

# NON-STANDARD LEASE FORM

## SHOPPING CENTER LEASE

DATE OF THIS LEASE: 2/15, 2019

SHOPPING CENTER: REDBIRD OAKS SHOPPING CENTER

LANDLORD: SEC REDBIRD COCKRELL HILL, LTD., a Texas limited partnership

TENANT: CANALES LUNA GROUP LLC, a Texas limited liability company

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# SHOPPING CENTER LEASE

## ARTICLE I

### DEFINITIONS AND CERTAIN BASIC PROVISIONS

1.1 The following list sets out certain defined terms and certain financial and other information pertaining to this Shopping Center Lease (this "Lease"):

(a) "Landlord": **SEC REDBIRD COCKRELL HILL, LTD., a Texas limited partnership**

(b) Landlord's notice address: 3102 Maple Avenue, Suite 350  
Dallas, Texas 75201

(c) "Tenant": **CANALES LUNA GROUP LLC, a Texas limited liability company**

(d) Tenant's notice address [NOTE: The address to be inserted in this subsection (d) is preferably **not** the address of the Demised Premises and **not** a post office box]:

**2200 E Randol Mill Road**  
**Arlington, TX 76011**

(e) Tenant's trade name: **Canales Furniture**

(f) Tenant's Guarantor [NOTE: If this subsection (f) is applicable, attach a Guaranty as an exhibit]:  
**CANALES V.C. INVESTMENTS LLC, a Texas limited liability company**

(g) "Agent": Weitzman Management Corporation, doing business as Weitzman (see Section 30.16 below).

(h) "Cooperating Agent": **N/A**

(i) "Shopping Center": Landlord's property located in the **City of Dallas, Dallas County**, Texas, which property is described or shown on Exhibit "**A**" attached to this Lease. With regard to Exhibit "**A**," the parties agree that the Exhibit is attached solely for the purpose of locating the Shopping Center and the Demised Premises within the Shopping Center and that no representation, warranty, or covenant is to be implied by any other information shown on the exhibit (i.e., any information as to buildings, tenants or prospective tenants, etc., is subject to change at any time).

(j) "Demised Premises": a store unit in the Shopping Center containing approximately **9,000 square feet** in area measured by calculating lengths and widths to immediately inside the exterior of outside walls (i.e., not including the exterior surface of such outside walls) and to the middle of interior walls, being known as **7320 S. Cockrell Hill Road, Dallas, Texas**, and being described or shown on Exhibit "**A**" attached to this Lease. With regard to the area of the Demised Premises, both Landlord and Tenant acknowledge and confirm their mutual desire to have all financial obligations under this Lease fixed and liquidated so that they can account for and plan such obligations with greater certainty. Accordingly, the parties agree that all aspects of this Lease which are based in whole or in part upon the area of the Demised Premises shall be deemed to be liquidated and not subject to adjustment based upon inaccuracies and/or errors, if any, in the above-estimated area of the Demised Premises.

(k) "Commencement Date": the earlier of:

(i) the date upon which Tenant opens for business at the Demised Premises, or

(ii) **90 days** after the final execution of this Lease by both Landlord and Tenant.

The Demised Premises are vacant and shall be turned over to Tenant for finish out on Lease execution.

(l) "Lease Term": Commencing on the Commencement Date and continuing for **FIVE (5) years and NINE (9) months** after the Commencement Date; provided that if the Commencement Date is a date other than the first (1<sup>st</sup>) day of a calendar month, the Lease Term shall be extended for said number of years and months in addition to the remainder of the calendar month in which the Commencement Date occurs.

(m) "Minimum Guaranteed Rental": Minimum Guaranteed Rental shall be as follows during the respective months of the Lease Term:

Beginning month <b><u>1</u></b>	through month <b><u>1</u></b>	:	<b><u>\$10,762.50</u></b>	per month
Beginning month <b><u>2</u></b>	through month <b><u>10</u></b>	:	<b><u>\$ -0- *</u></b>	per month
Beginning month <b><u>11</u></b>	through month <b><u>69</u></b>	:	<b><u>\$10,762.50</u></b>	per month
Beginning month _____	through month _____	:	\$ _____	per month
Beginning month _____	through month _____	:	\$ _____	per month
Beginning month _____	through month _____	:	\$ _____	per month
Beginning month _____	through month _____	:	\$ _____	per month
Beginning month _____	through month _____	:	\$ _____	per month

**\* TENANT DOES NOT PAY COMMON AREA CHARGES, TAX AND INSURANCE REIMBURSEMENTS DURING THESE MONTHS.**

If the Commencement Date does not occur on the first day of a calendar month, then "month 1" in the above table shall commence on the Commencement Date and shall end at the conclusion of the last calendar day of the next succeeding calendar month (for example, if the Commencement Date is February 10th, then "month 1" in the above chart would begin on February 10th and would end upon the conclusion of business on March 31st). And in such event the Minimum Guaranteed Rental for "month 1" shall be increased proportionately with the additional number of days attributable to such period.

(n) Percentage Rental rate: **TENANT DOES NOT PAY PERCENTAGE RENTAL.**

(o) Common Area Maintenance Charge: A minimum of **\$3,727.50 per month**, payable in advance.

(p) Prepaid Rental: **\$10,762.50**, being an estimate of the Minimum Guaranteed Rental, Common Area Maintenance Charge, and Tenant's obligations for taxes, other real estate charges and insurance for the first full month of the Lease Term, such prepaid rental being due and payable upon execution of this Lease.

(q) Security Deposit: **\$10,762.50**, such Security Deposit being due and payable upon execution of this Lease and being subject to the applicable provisions of Section 23.9 and Article XXVII of this Lease.

(r) Permitted Use: **Sale of furniture.**

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Tenant acknowledges that the above specification of a "permitted use" means only that Landlord has no objection to the specified use and does not include any representation or warranty by Landlord as to whether or not such specified use complies with applicable laws and/or requires special governmental permits. In this regard, Tenant acknowledges that this Section 1.1(r) is subject to Sections 3.1 and 10.9 of this Lease.

1.2 The following table is provided as an estimate of Tenant's initial monthly payment broken down into its components. This table, however, does not supersede the specific provisions contained elsewhere in this Lease:

Initial Minimum Guaranteed Rental (Sections 1.1(m) and 4.1)	<b><u>\$6,000.00</u></b>
Initial Escrow Payment for Common Area Maintenance Charge (Sections 1.1(o) and 7.4)	<b><u>\$3,727.50</u></b>
Initial Escrow Payment for Taxes and Other Real Estate Charges (Article VI)	<b><u>\$ 832.50</u></b>
Initial Escrow Payment for Insurance (Article VI)	<b><u>\$ 202.50</u></b>
<b>TOTAL ESTIMATED INITIAL MONTHLY PAYMENT</b>	<b><u>\$10,762.50</u></b>

**ARTICLE II**

**GRANTING CLAUSE**

2.1 Landlord leases the Demised Premises to Tenant upon the terms and conditions set forth in this Lease.

**ARTICLE III**

**DELIVERY OF PREMISES; RELOCATION OF PREMISES**

3.1 Except to the extent modified by Landlord's express assumption of construction obligations, if any, in an exhibit attached to this Lease, the Demised Premises is being leased "AS IS," with Tenant accepting all defects, if any; and Landlord makes no warranty of any kind, express or implied, with respect to the Demised Premises (without limitation, Landlord makes no warranty as to the habitability, fitness or suitability of the Demised Premises for a particular purpose nor as to the absence of any toxic or otherwise hazardous substances). This Section 3.1 is subject to any contrary requirements under applicable law; however, in this regard, Tenant acknowledges that it has been given the opportunity to inspect the Demised Premises and to have qualified experts inspect the Demised Premises prior to the execution of this Lease.

**NOTWITHSTANDING THE FOREGOING, LANDLORD HAS AGREED TO TURN OVER THE SPACE TO TENANT WITH THE HVAC SYSTEM (INCLUDING THE FURNACE), ELECTRICAL SYSTEMS AND PLUMBING SYSTEM IN GOOD WORKING ORDER.**

3.2 If this Lease is executed before the Demised Premises becomes vacant, or if any present tenant or occupant of the Demised Premises holds over and Landlord cannot acquire possession of the Demised Premises prior to the Commencement Date of this Lease, as above defined, Landlord shall not be deemed to be in default under this Lease; and in such event, Tenant agrees to accept possession of the Demised Premises at such time as Landlord is able to turn over possession of the same to Tenant. If Landlord utilizes the provisions of this Section 3.2, the Commencement Date (and Lease Term) shall be extended day-for-day for each day during which Landlord is unable to turn over possession of the Demised Premises to Tenant.

