any business using exterior loud speakers); any use that produces noise and/or vibrations that can be heard and/or felt in the Common Areas and/or the Premises; manufacturing facility; dry cleaner; automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks; used clothing or thrift store or liquidation outlet; hotels, motels or other lodging; marijuana sales or dispensary; massage parlor; adult book shop or adult movie house; mortuary or funeral parlor; coin operated laundry; cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant permitted hereunder; night club; cinema or theater; drug store/pharmacy; place of recreation (including, but not limited to, bowling alley, skating rink, carnival, game arcade, swimming pool, hot tub, gym, health club or exercise facility); church; children's recreational, educational or day care facility; offices;

professional uses; a school of any nature (including a beauty school, barbe/s college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers); drive-throughs; restaurants occupying more than 2,500 square feet of Gross Floor Area; the use of the word "beauty" in the name or signage of any other tenant or occupant; and any other use inconsistent with the operation of a high quality retail shopping center; and

B. Excepting those Use Restrictions set forth in Exhibit E, all of the restrictions or prohibitions that exist under any declarations of covenant or restrictions or other documents affecting any portion of the Shopping Center.

C. Any and all restrictions or prohibitions that exist under any leases, occupancy agreements or other documents affecting any portion of the Shopping Center are set forth below: See Rite Aid, Staples, Marshalls, and Bed Bath & Beyond Prohibited Uses

**Exclusive Rights of other Parties.** The following is a list of all exclusive use rights that exist as of the date hereof affecting any portion of the Shopping Center, and the name of the tenant which each exclusive right benefits: See Bank of America, Bed Bath & Beyond, Carter's, Davita Dialysis, Desert Sun, GameStop, Highline Medical, John L. Scott Realty, Marshalls, Massage Envy, Mattress Firm, McDonald's, NK Nails, Pet Pros (Lucky Dog), QFC, Rite Aid, Ross, Sally Beauty Supply, Staples, Starbucks, State Farm, Sub Shop, Vatsana Thai Restaurant, WingStop, and Wyatt Jewelers Exclusives.

### **Wing Stop**

**Exclusive.** Landlord will not lease any other premises in the Shopping Center to a person or entity whose primary business is the sale of prepared "ready-to-eat" chicken wings. For the purposes of the foregoing, a person or entity shall be deemed to be primarily engaging in such business in such premises only if more than twenty percent (20%) of the sales from the business in such premises derive from the sale of prepared "ready-to-eat" chicken wings ("Tenant's Exclusive Items/Service").

### **Wyatt's Jewelers**

**Exclusive.** Landlord covenants it will not lease premises in the Center to any party whose proposed principal business is the operation of a retail store for the sale, at retail, of jewelry.

### **UPS**

**Exclusive.** that Landlord will not lease space in the Shopping Center, as existing as of the Effective Date, to a tenant or occupant whose primary use shall be to provide packing and shipping services via UPS, DHL, FedEx or any other related overnight delivery and/or courier services ("Competing Tenant"). "Primary Use" for the purposes of this clause is defined as more than five percent (5%) of Gross Sales in the aggregate in any thirty (30) day period

**2. Prohibited Uses.** Additionally, Tenant's use and occupancy of the Premises shall be limited by, and is subject to, the following use restrictions and prohibitions (collectively, "Prohibited Uses"):

- a) A bar, lounge, or nightclub where the sale of alcoholic beverages by the drink exceeds forty percent (40%) of such occupant's total gross sales;
- b) A tattoo parlor;
- c) A massage parlor (excluding, however, establishments typically found in Shopping Centers similar to the Center, such as by way of example only, Massage Envy and massage provided by professional health care providers);
- e) A funeral home;
- f) The sale of drug paraphernalia, except as may be permitted in a standard drug store or pharmacy;

h) The sale or display of pornographic material (excluding materials sold at first class bookstores, such as Barnes&Noble), or the presentation of obscene, nude, or semi-nude live performances; or a so-called rubber goods shop, or as a sex club of any sort.

i) A flea market or pawn shop (excluding, first class store selling "second hand" items such as, but not limited to, "Brooklyn Flea," "Play it Again Sports," and "GameStop")

j) A manufacturing facility, excluding manufacturing incidental to an otherwise permissible retail use.

