Exhibit 10.6  
LEASE AGREEMENT  
[7401 Xxxxx Avenue North, Brooklyn Park, MN]  
 This Lease is made and entered into as of the Effective Date by and between IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP, as Landlord, and AM RETAIL GROUP, INC., a Delaware corporation, as Tenant.  
DEFINITIONS  
 Except as otherwise specifically defined in this Lease, the capitalized terms used in this Lease have the meanings ascribed to them on Exhibit 1.  
BASIC TERMS  
 The following Basic Terms are governed by the particular sections in this Lease pertaining to the following information:  
 1.  
 Premises: Suite A, consisting of approximately 155,026 square feet of the Building located at 0000 Xxxxx Xxxxxx Xxxxx, Xxxxxxxx Xxxx, Xxxxxxxxx. The Premises are depicted on attached Exhibit 2.1 (first floor) and Exhibit 2.2 (mezzanine). As of the Effective Date, the initial Premises will consist of: (a) 1,618 square feet of first floor entry space; (b) 97,011 square feet of first floor warehouse space; (c) 29,922 square feet of mezzanine office space; and (d) 26,475 square feet of mezzanine warehouse space.  
 2.  
 Lease Term: 36 full calendar months (Section 1.2.1).  
 3.  
 Commencement Date: The first to occur of: (1) the first Business Day following Substantial Completion of the Tenant Improvements (Section 17.1); or (2) June 1, 2009.  
 4.  
 Basic Rent:   
 Months Annualized Monthly  
1-12  
 $579,797.24 ($3.74/sf) $ 48,316.44   
13-24  
 $596,850.10 ($3.85/sf) $ 49,737.51   
25-36  
 $615,453.22 ($3.97/sf) $ 51,287.77   
 Extension Term: (Section 1.2.4)  
 5.  
 Tenant’s Share of Expenses Percentage: 37.864%  
 6.  
 Property Manager: IRET Properties, a North Dakota Limited Partnership  
00000 Xxxxxxxxx Xxxxxx, Xxxxx 000  
Xxxx Xxxxxxx, XX 00000  
Telephone: (000) 000-0000  
 7.  
 Rent Payment Address: IRET Properties, a North Dakota Limited Partnership  
Attn: PM Accounting (GL#1233)  
XX Xxx 0000 (regular mail)  
00 Xxxxx Xxxx Xxxxxx (overnight delivery)  
Xxxxx, XX 00000  
 8.  
 Address of Landlord for Notices: IRET Properties, a North Dakota Limited Partnership  
Attn: General Counsel  
PO Box 1988 (regular mail)  
00 Xxxxx Xxxx Xxxxxx (overnight delivery)  
Xxxxx, XX 00000  
 With a copy to: Property Manager at the address described in Section 6 of the Basic Terms.  
 9.  
 Address of Tenant for Notices: AM Retail Group, Inc.  
Attn: Xx. Xxxxx Xxxxxx  
0000 Xxxxx Xxx X, Xxxxx X  
Xxxxxxxx Xxxx, XX 00000  
 10.  
 Brokers: None (Landlord’s Broker).  
None (Tenant’s Broker).  
(Section 18.10)  
 11.  
 Security Deposit: None.  
 12.  
 Permitted Use: Tenant shall use the Premises only for general office, warehouse and distribution purposes, together with all uses which are incidental or ancillary to any such permitted primary uses, and not for any other purpose (Section 4.1).  
 13.  
 Extension Option: 1 option of 3 years, on advance written notice, as set forth in Section 1.2.4.  
ARTICLE 1  
LEASE OF PREMISES AND LEASE TERM  
 1.1. Premises. In consideration of the mutual covenants this Lease describes, Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord, subject to the terms, covenants and conditions set forth in this Lease. The rentable area of the Premises is the rentable area specified in the Basic Terms. In the event that a measurement of the Premises by a licensed architect retained by Landlord shows that the rentable area of the Premises differs from the rentable area specified in the Basic Terms, then Landlord and Tenant shall amend this Lease accordingly; provided, however, that any such amendment will operate prospectively only. Landlord and Tenant will not make any retroactive adjustments to Rent payments on account of any difference between the rentable area of the Premises specified in the Basic Terms and the rentable area of the Premises as may be determined after the Effective Date.  
 1.2. Term, Delivery and Commencement.  
 1.2.1. Commencement and Expiration of Term. The Term of this Lease is the period stated in the Basic Terms. The Term shall commence on the Commencement Date and shall end on the last day of the last calendar month of the Term.  
 1.2.2. Tender of Possession. The parties acknowledge that Tenant is already in possession of the Premises pursuant to a prior sublease that will be terminated by this Lease as of midnight of the day before the Commencement Date of this Lease (“Sublease Termination Date”). Landlord expressly acknowledges and agrees that any obligations and liabilities under the prior sublease will cease to accrue as of the Sublease Termination Date and, within 20 days after such date, Landlord will refund to Tenant any prepaid amounts under the prior sublease, prorated as of the Sublease Termination Date, as well as the security deposit under the prior sublease.  
2  
 1.2.3. Commencement Date Memorandum. Within a reasonable time after the Commencement Date, Landlord will deliver to Tenant a commencement date memorandum, in the specific form attached as Exhibit 1.2.3 (the “Commencement Date Memorandum”), with all blanks completed in accordance with this Lease. Tenant, within 10 Business Days after receipt from Landlord, shall execute and deliver to Landlord the Commencement Date Memorandum. Tenant’s failure to execute and deliver to Landlord the Commencement Date Memorandum shall not affect any obligation of Tenant under this Lease. If Tenant does not timely execute and deliver the Commencement Date Memorandum, then Landlord and any prospective purchaser or lender may conclusively rely on the information contained in the unexecuted Commencement Date Memorandum Landlord delivered to Tenant.  
 1.2.4. Option to Extend. Tenant shall have the right, to be exercised as hereinafter provided, to extend the term of this Lease for 1 period of 3 years (“Extension Term”), on the following terms and conditions and subject to the limitations hereinafter set forth. The Extension Term shall be upon the same terms, covenants and conditions as in this Lease, except that Basic Rent shall be the Fair Market Basic Rent for such space on the date such Extension Term shall commence. Tenant shall notify Landlord of its desire to extend the term for the Extension Term by notifying Landlord in writing (the “Extension Notification”) at least 9 months prior to the commencement date of the Extension Term; if Tenant fails to timely deliver the Extension Notification to Landlord, then Tenant’s option to extend shall automatically terminate. Upon Landlord’s receipt of the Extension Notification, Landlord and Tenant shall make a good faith effort to agree upon the Fair Market Basic Rent of the Premises for the Extension Term. “Fair Market Basic Rent” shall mean that net annual basic rent per rentable square foot of the Premises as of the commencement of the Extension Term that a willing credit-worthy tenant would pay and that a willing landlord would accept in an arms length bona fide negotiation for space comparable to the Premises in condition, quality, size and location, with neither party under a compulsion for the appropriate term. In determining “Fair Market Basic Rent,” the parties shall consider rental rates, rent concessions, and other economic terms that a comparable landlord, acting reasonably and in good faith, is then offering or would then offer, to a lessee similar to Tenant for a similar term. In the event that Landlord and Tenant fail to agree upon the Fair Market Basic Rent within 90 days of Landlord’s receipt of the Extension Notification, then Tenant’s extension right shall automatically terminate. Tenant’s option to extend as set forth in this Section shall be contingent upon this Lease being in full force and effect and Tenant not being in default in the performance of any of the terms, covenants and conditions herein contained in respect to a matter as to which notice of default has been given hereunder which has not been remedied within the time limited in this Lease.  
 1.3. Landlord’s Right to Construct Internal Hallway. Landlord reserves the right, to be exercised in Landlord’s sole but reasonable discretion at any time during the Term, but subject to the provisions of Section 9.3 of this Lease, to construct a new hallway through the Premises as shown on attached Exhibit 1.3. If Landlord exercises such right, then the construction shall be completed at Landlord’s sole cost and expense and shall not be included in Operating Expenses. This Lease shall automatically terminate as to the portion of the Premises used to construct the hallway as of the date that Landlord takes possession to commence the conversion. Landlord will, at its sole cost and expense, restore the remaining portion of the Premises to a complete architectural unit with all commercially reasonable diligence and speed and will reduce the Basic Rent for the period after the date Landlord takes possession to a sum equal to the product of the Basic Rent provided for in this Lease multiplied by a fraction, the numerator of which is the rentable area of the Premises after the hallway is constructed and after Landlord restores the Premises to a complete architectural unit (as documented by a certified measurement by a licensed architect retained by Landlord), and the denominator of which is the rentable area of the Premises prior to the hallway construction. Landlord will also equitably adjust Tenant’s Share of Expenses Percentage for the same period, to account for the reduction in the rentable area of the Premises or the Building resulting from the construction of the hallway.  
 1.4. Quiet Enjoyment. Subject to the terms of this Lease, Landlord covenants that if Tenant timely (a) pays all Rent and other charges provided for herein, (b) performs all of its obligations provided for herein, and (c) observes all of the other provisions hereof, then Tenant shall at all times during the Term peaceably and quietly have, hold and enjoy the Premises, without interruption or disturbance by Landlord, or anyone claiming through or under Landlord.  
3  
 ARTICLE 2  
RENT  
 2.1. Basic Rent. Tenant will pay Basic Rent in monthly installments to Landlord, in advance, without offset or deduction, commencing on the Commencement Date and continuing on the first day of each and every calendar month after the Commencement Date during the Term. Tenant will make all Basic Rent payments to Landlord at the address specified in the Basic Terms or at such other place or in such other manner as Landlord may from time to time designate in writing. Tenant will make all Basic Rent payments without Landlord’s previous demand, invoice or notice for payment. Landlord and Tenant will prorate, on a per diem basis, Basic Rent for any partial month within the Term.  
 2.2. Additional Rent. Article 3 of this Lease requires Tenant to pay certain Additional Rent pursuant to estimates Landlord delivers to Tenant. Tenant will make all payments of estimated Additional Rent in accordance with Article 3 without deduction or offset and without Landlord’s previous demand, invoice or notice for payment. Tenant will pay all other Additional Rent described in this Lease that is not estimated under Article 3 within 15 days after receiving Landlord’s invoice for such Additional Rent. Tenant will make all Additional Rent payments to the same location and, except as set forth in the preceding sentence, in the same manner as Tenant’s payments of Basic Rent.  
 2.3. Delinquent Rental Payments. If Tenant does not pay any installment of Basic Rent or any Additional Rent within 5 Business Days after the date the payment is due, Tenant will pay Landlord an additional amount equal to the greater of (a) interest on the delinquent payment calculated at the Maximum Rate from the date when the payment is due through the date the payment is made, or (b) a late payment charge equal to 5% of the amount of the delinquent payment. Landlord’s right to such compensation for any such delinquency is in addition to all of Landlord’s rights and remedies under this Lease, at law or in equity. Notwithstanding anything in this Section to the contrary, Landlord agrees that (i) Landlord shall only impose the interest or the late payment charge on delinquent amounts if Tenant fails to make timely payment of Rent on more than 1 occasion in any 12-month period, and (ii) that the late payment charge for a second failure in any 12-month period shall not exceed $1,000.00.  
 2.4. Independent Obligations. Notwithstanding any contrary term or provision of this Lease, Tenant’s covenant and obligation to pay Rent is independent from any of Landlord’s covenants, obligations, warranties or representations in this Lease.  
ARTICLE 3  
PROPERTY TAXES AND OPERATING EXPENSES  
 3.1. Payment of Expenses. Tenant will pay, as Additional Rent and in the manner this Article 3 describes, Tenant’s Share of Expenses due and payable during any calendar year of the Term. Landlord will prorate Tenant’s Share of Expenses due and payable during the calendar years in which the Lease commences and terminates as of the Commencement Date or termination date, as applicable, on a per diem basis based on the number of days of the Term within such calendar year.  
 3.2. Estimation of Tenant’s Share of Expenses. Landlord will deliver to Tenant a written estimate of the following for each calendar year of the Term: (a) Property Taxes, (b) Operating Expenses, (c) Tenant’s Share of Expenses Percentage and (d) the annual and monthly Additional Rent attributable to Tenant’s Share of Expenses.  
 3.3. Payment of Estimated Tenant’s Share of Expenses. Tenant will pay the amount Landlord estimates as Tenant’s Share of Expenses under Section 3.2 for each calendar year of the Term in equal monthly installments, in advance, on the first day of each month during such calendar year. If Landlord has not delivered the estimates to Tenant by the first day of January of the applicable calendar year, Tenant will continue paying Tenant’s Share of Expenses based on Landlord’s estimates for the previous calendar year. When Tenant receives Landlord’s estimates for the current calendar year, Tenant will pay the estimated amount (less amounts Tenant paid to Landlord in accordance with the immediately preceding sentence) in equal monthly installments over the balance of such calendar year, with the number of installments being equal to the number of full calendar months remaining in such calendar year.  
4  
 3.4. Re-Estimation of Expenses. Landlord may re-estimate Expenses from time to time during the Term. In such event, Landlord will re-estimate the monthly Additional Rent attributable to Tenant’s Share of Expenses to an amount sufficient for Tenant to pay the re-estimated monthly amount over the balance of the calendar year. Landlord will notify Tenant of the re-estimate and Tenant will pay the re-estimated amount in the manner provided in the last sentence of Section 3.3.  
 3.5. Confirmation of Tenant’s Share of Expenses. Within 60 days after the end of each calendar year within the Term, Landlord will determine the actual amount of Expenses and Tenant’s Share of Expenses for the expired calendar year and deliver to Tenant a written statement of such amounts. Tenant, at Tenant’s sole cost and expense, upon prior written notice of at least 15 days, and during regular business hours at the location where Landlord or its Property Manager maintains the applicable records, may review Landlord’s method of calculating Tenants Share of Expenses, along with the underlying documents used by Landlord in such calculation. If Tenant paid less than the actual amount of Tenant’s Share of Expenses specified in the statement, Tenant will pay the difference to Landlord as Additional Rent in the manner Section 2.2 describes. If Tenant paid more than the actual amount of Tenant’s Share of Expenses specified in the statement, then Landlord (at Landlord’s option) will either (a) promptly refund the excess amount to Tenant, or (b) credit the excess amount against Tenant’s next due monthly installment or installments of estimated Additional Rent. If Landlord is delayed in delivering such statement to Tenant, such delay does not constitute Landlord’s waiver of Landlord’s rights under this section or release Tenant from any of its obligations hereunder. Tenant acknowledges that, for purposes of accounting for Expenses, Landlord may close a “calendar” year on December 20th of that year; if Landlord actually does so, then Landlord’s determination of the actual amount of Expenses for the following calendar year will include any Expenses attributable to the period of December 21st through December 31st of the previous calendar year.  