3.3 In the event Landlord determines it necessary to utilize the Demised Premises for other purposes during the Lease Term, Tenant agrees to relocate to other space owned by Landlord and located within the Shopping Center, provided such other space is of equal or larger size than the Demised Premises. Landlord shall give Tenant at least thirty

(30) days' written notice of any such relocation. Landlord shall pay all reasonable out-of-pocket expenses of any such relocation, including the expenses of moving and reconstruction of all Tenant-furnished and Landlord-furnished improvements, together with the costs of reprinting a reasonable supply of stationery and announcements depicting Tenant's new address, but not including any component for sales which may be lost during the relocation. In the event of such relocation, this Lease shall continue in full force and effect without any change in the terms or other conditions, but with the new location substituted for the old location set forth in Section 1.1(j) of this Lease.

## ARTICLE IV

### MINIMUM GUARANTEED RENTAL

4.1 Tenant shall pay to Landlord Minimum Guaranteed Rental in monthly installments in the amount(s) specified in Section 1.1(m) of this Lease. The first (1<sup>st</sup>) such monthly installment shall be due and payable on or before the date of execution of this Lease (as stated in Section 1.1(p) of this Lease), and subsequent installments shall be due and payable on or before the first (1<sup>st</sup>) day of each calendar month during the Lease Term. The only exception to the payment procedure stated in the previous two (2) sentences is as follows: If the Commencement Date is a date other than the first (1<sup>st</sup>) calendar day of a calendar month, then (i) on the date of execution of this Lease, Tenant shall pay the amount specified in Section 1.1(p) of this Lease, and (ii) on the first (1<sup>st</sup>) day of the calendar month which immediately follows the month in which the Commencement Date of this Lease occurs, a prorated portion of the monthly Minimum Guaranteed Rental, based upon the number of days remaining in the calendar month during which the Commencement Date occurs (i.e. the number of days in such calendar month on and after the Commencement Date), shall be due and payable in arrears as Minimum Guaranteed Rental for the balance of the calendar month during which the Commencement Date occurs.

4.2 Intentionally Deleted.

4.3 Intentionally Deleted.

4.4 The term "gross sales," as used in elsewhere in this Lease, shall be construed to include the entire amount of the sales price, whether for cash or otherwise of all sales of merchandise from the Demised Premises.

## ARTICLE V

### SALES REPORTS, RECORDS AND FINANCIAL STATEMENTS

5.1 On or before the tenth (10<sup>th</sup>) day of each calendar quarter during the term of this Lease, Tenant shall prepare and deliver to Landlord at the place where rental is then payable a statement of gross sales made from the Demised Premises during the preceding calendar quarter.

5.2 Intentionally Deleted.

5.3 Intentionally Deleted.

5.4 In addition to the statements and reports prescribed above, Tenant shall, within ten (10) days after a request from Landlord, but not more often than once in a calendar year, deliver to Landlord such financial statements as are reasonably required by Landlord to verify the net worth of Tenant.

5.5 Landlord shall use good faith efforts to keep confidential all sales reports, records and financial statements supplied by Tenant; however, Landlord shall have the right to reveal such information to mortgagees, prospective purchasers and prospective mortgagees (and their respective agents) and to Landlord's managers, development and administrative officers and personnel, and consultants.

## ARTICLE VI

### TENANT'S RESPONSIBILITY FOR TAXES, OTHER REAL ESTATE CHARGES AND INSURANCE EXPENSES

6.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures within the Demised Premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the Demised Premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable hereunder.

6.2 Tenant shall also be liable for "Tenant's proportionate share" (as defined below) of all "real estate charges" (as defined below) and "insurance expenses" (as defined below) related to the Shopping Center or Landlord's ownership of the Shopping Center, with all payments for which Tenant is liable pursuant to this Article VI to be considered for all purposes to be additional Rentals under this Lease. Tenant's obligations under this Section 6.2 shall be prorated during any partial year (i.e., the first year and the last year of the Lease Term). "Tenant's proportionate share" shall be a fraction, the numerator of which is the total floor area (all of which is deemed "leasable") in the Demised Premises and the denominator of which is the total leasable floor area of all buildings in the Shopping Center at the time when the respective charge was incurred, excluding, however, areas for which any such real estate charges or insurance expenses, or both, are paid by a party or parties other than Landlord. "Real estate charges" shall include ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents, any franchise or gross margins tax (but only to the extent attributable to the Rentals received by Landlord from Tenant and other tenants in the Shopping Center), any tax or charge for governmental services (such as street maintenance or fire protection), any tax or charge which is implemented after the date of this Lease and is reasonably determined by Landlord to have been assessed in lieu of the whole or part of any of such above-described "real estate charges," and any fees paid by Landlord to consultants,

attorneys and other professionals who monitor, negotiate and/or contest any or all above-described real estate charges; provided, however, that "real estate charges" shall not be deemed to include any estate, inheritance or general income tax. "Insurance expenses" shall include all premiums and other expenses incurred by Landlord for liability insurance and property insurance (including, to the extent deemed appropriate by Landlord, environmental coverage, pollution coverage, mold coverage, terrorism coverage and whatever other special coverages and/or endorsements that Landlord, in Landlord's sole discretion, may from time to time consider appropriate).

6.3 Landlord may, if Landlord deems it appropriate to do so, attempt to obtain separate assessments for Tenant's obligations pursuant to Section 6.1 and, with respect to Section 6.2, for such of the "real estate charges" as are readily susceptible of separate assessment; and if Landlord does attempt to so obtain separate assessments, Tenant shall cooperate with Landlord's efforts. To the extent of a separate assessment, Tenant agrees to pay such assessment before it becomes delinquent and to keep the Demised Premises free from any lien or attachment; moreover, as to all periods of time during the Lease Term, this covenant of Tenant shall survive the termination of this Lease. With regard to the calendar year during which the Lease Term expires, Landlord at its option either may bill Tenant when the charges become payable or may charge the Tenant an estimate of Tenant's pro rata share of whichever charges have been paid directly by Tenant (based upon information available for the current year plus, if current year information is not adequate in itself, information relating to the immediately preceding year).

6.4 Tenant agrees that, as between Tenant and Landlord, Landlord has the sole and absolute right to contest taxes levied against the Demised Premises and the Shopping Center (other than taxes levied directly against Tenant's personal property within the Demised Premises). Accordingly, Tenant, to the maximum extent permitted by law, irrevocably waives any and all rights that Tenant may have to receive from Landlord a copy of notices received by Landlord regarding the appraisal or reappraisal, for tax purposes, of all or any portion of the Demised Premises or the Shopping Center (including, without limitation, any rights set forth in §41.413 of the Texas Property Tax Code, as such section may be amended and/or supplemented from time to time). Additionally, Tenant, to the maximum extent permitted by law, hereby assigns to Landlord any and all rights of Tenant to protest or appeal any governmental appraisal or reappraisal of the value of all or any portion of the Demised Premises or the Shopping Center (including, without limitation, any rights set forth in §41.413 and §42.015 of the Texas Property Tax Code, as such sections may be amended and/or supplemented from time to time). To the maximum extent permitted by law, Tenant agrees that it will not protest or appeal any such appraisal or reappraisal before a governmental taxing authority without the express written authorization of Landlord.

6.5 At such time as Landlord has reason to believe that at some time within the immediately succeeding twelve (12) month period Tenant will owe Landlord any amounts pursuant to one or more of the preceding sections of this Article VI, Landlord may direct that Tenant prepay monthly a pro rata portion of the prospective future payment (i.e., the prospective future payment divided by the number of months before the prospective future payment will be due). Tenant agrees that any such prepayment directed by Landlord shall be due and payable monthly on the same day each month that Minimum Guaranteed Rental is due. In the event Landlord determines that the total of the monthly payments pursuant to this Section 6.5 for any appropriate fiscal period year is not equal to the total of payments required from Tenant for either "real estate charges" or "insurance expenses," or both, pursuant to previous sections in this Article VI, then Tenant shall pay to Landlord any deficiency or Landlord shall refund or credit to Tenant any overpayment, as the case may be, within thirty (30) days after the date upon which the exact amount has been determined by Landlord and communicated by writing to Tenant.