**EXHIBIT G**  
**EXISTING CONDITIONS**

On the Possession Date, the Premises shall conform to the following:

1. EXISTING DEMISING WALLS IN EACH SUITE TO BE DELIVERED IN EXISTING LOCATIONS AND CONDITIONS.
2. EXISTING CONCRETE SLAB AND FLOORING TREATMENTS IN EACH SUITE TO BE DELIVERED IN EXISTING CONDITION. EXISTING FLOORING WILL NOT BE REMOVED, NOR WILL ADDITIONAL FLOOR PREP BE PROVIDED BY LANDLORD.
3. EXISTING CEILING HEIGHTS IN EACH SUITE ARE TO REMAIN.
4. EXISTING EGRESS DOORS IN EACH SUITE TO BE DELIVERED IN EXISTING LOCATIONS AND CONDITIONS.
5. EXISTING RTU UNITS SERVICING EACH SUITE TO BE DELIVERED IN EXISTING LOCATIONS AND CONDITIONS.
6. EXISTING MINIMUM OF 200A 120/208 ELECTRIC IN EACH SPACE TO BE DELIVERED IN EXISTING LOCATIONS AND CONDITION.
7. EXISTING SPRINKLER SYSTEM IN EACH SUITE TO BE DELIVERED IN "AS IS" CONDITION. .
8. EXISTING TELEPHONE CONDUIT IN EACH SPACE TO BE DELIVERED IN EXISTING LOCATIONS AND CONDITIONS.
9. EXISTING DOMESTIC WATER SERVICE AND SANITARY SERVICE WILL BE DELIVERED IN EACH SUITE'S EXISTING LOCATIONS AND CONDITION.
10. EXISTING RESTROOMS IN EACH SUITE WILL BE DELIVERED IN THEIR CURRENT LOCATIONS AND CONDITIONS.
11. THE PREMISES IS STRUCURALLY SOUND AND WATERTIGHT.

**EXHIBIT H  
ACKNOWLEDGEMENT OF COMMENCEMENT DATE**

**THIS ACKNOWLEDGEMENT OF COMMENCEMENT DATE** ("Acknowledgement") is made as of \_\_\_\_\_ ("Effective Date"), with reference to that certain Lease Agreement dated \_\_\_\_\_ between \_\_\_\_\_, a Delaware limited liability company, as "Landlord", and \_\_\_\_\_, doing business as \_\_\_\_\_, as "Tenant" (hereinafter, the "Lease").

The undersigned hereby confirms the following:

1. The Possession Date (as defined in the Lease) occurred on \_\_\_\_\_.
2. In accordance with the provisions of the Lease, the Commencement Date is \_\_\_\_\_, and unless sooner terminated, the Lease Term expires on \_\_\_\_\_.
3. The last date upon which Tenant may exercise the Option Term is \_\_\_\_\_ (and \_\_\_\_\_), respectively.

The parties have executed this Commencement Date Agreement as of the day and year set forth above.

**LANDLORD:**  
**BCORE Westwood Village LLC**, a Delaware limited liability company

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

**TENANT:**  
**H.F.D. No. 55, Inc.**, a Delaware corporation

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

## EXHIBIT I

### Summary of Commercial Lease Requirements



**Seattle**  
Finance &  
Administrative Services

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### Summary of Commercial Lease Requirements

This document summarizes the commercial lease requirements established in Chapter 6.104 of the Seattle Municipal Code (SMC). Per SMC 6.104.040.C, nothing in this summary shall be construed as binding on or affecting any judicial determination of the rights and responsibilities of landlords and tenants, nor is the Department of Finance and Administrative Services (FAS) liable for any misstatement or misinterpretation of the applicable laws.

[Ordinance 126982](#) establishes limits on both the maximum personal guaranty that may be included in or as a condition of commercial leases and the value of a commercial lease's required security deposit and/or letters of credit. The ordinance applies to all lessors of commercial property located within Seattle city limits.

**Applicability:**

The law applies to any new lease agreement executed after January 27, 2024 for commercial property located within Seattle city limits. It does not apply to lease extensions.