 3.6. Tenant’s Inspection and Audit Rights. If (i) Tenant is not in default in the performance of any of its obligations under this Lease beyond any applicable period for cure, and if (ii) Tenant disputes Landlord’s determination of the actual amount of Expenses or Tenant’s Share of Expenses for any calendar year, and if (iii) Tenant delivers to Landlord written notice of the dispute within 60 days after Landlord’s delivery of the statement of such amount under Section 3.5, then Tenant at Tenant’s sole cost and expense (except as otherwise provided herein), upon prior written notice and during regular business hours at the location where Landlord or its Property Manager maintains the applicable records may cause a qualified financial officer or qualified accountant reasonably acceptable to Landlord to audit Landlord’s records relating to the disputed amounts. Tenant’s objection to Landlord’s determination of Expenses or Tenant’s Share of Expenses shall be deemed withdrawn unless Tenant completes and delivers the audit to Landlord within 90 days after the date Tenant delivers its dispute notice to Landlord under this section, provided Landlord reasonably cooperates with the scheduling and conducting of the audit. If the audit shows that the amount Landlord charged Tenant for Tenant’s Share of Expenses was greater than the amount this Article 3 obligates Tenant to pay, then, unless Landlord reasonably contests the audit, Landlord will refund the excess amount to Tenant within 10 days after Landlord receives a copy of the audit report. If the audit shows that the amount Landlord charged Tenant for Tenant’s Share of Expenses was less than the amount this Article 3 obligates Tenant to pay, then Tenant will pay to Landlord within 10 days as Additional Rent the difference between the amount Tenant paid and the amount determined in the audit. Pending resolution of any audit under this section, Tenant will continue to pay to Landlord the estimated amounts of Tenant’s Share of Expenses in accordance with Sections 3.3 and 3.4. If Tenant’s audit and Landlord’s review pursuant to this Section 3.6 conclusively establishes that the amount Landlord charged Tenant for Tenant’s Share of Expenses exceeds Tenant’s Share of Expenses as determined by this Section 3.6 by more than 8%, then Landlord shall reimburse Tenant for its actual third-party costs incurred in conducting its audit; provided, however, that in no event shall Landlord’s obligation under this provision exceed the sum of $5,000.00. Tenant must keep all information it obtains in any audit strictly confidential and may only use such information for the limited purpose this section describes and for Tenant’s own account.  
 3.7. Annual Amendment to Tenant’s Share of Expenses Percentage. Notwithstanding any contrary language in this Lease, Landlord may change Tenant’s Share of Expenses Percentage each calendar year to the percentage Landlord calculates by dividing the total rentable area of the portion of the Premises on the first floor of the Building by the total rentable area of the first floor of the Building for such calendar year. Landlord and Tenant acknowledge and agree that the second floor mezzanine portion of the Building will not be included in Landlord’s calculation of Tenant’s Share of Expenses Percentage. Landlord will notify Tenant of such change, if  
5  
 any, at the time Landlord delivers its estimates to Tenant under Section 3.2, which notice of change will include the certified statement of the licensed architect as to the total rentable area of the first floor of the Building and the total rentable area of the portion of the Premises on the first floor of the Building.  
 3.8. Landlord’s Right to Contest Property Taxes. Landlord may in its sole discretion contest the amount or validity, in whole or in part, of any Property Taxes. Landlord may include in its computation of Property Taxes the costs and expenses Landlord reasonably incurs in connection with any such contest (including but not limited to reasonable attorney’s fees). Tenant may not contest Property Taxes.  
ARTICLE 4  
USE  
 4.1. Permitted Use. Tenant shall use the Premises only for the use specified in Item 12 of the Basic Terms (the “Permitted Use”), and not for any other purpose. Tenant will not use the Property or knowingly permit the Property to be used in violation of any Laws or in any manner that would (a) cause injury or damage to the Property or to the person or property of any other tenant on the Property; (b) cause substantial diminution in the value or usefulness of all or any part of the Property (reasonable wear and tear excepted); or (c) constitute waste or a public or private nuisance. Tenant will obtain and maintain, at Tenant’s sole cost and expense, all permits and approvals required under the Laws for Tenant’s use of the Premises.  
 4.2. Acceptance of Premises. Tenant acknowledges that neither Landlord nor any agent, contractor or employee of Landlord have made any representation or warranty of any kind with respect to the Premises, the Building, or the Property, specifically including but not limited to any representation or warranty of suitability or fitness of the Premises, Building, or the Property for any particular purpose. Subject only to Section 17.1 below, including without limitation Landlord’s obligation to demise the Premises from the remainder of the Building in compliance with applicable Laws, Tenant accepts the Premises, the Building, and the Property in an “AS IS — WHERE IS” condition.  
 4.3. Laws & Building Rules. This Lease is subject and subordinate to all Laws. Tenant shall at all times comply with the rules and regulations for the Building set forth in Exhibit 4.3 (the “Building Rules”), and with any reasonable additions thereto and modifications thereof adopted from time to time by Landlord of which Tenant has been given at least 10 days prior written notice (provided no such additions or modifications to the Building Rules shall be adopted that would materially and adversely limit Tenant’s ability to use the Premises for the Permitted Use), and each such rule or regulation shall be deemed to be a covenant of this Lease to be performed and observed by Tenant. In the event of any conflict between the Building Rules and this Lease, this Lease shall control. Landlord will endeavor to include the Building Rules, as amended pursuant to this Section 4.3, in future leases with other occupants of the Building, and will enforce the Building Rules against all of the occupants of the Building in a nonarbitrary and nondiscriminatory manner.  
 4.4. Common Area. Landlord grants Tenant the non-exclusive right, together with all other occupants of the Building and their agents, employees and invitees, to use the Common Area during the Term, subject to all Laws. Landlord, at Landlord’s sole and absolute discretion (but subject to Section 9.3 below), may make changes to the Common Area. Landlord’s rights regarding the Common Area include without limitation the right to: (a) restrain unauthorized persons from using the Common Area; (b) temporarily close any portion of the Common Area (i) for repairs, improvements or Alterations, (ii) to discourage unauthorized use, (iii) to prevent dedication or prescriptive rights, or (iv) for any other reason that Landlord reasonably deems necessary; (c) change the shape and size of the Common Area; (d) add, eliminate or change the location of any improvements located in the Common Area; and (e) impose and revise Building Rules in a non-arbitrary and nondiscriminatory manner as to all Building tenants concerning use of the Common Area (including without limitation the parking facilities).  
 4.5. Signs.  
 4.5.1. Building Monument Sign. Landlord shall provide Tenant with one sign on the Building’s existing sign monument (the “Building Monument”), and Landlord hereby approves Tenant’s existing signage on the Building Monument. If Landlord elects to modify the Building Monument, or the signage on the Building  
6  
 Monument, then the design, materials, size, color and location of Tenant’s sign on the Building Monument shall be determined by Landlord in its sole but reasonable discretion, provided that Tenant’s sign shall be of comparable size and materials as other tenants’ signs. Tenant shall reimburse Landlord as Additional Rent for all costs incurred by Landlord in maintaining Tenant’s sign on the Building Monument. Landlord reserves the right to modify the Building Monument to accommodate additional signage.  
 4.5.2. Building Exterior Sign. Tenant shall have the right to install signage on the exterior of the East side of the Building (the “Exterior Sign”); provided, however, that (i) the design, materials, size, color and location of the Exterior Sign shall all be subject to Landlord’s prior written approval, which approval Landlord may withhold or condition in its sole and absolute discretion, and (ii) Tenant shall install and maintain the Exterior Sign at all times in strict compliance with the Laws. Notwithstanding the foregoing, Landlord hereby approves Tenant’s existing exterior Building signage. Tenant shall be solely responsible for all costs and expenses associated with the Exterior Sign, including without limitation all design, construction, permitting, installation, and maintenance costs. On or before the end of the Term, Tenant shall at its sole cost and expense remove the Exterior Sign and shall repair any damage cause by removal of the Exterior Sign. Landlord reserves the right to grant other tenants the right to construct and maintain signage on the exterior of the Building.  
 4.5.3. Except for the signs specifically allowed in this Section 4.5 and any existing signage required by Laws, no other sign, advertisement, graphics of any nature, or notice shall be inscribed, painted, affixed, or displayed on the windows or exterior walls of the Premises, or on any public area of the Building, without Landlord’s prior written consent (which consent Landlord may withhold or condition in its sole but reasonable discretion). Landlord agrees that Tenant my post “Help Wanted” signs and other business-related temporary signs. All permitted signs shall comply with the Laws, and shall be installed and maintained at Tenant’s sole expense. Landlord shall notify Tenant of any sign Landlord determines to be in violation of this Section 4.5 and, if Tenant fails to remove such sign within 10 days, then Landlord may immediately remove at Tenant’s sole cost and expense any sign, advertisement, graphics, or notice that violates this Section 4.5. The rights granted to Tenant pursuant to this Section 4.5 are personal to Tenant and no subtenants of Tenant shall have any rights under this Section 4.5.  
ARTICLE 5  
HAZARDOUS MATERIALS  
 5.1. Compliance with Hazardous Materials Laws. Tenant will not cause any Hazardous Material to be brought upon, kept or used on the Property in quantities reportable under any Hazardous Materials Law, or in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Tenant, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Property required for Tenant’s use of the Premises and will notify Landlord of any and all Hazardous Materials Tenant brings upon, keeps or uses on the Property (other than small quantities of office cleaning or other office supplies as are customarily used by a tenant in the ordinary course in a general office facility). On or before the expiration or earlier termination of this Lease, Tenant, at its sole cost and expense, will completely remove from the Property (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Tenant causes to be present in, on, under or about the Property. Notwithstanding the foregoing, Tenant shall not be responsible for removal of any Hazardous Materials existing in, on, under or about the Property prior to Tenant’s occupancy of the Premises pursuant to the sublease described in Section 1.2.2. Tenant will not take any remedial action in response to the presence of any Hazardous Materials in on, under or about the Property, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Property, without first notifying Landlord of Tenant’s intention to do so and affording Landlord reasonable opportunity to investigate, appear, intervene and otherwise assert and protect Landlord’s interest in the Property.  
 5.2. Notice of Actions. Tenant will notify Landlord of any of the following actions affecting Landlord, Tenant, or the Property that result from or are in any way caused by Tenant’s use of the Property immediately after receiving notice of the same: (a) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened under any Hazardous Materials Law; (b) any Claim made or threatened  
7  
 by any person relating to damage, contribution, liability, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (c) any reports made by any person, including Tenant, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations. Tenant will also deliver to Landlord, as promptly as possible and in any event within 5 Business Days after Tenant first receives or sends the same, copies of all Claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Tenant’s use of the Premises. Upon Landlord’s written request, Tenant will promptly deliver to Landlord documentation acceptable to Landlord reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Premises. All such documentation will list Tenant or its agent as a responsible party and will not attribute responsibility for any such Hazardous Materials to Landlord or Property Manager.  
 5.3. Disclosure and Warning Obligations. Tenant acknowledges and agrees that all reporting and warning obligations required under Hazardous Materials Laws resulting from or in any way relating to Tenant’s use of the Premises or the Property are Tenant’s sole responsibility, regardless whether the Hazardous Materials Laws permit or require Landlord to report or warn.  
 5.4. Landlord Indemnification. Landlord shall indemnify, defend and hold harmless Tenant from and against all damages (excluding consequential, punitive or similar type damages), costs, losses, expenses (including, but not limited to, reasonable attorneys’ fees and engineering fees) arising from or attributable to the existence of any Hazardous Materials at the Property in reportable quantities in violation of applicable Hazardous Materials Laws to the extent caused by Landlord provided, however, in case any claim, action, suit or proceeding shall be brought against Tenant and such matter is subject to Landlord’s indemnification as provided above, Tenant shall promptly notify Landlord of the same in time to avoid any prejudice to Landlord and Landlord shall have the right to assume and control the defense thereof with counsel of its own selection, and Landlord shall have the right to control any remediation. Landlord’s obligations under this section include, without limitation and whether foreseeable or unforeseeable: (a) the costs of any required repair, clean-up, detoxification or decontamination of the Premises; (b) the costs of implementing any closure, remediation or other required action in connection therewith as stated above; and (c) consultants’ fees, experts’ fees and response costs. The obligations of Landlord under this section shall survive the expiration or earlier termination of this Lease.  
 5.5. Tenant Indemnification. Tenant will release, indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, upon or from the Property (including water tables and atmosphere) resulting from or in any way caused by Tenant’s use of the Premises or the Property. Tenant’s obligations under this section include, without limitation and whether foreseeable or unforeseeable: (a) the costs of any required or necessary repair, clean-up, detoxification or decontamination of the Property; (b) the costs of implementing any closure, remediation or other required action in connection therewith as stated above; (c) the value of any loss of use and any diminution in value of the Property; and (d) consultants’ fees, experts’ fees and response costs. The obligations of Tenant under this section shall survive the expiration or earlier termination of this Lease.  
ARTICLE 6  
UTILITIES & SERVICES  
 6.1. Janitorial Service. Tenant shall provide any necessary janitorial services for the Premises.  
 6.2. Utilities. Landlord will provide electrical energy to the Premises for lighting and for general office/warehouse/distribution use. Landlord will provide heating, ventilation and air conditioning to the Premises sufficient to maintain, in Landlord’s reasonable judgment, comfortable temperatures in the Premises. Tenant shall pay for all electricity, HVAC, water, and other utilities used at the Premises. Landlord is not required to provide any heat, air conditioning, electricity or other service in excess of that permitted by voluntary or involuntary governmental guidelines or other Laws. Landlord agrees that gas service and electricity will be separately metered for the Premises, and Landlord will pay and costs and expenses for such separate metering, which costs will not be included in Expenses. Landlord has the exclusive right and discretion to select the provider of any utility or service to the Property. No interruption in or temporary stoppage of any of the utility  
8  
 services this Article 6 describes is to be deemed an eviction or disturbance of Tenant’s use and possession of the Premises, nor does any such interruption or stoppage relieve Tenant from any obligation this Lease describes, render Landlord liable for damages, or entitle Tenant to any abatement of Rent; provided, however, that if any such interruption or temporary stoppage is primarily caused by a negligent act or omission of Landlord, or results from Landlord’s decision to change the provider of any utility or service to the Property, and if the interruption or temporary stoppage continues for more than 3 consecutive Business Days, then Rent hereunder shall xxxxx until such interruption or temporary stoppage either ceases or is no longer primarily caused by a negligent act or omission of Landlord or of Landlord’s election to change service providers.  