## **ARTICLE VII**

### **COMMON AREA**

7.1 The term "Common Area" is defined for all purposes of this Lease as that part of the Shopping Center intended for the common use of all tenants and their employees, customers and other invitees, including among other facilities (as such may be applicable to the Shopping Center), parking area, private streets and alleys, landscaping, curbs, loading area, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, public toilets, and the like but excluding (i) space in buildings (now or hereafter existing) designated for rental for commercial purposes, as the same may exist from time to time, (ii) streets and alleys maintained by a public authority, (iii) areas within the Shopping Center which may from time to time not be owned by Landlord (unless subject to a cross-access agreement benefiting the area which includes the Demised Premises), and (iv) areas leased to a single-purpose user (such as a bank or a fast-food restaurant) where access is restricted. In addition, although the roof(s) of the building(s) in the Shopping Center are not literally part of the Common Area, they will be deemed to be so included for purposes of (A) Landlord's ability to prescribe rules and regulations regarding same and (B) common area maintenance reimbursements. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identities, locations and types of any buildings, signs or other improvements in the Shopping Center. For example, and without limiting the generality of the immediately preceding sentence, Landlord may from time to time allow vending carts, kiosks and/or other sales or entertainment displays and/or special promotional events in the Common Area; moreover, Landlord may substitute for any parking area other areas reasonably accessible to the tenants of the Shopping Center, which areas may be elevated, surface or underground.

7.2 Tenant and its employees and customers, and when duly authorized pursuant to the provisions of this Lease, its subtenants, licensees and concessionaires, shall have the nonexclusive right to use the Common Area (excluding roofs of buildings in the Shopping Center) as constituted from time to time, such use to be in common with Landlord, other tenants in the Shopping Center and other persons permitted by the Landlord to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe. For example, and without limiting the generality of Landlord's ability to establish rules and regulations governing all aspects of the Common Area, Tenant agrees as follows:

(a) If Landlord designates specific parking areas for Tenant and Tenant's employees, then Tenant shall comply with Landlord's designation and shall institute procedures to ensure that its employees also comply. In this regard, Tenant also agrees that if requested by Landlord, Tenant shall promptly furnish Landlord with state automobile license numbers assigned to Tenant's car or cars, and cars of Tenant's employees; moreover, in such event Tenant shall

thereafter notify Landlord of any changes within five (5) days after such changes occur. In the event Tenant or its employees fail to park their cars in designated parking areas as aforesaid, then Landlord at its option may charge Tenant Ten Dollars (\$10.00) per day per car parked in any area other than those designated, as and for liquidated damages, and Tenant shall pay such charges upon demand. Tenant authorizes Landlord to cause any car which is not parked in the designated parking areas to be towed from the Shopping Center; moreover, Tenant shall on demand from Landlord reimburse Landlord for the cost thereof, and Tenant shall in all respects indemnify and hold Landlord harmless with respect to such towing by Landlord.

(b) Tenant shall not solicit business within the Common Area, and Tenant shall not take any action which would interfere with the rights of other persons to use the Common Area.

(c) Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights.

(d) With regard to the roof(s) of the building(s) in the Shopping Center, use of the roof(s) is reserved to Landlord or, with regard to any tenant demonstrating to Landlord's satisfaction both a need to use same (such as in connection with HVAC repair or replacement, as contemplated in Section 11.3 of this Lease) and procedures to assure that no damage is done to the roof(s) (such as proper reattachment and sealing in connection with HVAC repair or replacement), to such tenant after it has received Landlord's written consent.

7.3 Landlord shall be responsible for the operation, management and maintenance of the Common Area, the manner of maintenance and the expenditures therefor to be in the sole discretion of Landlord, but to be generally in keeping with similar shopping centers within the same geographical area as the Shopping Center. Without limiting the generality of the immediately preceding sentence, Tenant acknowledges that **LANDLORD MAKES NO REPRESENTATION OR WARRANTY REGARDING WHETHER OR NOT LANDLORD WILL PROVIDE SECURITY SERVICES, OR IF SO, WHAT FORM OF SECURITY SERVICES WILL BE PROVIDED.**

7.4 In addition to the Rentals and other charges prescribed in this Lease, Tenant shall pay to Landlord, as additional Rentals required pursuant to this Lease, Tenant's proportionate share of the cost of Landlord's management, operation and maintenance of the Common Area, as well as other commonly shared costs, which may be incurred by Landlord in its discretion, including, among other costs, all costs of the following: lighting, painting, cleaning, policing, inspecting, repairing, replacing Common Area elements; heating and cooling of any enclosed mall or promenade (i.e., if such exist in the Shopping Center); trash removal (i.e., except as paid by Tenant or otherwise administered pursuant to Section 10.6 of this Lease); insect and pest treatments and eradication (whether in the Common Area or for the building(s) of the Shopping Center); security (if and to the extent Landlord provides security); advertising and other marketing to promote the Shopping Center; dues, fees and costs that Landlord pays in connection with mandatory membership in any property, neighborhood or community association; environmental protection improvements or devices and health and safety improvements and devices which may be required by applicable laws (including the maintenance, repair and replacement of same); seasonal decorations, seasonal lighting and/or other promotional activities (if any); charges and assessments paid by Landlord pursuant to any reciprocal easement or comparable document affecting the Shopping Center; a reasonable portion of the management fees which Landlord pays for the management of the Shopping Center; an allowance for Landlord's overhead costs, in the amount of fifteen percent (15%) of the total of all other Common Area costs; and the cost of any insurance for which Landlord is not reimbursed pursuant to Section 6.2. In addition, although the roof(s), sewer and water lines servicing the Shopping Center, fire-protection systems and devices, if any (such as sprinkler systems, if any), and exterior surfaces of the building(s) in the Shopping Center are not literally part of the Common Area, Landlord and Tenant agree that all costs incurred by Landlord for all sewer and water lines and other equipment (including maintenance, repair and replacement of same), for fire-protection equipment and devices (including maintenance, repair and replacement of same), for exterior painting and for roof maintenance, repair and replacement shall be included as Common Area maintenance expenses pursuant to this Section 7.4, to the extent not specifically allocated to Tenant under this Lease nor to another tenant pursuant to its lease. The charges contemplated in this Section 7.4, however, shall not include any expenses paid or reimbursed by Tenant pursuant to Article VI of this Lease. With regard to capital expenditures, (i) the original investment in capital improvements, i.e., upon the initial construction of the Shopping Center, shall not be included, and (ii) capital improvements made either before or during the Lease Term shall be included to the extent of a reasonable depreciation or amortization (including interest accruals commensurate with Landlord's interest costs) beginning with the date on which payment for the improvement was made and continuing through the reasonable useful life of the improvement. The proportionate share to be paid by Tenant of the cost of operation and maintenance of the Common Area shall be computed on the ratio that the total floor area of the Demised Premises bears to the total floor area of all buildings within the Shopping Center which are being leased to tenants or are being marketed for lease to prospective tenants (excluding however, to the extent applicable to all or any portion of the Common Area maintenance costs, areas owned or maintained by a party or parties other than Landlord); provided that in no event shall such share be less than the amount specified in Section 1.1(o) above. If this Lease should commence on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, Tenant's reimbursement obligations under this Section 7.4 shall be prorated based upon Landlord's expenses for the entire calendar year. Tenant shall make such payments to Landlord on demand at intervals not more frequently than monthly. Landlord may at its option make monthly or other periodic charges based upon the estimated annual cost of operation and maintenance of the Common Area, payable in advance at the same time each month as Minimum Guaranteed Rental is payable, but subject to adjustment after the end of the year on the basis of the actual cost for such year. In addition, if either before or during the Lease Term Landlord in its discretion elects to amortize a non-capital expense instead of charging it in full during the year in which it is incurred by Landlord, then such expense shall be amortized (with interest accruals commensurate with Landlord's interest costs) beginning with the date on which payment for the expense was made and continuing through the amortization period. With regard to the charges contemplated in this Section 7.4, Tenant further agrees that unless within thirty (30) days after Landlord's delivery to Tenant of an assessment and/or statement related to any such charges, Tenant delivers to Landlord a written assertion of one or more specific errors or a written request for further detail regarding a specific charge, then the assessment and/or statement shall be deemed correct in all respects. In addition, Tenant further agrees that if it so asserts error or requests further information within such thirty (30) day period, Tenant will nevertheless pay all amounts charged by Landlord pending a resolution thereof.