Commercial property is defined as any space that is intended to generate a profit and is used for commercial or retail activities, EXCLUDING the following:

- Residential property
- Lodging
- Office space
- Research and development laboratories
- Medical practices, clinics, and dispensaries
- Farming or cultivation

**General Provisions:**

Any new lease agreement executed after January 27, 2024 for commercial property located within Seattle city limits must comply with the following provisions:

- The total combined value of any required security deposit and/or letters of credit shall not exceed the total value of the first month and last month of base rent (SMC 6.140.030.A).
- The maximum personal guaranty that may be included in, or required as a condition of, the commercial lease is the sum of (SMC 6.140.030.B):
  - 1) The first two years of base rent payments and
  - 2) The total cost of tenant improvements made to the leased space, including any tenant improvement allowance but excluding any tenant improvement costs borne by the tenant.

A copy of this summary must be provided by the lessor to the tenant or prospective tenant when a new commercial lease is offered. In addition, lessors must provide this summary to existing commercial tenants by August 15, 2024, that is, within 90 days after publication of this document (SMC 6.104.050).

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Consumer Protection Beth Gappert, Division Director

700 Fifth Ave., 43rd Floor | P.O. Box 98380 | Seattle, WA 98124-7085 | 206-386-1267 | [seattle.gov/fas](#)

Summary of Commercial Lease Requirements

**Violations, Penalties, and Private Right of Action:**

It is considered a violation for lessors to enter into, or require another party to enter into, any commercial lease agreement that includes or requires a security deposit, letters of credit, and/or a personal guaranty that exceed the limits established in SMC 6.104.030 (SMC 6.104.070).

Violations are subject to the following penalties: \$500 for the first violation, and \$1,000 for each subsequent violation within a five-year period. Each day a lessor commits a violation may be considered a separate violation for which a civil citation, and associated penalty, may be issued (SMC 6.104.080.F).

Anyone that suffers financial injury due to a violation of these commercial lease requirements may bring civil action against the lessor and, upon prevailing, may be awarded reasonable attorney costs plus damages, including any interest due. In lieu of actual damages, the court may award the tenant liquidated damages up to \$20,000 per incident (SMC 6.104.090).

**To submit a complaint or alleged violation:**

To submit a complaint about a possible violation of these commercial lease requirements, please call the City of Seattle's Consumer Protection Division at 206-386-1267 or submit an email to [consumerprotection@seattle.gov](mailto:consumerprotection@seattle.gov).

**EXHIBIT J**  
**GREEN LEASE RIDER**

The following commercially reasonable terms are incorporated into the Lease and supersede any conflicting provisions in the Lease:

1. Operating Costs. “Operating Costs” as defined in the Lease shall include the cost of carbon or environmental credit or certificate trading or offset costs ensuring compliance by, or levies, charges or impositions made in lieu of or in absence of compliance by, the Shopping Center with greenhouse gas emission levels or energy consumption or conservation levels mandated by applicable law. To the extent any of the foregoing costs are considered capital expenditures, such costs shall be amortized over their respective useful life and only the yearly amortization amount included in yearly determination of Operating Costs. The above costs shall be subject to the CAM Cap set forth in Section 6.02.

2. Sustainability Reporting. In order to assure compliance with Laws, within thirty days after Landlord’s written request, Tenant shall report to Landlord (in the form required by Law) its waste generation and utility usage for the prior calendar quarter or for such shorter period as is required to comply with Law, including but not limited to: kilowatt hours of electricity, cubic feet of gas, gallons of water, and any other item of usage or waste creation that may be required by Law.

**EXHIBIT K**  
**GROSS SALES STATEMENT FORM**

*In accordance with the terms of the lease, the following is a true and accurate statement of sales for the above listed location. These sales figures are confidential and proprietary. Any unauthorized use or disclosure of this information is strictly prohibited.*

**Sales Calculation Summary For The Period**

Month	Year	Total Net Sales
<b>Total</b>		

If you should have any questions, please contact ASG Lease Administration at 614-212-5180 or  
leaseadmsales@consultasg.com

Sincerely,

Asset Strategies Group, LLC.