 6.3. Tenant’s Obligations. Except only as specifically set forth in this Section 6.3, Tenant will obtain and pay for all utilities and services Tenant requires with respect to the Premises, including but not limited to utility hook-up and connection charges. Tenant acknowledges that electricity and natural gas for the Premises will be separately metered and separately charged, as provided in Section 6.2 above. Following Landlord’s arranging and paying for the separate metering of electricity and natural gas, including but not limited to any utility hook-up and connection charges, Tenant shall be solely responsible for paying directly to the applicable utility companies, prior to delinquency, all such separately metered or separately charged utilities. Such separately metered or charged amounts will not be included in Operating Expenses. The costs and expenses for water used in the Premises will be included in Operating Expenses and will not be separately metered or separately charged. In the event any services are provided to the Premises and to some but not all of the remainder of the Building, then Tenant shall pay its pro rata share of the cost of providing any such services (including Landlord’s reasonable administrative and overhead costs) as Additional Rent; Tenant’s pro rata share shall be computed by dividing the rentable area of the Premises by the total rentable area of the portion of the Building to which such services are provided. Notwithstanding the foregoing, if Landlord leases space in the Building to any tenant or tenants whose use requires a disproportionate use of any utilities not separately metered (such as a restaurant, hair salon, laundry or similar tenant), then Landlord shall arrange for separate metering of such utilities at Landlord’s expense (not to be included as an Expense), or at the expense of such other tenant(s).  
 6.4. Tenant Devices and Communications Equipment. Tenant will not use any device or equipment in the Premises or otherwise on the Property that causes substantial noise, odor or vibration, without Landlord’s prior written consent (which consent Landlord may grant, withhold or condition in its sole and absolute discretion). Tenant will not connect any device or equipment to the Building’s electrical or plumbing systems except through the electrical and water outlets in the Premises that were installed (or otherwise approved in writing) by Landlord. No antenna, satellite dish, or other communications equipment shall be allowed without Landlord’s prior written consent (which consent Landlord may grant, withhold or condition in its sole and absolute discretion). In the event Landlord consents to Tenant’s installation of an antenna, satellite dish, or other communications equipment on the Property (including without limitation on the roof of the Building), then Landlord and Tenant shall execute a Communications Equipment License in form required by Landlord in its sole but reasonable discretion. Tenant acknowledges that the installation of any such communications equipment shall be deemed an “Alteration” subject to the terms and conditions of Article 8 of this Lease. Landlord represents and warrants that similar restrictions and requirements will be applied to any and all tenants of the Building and that if another tenant causes substantial noise, odor or vibration, then Landlord will promptly exercise commercially reasonable efforts, or cause its Property Manager to exercise commercially reasonable efforts, to enforce the terms of such tenant’s lease such that the noise, odor or vibration ceases.  
ARTICLE 7  
MAINTENANCE AND REPAIR  
 7.1. Landlord’s Obligations. Except as otherwise provided in this Lease, Landlord will repair and maintain the following in good order, condition and repair (including any necessary replacements): (a) the roof, footings, foundation, and the structural integrity of the mezzanine and exterior and interior load-bearing walls of the Building; (b) the electrical, mechanical, plumbing, heating and air conditioning systems located in the Building and serving the Common Area (or otherwise used in common by all tenants of the Building); (c) the main fire panel and fire pump serving the Building; and (d) the Common Area. Landlord’s repair and maintenance costs under this Section 7.1 will be included in Operating Expenses. Except only as specifically set forth in this Section 7.1, Landlord is not required to repair or maintain the electrical, mechanical, plumbing, fire sprinkler, heating and  
9  
 air conditioning systems, facilities and components serving the Premises; Tenant will repair and maintain such systems at Tenant’s sole cost and expense pursuant to Section 7.2.1 below.  
 7.2. Tenant’s Obligations.  
 7.2.1. Maintenance of Premises. Landlord is not required to repair or maintain the Premises or the Property (or to make any Alterations to the Premises or Property), except as otherwise specifically provided in this Lease. Except as specifically set forth in Section 7.1, Tenant is solely responsible for the repair, maintenance, replacement, operation, condition and management of the Premises. Except as specifically set forth in Section 7.1, Tenant at its sole cost and expense will keep and maintain the Premises (including without limitation all non-structural interior portions; electrical, mechanical, plumbing, heating and air conditioning systems serving only the Premises; fire sprinkler system components in the Premises, lighting systems; interior surfaces of exterior walls; and interior moldings, partitions, glass, doors and ceilings) in good order, condition and repair, reasonable wear and tear and damage from insured casualties excepted. Tenant’s repairs will be at least equal in quality and workmanship to the original work and Tenant will make the repairs in accordance with all Laws. Tenant will keep the Premises in a neat and sanitary condition and will not commit any nuisance or waste in, on or about the Premises or the Property. Tenant shall release, indemnify, protect and defend Landlord against (with counsel reasonably acceptable to Landlord), and hold Landlord harmless from, any Claims or damages resulting from any penetrations or perforations of the roof or exterior walls of the Building caused or allowed by Tenant.  
 7.2.2. Alterations Required by Laws. Subject to Landlord’s obligations specifically set forth in Section 7.1 above and Section 17.1.1 below, if any governmental authority requires any Alteration to the Building or the Premises as a result of Tenant’s particular use of the Premises or as a result of any Alteration to the Premises made by or on behalf of Tenant, or if Tenant’s particular use of the Premises subjects Landlord or the Property to any obligation under any Laws, Tenant will pay the cost of all such Alterations or the cost of compliance, as the case may be. If any such Alterations are Structural Alterations, Landlord will make the Structural Alterations; provided, however, that Landlord may require Tenant to deposit with Landlord an amount sufficient to pay the cost of the Structural Alterations (including, without limitation, reasonable overhead and administrative costs). If the Alterations are not Structural Alterations, Tenant will make the Alterations at Tenant’s sole cost and expense in accordance with Article 8.  
ARTICLE 8  
CHANGES AND ALTERATIONS  
 8.1. Landlord Approval. Tenant will not make any Structural Alterations to the Premises or any Alterations to the Common Area. Tenant will not make any other Alterations without Landlord’s prior written consent, which consent Landlord shall not unreasonably withhold; provided, however, that Landlord may condition its consent in its reasonable discretion. Notwithstanding the foregoing, Tenant may make cosmetic and other non-Structural Alterations to the interior of the Premises without Landlord’s prior written consent, provided that that the total cost of any such non-Structural Alterations does not exceed $10,000 in any 12 calendar-month period. Along with any request for Landlord’s consent, Tenant will deliver to Landlord complete plans and specifications for the Alterations, and will identify any prospective contractors for the Alterations. If Landlord approves the proposed Alterations, Tenant, before commencing the Alterations or delivering (or accepting delivery of) any materials to be used in connection with the Alterations, will deliver to Landlord for Landlord’s reasonable approval proof of insurance required by Section 8.2, copies of all necessary permits and licenses, and such other information relating to the Alterations as Landlord reasonably requests. Tenant will not commence the Alterations before Landlord, in Landlord’s reasonable discretion, approves the foregoing deliveries. Tenant will construct all approved Alterations or cause all approved Alterations to be constructed (a) promptly by a licensed and properly bonded contractor, (b) in a good and workmanlike manner, (c) in compliance with all Laws, (d) in accordance with all orders, rules and regulations of the Board of Fire Underwriters having jurisdiction over the Premises and any other body exercising similar functions, and (e) in full compliance with all of Landlord’s rules and regulations applicable to third party contractors, subcontractors and suppliers performing work at the Property, if and to the extent Landlord has given Tenant prior written notice of any such rules and regulations. Notwithstanding anything in this Lease to the contrary, Landlord acknowledges and agrees that it has reviewed and approved Tenant’s plans for relocating certain equipment and products in the warehouse of the Building prior  
10  
 to the Commencement Date of this Lease, and such work shall not be deemed Alterations under this Lease even if this Lease becomes effective prior to the completion of such work.  
 8.2. Tenant’s Responsibility for Cost and Insurance. Tenant will pay the cost and expense of all Alterations, and for any painting, restoring or repairing of the Premises or the Property the Alterations occasion. Prior to commencing the Alterations, Tenant will deliver the following to Landlord in form and amount reasonably satisfactory to Landlord, evidence that Tenant and each of Tenant’s contractors have in force liability insurance insuring against construction related risks, in at least the form, amounts and coverages required of Tenant under Article 10. The insurance policies described in the preceding sentence shall name Landlord and Property Manager (and, if requested by Landlord, Landlord’s lender) as additional insureds.  
 8.3. Construction Obligations and Ownership. Landlord may inspect construction of the Alterations. Immediately after completing the Alterations, Tenant will furnish Landlord with contractor affidavits, full and final notarized lien waivers and receipted bills covering all labor and materials expended and used in connection with the Alterations, except that Tenant shall not be required to provide such documentation for labor and/or materials for any Alteration that collectively costs less than $3,000. Tenant will remove any Alterations Tenant constructs in violation of this Article 8 within 30 days after Landlord’s written request and in any event prior to the expiration or earlier termination of this Lease. All Alterations Tenant makes or installs (excluding Tenant’s movable trade fixtures, warehouse equipment and storage racking, and other furniture and equipment) become the property of Landlord upon installation and, unless Landlord requires Tenant to remove the Alterations (which removal requirement must be exercised by Landlord, if at all, at the time Landlord consents to such Alterations, or it shall be deemed waived), Tenant will surrender the Alterations to Landlord upon the expiration or earlier termination of this Lease at no cost to Landlord.  
 8.4. Liens. Tenant will keep the Property free from any mechanics’, materialmens’, designers’ or other liens arising out of any work performed, materials furnished or obligations incurred by or for Tenant or any person or entity claiming by, through or under Tenant. Tenant will notify Landlord in writing at least 30 days prior to commencing any Alterations in order to provide Landlord the opportunity to record and post notices of non-responsibility or such other protective notices available to Landlord under the Laws. If any such liens are filed and Tenant, within 30 days after such filing, does not release the same of record or provide Landlord with a bond or other surety satisfactory to Landlord protecting Landlord and the Property against such liens, Landlord may, without waiving its rights and remedies based upon such breach by Tenant and without releasing Tenant from any obligation under this Lease, cause such liens to be released by any means Landlord deems proper, including, but not limited to, paying the claim giving rise to the lien or posting security to cause the discharge of the lien. In such event, Tenant will reimburse Landlord, as Additional Rent, for all amounts Landlord pays (including, without limitation, reasonable attorneys’ fees and costs).  
 8.5. Indemnification. To the fullest extent allowable under the Laws, Tenant will release, indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties and the Property from and against any Claims in any manner relating to or arising out of any Alterations or any other work performed, materials furnished or obligations incurred by or for Tenant or any person or entity claiming by, through or under Tenant.  
ARTICLE 9  
RIGHTS RESERVED BY LANDLORD  
 9.1. Landlord’s Entry. Landlord and its authorized representatives may at all reasonable times and upon reasonable notice to Tenant enter the Premises to: (a) inspect the Premises; (b) show the Premises to prospective purchasers, mortgagees and tenants; (c) post notices of non-responsibility or other protective notices available under the Laws; and (d) exercise and perform Landlord’s rights and obligations under this Lease. Landlord, in the event of any emergency, may enter the Premises without notice to Tenant. Landlord’s entry into the Premises is not to be construed as a forcible or unlawful entry into, or detainer of, the Premises or as an eviction of Tenant from all or any part of the Premises. Subject to Section 9.3 below, Tenant will also permit Landlord (or its designees) to erect, install, use, maintain, replace and repair pipes, cables, conduits, plumbing and vents, and telephone, electric and other wires or other items, in, to and through the Premises (in a manner  
11  
 and in locations reasonably acceptable to Tenant) if Landlord reasonably determines that such activities are necessary for properly operating and maintaining the Building.  
 9.2. Control of Property. Landlord reserves all rights respecting the Property and Premises not specifically granted to Tenant under this Lease, including, without limitation, the right to: (a) change the name of the Building; (b) designate and approve all types of signs, window coverings, internal lighting and other aspects of the Premises and its contents that may be visible from the exterior of the Premises; (c) grant any party the exclusive right to conduct any business or render any service in the Building, provided such exclusive right to conduct any business or render any service in the Building does not materially and adversely limit Tenant’s ability to use the Premises for the Permitted Use; (d) close the Building after regular business hours, except that Tenant and its employees and invitees may access the Premises after regular business hours in accordance with such rules and regulations as Landlord may prescribe from time to time for security purposes; (e) install, operate and maintain security systems that monitor, by closed circuit television or otherwise, all persons entering or leaving the Building; (f) install and maintain pipes, ducts, conduits, wires and structural elements in the Premises that serve other parts or other tenants of the Building; (g) change the regular business hours of the Property; and (h) retain and receive master keys or pass keys to the Premises and all doors in the Premises. Notwithstanding the foregoing, or the provision of any security-related services by Landlord, Landlord is not responsible for the security of persons or property in the Premises or otherwise on the Property, and Landlord is not and will not be liable in any way whatsoever for any breach of security not solely and directly caused by the willful misconduct of Landlord, its agents or employees.  
 9.3. Interference with Tenant’s Business. With respect to any provision of this Lease which entitles or requires Landlord to make improvements, alterations or repairs to the Premises, the Building or the Common Area, Landlord agrees that such work shall not materially interfere with Tenant’s use and enjoyment of the Premises. Landlord shall endeavor to perform any such work so as to minimize disruption to Tenant’s business where reasonably possible.  