## ARTICLE VIII

### INTENTIONALLY DELETED

8.1 Intentionally Deleted.

## ARTICLE IX

### PROVISIONS APPLICABLE TO ALL RENTALS

9.1 For purposes of this Lease, the term "Rental" or "Rentals" shall be deemed to include Minimum Guaranteed Rentals (Sections 1.1(m) and 4.1 of this Lease), Tenant's required payments for real estate charges and insurance expenses (Article VI of this Lease), Tenant's and Common Area charges (Section 7.4 of this Lease). Landlord and Tenant agree that each provision of this Lease for determining Rentals adequately and sufficiently describes to Tenant the method by which such Rental is to be computed.

9.2 Rentals shall accrue from the Commencement Date, and shall be payable to Landlord at Landlord's address specified in Section 1.1(b) of this Lease, or at any other address which Landlord may subsequently designate in a written notice to Tenant.

9.3 The parties agree that each monthly installment of Minimum Guaranteed Rental and Tenant's monthly payments for real estate charges and insurance expenses, and Common Area charges are payable on or before the first (1<sup>st</sup>) day of each calendar month. Any such payment of Rental which is not received on or before the first (1<sup>st</sup>) day of a particular calendar month shall be deemed past-due. The parties further agree that each annual adjustment payment from Tenant (such as the payments prescribed in Sections 6.5 and 7.4) is payable within thirty (30) days after Landlord's written statement requesting such payment from Tenant; and any such prescribed payment which is not so received shall be deemed past-due. All Rentals shall be due and payable without offset or deduction of any nature. In the event any Rental which is payable pursuant to this Lease is not actually received by Landlord within ten (10) days after its due date for any reason whatsoever (including, but not limited to, a failure in the United States mails), or if any Rental payment is by check which is returned for insufficient funds, then in addition to the past due amount, Tenant shall pay to Landlord one of the following (the choice to be at the sole option of Landlord unless one of the choices is improper under applicable law, in which event the other alternative will automatically be deemed to have been selected): (a) a late charge in an amount equal to ten percent (10%) of the Rental then due, in order to compensate Landlord for its administrative and other overhead expenses; or (b) interest on the Rental then due at the maximum contractual rate which could legally be charged in the event of a loan of such Rental to Tenant (but in no event to exceed 18% per annum), such interest to accrue continuously on any unpaid balance due to Landlord by Tenant during the period commencing with the Rental due date and terminating with the date on which Tenant makes full payment of all amounts owing to Landlord at the time of said payment. Any such late charge or interest payment shall be payable as additional Rental under this Lease and shall be payable immediately on demand. If any Rental is paid by check which is returned for insufficient funds (or, if Tenant has authorized Landlord to draft Tenant's bank account for the Rental and there are insufficient funds available to pay such draft), Tenant shall immediately make the required payment to Landlord in the form of a cashier's check or money order; moreover, Tenant shall also pay Landlord the amounts specified above in this Section 9.3, plus an additional fee of \$100.00 to compensate Landlord for its expense and effort in connection with the dishonored check or bank draft.

9.4 If Tenant fails in two (2) consecutive months to make any required payment of Rental(s) within ten (10) days after such payment is due, then Landlord, in order to reduce its administrative costs may require, by giving written notice to Tenant (and in addition to any late charge or interest accruing pursuant to Section 9.3 above, as well as any other rights and remedies accruing pursuant to Article XXIII or Article XXIV below, or any other provision of this Lease or at law), that Rentals are to be paid quarterly in advance instead of monthly and that all future Rental payments are to be made on or before the due date by cashier's check or money order, and that the delivery of Tenant's personal or corporate check will no longer constitute a payment of Rental as provided in this Lease. Any acceptance of a monthly Rental payment or of a personal or corporate check thereafter by Landlord shall not be construed as a subsequent waiver of said rights.

## ARTICLE X

### USE AND CARE OF DEMISED PREMISES

10.1 Tenant shall commence business operations in the Demised Premises on or immediately after the Commencement Date and shall operate its business continuously in an efficient, high-class and reputable manner so as to produce the maximum amount of sales from the Demised Premises. Tenant shall not at any time leave the Demised Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Demised Premises the type of business for which the Demised Premises is leased. Tenant shall, except during reasonable periods for repairing, cleaning and decorating, keep the Demised Premises open to the public for business with adequate personnel in attendance on all days (including, if designated by Landlord, Sundays and holidays) and during all hours (including, if designated by Landlord, evenings) established by Landlord from time to time as business days and store hours for the Shopping Center (including, if designated by Landlord, extended days and hours during the shopping season prior to Christmas and whenever else the majority of the retail tenants in the Shopping Center open for business during extended days or hours, or both), except to the extent Tenant may be prohibited from being open for business by applicable law, ordinance or governmental regulation.

10.2 The Demised Premises may be used only for the purpose or purposes specified in Section 1.1(r) above, and only under the trade name specified in Section 1.1(e) above (or, if Section 1.1(e) is not filled in, any trade name approved in advance by Landlord in writing), and for no other purpose and under no other trade name, it being understood and acknowledged that Landlord has entered into this Lease in large part because it believes that such use and trade

name will benefit the Shopping Center as a whole. Landlord understands and agrees that the use specified in Section 1.1(r) above may, at Tenant's option, include one or more incidental uses (i.e., constituting only a small portion of Tenant's premises area and a negligible percentage of Tenant's gross sales) which in the marketplace in the vicinity of the Shopping Center are regularly and customarily deemed to be essential to Tenant's specified use; however, Tenant understands and agrees that no such incidental use shall be permitted unless it complies with all applicable laws as well as with all of the following additional requirements: (i) such incidental use must be consistent with a first-class shopping center; (ii) such incidental use must in all respects be in compliance with the terms of this Lease; and (iii) such incidental use must not violate any so-called "exclusive" or other use restriction then applicable to the Shopping Center.

10.3 Tenant shall not, without Landlord's prior written consent, keep anything within the Demised Premises or use the Demised Premises for any purpose which either (a) creates a risk of toxic or otherwise hazardous substances or (b) invalidates any insurance policy or increases the insurance premium cost for any insurance policy carried on the Demised Premises or other parts of the Shopping Center. Tenant's operations in the Demised Premises—as well as all property, substances and other materials kept, stored, allowed to be brought within, or disposed from the Demised Premises—shall comply in all respects with all federal, state, and municipal laws, ordinances, codes and regulations relating to the protection of the environment and natural resources, now existing or hereafter enacted (collectively, the "Environmental Laws"), including without limitation the following: (i) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (often referred to as "CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, as same may have been further amended or may be further amended from time to time, (ii) the federal Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984, as same may have been further amended or may be further amended from time to time, (iii) the federal Water Pollution Control Act of 1972 (often referred to as the "Clean Water Act"), as same may have been amended or may be amended from time to time, (iv) the federal Spill Compensation and Control Act of 1976, as same may have been amended or may be amended from time to time, and (v) any and all other federal, state, county, and municipal laws, ordinances, codes and regulations which relate in any way to the matters regulated by CERCLA and/or any other above-mentioned federal legislation. All property kept, stored or allowed to be brought within the Demised Premises shall be at Tenant's sole risk. Tenant shall immediately notify Landlord in the event Tenant becomes aware of any actual or potential environmental hazard or any actual or alleged violation of one or more Environmental Laws. Tenant shall indemnify Landlord and hold Landlord harmless from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action (including without limitation all attorneys' fees and expenses) arising out of or relating to, directly or indirectly, any violation or alleged violation by Tenant or any party accessing the Demised Premises by or through Tenant of any one or more of the Environmental Laws, except for any violations of Environmental Laws which may be caused solely by Landlord. This indemnification shall survive the expiration or termination of this Lease.

10.4 Tenant shall not conduct within the Demised Premises any fire, auction, bankruptcy, "going-out-of-business," "lost-our-lease," "moving" or similar sale; nor shall Tenant operate within the Demised Premises a "wholesale" or "factory outlet" store, a cooperative store, a "second-hand" store, a "surplus" store or a store commonly referred to as a "discount house". The purpose for this restriction is the maintenance of a first-class shopping center image, not price regulation; therefore, Landlord agrees that items may be sold, and on occasion be advertised as being sold, at discounted prices as long as Tenant complies with all applicable laws and maintains an image consistent with a first-class shopping center.

10.5 Tenant shall not permit any objectionable noises or odors to emanate from the Demised Premises (or from any facility or equipment servicing the Demised Premises, such as grease traps for restaurant operations); nor place or permit any radio, television, loudspeaker or amplifier on the roof or outside the Demised Premises or where the same can be seen or heard from outside the building; nor place any antenna, equipment, awning or other projection on the exterior of the Demised Premises; nor take any other action which would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective premises; nor permit any unlawful or immoral practice to be carried on or committed on the Demised Premises; nor do anything which would tend to injure the reputation of the Shopping Center.

10.6 Tenant shall take good care of the Demised Premises; shall not commit or suffer waste in or about the Demised Premises, nor to any facility or equipment for which Tenant is responsible pursuant to Section 11.2 of this Lease; shall not cause damage to any other portion of the building in which the Demised Premises is situated (and, if any such damage should occur, shall immediately repair same or, if Landlord so elects, reimburse Landlord for Landlord's cost in repairing same); shall keep the Demised Premises free of insects, rodents, vermin and other pests (including regular exterminator treatments at least quarter-annually, and additional spot treatments if and as needed, with copies of all exterminator paid invoices and reports to be delivered to Landlord promptly after receipt by Tenant), and shall keep the Demised Premises secure, i.e., Tenant hereby acknowledging that security is Tenant's responsibility and that Tenant is not relying on any representation or warranty by Landlord in this regard. Tenant shall not overload the floors in the Demised Premises, nor deface or injure the Demised Premises. Tenant shall keep the Demised Premises and sidewalks, service-ways and loading areas adjacent to the Demised Premises (and, for restaurant operations, the grease traps servicing the Demised Premises) neat, clean and free from dirt, rubbish, ice or snow at all times. If and to the extent that Tenant is engaged in restaurant operations (with this Section 10.6, as well as other references to restaurant operations elsewhere in the printed text of this Lease, not being deemed to permit any restaurant operations unless such operations are included in the Permitted Use specified in Section 1.1 above), Tenant must maintain all kitchen exhaust systems and grease traps in a clean, working condition and must provide to Landlord, when requested by Landlord, Tenant's records and manifests regarding the maintenance of same. Tenant shall store all trash and garbage within the Demised Premises, or in a trash dumpster or similar container approved by Landlord as to type, location and screening; and if Landlord is not arranging for trash pick-up as part of the services for which Tenant pays pursuant to Section 7.4 above, then Tenant shall arrange for the regular pick-up of such trash and garbage at Tenant's expense. Receiving and delivery of goods and merchandise and removal of garbage and trash shall be made only in the manner and areas prescribed by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Shopping Center.

10.7 Tenant shall notify Landlord of all leaks and water damage which may occur at the Demised Premises, even if Tenant repairs the problem on its own. Tenant understands that after a leak or water damage has occurred, moisture may remain that can cause fungus or mold. Tenant shall indemnify Landlord and hold Landlord harmless from



and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action (including without limitation all attorneys' fees and expenses) arising out of or relating to, directly or indirectly, any violation by Tenant of this Section 10.7; and Tenant acknowledges and agrees that this indemnification shall survive the expiration or termination of this Lease.

10.8 Tenant shall include the address and identity of its business activities in the Demised Premises in all advertisements made by Tenant in which the address and identity of any similar local business activity of Tenant is mentioned.

10.9 Tenant shall procure at its sole expense any permits and licenses required for the transaction of business in the Demised Premises and otherwise comply with all applicable laws, ordinances and governmental regulations. In addition, if the nature of Tenant's business makes it advisable for Tenant to take any extra precautions (for example, in the case of a business which is affected by so-called "dramshop" laws, Tenant's compliance with all dramshop educational programs and procedures), Tenant shall take all such extra precautions. Without limiting the generality of the foregoing, and cumulative with Tenant's obligations pursuant to other provisions of this Lease (such as, without limitation, Section 10.3 and Section 29.1), Tenant further agrees as follows:

(a) Tenant shall not commence business operations in the Demised Premises without having first obtained a Certificate of Occupancy from the appropriate governmental authority;

(b) Tenant shall be responsible for compliance with the federal Americans with Disabilities Act of 1990 ("ADA"), as the same may have been amended or may be amended from time to time, and all federal, state, county and municipal laws and regulations which relate in any way to the matters regulated by the ADA (collectively, the "ADA-based Laws"), including, without limitation, the configuration of the Demised Premises (the interior as well as all public and/or employee door entrances) and Tenant's business operations at the Demised Premises; moreover, if and to the extent that because of Tenant's construction and/or activities within the Demised Premises, one or more of the ADA-based Laws require Landlord to alter and/or improve the Common Area, then Tenant shall reimburse Landlord for the cost of such alterations and improvements; and

(c) Tenant shall be responsible for compliance with all federal, state, county and municipal laws and regulations relating to health and safety, including without limitation the federal Occupational Safety and Health Act of 1970 ("OSHA"), as the same may have been amended or may be amended from time to time, and any and all other federal, state, county, and municipal laws, ordinances, codes and regulations which relate in any way to the matters regulated by OSHA.

At Landlord's request, Tenant shall deliver to Landlord copies of all necessary permits and licenses and proof of Tenant's compliance with all such laws, ordinances, governmental regulations and extra precautions.

10.10 If any personal property, equipment, furniture, fixtures or furnishings have been left within the Demised Premises by a previous tenant, Landlord makes no warranty as to the ownership or condition of such items, and Landlord shall have no liability or responsibility arising from Tenant's use of such items or Tenant's dispossession of such items by the actual owner or lienholder.

## ARTICLE XI

### MAINTENANCE AND REPAIR OF DEMISED PREMISES

11.1 Landlord shall keep the foundation, the structural elements of all exterior walls (except plate glass; windows, doors and other exterior openings; window and door frames, molding, closure devices, locks and hardware; special store fronts; lighting, heating, air-conditioning, plumbing and other electrical, mechanical and electromotive installation equipment and fixtures; signs, placards, decorations or other advertising media of any type; and interior painting or other treatment of interior walls) and roof (subject to Section 7.4 above) of the Demised Premises in good repair. Landlord, however, shall not be required to make any repairs occasioned by the act or negligence of Tenant, its agents, employees, subtenants, licensees and concessionaires (including, but not limited to, roof leaks resulting from Tenant's installation, replacement or maintenance of air-conditioning equipment or any other roof penetration or placement); and the provisions of the previous sentence are expressly recognized to be subject to the provisions of Article XVIII and Article XIX of this Lease. In the event that the Demised Premises should become in need of repairs required to be made by Landlord hereunder, Tenant shall give immediate written notice thereof to Landlord, and Landlord shall have a reasonable time after receipt by Landlord of such written notice in which to make such repairs.