ARTICLE 10  
INSURANCE AND LIABILITY  
 10.1. Tenant’s Insurance Obligations. Tenant, at all times during the Term and during any early occupancy period, at Tenant’s sole cost and expense, will maintain the insurance this Section 10.1 describes.  
 10.1.1. Liability Insurance. Tenant shall maintain commercial general liability insurance (providing coverage at least as broad as the current ISO commercial general liability form) with respect to the Premises and Tenant’s activities in the Premises and upon and about the Property, on an “occurrence” basis, with minimum limits of $1,000,000 each occurrence and $3,000,000 general aggregate, which coverage limits may be satisfied with an umbrella or excess liability policy sitting over the commercial general liability insurance. Such insurance must include the following specific coverage provisions or endorsements: (a) broad form contractual liability insurance insuring Tenant’s obligations under this Lease; (b) naming Landlord and Property Manager as additional insureds by an “Additional Insured — Managers or Lessors of Premises” endorsement (or equivalent coverage or endorsement); and (c) waiving the insurer’s subrogation rights against all Landlord Parties. If Tenant receives notice of the modification, cancellation, or non-renewal of such insurance from its carrier, then Tenant shall notify Landlord of the modification, cancellation, or non-renewal within 5 Business Days of receiving such notice from its carrier. Tenant may provide such liability insurance under a blanket policy so long as Tenant provides certificate of insurance, in form required by Section 10.1.3 below, and with content reasonably acceptable to Landlord, that states that the liability insurance coverage is specifically applicable to the Premises. Such certificate shall also require the carrier to endeavor to provide at least 10 days’ notice of modification, cancellation or non-renewal of the underlying insurance policy. Tenant acknowledges and agrees that Tenant’s liability insurance will be provided on a primary and non-contributory basis.  
 10.1.2. Other Insurance. Tenant shall maintain property insurance (providing coverage at least as broad as the current ISO Special Form) for Tenant’s personal property and trade fixtures. Tenant shall also maintain such other insurance as may be required by any Laws (including without limitation any necessary worker’s compensation insurance), or as may reasonably be required by Landlord from time to time. If insurance obligations generally required of tenants in similar space in similar buildings in the area in which the Property is  
12  
 located increase or otherwise change, then Landlord may likewise increase or otherwise change Tenant’s insurance obligations under this Lease.  
 10.1.3. Miscellaneous Insurance Provisions. All of Tenant’s insurance will be written by companies rated at least “Best A-VII” and otherwise reasonably satisfactory to Landlord. Tenant will deliver evidence of insurance reasonably satisfactory to Landlord, (a) on or before the Commencement Date (and prior to any earlier occupancy by Tenant), (b) not later than 10 Business Days prior to the expiration of any current policy or certificate, and (c) at such other times as Landlord may reasonably request. If Landlord allows Tenant to provide evidence of liability insurance by certificate, then Tenant will deliver an XXXXX Form 25 certificate and will attach or cause to be attached to the certificate copies of any endorsements this Section 10.1 requires. Tenant’s insurance must permit releases of liability and provide for waiver of subrogation as provided in Section 10.3. Tenant acknowledges and agrees that Landlord’s establishment of minimum insurance requirements is not a representation by Landlord that such limits are sufficient and does not limit Tenant’s liability under this Lease in any manner.  
 10.1.4. Tenant’s Failure to Insure. Notwithstanding any contrary language in this Lease and any notice and cure rights this Lease provides Tenant, if Tenant fails to provide Landlord with evidence of insurance as required under this Section 10.1, then Landlord may assume that Tenant is not maintaining the insurance Section 10.1 requires Tenant to maintain and Landlord may (but is not obligated to) without further demand upon Tenant or notice to Tenant and without giving Tenant any cure right or waiving or releasing Tenant from any obligation contained in this Lease, obtain such insurance for Landlord’s benefit. In such event, Tenant will pay to Landlord, as Additional Rent, all costs and expenses Landlord incurs obtaining such insurance. Landlord’s exercise of its rights under this section does not relieve Tenant from any default under this Lease.  
 10.2. Landlord’s Insurance Obligations. Landlord will (except for the optional coverages and endorsements this Section 10.2 may describe) at all times during the Term maintain the insurance this Section 10.2 describes. All premiums and other costs and expenses Landlord incurs in connection with maintaining such insurance (including without limitation a reasonable administrative fee for maintaining and coordinating Landlord’s insurance program) are Operating Expenses.  
 10.2.1. Property Insurance. Property insurance on the Building in an amount not less than the full insurable replacement cost of the Building insuring against loss or damage by such risks as are covered by the current ISO Special Form policy. Landlord, at its option, may obtain such additional coverages or endorsements as Landlord deems appropriate or necessary in its sole discretion, including without limitation insurance covering foundation, grading, excavation and debris removal costs; business income and rents insurance; earthquake insurance; terrorism insurance; and flood insurance. Landlord may maintain such insurance in whole or in part under blanket policies. Tenant acknowledges and agrees that Landlord’s property insurance will not cover or be applicable to any property of Tenant within the Premises or otherwise located at the Property.  
 10.2.2. Liability Insurance. Commercial general liability insurance against claims for bodily injury and property damage occurring at the Property in such amounts as Landlord deems appropriate or necessary in its sole discretion, but in no event in amounts less than $1,000,000 each occurrence and $3,000,000 general aggregate. Such liability insurance will only protect Landlord (and, at Landlord’s sole option, Landlord’s lender and some or all of the Landlord Parties). Such liability insurance will not protect or insure Tenant, and does not replace or supplement the liability insurance this Lease obligates Tenant to carry. Nothing in the foregoing shall be deemed to limit Landlord’s liability pursuant to Section 10.4.1 or Section 10.4.3 below or any other provision of this Lease.  
 10.2.3. Deductible. Tenant acknowledges that Landlord’s insurance may include deductible limits up to $50,000, that such deductible amounts reduce the insurance premiums chargeable as Operating Expenses under the Lease, and that, notwithstanding the waiver set forth in Section 10.3, such deductible amounts shall either (i) be considered Operating Expenses under the Lease, or, (ii) if any loss covered by Landlord’s insurance resulted from Tenant’s negligent or intentional act or omission, be considered the sole responsibility of Tenant hereunder to the extent of Tenant’s fault.  
13  
 10.3. Mutual Waiver of Subrogation. Subject only to Section 10.2.3 above, each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is actually covered by an insurance policy maintained by such party, but only to the extent that such loss or damage is covered under any such insurance policy.  
 10.4. Liability of Landlord and Tenant.  
 10.4.1. Except only as otherwise specifically provided in this Lease, the Landlord Parties shall not have any liability to Tenant for any Claims based on or arising out of any cause whatsoever, including without limitation the following: the repair or maintenance of any portion of the Premises (including the Tenant Improvements) or the Property; interruption in the use of the Premises due to Force Majeure; any accident or damage resulting from any use or operation by Landlord, Tenant or any other person or entity of the heating, cooling, electrical, or plumbing systems serving the Property; termination of this Lease by reason of damage to the Premises or the Building; fire, robbery, theft, vandalism, or any other casualty; actions of any other tenant of the Building or of any other person or entity; inability to furnish any service specified in this Lease; and leakage in any part of the Premises or the Building from water, rain, ice or snow that may leak into, or flow from, any part of the Premises or the Building, or from drains, pipes or plumbing fixtures in the Premises or the Building. Any property placed by Tenant in or about the Premises or the Property shall be at the sole risk of Tenant, and Landlord shall not in any manner be responsible therefore. Notwithstanding the foregoing, Landlord shall not be released from liability to Tenant for and to the extent of any injury or damage caused by the negligence or willful misconduct of Landlord. In no event, however, shall Landlord have any liability to Tenant on account of any claims for the interruption of or loss to Tenant’s business or for any indirect damages or consequential losses.  
 10.4.2. In addition to Tenant’s other indemnification obligations in this Lease (but subject to Landlord’s insurance obligations in Section 10.2, to Section 10.3 above, and to Landlord’s obligations pursuant to Section 10.4.1 above and Section 10.4.3 below), Tenant to the fullest extent allowable under the Laws shall release, indemnify, protect, defend (with counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties from and against all Claims arising from: (a) any breach or default by Tenant in the performance of any of Tenant’s covenants or agreements in this Lease; (b) the negligence or willful misconduct of Tenant; (c) any accident, injury, occurrence or damage in, about or to the Premises, except to the extent caused by the negligence or willful misconduct of Landlord; and (d) to the extent caused in whole or in part by Tenant, any accident, injury, occurrence or damage in, about or to the Property.  
 10.4.3. Landlord hereby indemnifies and agrees to save the Tenant Parties harmless from and against any and all claims to the extent arising out of: (a) the negligence or willful misconduct of Landlord in connection with the possession, use, occupation, management, repair, maintenance or control of the Building, the Property and/or the Common Area; and (b) any breach or default by Landlord in the performance of Landlord’s covenants or agreements in this Lease. In no event, however, shall Landlord have any liability to Tenant on account of any claims for the interruption of or loss to Tenant’s business or for any indirect damages or consequential losses.  
 10.4.4. Notwithstanding any provision to the contrary contained herein, Tenant shall look solely to the estate and property of Landlord in and to the Property in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant, or Tenant’s use of the Premises, and Tenant agrees that the liability of Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant, or Tenant’s use of the Premises, shall be limited to such estate and property of Landlord in and to the Property. No properties or assets of Landlord other than the estate and property of Landlord in and to the Property, as described above, and no property owned by any partner of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant’s use of the Premises.  
14  
 ARTICLE 11  
DAMAGE OR DESTRUCTION  
 11.1. Tenant’s Notice of Casualty. If the Premises or any part thereof shall be damaged by fire or any other casualty, Tenant shall give immediate written notice thereof to Landlord.  
 11.2. Tenantable Within 180 Days. Except as provided in Section 11.4, if a casualty renders the whole or any material part of the Premises untenantable and Landlord determines in its sole but reasonable discretion that it can make the Premises tenantable within 180 days after the date of the casualty, then Landlord will notify Tenant within 20 Business Days after the date of the casualty that Landlord will repair and restore the Building and the Premises as required by Section 11.6. Notwithstanding anything to the contrary contained herein, in the event that such restoration of the Premises is not substantially completed within 180 days from the date of the casualty, and provided that such delay in substantial completion results from a cause other than Tenant Delay or Force Majeure, then Tenant shall have the right to terminate this Lease by delivering 30 days’ prior written notice to Landlord. In the event the restoration of the Premises is substantially completed within such 30 day period, such right of termination shall be deemed to be void and without effect.  
 11.3. Not Tenantable Within 180 Days. If a casualty renders the whole or any material part of the Premises untenantable and Landlord reasonably determines in its sole discretion that it cannot make the Premises tenantable within 180 days after the date of the casualty, then Landlord will so notify Tenant within 20 Business Days after the date of the casualty and may, in such notice, terminate this Lease effective on the date of Landlord’s notice. If Landlord does not terminate this Lease as provided in this section, Tenant may terminate this Lease by notifying Landlord within 30 days after Tenant’s receipt of Landlord’s notice, which termination will be effective 30 days after Landlord’s receipt of Tenant’s notice.  
 11.4. Building Substantially Damaged. Notwithstanding Section 11.2, if the Building is damaged or destroyed by casualty (regardless whether the Premises is affected) and either (a) fewer than 9 months remain in the Term (excluding any unexercised Extension Terms), or (b) the damage reduces the value of the improvements on the Property by more than 50% (as determined by Landlord in its sole but reasonable discretion), then, regardless of whether Landlord determines in its reasonable discretion that it can make the Building tenantable within 180 days after the date of the casualty, Landlord, at Landlord’s option, by notifying Tenant within 20 Business Days after the casualty, may terminate this Lease effective on the date of Landlord’s notice.  
 11.5. Insufficient Proceeds. Notwithstanding any contrary language in this Article 11, if this Article 11 obligates Landlord to repair damage to the Premises or Building caused by casualty, and if Landlord does not receive sufficient insurance proceeds (excluding any deficiency caused by the amount of any policy deductible) to repair all of the damage, or if the lender under any Mortgage does not release to Landlord sufficient insurance proceeds to repair all of the damage, then Landlord, at Landlord’s option, by notifying Tenant within 45 days after the casualty, may terminate this Lease effective on the date of Landlord’s notice.  
 11.6. Landlord’s Repair Obligations. If this Lease is not terminated under Sections 11.3 through 11.5 following a casualty, then Landlord shall, at Landlord’s sole cost and expense and at no cost to Tenant (except as provided in Section 10.2.3 above), repair and restore the Premises and the Building to as near their condition prior to the casualty as is reasonably possible with all commercially reasonable diligence and speed (subject to delays caused by Tenant Delay or Force Majeure). In such case, this Lease shall remain in full force and effect, but Basic Rent and Tenant’s Share of Expenses for the period during which the Premises are untenantable shall xxxxx pro rata (based upon the rentable area of the untenantable portion of the Premises as compared with the rentable area of the entire Premises). In no event is Landlord obligated to repair or restore any Alterations that were completed by Tenant, any special equipment or improvements that were installed by Tenant, or any personal property (or other property) of Tenant. Landlord will, if necessary, equitably adjust Tenant’s Share of Expenses Percentage, subject to Section 3.7, to account for any reduction in the rentable area of the Premises or Building resulting from a casualty.  
 11.7. Rent Apportionment Upon Termination. If either party terminates this Lease under this Article 11, Landlord will apportion Basic Rent and Tenant’s Share of Expenses on a per diem basis and Tenant will pay the Basic Rent and Tenant’s Share of Expenses to (a) the date of the casualty if the event renders the Premises completely untenantable or (b) if the event does not render the Premises completely untenantable, the effective date of such termination (provided that if a portion of the Premises is rendered untenantable, but the  
15  
 remaining portion is tenantable, then Tenant’s obligation to pay Basic Rent and Tenant’s Share of Expenses abates pro rata [based upon the rentable area of the untenantable, portion of the Premises divided by the rentable area of the entire Premises] from the date of the casualty and Tenant will pay the unabated portion of the Rent to the date of such termination).  
 11.8. Exclusive Casualty Remedy. The provisions of this Article 11 are Tenant’s sole and exclusive rights and remedies in the event of a casualty. To the extent permitted by the Laws, Tenant waives the benefits of any Law that provides Tenant any abatement or termination rights (by virtue of a casualty) not specifically described in this Article 11.  