11.2 Tenant shall keep the Demised Premises in good, clean and habitable condition and shall at its sole cost and expense make all needed repairs and replacements, including replacement of cracked or broken glass, except for repairs and replacements required to be made by Landlord under the provisions of Section 11.1, Article XVIII and Article XIX. Without limiting the coverage of the previous sentence, it is understood that Tenant's responsibilities therein include all items which are expressly excluded from Landlord's responsibility in Section 11.1 above, as well as the maintenance, repair and replacement of all of the following facilities and equipment, to the extent located within the Demised Premises or on the exterior of the building and servicing the Demised Premises: lighting, heating, air-conditioning, fire-protection sprinkler systems, plumbing, kitchen exhaust systems, grease traps and roof grease protection systems (e.g., for restaurant operations), and other electrical, mechanical and electromotive installation, equipment and fixtures. In addition, Tenant's responsibilities shall also include all repairs in ducts, conduits, pipes and wiring, and any sewer stoppage located in, under and above the Demised Premises, regardless of when or how the defect or other cause for repair or replacement occurred or became apparent. Tenant shall give Landlord prompt written notice of any need for repair or replacement as contemplated in this Section 11.2, especially if such repair or replacement is necessary for maintaining health and safety (such as the fire-protection sprinkler system). If any repairs required to be made by Tenant hereunder are not made within ten (10) days after written notice delivered to Tenant by Landlord (or less than ten [10] days, in the case of a situation which by its nature requires an immediate response or a response within less than ten [10] days), Landlord may at its option make such repairs without liability to Tenant for any loss or damage which may result to its

stock or business by reason of such repairs; and Tenant shall pay to Landlord upon demand, as additional Rental hereunder, the cost of such repairs plus one of the following (the choice to be at the sole option of Landlord unless one of the choices is improper under applicable law, in which event the other alternative will automatically be deemed to have been selected): (a) a one-time charge in an amount equal to fifteen percent (15%) of the cost of repairs, in order to compensate Landlord for its administrative and other overhead expenses; or (b) interest at the maximum contractual rate which could legally be charged in the event of a loan of such payment to Tenant (but in no event to exceed 18% per annum), such interest to accrue continuously from the date of payment by Landlord until repayment by Tenant. At the expiration of this Lease, Tenant shall surrender the Demised Premises broom-clean and in good condition, excepting reasonable wear and tear and losses required to be restored by Landlord in Section 11.1, Article XVIII and Article XIX of this Lease; and without limiting the generality of the foregoing, Tenant agrees that it shall repair all damages which may be caused to the Demised Premises by the removal of Tenant's property; moreover, Tenant shall remove all of Tenant's signage (including, to the extent applicable to Tenant, all fascia, store front, pylon and directory signage) and repair all damage caused by the installation, operation or removal of same.

11.3 Tenant shall be responsible for performing adequate preventive maintenance on the heating, ventilation and air-conditioning equipment ("HVAC") for the Demised Premises; moreover, for any restaurant operation, Tenant's responsibility pursuant to this Section 11.3 shall also include kitchen exhaust systems ("Restaurant Exhaust System"). Without limiting the generality of the immediately preceding sentence: (a) Tenant shall replace all filters in the HVAC system at least once every six (6) weeks; (b) Tenant shall have the entire heating, ventilation and air-conditioning equipment inspected by a qualified or licensed HVAC contractor at least once a year; and (c) for any restaurant operation, Tenant shall have the Restaurant Exhaust System cleaned and inspected by a qualified specialist at least quarter-annually, with the invoice or report of same (the "RES Report") to be delivered to Landlord at least quarter-annually. The inspection specified in item (b) immediately above shall be completed between March 1st and May 31st of each year, and Tenant shall provide Landlord a copy of the invoice or report (the "HVAC Inspection Report") from the inspecting company, giving evidence that the system has been inspected. If by June 15th of any calendar year during the Lease Term Landlord has not received a copy of the HVAC Inspection Report from Tenant, or if by the 15th day after any calendar quarter Landlord has not received a copy of the RES Report from any restaurant operation, and if such failure continues for more than fifteen (15) days after Landlord's written notice to Tenant advising Tenant of its failure in this regard, then Landlord shall have the right to have the applicable equipment inspected by a company to be selected by Landlord. Landlord shall bill Tenant for the cost of this inspection, which shall be paid within ten (10) days of receipt of Landlord's invoice. It is expressly understood and agreed by Tenant that in satisfying Tenant's responsibilities pursuant to this Section 11.3, Tenant must abide by all restrictions in this Lease regarding the roof of the building in which the Demised Premises is located, including but not limited to Section 7.2(d) of this Lease.

## ARTICLE XII

### ALTERATIONS

12.1 Tenant shall not make any alterations, additions or improvements to the Demised Premises without the prior written consent of Landlord, except for the installation of unattached, movable trade fixtures which may be installed without drilling, cutting, or otherwise defacing the Demised Premises. Whenever Tenant proposes to do any construction work within the Demised Premises, Tenant shall first furnish to Landlord plans and specifications in such detail as Landlord may request covering all such work, together with an identification of the contractor(s) whom Tenant plans to employ for the work. In no event shall any construction work be commenced within the Demised Premises without Landlord's written confirmation that it has no objection to Tenant's plans and specifications and contractor(s). Notwithstanding the rights accorded to Landlord pursuant to the immediately preceding sentences, Tenant acknowledges and agrees that Landlord's permission for Tenant to commence construction shall in no way constitute any representation or warranty by Landlord as to the adequacy or sufficiency of such plans and specifications, the improvements to which they relate or the capabilities of such contractors; instead, any such permission shall merely be the consent of Landlord as required hereunder. Without limiting the generality of the preceding sentences in this Section 12.1, Tenant acknowledges and agrees that any installation or replacement of Tenant's heating or air-conditioning equipment must be subject to such preceding sentences and must be effected strictly in accordance with Landlord's instructions regarding same.

**NOTWITHSTANDING ANY PROVISION CONTAINED IN THIS LEASE TO THE CONTRARY, LANDLORD UNDERSTANDS AS PART OF TENANT'S WORK TENANT DESIRES TO ALTER THE FAÇADE OF THE BUILDING WHERE THE DEMISED PREMISES ARE LOCATED. IN THAT REGARD, LANDLORD HEREBY AGREES THAT LANDLORD WILL NOT UNREASONABLY WITHHOLD OR DELAY LANDLORD'S CONSENT TO THE CHANGES TO THE FAÇADE AS PART OF ITS APPROVAL OF TENANT'S PLANS.**

12.2 All construction work done by Tenant within the Demised Premises shall be performed in a good and workmanlike manner, lien-free and in compliance with all governmental requirements, and in such manner as to cause a minimum of interference with other construction in progress and with the transaction of business in the Shopping Center. In this regard, Tenant shall secure all permits or certificates required related to any work performed by Tenant, including, without limitation, those from the Texas Department of Licensing and Regulation with respect to the compliance of Tenant's work with the Americans with Disabilities Act or any similar type of law, whether state, local or federal, and Tenant shall pay any fee, penalty, or cost incurred by Landlord in connection with Tenant's failure to obtain such permits or certificates. Without limiting the generality of the foregoing, Landlord shall have the right to require that such work be performed during hours when the Shopping Center is not open for business and in accordance with rules and regulations which Landlord may from time to time prescribe. Tenant agrees to indemnify Landlord and hold Landlord harmless against any loss, liability or damage resulting from such work, and Tenant shall, if requested by Landlord, furnish a bond or other security satisfactory to Landlord against any such loss, liability or damage.

12.3 In the event Tenant uses a general contractor to perform construction work within the Demised Premises, Tenant shall, prior to the commencement of such work, require said general contractor to execute and record a Bond to Pay Claims (the "Bond") in accordance with Chapter 53, Subchapter I of the Texas Property Code, as such may be amended, superseded or replaced from time to time, and shall deliver a copy of the recorded Bond to Landlord. The delivery of the Bond within the time period set forth above shall be a condition precedent to Tenant's ability to enter on and begin its construction work at the Demised Premises and if applicable, to any reimbursement from Landlord for its construction work.

12.4 All alterations, additions, improvements and fixtures (including, without limitation, all floor coverings and all heating and air-conditioning equipment but excluding Tenant's unattached, readily movable furniture and office equipment) which may be made or installed by either party upon the Demised Premises shall remain upon and be surrendered with the Demised Premises and become the property of Landlord at the termination of this Lease, unless Landlord requests their removal, in which event Tenant shall remove the same and restore the Demised Premises to its original condition at Tenant's expense.

12.5 In the event that Landlord elects to remodel all or any portion of the Shopping Center, Tenant will cooperate with such remodeling, including Tenant's tolerating temporary inconveniences (and even the temporary removal of Tenant's signs in order to facilitate such remodeling, as it may relate to the exterior of the Demised Premises).

### **ARTICLE XIII**

#### **LANDLORD'S RIGHT OF ACCESS**

13.1 Landlord shall have the right to enter upon the Demised Premises at any time for the purpose of inspecting the same, or of making repairs to the Demised Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the Demised Premises to prospective purchasers, tenants or lenders. This Section 13.1, however, shall not be deemed to impose any obligation upon Landlord to enter the Demised Premises, except if and to the extent that any such obligation may be specifically required pursuant to another express provision of this Lease.