ARTICLE 12  
CONDEMNATION  
 12.1. Termination of Lease. If a Condemning Authority desires to effect a Taking of all or any material part of the Property, Landlord will notify Tenant and Landlord and Tenant will reasonably determine whether the Taking will render the Premises unsuitable for Tenant’s intended purposes. If Landlord and Tenant conclude that the Taking will render the Premises unsuitable for Tenant’s intended purposes, Landlord and Tenant will document such determination and this Lease will terminate as of the date the Condemning Authority takes possession of the portion of the Property taken. Tenant will pay Rent to the date of termination. If a Condemning Authority takes all or any material part of the Building, or if a Taking reduces the value of the Property by 50% or more (as reasonably determined by Landlord in its sole discretion), regardless whether the Premises is affected, then Landlord, at Landlord’s option, by notifying Tenant prior to the date the Condemning Authority takes possession of the portion of the Property taken, may terminate this Lease effective on the date the Condemning Authority takes possession of the portion of the Property taken.  
 12.2. Landlord’s Repair Obligations. If this Lease does not terminate with respect to the entire Premises under Section 12.1 and the Taking includes a portion of the Premises, then this Lease shall automatically terminate as to the portion of the Premises taken as of the date the Condemning Authority takes possession of the portion taken and Landlord will, at its sole cost and expense, restore the remaining portion of the Premises to a complete architectural unit with all commercially reasonable diligence and speed and will reduce the Basic Rent for the period after the date the Condemning Authority takes possession of the portion of the Premises taken to a sum equal to the product of the Basic Rent provided for in this Lease multiplied by a fraction, the numerator of which is the rentable area of the Premises after the Taking and after Landlord restores the Premises to a complete architectural unit, and the denominator of which is the rentable area of the Premises prior to the Taking. Landlord will also equitably adjust Tenant’s Share of Expenses Percentage for the same period, subject to Section 3.7, to account for the reduction in the rentable area of the Premises or the Building resulting from the Taking. Tenant’s obligation to pay Basic Rent and Tenant’s Share of Expenses will xxxxx on a proportionate basis with respect to that portion of the Premises remaining after the Taking that Tenant is unable to use during Landlord’s restoration for the period of time that Tenant is unable to use such portion of the Premises.  
 12.3. Tenant’s Participation. Except only as specifically set forth in the last sentence of this Section, Landlord is entitled to receive and keep all damages, awards or payments resulting from or paid on account of a Taking. Tenant has no right to receive any award for its interest in this Lease or for loss of leasehold (including without limitation any award for the unexpired portion of the Term), and Tenant hereby assigns to Landlord any interest of Tenant in any such award. Tenant may only prove in any condemnation proceedings, and may only receive from the Condemning Authority: (i) any separate award for damages to or condemnation of Tenant’s movable trade fixtures and equipment, and (ii) any separate award for relocation expenses.  
 12.4. Exclusive Taking Remedy. The provisions of this Article 12 are Tenant’s sole and exclusive rights and remedies in the event of a Taking. To the extent permitted by the Laws, Tenant waives the benefits of any Law that provides Tenant any abatement or termination rights or any right to receive any payment or award (by virtue of a Taking) not specifically described in this Article 12.  
16  
 ARTICLE 13  
TRANSFERS  
 13.1. Restriction on Transfers.  
 13.1.1. General Prohibition. Except as set forth in Section 13.1.2, Tenant will not cause or suffer a Transfer without first obtaining Landlord’s written consent, which consent Landlord may grant, withhold, or condition in its sole but reasonable discretion. If Landlord consents to the Transfer, then Landlord may impose on Tenant or the transferee such conditions as Landlord deems appropriate in its sole but reasonable discretion. Tenant’s request for Landlord’s consent to a Transfer must describe in detail the parties, terms and portion of the Premises affected. Tenant will, in connection with requesting Landlord’s consent, provide Landlord with a copy of any and all documents and information regarding the proposed Transfer and the proposed transferee as Landlord reasonably requests. Landlord will notify Tenant of Landlord’s election to consent or withhold consent within 30 days after receiving Tenant’s written request for consent to the Transfer. Tenant acknowledges and agrees that no Transfer, including without limitation a Transfer under Section 13.1.2, will release Tenant from any liability or obligation under this Lease and that Tenant shall remain liable to Landlord after such a Transfer as a principal and not as a surety or guarantor, nor shall the collection or acceptance of rent from any such assignee, transferee, subtenant or occupant constitute a waiver or release of Tenant under any provision of the Lease. If Landlord consents to any Transfer, Tenant will pay to Landlord, as Additional Rent, 50% of any amount Tenant receives on account of the Transfer in excess of the amounts this Lease otherwise requires Tenant to pay. Any attempted Transfer in violation of this Lease is null and void and constitutes a breach of this Lease. Tenant acknowledges and agrees that Landlord’s refusal to consent to a Transfer shall be deemed not to have been unreasonably withheld if (i) the proposed transferee is not of a type and quality consistent with the first-class nature of the Building, (ii) the proposed transferee is a governmental agency or any party by whom any suit or action could be defended on the ground of sovereign immunity, (iii) the proposed transferee is already a tenant at the Property, or is a party with whom the Landlord is presently negotiating for the lease of space at the Property, (iv) the presence of the proposed transferee in the Premises would cause Landlord to be in violation of any other lease, or would trigger termination rights by any other tenant, (v) the proposed transferee does not have the financial capacity and credit worthiness to undertake and perform the obligations of this Lease, or (vi) the space to be assigned or sublet is not configured to allow appropriate means of ingress and egress. Tenant also acknowledges that one or more existing or future mortgagees of a Mortgage affecting the Property may have the right to approve any Transfer and that, whenever that is the case, Landlord shall have the absolute right to withhold its consent to a Transfer if any such mortgagee withholds its consent thereto.  
 13.1.2. Transfers to Affiliates. Provided that Tenant is not in default in the performance of its obligations under this Lease beyond any applicable period for cure, Tenant may cause a Transfer to an Affiliate without Landlord’s consent if: (a) Tenant notifies Landlord at least 30 days prior to such Transfer; (b) the transferee assumes and agrees in a writing reasonably acceptable to Landlord to perform Tenant’s obligations under this Lease and to observe all terms and conditions of this Lease; and (c) Tenant delivers to Landlord, at the time of Tenant’s notice, current financial statements of the proposed transferee. Tenant acknowledges and agrees that a Transfer to an Affiliate under this Section 13.1.2 will not release Tenant from any liability or obligation under this Lease, and that Tenant shall remain liable to Landlord after such a Transfer as a principal and not as a surety or guarantor. Landlord’s right described in Section 13.1.1 to share in any profit Tenant receives from a Transfer permitted under this Section 13.1.2 does not apply to any Transfer this Section 13.1.2 permits.  
 13.2. Costs. Tenant will pay to Landlord, as Additional Rent, all reasonable costs and expenses Landlord actually incurs in connection with any Transfer (except for Transfers to Affiliates completed in accordance with Section 13.1.2), including without limitation reasonable attorneys’ fees and other third-party expenses, regardless whether Landlord consents to the Transfer.  
ARTICLE 14  
DEFAULTS; REMEDIES  
 14.1. Events of Default. The occurrence of any of the following constitutes an “Event of Default” by Tenant under this Lease:  
17  
 14.1.1. Failure to Pay Rent. Tenant fails to pay as and when due (a) Basic Rent, (b) any installment of Tenant’s Share of Expenses, or (c) any other Additional Rent amount, and such failure continues for 10 days after Landlord notifies Tenant of such failure.  
 14.1.2. Failure to Perform. Tenant breaches or fails to perform any of Tenant’s non-monetary obligations under this Lease and the breach or failure continues for a period of 30 days after Landlord notifies Tenant of such breach or failure; provided, however, that if Tenant cannot reasonably cure its breach or failure within said 30 day period, then Tenant’s breach or failure is not an Event of Default if Tenant promptly commences to cure its breach or failure and thereafter diligently pursues the cure and effects the cure within a period of time that does not exceed 90 days after the date that Landlord notified Tenant of the breach of failure. Notwithstanding any contrary language in this Section 14.1.2, Tenant is not entitled to any notice or cure period before an uncurable breach of this Lease (or failure) becomes an Event of Default.  
 14.1.3. Misrepresentation. The existence of any material misrepresentation or omission in any financial statements, correspondence or other information provided to Landlord by or on behalf of Tenant in connection with: (a) Tenant’s negotiation or execution of this Lease; (b) Landlord’s evaluation of Tenant as a prospective tenant at the Property; (c) any proposed or attempted Transfer; or (d) any consent or approval requested by Tenant under this Lease.  
 14.1.4. Other Defaults. (a) Tenant makes a general assignment or general arrangement for the benefit of creditors; (b) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by Tenant; (c) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed against Tenant and is not dismissed within 60 days; (d) a trustee or receiver is appointed to take possession of substantially all of Tenant’s assets located at the Premises or of Tenant’s interest in this Lease and possession is not restored to Tenant within 30 days; or (e) substantially all of Tenant’s assets, substantially all of Tenant’s assets located at the Premises or Tenant’s interest in this Lease is subjected to attachment, execution or other judicial seizure not discharged within 30 days. If a court of competent jurisdiction determines that any act described in this section does not constitute an Event of Default, and the court appoints a trustee to take possession of the Premises (or if Tenant remains a debtor in possession of the Premises) and such trustee or Tenant transfers Tenant’s interest hereunder, then Landlord is entitled to receive, as Additional Rent, the amount by which the Rent (or any other consideration) paid in connection with the Transfer exceeds the Rent otherwise payable by Tenant under this Lease.  
 14.1.5. Notice Requirements. The notices required by this Section 14.1 are intended to satisfy any and all notice requirements imposed by the Laws and are not in addition to any such requirements.  
 14.2. Remedies. Upon the occurrence of any Event of Default, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the following remedies:  
 14.2.1. Termination of Tenant’s Possession; Re-entry and Reletting Right. Terminate Tenant’s right to possess the Premises by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord’s termination of Tenant’s right to possess the Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant’s obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant’s right to possess the Premises) and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant’s right to possess the Premises, Landlord is not obligated to but may re-enter the Premises and remove all persons and property from the Premises. Landlord may store any property Landlord removes from the Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. Upon such re-entry, Landlord is not obligated to but may relet all or any part of the Premises to a third party or parties for Tenant’s account. Tenant is immediately liable to Landlord for all Re-entry Costs and must pay Landlord the same within 10 days after Landlord’s notice to Tenant. Landlord may relet the Premises for a period shorter or longer than the remaining Term. If Landlord relets all or any part of the Premises, Tenant will continue to pay Rent when due under this Lease and Landlord will refund to Tenant the Net Rent Landlord actually receives from  
18  
 the reletting up to a maximum amount equal to the Rent paid by Tenant that came due after Landlord’s reletting. If the Net Rent Landlord actually receives from reletting exceeds such Rent, Landlord will apply the excess sum to future Rent due under this Lease. Landlord may retain any surplus Net Rent remaining at the expiration of the Term.  
 14.2.2. Termination of Lease. Terminate this Lease effective on the date Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant will pay to Landlord on demand all damages Landlord incurs by reason of Tenant’s default, including, without limitation: (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) any amount necessary to compensate Landlord for any detriment proximately caused to Landlord by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant’s failure to perform, including but not limited to any Re-entry Costs; (c) an amount equal to the difference between the present worth, as of the effective date of the termination, of the Basic Rent for the balance of the Term remaining after the effective date of the termination (assuming no termination) and the present worth, as of the effective date of the termination, of a fair market Rent for the Premises for the same period (as Landlord reasonably determines the fair market Rent); and (d) Tenant’s Share of Expenses to the extent Landlord is not otherwise reimbursed for such Expenses. For purposes of this section, Landlord will utilize the Discount Rate to compute present worth. Nothing in this section shall limit or prejudice Landlord’s right to prove and obtain damages in an amount equal to the maximum amount allowed by the Laws, regardless whether such damages are greater than the amounts set forth in this section.  
 14.2.3. Present Worth of Rent. Recover from Tenant, and Tenant will pay to Landlord on demand, an amount equal to the then present worth, as of the effective date of termination, of the aggregate of the Rent and any other charges payable by Tenant under this Lease for the unexpired portion of the Term, less the fair and reasonable rental value of the Premises for the corresponding period. Landlord will utilize the Discount Rate to compute present worth. The fair and reasonable rental value of the Premises shall be determined in good faith by Landlord on the basis of the rents payable under leases entered into by Landlord for comparable space in the Building during the 18-month period immediately preceding Landlord’s election to proceed under this Section 14.2.3; or, if Landlord reasonably determines that no such leases for comparable space have been entered into, then the fair and reasonable rental value shall be otherwise determined by Landlord in good faith. If the Premises or any part thereof are relet by Landlord before any adjudication of Landlord’s claims for damages, then the amount of rent payable to Landlord for such reletting shall be deemed the fair and reasonable rental value of the Premises (or the applicable part thereof) during the term of the reletting.  
 14.2.4. Self Help. Perform the obligation on Tenant’s behalf without waiving Landlord’s rights under this Lease at law or in equity, and without releasing Tenant from any obligation under this Lease. Tenant shall pay to Landlord, as Additional Rent, all reasonable sums that Landlord pays on Tenant’s behalf under this section.  
 14.2.5. Other Remedies. Any other right or remedy available to Landlord under this Lease, under the Laws, and/or in equity.  
 14.3. Costs. Tenant will reimburse and compensate Landlord on demand and as Additional Rent for any actual loss Landlord incurs in connection with, resulting from or related to any breach or default of Tenant under this Lease, regardless whether the breach or default constitutes an Event of Default, and regardless whether suit is commenced or judgment is entered. Such loss shall include all reasonable legal fees, costs and expenses (including paralegal fees and other professional fees and expenses) Landlord incurs in investigating, negotiating, settling or enforcing any of Landlord’s rights or remedies or otherwise protecting Landlord’s interests under this Lease. Tenant will also indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties from and against all Claims that Landlord or any of the other Landlord Parties incurs if Landlord or any of the other Landlord Parties becomes or is made a party to any claim or action (a) instituted by Tenant (other than claims asserting that Landlord has breached any of its obligations to Tenant under this Lease) or by or against any person holding any interest in the Premises by, under or through Tenant, (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person, or (c) otherwise  
19  
 arising out of or resulting from any act or omission of Tenant or such other person. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord’s fees, expenses and damages, including, but not limited to, reasonable attorneys’ fees and paralegal and other professional fees and expenses, Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including without limitation any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.  