13.2 Tenant will permit Landlord to place and maintain "For Rent" or "For Lease" signs on the Demised Premises during the last one hundred eighty (180) days of the Lease Term, it being understood that such signs shall in no way affect Tenant's obligations pursuant to Section 10.4, Section 14.1 or any other provision of this Lease.

13.3 Use of the roof above the Demised Premises is reserved to Landlord; however, Landlord agrees that it will not use the roof above the Demised Premises for signage or other advertising displays without Tenant's consent.

### **ARTICLE XIV**

#### **SIGNS; STORE FRONTS**

14.1 Tenant shall not, without Landlord's prior written consent, (a) make any changes to the store front, (b) install any exterior lighting, decorations, paintings, awnings, canopies or the like, (c) erect or install any signs, window or door lettering, placards, decorations, banners, portable signs or advertising media of any type which can be viewed from the exterior of the Demised Premises, excepting only dignified displays of customary type, for its display windows, or (d) install any bars, drapes, blinds, shades or other window or door covering or treatment, or tint any windows or plate glass. All signs, lettering, placards, decorations and advertising media (including, without limitation, the fascia sign required by Section 14.2 below) shall conform in all respects to the sign criteria established by Landlord for the Shopping Center from time to time in the exercise of its sole discretion, and shall be subject to Landlord's requirements as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs shall be kept in good condition and in proper operating order at all times.

14.2 Subject to the restrictions of Section 14.1 above, Tenant agrees to install a first-class fascia sign on the front of the Demised Premises, on or prior to the Commencement Date, and to maintain such sign in a good, attractive condition during the entire Lease Term. At the conclusion of the Lease Term, unless otherwise directed by Landlord, Tenant will remove its sign, will close off ("cap") the electrical outlet(s) servicing such sign, will repair any damage to the building which may have resulted from the installation or removal of the sign and will seal, clean or paint the front of the building in the manner directed by Landlord, in and around the area where the sign had been located. In addition, in the event that Tenant has received permission from Landlord to install a panel on a pylon sign within the Shopping Center (with this Section 14.2 not to be deemed to grant, nor imply the grant, of any right for Tenant to install a pylon sign panel), then at the conclusion of the Lease Term, unless otherwise directed by Landlord, Tenant will remove its panel and replace it with a blank white or colored panel as directed by Landlord.

**TENANT ACKNOWLEDGES THAT TENANT HAS RECEIVED A COPY OF THE RECIPROCAL EASEMENT AND USE AGREEMENT RECORDED AS VOLUME 84040, PAGE 2358 AS AMENDED BY INSTRUMENTS RECORDED AS VOLUME 86123, PAGE 4868 AND INSTRUMENT 201100040620, DEED RECORDS, DALLAS COUNTY, TEXAS (COLLECTIVELY THE "REA"). LANDLORD HAS THE RIGHT TO THE USE OF THE LOWER PANEL ON THE I-20 MONUMENT SIGN (THE "I-20 PANEL"), BUT CURRENTLY ANOTHER OCCUPANT HAS PLACED ITS SIGNAGE ON THE I-20 PANEL WITHOUT PERMISSION. LANDLORD HEREBY AGREES TO USE DILIGENT EFFORTS TO CAUSE THE OTHER OCCUPANT OF THE SHOPPING CENTER TO REMOVAL ITS SIGN PANEL FROM THE I-20 PANEL AND UPON REMOVAL HEREBY GRANTS TO TENANT THE RIGHT TO THE USE OF THE I-20 PANEL FOR THE TERM OF THE LEASE. IF LANDLORD IS UNABLE TO DELIVER TO TENANT THE RIGHT TO USE THE I-20 PANEL WITHIN SIX (6) MONTHS OF THE COMMENCEMENT DATE, THE MINIMUM GUARANTEED RENTAL SHALL BE REDUCED BY \$2,000.00 PER MONTH UNTIL THE DATE THAT THE LANDLORD DELIVERS THE USE OF THE I-20 PANEL TO TENANT. IF LANDLORD HAS NOT DELIVERED TO THE TENANT THE RIGHT TO PLACE ITS SIGNAGE ON THE I-20 PANEL WITHIN TWELVE (12) MONTHS OF THE COMMENCEMENT DATE, TENANT SHALL HAVE THE RIGHT TO TERMINATE THIS LEASE ON THIRTY (30) DAYS ADVANCE WRITTEN NOTICE TO LANDLORD.**

14.3 Tenant shall maintain all display windows in a neat, attractive condition, and shall keep all display windows, exterior electric signs and exterior lighting under any canopy in front of the Demised Premises lit from dusk until 11:00 p.m., every day, including Sundays and holidays (or any other hours established by Landlord for the Shopping Center).

14.4 For any violation of this Article XIV which continues after Landlord has given Tenant at least ten (10) days' notice to cure same, Landlord shall have the right to assess Tenant with a \$500.00 monthly charge in order to compensate Landlord for its administrative and other overhead expenses in connection with this Article XIV; and Tenant

hereby acknowledges and agrees that any such charge shall be payable as additional Rental under this Lease and shall be payable immediately on demand. In addition, Tenant further acknowledges and agrees that the charge provided in this Section 14.4 is cumulative with, and does not supersede or reduce in any way, Landlord's rights as specified in Article XXIII of this Lease.

## ARTICLE XV

### UTILITIES

15.1 Landlord agrees to cause to be provided to the Shopping Center the necessary mains, conduits and other facilities necessary to supply water, gas (if deemed appropriate by Landlord), electricity, telephone service and sewerage service to the building in which the Demised Premises is located.

15.2 Tenant shall promptly pay all charges for electricity, water, gas (but only if provided by Landlord), telephone service, sewerage service and other utilities furnished to the Demised Premises. Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase the use of such services as are tendered by Landlord, and shall pay on demand as additional Rental under this Lease the rates established therefor by Landlord which shall not exceed the rates which would be charged for the same services furnished directly by the local public utility companies. Landlord may at any time discontinue furnishing any such service without obligation to Tenant other than to connect the Demised Premises to the public utility, if any, furnishing such service. In addition, if certain utilities are furnished to the Demised Premises in common with other premises, then Landlord shall make a good faith estimate as to the amount used by each tenant (including Tenant) and bill each tenant accordingly; however, at any time, Landlord may elect to install one or more sub-meters for one or more premises (which, if installed at the Demised Premises, shall be at Tenant's expense), in which event Landlord will bill each tenant whose premises is sub-metered for the amount used according to that tenant's sub-meter. Any amounts which Landlord bills to Tenant under the terms of this Section 15.2 will be considered additional Rental and will be due within ten (10) days after the date upon which Landlord delivers such bill to Tenant.

15.3 Landlord assures Tenant that upon Tenant's request, Landlord will advise Tenant as to which utility company currently provides electricity service for the Demised Premises (the "Current Electric Service Provider"). Tenant also acknowledges and agrees that to the maximum degree permitted by applicable law, Landlord shall have the right at any time and from time to time during the Lease Term either to contract for service from a different company or companies providing electricity service (each such company shall hereinafter be referred to as an "Alternate Electric Service Provider") or continue to contract for service from the Current Electric Service Provider. Tenant at all times shall cooperate with Landlord, the Current Electric Service Provider, and any Alternate Electric Service Provider designated by Landlord; moreover, Tenant shall, as reasonably necessary, allow Landlord, the Current Electric Service Provider, and any Alternate Electric Service Provider reasonable access to the electric lines, feeders, risers, wiring, and any other machinery within or servicing the Demised Premises.

15.4 Landlord shall not be liable for any interruption whatsoever in utility services not furnished by Landlord, nor for interruptions in utility services furnished by Landlord which are due to fire, accident, strike, acts of God or other causes beyond the control of Landlord or which are necessary or useful in connection with making any alterations, repairs or improvements. None of such interruptions shall constitute an actual or constructive eviction, in whole or in part, nor shall any such interruption entitle Tenant to any abatement or diminution of Rentals. Without limiting the generality of the foregoing, Landlord shall in no way be liable or responsible for any loss, damage, or expense that Tenant may sustain or incur by reason of any failure, interference, disruption, or defect in the supply or character of the electric energy furnished to the Demised Premises, or if the quantity or character of the electric energy supplied by the Current Electric Service Provider or any Alternate Electric Service Provider is no longer available or suitable for Tenant's requirement; and no such failure, defect, unavailability or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rentals.