 14.4. Waiver and Release by Tenant. Except for compulsory counterclaims, Tenant waives and releases all Claims Tenant may have resulting from Landlord’s re-entry and taking possession of the Premises by any lawful means and removing and storing Tenant’s property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under the Laws, Tenant will release, indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord Parties from and against any and all Claims occasioned thereby. No such re-entry is to be considered or construed as a forcible entry by Landlord.  
 14.5. Landlord’s Default. If Landlord defaults in the performance of any of its obligations under this Lease, Tenant will notify Landlord of the default and Landlord will have 30 days after receiving such notice to cure the default. If Landlord is not reasonably able to cure the default within a 30 day period, Landlord will have an additional reasonable period of time to cure the default as long as Landlord promptly commences the cure and thereafter diligently pursues the cure to completion. In no event shall Landlord be liable to Tenant or any other person for consequential, special or punitive damages (including without limitation lost profits). If Landlord has not commenced repair or maintenance required to be performed by Landlord hereunder within 30 days after written notice thereof from Tenant, then Tenant shall have the right, but not the obligation, to make such repairs and Landlord shall reimburse Tenant for the reasonable and actual cost thereof within 30 days after receipt of a xxxx therefore from Tenant. In the event of an emergency, Tenant may (but shall not be obligated to) perform such repairs which would otherwise be Landlord’s obligation hereunder which may be reasonably necessary, after having given Landlord such notice, if any, as may be practicable under the circumstances, and Landlord shall promptly reimburse Tenant for any reasonable third-party costs and expenses actually incurred by Tenant in performing such repairs. Notwithstanding anything to the contrary set forth hereinabove, Tenant shall not be required to perform any repairs which would otherwise be Landlord’s obligation hereunder.  
 14.6. No Waiver. Except as specifically set forth in this Lease, no failure by Landlord or Tenant to insist upon the other party’s performance of any of the terms of this Lease or to exercise any right or remedy upon a breach thereof, constitutes a waiver of any such breach or of any breach or default by the other party in its performance of its obligations under this Lease. No acceptance by Landlord of full or partial Rent from Tenant or any third party during the continuance of any breach or default by Tenant of Tenant’s performance of its obligations under this Lease constitutes Landlord’s waiver of any such breach or default. Except as specifically set forth in this Lease, none of the terms of this Lease to be kept, observed or performed by a party to this Lease, and no breach thereof, are waived, altered or modified except by a written instrument executed by the other party. One or more waivers by a party to this Lease are not to be construed as a waiver of a subsequent breach of the same covenant, term or condition. No statement on a payment check from a party to this Lease or in a letter accompanying a payment check is binding on the other party. The party receiving the check, with or without notice to the other party, may negotiate such check without being bound to the conditions of any such statement.  
ARTICLE 15  
CREDITORS; ESTOPPEL CERTIFICATES  
 15.1. Subordination. This Lease, all rights of Tenant in this Lease, and all interest or estate of Tenant in the Property, is subject and subordinate to the lien of any Mortgage. Tenant, within 20 days of Landlord’s demand, will execute and deliver to Landlord (or to any other person Landlord designates) any instruments, releases or other documents reasonably required to confirm the self-effectuating subordination of this Lease as provided in this Section to the lien of any Mortgage. Notwithstanding the subordination to any future Mortgage provided for in this section, as long as Tenant is not in default in the payment of Rent or the performance and observance of any covenant, condition, provision, term or agreement to be performed and observed by Tenant  
20  
 under this Lease beyond any applicable grace or cure period this Lease provides Tenant, the holder of the Mortgage shall not by virtue of such subordination under this section be entitled to disturb Tenant’s right of possession of the Premises under this Lease. Landlord acknowledges and agrees that the lien of any existing or future Mortgage will not cover Tenant’s moveable trade fixtures or personal property located in or on the Premises.  
 15.2. Attornment. If the holder of any Mortgage at a foreclosure sale (or by deed in lieu of foreclosure) or any other transferee acquires Landlord’s interest in this Lease, the Premises or the Property, then, provided such transferee confirms the validity of this Lease, Tenant will attorn to the transferee of or successor to Landlord’s interest in this Lease, the Premises or the Property (as the case may be) and recognize such transferee or successor as landlord under this Lease, provided that any such purchaser at a foreclosure sale or transferee under a deed in lieu of foreclosure shall not be (a) bound by any payment of Rent more than one month in advance, (b) liable for damages for any breach, act or omission of any prior landlord, or (c) subject to any offsets or defenses which Tenant might have against any prior landlord. Tenant waives the protection of any statute or rule of law that gives or purports to give Tenant any right to terminate this Lease or surrender possession of the Premises upon the transfer of Landlord’s interest.  
 15.3. Mortgagee Protection Clause. Tenant will give the holder of any Mortgage, by registered or certified mail or via reputable overnight courier, a copy of any notice of default Tenant serves on Landlord, provided that Landlord or the holder of the Mortgage previously notified Tenant (by way of notice of assignment of rents and leases or otherwise) of the address of such holder. Tenant further agrees that if Landlord fails to cure such default within the time provided for in this Lease, then Tenant will provide written notice of such failure to such holder and such holder will have an additional 30 days after receipt of such notice within which to cure the default (but shall not be obligated to cure the default). If the default cannot be cured within the additional 30 day period, then the holder will have such additional time as may be necessary to effect the cure if, within the 30 day period, the holder has promptly commenced and is diligently pursuing the cure (including without limitation commencing foreclosure proceedings if necessary to effect the cure).  
 15.4. Estoppel Certificates.  
 15.4.1. Contents. Upon Landlord’s written request, Tenant will execute, acknowledge and deliver to Landlord a written statement in form satisfactory to Landlord certifying: (a) that this Lease is unmodified and in full force and effect (or, if there have been any modifications, that the Lease is in full force and effect as modified, and stating the modifications); (b) that this Lease has not been canceled or terminated; (c) the last date of payment of Rent and the time period covered by such payment; (d) whether there are then existing any breaches or defaults by Landlord under this Lease known to Tenant and, if so, specifying the same; (e) specifying any existing claims or defenses in favor of Tenant against the enforcement of this Lease; (f) that Tenant has accepted the Premises and that Landlord has no outstanding construction or payment obligations with respect to preparation of the Premises for Tenant’s occupancy (or stating the specific nature and amount of any such outstanding obligations); (g) that Tenant has no option to purchase the Premises or any part of the Property; and (h) such other factual statements as Landlord, or any lender, prospective lender, investor or purchaser may reasonably request. Tenant will deliver the properly signed statement to Landlord within 20 days after receipt of Landlord’s request. Landlord may give any such statement by Tenant to any lender, prospective lender, investor or purchaser of all or any part of the Property and any such party may conclusively rely upon such statement as true and correct.  
 15.4.2. Failure to Deliver. If Tenant does not timely deliver the properly signed statement referenced in Section 15.4.1 to Landlord, and if such failure continues for more than 2 Business Days after Tenant’s receipt of written notice from Landlord of such failure, then such failure shall constitute an Event of Default under this Lease. Further, if Tenant fails to timely deliver the properly signed statement within such 2-day period, then Landlord and any lender, prospective lender, or purchaser may conclusively presume and rely, except as otherwise represented by Landlord, (i) that the terms and provisions of this Lease have not been changed; (ii) that this Lease has not been canceled or terminated; (iii) that not more than one month’s Rent has been paid in advance; (iv) that Tenant has accepted the Property and that Landlord has no outstanding construction or payment obligations with respect to preparation of the Property for Tenant’s occupancy; (v) that Tenant has no option to purchase the Property or any part of the Property; and (vi) that Landlord is not in default  
21  
 in the performance of any of its obligations under this Lease. In such event, Tenant is estopped from denying the truth of such facts.  
ARTICLE 16  
TERMINATION OF LEASE  
 16.1. Surrender of Premises. Tenant will surrender the Premises to Landlord at the expiration or earlier termination of this Lease in good order, condition and repair (reasonable wear and tear, permitted Alterations, and damage by casualty or condemnation excepted), and will surrender all keys to the Premises to Landlord at the place then fixed for Tenant’s payment of Basic Rent or as Landlord otherwise directs. Tenant will also inform Landlord of all combinations on locks, safes and vaults, if any, in the Premises or on the Property. Tenant will at such time remove all of its property from the Premises and, if Landlord required as a condition of its consent, all specified Alterations carried out by Tenant in the Premises. Tenant will promptly repair any damage to the Premises caused by such removal. If Tenant does not surrender the Premises in accordance with this section, Tenant will indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless Landlord from and against any Claim resulting from Tenant’s delay in so surrendering the Premises, including, without limitation, any Claim made by any succeeding occupant founded on such delay. All property of Tenant not removed on or before the last day of the Term is deemed abandoned. If Tenant fails to remove all of Tenant’s property from the Premises upon termination of this Lease, then Tenant shall be deemed to have appointed Landlord as Tenant’s agent to remove, at Tenant’s sole cost and expense, all of Tenant’s property from the Premises upon termination of this Lease and to cause its transportation and storage for Tenant’s benefit, all at the sole cost and risk of Tenant, and Landlord will not be liable for damage, theft, misappropriation or loss thereof or in any manner in respect thereto.  
 16.2. Holding Over. If Tenant possesses the Premises after the Term expires (or after this Lease is otherwise terminated) without executing a new lease but with Landlord’s written consent, then Tenant is deemed to be occupying the Premises as a tenant from month-to-month, subject to all provisions, conditions and obligations of this Lease applicable to a month-to-month tenancy, except that (a) Rent for each month during the hold-over period shall be equal to 125% of the Rent for the month immediately preceding the commencement of the hold-over period, and (b) either Landlord or Tenant may terminate the month-to-month tenancy at any time upon 30 days prior written notice to the other party. If Tenant possesses the Premises after the Term expires (or is otherwise terminated) without executing a new lease and without Landlord’s written consent, then Tenant is deemed to be occupying the Premises without claim of right (but subject to all terms and conditions of this Lease) and, in addition to Tenant’s liability for failing to surrender possession of the Premises as provided in Section 16.1, Tenant shall also pay to Landlord a charge for each day of occupancy after expiration of the Term in an amount equal to 200% of the Rent for the last month of the expired Term (on a daily basis).  
ARTICLE 17  
ADDITIONAL PROVISIONS  
 17.1. Tenant Improvements.  
 17.1.1. Tenant Improvements. Landlord is providing the basic Premises in its current “AS IS” condition, without representation or warranty of any kind, and Landlord shall have no obligation to make any modifications or alterations to the Premises except as specifically set forth in this Section 17.1. Notwithstanding the foregoing, Landlord agrees at its sole cost to (i) construct demising walls to separate the Premises from the remainder of the Building, (ii) install separate meters to measure the gas and electricity being used at the Premises; and (iii) physically separate the fire sprinkler system serving the Premises (the “Landlord Improvements”). Landlord shall complete the Landlord Improvements in compliance with all applicable Laws. Item (iii) of the Landlord improvements shall include physically repositioning any fire sprinkler heads required for the construction of the demising walls; item (iii) of the Landlord Improvements shall specifically exclude any other alterations to the fire sprinkler system in the Premises, or any alterations to the fire sprinkler system in the Premises that are required to comply with any Laws; notwithstanding anything to the contrary in this Lease, any such alterations to the fire sprinkler system in the Premises, to the extent required by Tenant or applicable Laws, shall be completed by Tenant at its sole cost and expense. Landlord agrees to coordinate the tenant improvements (the “Tenant Improvements”) described on Exhibit 17.1.1 attached hereto. The costs of the  
22  
 Tenant Improvements shall be the sole responsibility of Tenant; provided, however, that Landlord shall provide Tenant with an allowance of up to $120,000.00 (the “Allowance”). Landlord shall use the Allowance to pay: (1) all costs and expenses directly incurred by Landlord, if any, in the construction of the Tenant Improvements (including all applicable licenses and permits); (2) all costs and expenses directly incurred by Landlord for the preparation or review of all plans and specifications for the Tenant Improvements; and (3) a construction supervision fee to Landlord’s construction agent, CB Xxxxxxx Xxxxx, equal to 6% of the actual costs of construction of the Tenant Improvements. If the cost of the Tenant Improvements exceeds the Allowance, then Tenant shall pay such excess cost to Landlord as Additional Rent pursuant to Section 2.2. If the cost of the Tenant Improvements is less than the Allowance, then Tenant shall not be entitled to any payment or credit for such excess amount. Any other improvements made to the Premises by Tenant shall be at Tenant’s sole expense, and shall be deemed an “Alteration” subject to Article 8 of this Lease.  
 17.1.2. Substantial Completion. Landlord will use commercially reasonable efforts to achieve Substantial Completion of the Tenant Improvements as soon as possible after the Effective Date, subject to Tenant Delays and delays caused by Force Majeure.  
 17.1.3. Punch List. Promptly after Substantial Completion of the Tenant Improvements, Landlord and Tenant will inspect the Premises and develop a Punch List. Landlord will complete (or repair, as the case may be) the items described on the Punch List with commercially reasonable diligence and speed, subject to delays caused by Tenant Delays and Force Majeure. If Tenant refuses to inspect the Premises with Landlord within 5 days of Landlord’s written request for an inspection, then Tenant is deemed to have accepted the Premises as delivered.  
 17.2. Parking Facilities. Tenant shall have the right of non-exclusive use, in common with others, of the unrestricted automobile parking areas located at the Property. Landlord agrees that Tenant shall have equal access to the unrestricted automobile parking areas located at the Property with any other tenants of the Building. Tenant acknowledges that Landlord has designated the parking area identified on attached Exhibit 17.2.A as restricted; neither Tenant nor any of its employees, agents, or visitors shall use said restricted parking area. Landlord agrees that the parking area identified on attached Exhibit 17.2.B shall be dedicated for the use of Tenant. Neither Tenant, nor any of its employees, agents, or visitors shall use any of the parking areas for overnight storage of vehicles. Tenant acknowledges and agrees that Landlord will not be responsible for any loss, theft or damage to vehicles, or the contents thereof, parked or left in the parking areas of the Property.  
ARTICLE 18  
MISCELLANEOUS PROVISIONS  
 18.1. Notices. All Notices must be in writing and must be sent by personal delivery, by nationally-recognized overnight express delivery service, or by U.S. registered or certified mail (return receipt requested, postage prepaid), to the addresses specified in the Basic Terms or at such other place as either party may designate to the other party by written notice given in accordance with this section. Such notices shall be deemed received (a) as of the date of delivery, if delivered by hand by 4:00 p.m. Central on a Business Day (if hand delivered after said time, any such notice shall be deemed received as of the first Business Day after delivery), (b) as of the next Business Day, if tendered to an overnight express delivery service by the applicable deadline for overnight service, or (c) as of the fifth Business Day after mailing, if sent by regular mail.  
 18.2. Transfer of Landlord’s Interest. If Landlord Transfers any interest in the Premises for any reason other than collateral security purposes, and provided the transferee agrees in writing to assume all of the Landlord’s obligations under this Lease that accrue after the date of Transfer, then the transferor is automatically relieved of all obligations on the part of Landlord accruing under this Lease from and after the date of the Transfer, provided that the transferor will deliver to the transferee any funds the transferor holds in which Tenant has an interest. For a period of 12 months after the Transfer, the transferor shall remain liable for any obligations (including but not limited to indemnification obligations, which shall survive the Transfer for a period of 12 months) and outstanding disputes accruing under this Lease prior to the date of the Transfer. Landlord’s covenants and obligations in this Lease bind each successive Landlord only during and with respect to its respective period of ownership. However, notwithstanding any such Transfer, the transferor remains entitled to the benefits of  
23  
 Tenant’s indemnity and insurance obligations (and similar obligations) under this Lease with respect to matters arising or accruing during the transferor’s period of ownership.  
 18.3. Successors. The covenants and agreements contained in this Lease bind and inure to the benefit of Landlord, its successors and assigns, bind Tenant and its successors and assigns and inure to the benefit of Tenant and its permitted successors and assigns.  
 18.4. Captions and Interpretation. The captions of the articles and sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular includes the plural and the plural includes the singular.  
 18.5. Relationship of Parties. This Lease does not create the relationship of principal and agent, or of partnership, joint venture, or of any association or relationship between Landlord and Tenant other than that of landlord and tenant.  
 18.6. Entire Agreement; Amendment. The Basic Terms and all exhibits, addenda and schedules attached to this Lease are incorporated into this Lease as though fully set forth in this Lease and together with this Lease contain the entire agreement between the parties with respect to the improvement and leasing of the Premises. All preliminary and contemporaneous negotiations, including, without limitation, any letters of intent or other proposals and any drafts and related correspondence, are merged into and superseded by this Lease. No subsequent alteration, amendment, change or addition to this Lease (other than to the Building Rules) is binding on Landlord or Tenant unless it is in writing and signed by the party to be charged with performance.  
 18.7. Severability. If any covenant, condition, provision, term or agreement of this Lease is, to any extent, held invalid or unenforceable, the remaining portion thereof and all other covenants, conditions, provisions, terms and agreements of this Lease, will not be affected by such holding, and will remain valid and in force to the fullest extent permitted by law.  
 18.8. Survival. The obligations of both parties under this Lease (together with interest on payment obligations at the Maximum Rate) that accrue prior to the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease. Further, the release, indemnification, defense and hold harmless obligations of both parties under this Lease shall survive the expiration or other termination of this Lease, without limitation.  
 18.9. Attorneys’ Fees. If either Landlord or Tenant commences any litigation or judicial action to determine or enforce any of the provisions of this Lease, the prevailing party in any such litigation or judicial action is entitled to recover all of its costs and expenses (including, but not limited to, reasonable attorneys’ fees, costs and expenditures) from the non-prevailing party.  
 18.10. Brokers. Landlord and Tenant each represents and warrants to the other that it has not had any dealings with any realtors, brokers, finders or agents in connection with this Lease (except as may be specifically set forth in the Basic Terms) and agrees to release, indemnify, defend and hold the other harmless from and against any Claim based on the failure or alleged failure to pay any realtors, brokers, finders or agents (other than any brokers specified in the Basic Terms) and from any cost, expense or liability for any compensation, commission or charges claimed by any realtors, brokers, finders or agents (other than any brokers specified in the Basic Terms) claiming by, through or on behalf of it with respect to this Lease or the negotiation of this Lease.  
 18.11. Governing Law. This Lease is governed by, and must be interpreted under, the internal laws of the State. Any suit arising from or relating to this Lease must be brought in the County; Landlord and Tenant each waive the right to bring suit elsewhere.  
 18.12. Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.  
24  
 18.13. Authority. Landlord and Tenant, and each individual signing this Lease on behalf of either Landlord or Tenant represents and warrants that they are duly authorized to sign on behalf of and to bind said party and that this Lease is a duly authorized obligation of said party.  
 18.14. Force Majeure. If Landlord is delayed or prevented from performing any act required in this Lease (excluding, however, the payment of money) by reason of either Tenant Delay or Force Majeure, then Landlord’s performance of such act is excused for the period of delay caused by such Tenant Delay or Force Majeure, and the period of the performance of any such act will be extended for a period equivalent to such period. If Tenant is delayed or prevented from performing any act required in this Lease (excluding, however, the payment of money) by reason of Force Majeure, then Tenant’s performance of such act is excused for the period of delay caused by such Force Majeure, and the period of the performance of any such act will be extended for a period equivalent to such period.  
 18.15. No Recording. Tenant will not record this Lease or a Memorandum of this Lease without Landlord’s prior written consent, which consent Landlord may grant or withhold in its sole and absolute discretion.  
 18.16. Nondisclosure of Lease Terms. The terms and conditions of this Lease constitute proprietary information of Landlord that Tenant will keep confidential. Tenant’s disclosure of the terms and conditions of this Lease could adversely affect Landlord’s ability to negotiate other leases and impair Landlord’s relationship with other tenants. Accordingly, Tenant, without Landlord’s consent (which consent Landlord may grant or withhold in its sole and absolute discretion), will not directly or indirectly disclose the terms and conditions of this Lease to any other tenant or prospective tenant of the Building or to any other person or entity other than Tenant’s employees and agents who have a legitimate need to know such information (and who will also keep the same in confidence).  
 18.17. Financial Disclosure. At the request of Landlord, from time to time during the Term, Tenant shall provide Landlord with any reasonable financial records, including financial statements or federal tax returns of Tenant prepared in accordance with generally accepted accounting principles for the prior two fiscal years of operation of Tenant. Landlord shall retain such financial disclosure in confidence but shall be permitted to provide copies to its mortgagees for the purpose of financing the Building or to prospective purchasers of the Building.  
 18.18. Construction of Lease and Terms. The terms and provisions of this Lease represent the results of negotiations between Landlord and Tenant, each of which are sophisticated parties and each of which has been represented or been given the opportunity to be represented by counsel of its own choosing, and neither of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Lease must be interpreted and construed in accordance with their usual and customary meanings, and Landlord and Tenant each waive the application of any rule of law that ambiguous or conflicting terms or provisions contained in this Lease are to be interpreted or construed against the party who prepared the executed Lease or any earlier draft of the same. Landlord’s submission of this instrument to Tenant for examination or signature by Tenant does not constitute a reservation of or an option to lease and is not effective as a lease or otherwise until Landlord and Tenant both execute and deliver this Lease. The parties agree that, regardless of which party provided the initial form of this Lease, drafted or modified one or more provisions of this Lease, or compiled, printed or copied this Lease, this Lease is to be construed solely as an offer from Tenant to lease the Premises, executed by Tenant and provided to Landlord for acceptance on the terms set forth in this Lease, which acceptance and the existence of a binding agreement between Tenant and Landlord may then be evidenced only by Landlord’s execution of this Lease.  
25  
 Landlord and Tenant each caused this Lease to be executed and delivered by its duly authorized representative to be effective as of the Effective Date.  
 LANDLORD:  
 IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP  
By: IRET, Inc., its general partner  
 By:  
 Print Name: Xxxxxx X. Xxxxx, Xx.   
Print Title: Senior Vice President  
 DATED:   
 By:  
 Print Name: Xxxxxxx X. Xxxxxxxxx   
Print Title: Vice President   
 TENANT:   
 AM RETAIL GROUP, INC., a Delaware corporation   
 By:  
 Print Name: Xxxx Xxxxxx   
Print Title: President   
26  
 EXHIBIT “1” TO LEASE  
Definitions  
“Additional Rent” means any charge, fee or expense (other than Basic Rent), however denoted, that is payable by Tenant under this Lease.  
“Affiliate” means any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Tenant. For purposes of this definition, “control” means possessing the power to direct or cause the direction of the management and policies of the entity by the ownership of a majority of the voting securities of the entity.  
“Alteration” means any change, alteration, addition or improvement to the Premises or Property.  
“Bankruptcy Code” means the United States Bankruptcy Code as the same now exists and as the same may be amended, including any and all rules and regulations issued pursuant to or in connection with the United States Bankruptcy Code now in force or in effect after the Effective Date.  
“Basic Rent” means the basic rent amounts specified in the Basic Terms.  
“Basic Terms” means the terms of this Lease identified as the Basic Terms before Article 1 of the Lease.  
“Building” means the building(s) now existing on the Land, as identified in the Basic Terms.  
“Business Days” means any day other than Saturday, Sunday or a legal holiday in the State.  
“City” means the City of Brooklyn Park, Minnesota.  
“Claims” means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys’ fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under the Lease.  
“Commencement Date” means the Commencement Date specified in the Basic Terms.  
“Common Area” means the telecommunications room, parking area, driveways, and other areas of the Property Landlord may designate from time to time as common area available to all tenants.  
“Condemning Authority” means any person or entity with a statutory or other power of eminent domain.  
“County” means the County in which the Property is located in.  
“Discount Rate” means 1% per annum plus the prevailing “Primary Credit” discount rate established by the Federal Reserve Bank for the district in which the Property is located on advances made to member banks under the Federal Reserve Act.  
“Effective Date” means the date Landlord executes this Lease, as indicated on the signature page.  
“Event of Default” means the occurrence of any of the events specified in Section 14.1 of the Lease.  
“Expenses” means the total amount of Property Taxes and Operating Expenses due and payable with respect to the Property during any calendar year of the Term.  
“Force Majeure” means acts of God; strikes; lockouts; inability to procure materials (despite commercially reasonable pursuit of such materials); governmental laws or regulations; casualty; orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any governmental licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); and other similar or dissimilar causes beyond Landlord’s or Tenant’s reasonable control.  
 “Hazardous Materials” means any of the following, in any amount: (a) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (b) any radioactive substance; (c) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (d) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “solid waste” or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Effective Date as the same may be interpreted by government offices and agencies.  
“Hazardous Materials Laws” means any federal, state or local statutes, laws, ordinances or regulations now existing or existing after the Effective Date that control, classify, regulate, list or define Hazardous Materials.  
“Land” means the parcel(s) of land on which the Building is located. In the event the Building is part of a designated complex, then “Land” shall also mean all associated parcels of land owned by Landlord, all easements appurtenant thereto, and all access drives serving the complex. Subject to the terms and conditions of any applicable Permitted Encumbrances, and such other restrictions as Landlord may impose during the Lease Term, Tenant will have the nonexclusive right to use the described access-ways within the complex, as the same may exist from time to time.  
“Landlord” means only the owner or owners of the Property at the time in question. In any provision relating to the conduct, acts or omissions of “Landlord,” the term “Landlord” means the landlord identified in the Lease and such landlord’s officers and employees, and (if any) the Property Manager.  
“Landlord Parties” means Landlord and Property Manager and their respective officers, directors, partners, shareholders, members and employees.  
“Laws” means any law, regulation, rule, order, statute, ordinance or codes of any governmental or private entity in effect on or after the Effective Date and applicable to the Property or the use or occupancy of the Property, including, without limitation, Hazardous Materials Laws, Building Rules and Permitted Encumbrances.  
“Lease” means this Lease Agreement, as the same may be amended or modified after the Effective Date.  
“Lease Year” means each consecutive 12 month period during the Term, commencing on the Commencement Date, except that if the Commencement Date is not the first day of a calendar month, then the first Lease Year is a period beginning on the Commencement Date and ending on the last day of the calendar month in which the Commencement Date occurs plus the following 12 consecutive calendar months.  
“Maximum Rate” means interest at a rate equal to the lesser of (a) 18% per annum or (b) the maximum interest rate permitted by law.  
“Mortgage” means any mortgage, deed of trust, security interest or other security document of like nature that at any time may encumber all or any part of the Property and any replacements, renewals, amendments, modifications, extensions or refinancings thereof, and each advance (including future advances) made under any such instrument.  
“Net Rent” means all rental Landlord actually receives from any reletting of all or any part of the Premises, less any indebtedness from Tenant to Landlord other than Rent (which indebtedness is paid first to Landlord) and less the Re-entry Costs (which costs are paid second to Landlord).  
“Notices” means all notices, demands or requests that may be or are required to be given, demanded or requested by either party to the other as provided in the Lease.  
“Operating Expenses” means all expenses Landlord incurs in connection with maintaining, repairing and operating the Property, as reasonably determined by Landlord in accordance with generally accepted accounting principles consistently followed. “Operating Expenses” shall include without limitation the following: utility  
2  
 charges (including without limitation electricity, water, sewer, gas, fuel and steam); lighting; window washing; the costs and expenses incurred in connection with the provision of the utilities and services set forth in Section 6.1 (including without limitation the maintenance and repair of the Building systems furnishing such utilities and services); costs and expenses incurred in connection with Landlord’s obligations under Section 7.1; Landlord’s costs and expenses for insurance, as specified in Section 10.2; property association fees, dues, and any other payments under any of the Permitted Encumbrances (except the Mortgage) affecting the Property; wages payable to persons whose duties are connected with maintaining and operating the Property (but only for the portion of such persons’ time allocable to the Property), together with all payroll taxes, unemployment insurance, vacation allowances and disability, pension, profit sharing, hospitalization, retirement and other so-called “fringe benefits” paid in connection with such persons (allocated in a manner consistent with such persons’ wages); amounts paid to contractors or subcontractors for work or services performed in connection with maintaining, repairing and operating the Property; all costs of uniforms, supplies and materials used in connection with maintaining, repairing and operating the Property; all services, supplies, replacements or other expenses for maintaining, repairing and operating the Property; costs of complying with Laws; reasonable management fees (not to exceed 5% of gross rents); expenses Landlord incurs in connection with public sidewalks adjacent to the Property, any pedestrian walkway system (either above or below ground) and any other public facility to which Landlord or the Property is from time to time subject in connection with operating the Property; and such other expenses as may ordinarily be incurred in connection with maintaining, repairing and operating a property similar to the Property. Notwithstanding anything to the contrary in this Lease, if Landlord makes a capital improvement to the Property that would be deemed a capital expense under generally accepted accounting principles, then Landlord may only include in Operating Expenses reasonable charges for interest paid on the investment and reasonable charges for depreciation of the investment, so as to amortize the investment over the reasonable useful life of the improvement on a straight line basis. The term “Operating Expenses” does not include:  
 i. The costs of repair, restoration or other work occasioned by any insured casualty (except for deductibles as provided in Section 10.2).  
 ii. Interest, principal, points and fees, amortization or any other costs associated with the Mortgage, and all costs and expenses associated with any such debt, irrespective of whether this Lease is subject or subordinate thereto.  
 iii. Expenses or Allowances for depreciation or amortization (except as may be expressly allowed by this Lease, including without limitation the amortization of capital improvements as noted above).  
 iv. Any bad debt loss, or any reserve for bad debt loss.  
 v. Compensation (including benefits) paid to any employee of Landlord or Property Manager above the grade of building superintendent or manager.  
 vi. Expenses to prepare, renovate, or perform any other work in any space leased to an existing or new tenant of the Building, or to prepare, renovate or perform work in the Building to accommodate additional tenants.  
 vii. Expenses to retain existing tenants or to lease space to new tenants, including without limitation legal fees, leasing commissions, advertising, and promotional expenditures.  
 viii. Expenses to resolve disputes with existing tenants, or to negotiate lease terms with prospective tenants.  
 ix. The costs of any services or supplies to the extent that such costs are reimbursed to Landlord by tenants of the Building (other than by virtue of the pass through of Operating Expenses to tenants), or by other third parties.  
 x. The costs of any repair, restoration or other work occasioned by a condemnation proceeding, if and to the extent Landlord has actually been reimbursed by condemnation proceeds.  
3  
 xi. Rent payable by Landlord pursuant to any ground or air-rights lease affecting the Property, irrespective of whether this Lease is subject or subordinate thereto.  
 xii. Fees or sums paid to an affiliate of Landlord, to the extent that such fees exceed the customary amount charged by independent contractors and suppliers for the services or supplies provided.  
 xiii. Expenses for any necessary replacement of any item to the extent that it is covered under warranty.  
 xiv. Costs of sculptures, paintings and other objects of art.  
 xv. Charitable or political contributions by Landlord.  
 xvi. Interest or penalties assessed against Landlord due to the late payment of any Expenses.  
 xvii. Expenses for any item or service that Tenant pays directly to a third party, or separately reimburses to Landlord.  
 xviii. The costs of repairs to the extent such repairs are necessitated by Landlord’s negligence or willful misconduct.  
 xix. The costs of any services provided to other tenants of the Property in excess of the services provided to Tenant under this Lease.  
 xx. Landlord’s general corporate overhead and administrative expenses, except to the extent related (or reasonably allocated) to the Property, and except as expressly provided in this Lease.  
 xxi. Personal property taxes of Landlord for equipment or items to the extent not used directly in the operation or maintenance of the Property.  
 xxii. Landlord’s income, franchise, estate or inheritance taxes.  
“Permitted Encumbrances” means all Mortgages, liens, easements, declarations, encumbrances, covenants, conditions, reservations, restrictions, and other matters now or after the Effective Date affecting title to the Property.  
“Property” means, collectively, the Land, Building (including the Premises) and all other improvements on the Land.  
“Property Manager” means the property manager specified in the Basic Terms, or any other agent Landlord may appoint from time to time to manage the Property.  
“Property Taxes” means any general real property tax, improvement tax, assessment, special assessment, reassessment, commercial rental tax, in lieu tax, levy, charge, penalty or similar imposition imposed by any authority having the direct or indirect power to tax, including but not limited to, (a) any city, county, state or federal entity, (b) any school, agricultural, lighting, drainage or other improvement or special assessment district, (c) any governmental agency, or (d) any private entity having the authority to assess the Property under any of the Permitted Encumbrances. The term “Property Taxes” includes all charges or burdens of every kind and nature Landlord incurs in connection with using, occupying, owning, operating, leasing or possessing the Property, without particularizing by any known name and whether any of the foregoing are general, special, ordinary, extraordinary, foreseen or unforeseen; any tax or charge for fire protection, street lighting, streets, sidewalks, road maintenance, refuse, sewer, water or other services provided to the Property and any personal property taxes on personal property used on the Property. The term “Property Taxes” does not include Landlord state or federal income, franchise, estate or inheritance taxes. If Landlord is entitled to pay, and elects to pay, any of the above listed assessments or charges in installments over a period of two or more calendar years, then only such installments of the assessments or charges (including interest thereon) as are actually paid in a calendar year will  
4  
 be included within the term “Property Taxes” for such calendar year. If any of Tenant’s trade fixtures and other personal property are taxed with the Property, Tenant will pay the taxes attributable to Tenant’s trade fixtures and other personal property to Landlord as Additional Rent. Notwithstanding anything to the contrary in this Lease, Tenant shall pay Property Taxes pursuant to the existing sublease, as amended, as are due and owing up to the Commencement Date of this Lease; thereafter, Tenant will pay a prorata share pursuant to this Lease.  
“Punch List” means a list of Tenant Improvements items that were either (a) not properly completed by Landlord, or (b) in need of repair, which list is prepared in accordance with Section 17.1.  
“Re-entry Costs” means all reasonable costs and expenses Landlord incurs re-entering or reletting all or any part of the Premises, including, without limitation, all costs and expenses Landlord incurs (a) maintaining or preserving the Premises after an Event of Default; (b) recovering possession of the Premises, removing persons and property from the Premises (including, without limitation, court costs and reasonable attorney’s fees) and storing such property; (c) reletting, renovating or altering the Premises, but only to the extent reasonably required to relet the Premises; and (d) real estate commissions, reasonable advertising expenses and similar expenses paid or payable in connection with reletting all or any part of the Premises. “Re-entry Costs” also includes the value of free rent and other concessions Landlord gives in connection with re-entering or reletting all or any part of the Premises.  
“Rent” means, collectively, Basic Rent and Additional Rent.  
“State” means the State in which the Property is located.  
“Structural Alterations” means any Alterations involving the structural, mechanical, electrical, plumbing, fire/life safety or heating, ventilating and air conditioning systems of the Building.  
“Substantial Completion” means the date that the improvements or alterations are substantially complete (as evidenced by material compliance with applicable construction permits), and Tenant is reasonably able to use the Premises for the Permitted Use.  
“Taking” means the exercise by a Condemning Authority of its power of eminent domain on all or any part of the Property, either by accepting a deed in lieu of condemnation or by any other manner.  
“Tenant” means the tenant identified in the Lease and such tenant’s permitted successors and assigns. In any provision relating to the conduct, acts or omissions of “Tenant,” the term “Tenant” means the tenant identified in the Lease and such tenant’s agents, employees, contractors, invitees, successors, assigns and others using the Premises or on the Property with Tenant’s expressed or implied permission.  
“Tenant Delays” means any delays caused or contributed to by Tenant.  
“Tenant Parties” means Tenant and its officers, directors, partners, shareholders, members and employees. “Tenant Parties” specifically excludes Tenant’s agents, contractors, invitees, and others using the Premises or on the Property with Tenant’s expressed or implied permission.  
“Tenant’s Share of Expenses” means the product obtained by multiplying the amount of Expenses for the period in question by the Tenant’s Share of Expenses Percentage.  
“Tenant’s Share of Expenses Percentage” means the percentage specified in the Basic Terms, as such percentage may be adjusted in accordance with the terms and conditions of this Lease.  
“Term” means the initial term of this Lease specified in the Basic Terms and, if applicable, any extension term then in effect.  
“Transfer” means an assignment, mortgage, pledge, transfer, sublease or other encumbrance or conveyance (voluntarily, by operation of law or otherwise) of this Lease or the Premises or any interest in this Lease or the Premises. The term “Transfer” also includes any assignment, mortgage, pledge, transfer or other encumbering or  
5  
 disposal (voluntarily, by operation of law or otherwise) of any ownership interest in Tenant that results or could result in a change of control of Tenant.  
6  
 EXHIBIT “2.1” TO LEASE  
Premises (First Floor)  
 EXHIBIT “2.2” TO LEASE  
Premises (Mezzanine)  
 EXHIBIT “1.2.3” TO LEASE  
Commencement Date Memorandum  
 THIS MEMORANDUM is entered into effective as of the \_\_\_ day of , 2009, by and between IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP (“Landlord”) and AM RETAIL GROUP, INC., a Delaware corporation (“Tenant”). Landlord and Tenant are party to a certain Lease Agreement dated as of the \_\_\_ day of February, 2009 (“Lease”), relating to that certain premises (“Premises”) located in the building located at 0000 Xxxxx Xxxxxx Xxxxx, Xxxxxxxx Xxxx, Xxxxxxxxx (“Building”). Pursuant to Section 1.2.3 of the Lease, Landlord and Tenant acknowledge and agree as follows:  
 1. The Commencement Date is , 2009. The initial Term of the Lease shall expire on , 2012, unless the Lease is extended or sooner terminated in accordance with the terms and conditions of the Lease.  
 2. Tenant shall pay Basic Rent during the initial Term in accordance with the following schedule:  
 Months Total Annualized Total Monthly  
 $ 579,797.24 $ 48,316.44   
 $ 596,850.10 $ 49,737.51   
 $ 615,453.22 $ 51,287.77   
 3. Subject to the conditions and limitations set forth in the Lease, Tenant must exercise its right to the Extension Term, if at all, by notifying Landlord on or before . Said Extension Term shall commence on , and shall terminate on .  
 All capitalized terms not otherwise defined in this memorandum have the meanings ascribed to them in the Lease. Landlord and Tenant, and each individual signing this memorandum on behalf of each party, represents and warrants that they are duly authorized to sign on behalf of and to bind said party. This memorandum may be executed in counterparts, each of which is an original and all of which constitute one instrument.  
LANDLORD:  
IRET PROPERTIES, A NORTH DAKOTA LIMITED PARTNERSHIP  
By: IRET, Inc., its sole General Partner  
By:   
Print Name:  
Print Title:  
TENANT:  
AM RETAIL GROUP, INC., a Delaware corporation  
By:   
Print Name:  
Print Title:  
 EXHIBIT “1.3” TO LEASE  
Identification of Hallway Area  
 EXHIBIT “4.3” TO LEASE  
Building Rules  
 1. Wherever in these Building Rules the word “Tenant” occurs, it is understood and agreed that it shall also mean Tenant’s assigns, employees, agents, invitees, and visitors. Wherever the word “Landlord” occurs, it is understood and agreed that it shall also mean Landlord’s assigns, employees, and agents.  
 2. Tenant shall not bring into the Property any inflammables (including without limitation gasoline, kerosene, naphtha and benzene), explosives, or any other article of intrinsically dangerous nature.  
 3. Tenant shall not obstruct sidewalks, entrances, passages, corridors, vestibules, halls, or stairways in and about the Property which are used in common with other tenants and their servants, employees, customers, guests and invitees, and which are not a part of the Premises of Tenant.  
 4. Tenant acknowledges and agrees that the Building is “smoke free,” and that no smoking of tobacco products shall be allowed within the Building.  
 5. The Premises shall not be used for cooking (except for microwaves), lodging, sleeping or for any immoral or illegal purpose. No animals are allowed in the Building.  
 6. Tenant is solely responsible for protecting the Premises and Tenant’s property from theft and robbery. All entrance doors to the Premises shall be locked when the Premises are not in use. No locks or similar devices shall be attached to any door or window, except as provided by Landlord or otherwise approved in writing by Landlord. Landlord’s consent to the installation of any additional locks or similar devices may be conditioned upon (among other things), Tenant providing Landlord with keys to all such additional locks. Upon termination of this Lease or of the Tenant’s possession, the Tenant shall surrender all keys of the Premises and shall provide to Landlord all combination locks on safes, cabinets and vaults.  
 7. Tenant shall not waste electricity, water, heat or air conditioning, and shall cooperate fully with Landlord to insure the most effective and efficient operation of the Building’s mechanical systems.  
 8. All loading, unloading, receiving or delivery of goods, supplies or disposal of garbage or refuse shall be made only through entryways provided for such purposes. Tenant shall be responsible for any damage to the Building or the Property of its employees or others and injuries sustained by any person whomsoever resulting from the use or moving of such articles in or out of the leased Premises, and shall make all repairs and improvements required by Landlord or governmental authorities in connection with the use or moving of such articles.  
 9. Tenant, its servants, employees, customers, invitees and guests shall, when using the common parking facilities, if any, in and around the Building, observe and obey all signs regarding fire lanes and no parking zones, and when parking always park between the designated lines. Landlord reserves the right to tow away, at the expense of the owner, any vehicle which is improperly parked or parked in a no parking zone. All vehicles shall be parked at the sole risk of the owner, and Landlord assumes no responsibility for any damage to or loss of vehicles. No vehicles shall be parked overnight.  
 10. Tenant shall observe faithfully and comply strictly with the foregoing rules and regulations and such other and further appropriate rules and regulations as Landlord may from time to time adopt. Landlord reserves the right at any time and from time to time to rescind, alter or waive, in whole or in part, any of these Building Rules when it is deemed necessary, desirable, or proper, in Landlord’s judgment, for its best interest or for the best interest of the tenants of the Property.  
 EXHIBIT “17.1.1” TO THE LEASE  
Description of Tenant Improvements  
 EXHIBIT “17.2.A” TO THE LEASE  
Identification of Restricted Parking Area  
 EXHIBIT “17.2.B” TO THE LEASE  
Identification of Tenant’s Designated Parking Area