## ARTICLE XVI

### INSURANCE COVERAGES

16.1 Landlord shall procure and maintain throughout the term of this Lease a policy or policies of insurance, at its sole cost and expense (but subject to Article VI above), causing the Shopping Center to be insured under special form of property coverage (sometimes referred to as "all-risk" coverage) and commercial general liability insurance (plus, as to either coverage, whatever endorsements or special coverages Landlord, in its sole discretion, may consider appropriate), to the extent necessary to comply with Landlord's obligations pursuant to other provisions of this Lease, and such other insurance (if any) that Landlord deems appropriate for the Shopping Center.

16.2 Tenant, at its sole cost and expense, shall procure and maintain throughout the Lease Term the following policies of insurance:

(a) property insurance causing Tenant's leasehold improvements and business personal property (sometimes also referred to as "fixtures and contents") in the Demised Premises (including the HVAC system) to be insured under the broadest available special form of property coverage, sometimes referred to as "all-risk" coverage, with provisions and/or endorsements assuring both mold coverage and terrorism coverage, such insurance coverage (i) to be in the full amount of the replacement cost of all insured property, (ii) to include coverage for the loss of business income, in an amount not less than 75% of Tenant's estimated gross annual income at the Demised Premises, and (iii) to contain no deductible or self-insured retention in excess of \$10,000.00; and

(b) commercial general liability insurance insuring both Landlord and Tenant against all claims, demands or actions for bodily injury, property damage, personal and advertising injury, and medical payments arising out of or in connection with Tenant's use or occupancy of the Demised Premises, or by the condition of the Demised

Premises, including environmental coverage and/or dramshop (i.e., alcohol sales) coverage if deemed appropriate by Landlord, with a limit of not less than \$1,000,000.00 per occurrence (and no offset for occurrences on property other than the Demised Premises), and with coverage for contractual liability; and

(c) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the State of Texas, together with employer's liability insurance in an amount not less than \$1,000,000.00.

All insurance procured and maintained by Tenant shall be written by insurance companies satisfactory to Landlord which are licensed to do business in the state in which the Shopping Center is located with a general policyholder's rating of not less than B+ and a financial rating of not less than Class VIII, as rated in the most current edition of Best's Key Rating Guide. With the exception of the insurance prescribed in subsection (c) above, Landlord and Landlord's property manager shall be additional insureds under all liability insurance maintained by Tenant, and Landlord shall be named as a loss payee under all property insurance maintained by Tenant; moreover, Tenant shall obtain a written obligation on the part of each insurance company to notify Landlord prior to cancellation of such insurance. Duly executed certificates of insurance on appropriate ACORD forms (for property insurance, the ACORD Form 28; for liability insurance, the ACORD Form 25), shall be promptly delivered to Landlord, and renewals thereof as required shall be delivered to Landlord at least thirty (30) days prior to the expiration of the respective policy terms. The ACORD Form 25 shall contain the following provision: *"The General Liability policy includes a blanket automatic additional insured endorsement or policy terms that provide additional insured status to the certificate holder only where there is a written contract between the named insured and the certificate holder that requires such status subject to policy terms and conditions."* If Tenant should fail to comply with the foregoing requirements relating to insurance, Landlord may obtain such insurance and Tenant shall pay to Landlord on demand as additional Rental hereunder the premium cost thereof plus interest at the maximum contractual rate (but in no event to exceed 18% per annum) from the date of payment by Landlord until repaid by Tenant. Tenant and Landlord hereby acknowledge and agree that during the term of this Lease, in the event of any change in the available ACORD forms or legal requirements, Landlord may change the requirements with respect to the ACORD forms used to show evidence of insurance, as well as the wording of those forms, by written notice from Landlord to Tenant. In addition, Landlord may delegate monitoring Tenant's compliance with the insurance provisions of this Lease to a third-party monitoring service and Tenant shall reasonably cooperate with such third-party monitoring service regarding Tenant's compliance hereunder.

16.3 For any violation of this Article XVI which continues after Landlord has given Tenant at least ten (10) days' notice to cure same, Landlord shall have the right to assess Tenant with a \$500.00 monthly charge in order to compensate Landlord for its administrative and other overhead expenses in connection with this Article XVI; and Tenant hereby acknowledges and agrees that any such charge shall be payable as additional Rental under this Lease and shall be payable immediately on demand. In addition, Tenant further acknowledges and agrees that the charge provided in this Section 16.3 is cumulative with, and does not supersede or reduce in any way, Landlord's rights as specified in Article XXIII of this Lease.

## ARTICLE XVII

### WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION

17.1 Landlord and Landlord's agents and employees shall not be liable to Tenant or to Tenant's employees, agents or visitors, or to any other person whomsoever, for any injury to person or damage to property caused by the Demised Premises or other portions of the Shopping Center becoming out of repair, or by defect or failure of any structural element of the Demised Premises or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Demised Premises (except where due to Landlord's willful failure to make repairs required to be made hereunder, after the expiration of a reasonable time after written notice to Landlord of the need for such repairs), nor shall Landlord be liable to Tenant, or to Tenant's employees, agents or visitors, or to any other person whomsoever, for any loss or damage that may be occasioned by or through the acts or omissions of other tenants of the Shopping Center or of any other persons whomsoever, excepting only duly authorized employees and agents of Landlord. Landlord shall not be held responsible in any way on account of any construction, repair or reconstruction (including widening) of any private or public roadways, walkways or utility lines. **THE WAIVER CONTAINED IN THIS SECTION 17.1 APPLIES EVEN TO A LOSS OR INJURY WHICH IS ATTRIBUTABLE TO THE NEGLIGENCE OF LANDLORD, ITS PROPERTY MANAGER(S) OR ANYONE ELSE FOR WHOM LANDLORD MAY BE RESPONSIBLE; HOWEVER, THIS WAIVER SHALL NOT APPLY TO LANDLORD'S WILLFUL WRONGDOING OR GROSS NEGLIGENCE.**

17.2 Landlord shall not be liable to Tenant or to Tenant's employees, agents, or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Demised Premises or the Common Area caused by the negligence or misconduct of Tenant, its employees, subtenants, licensees or concessionaires, or of any other person entering the Shopping Center under express or implied invitation of Tenant (with the exception of customers in the Common Area), or arising out of the use of the Demised Premises by Tenant and the conduct of its business therein, or arising out of any breach or default by Tenant in the performance of its obligations under this Lease; and Tenant hereby agrees to indemnify Landlord and hold Landlord harmless from any loss, expense or claim arising out of such damage or injury.

17.3 Landlord and Tenant each hereby waives and releases the other from any and all liability or responsibility to the other, or to any other party claiming through or under them by way of subrogation or otherwise, for any loss or damage to property caused by a casualty which is insurable under the special form of property coverage (sometimes referred to as "all-risk" coverage); **provided, however**, that this mutual waiver and release shall be applicable only with respect to a loss or damage occurring during the time when property insurance policies, which are readily available in the marketplace, contain a clause or permit an endorsement to the effect that any such release and waiver shall not adversely affect or impair the policy or the right of the insured party to receive proceeds under the policy; **provided, further**, that this release and waiver shall not be applicable to the portion of any damage which is not reimbursed by the damaged party's insurer because of the "deductible" in the damaged party's insurance coverage. **THE RELEASE AND WAIVER CONTAINED IN THIS SECTION 17.3 APPLIES EVEN TO A LOSS WHICH IS ATTRIBUTABLE TO THE NEGLIGENCE**

**OF THE PARTY HEREBY RELEASED (AND WITH RESPECT TO LANDLORD, ITS PROPERTY MANAGER(S) OR ANYONE ELSE FOR WHOM LANDLORD MAY BE RESPONSIBLE); HOWEVER, THIS RELEASE AND WAIVER SHALL NOT APPLY TO A PARTY'S WILLFUL WRONGDOING OR GROSS NEGLIGENCE.** The release and waiver specified in this Section 17.3 is cumulative with any releases or exculpations which may be contained in other provisions of this Lease.

## **ARTICLE XVIII**

### **DAMAGES BY CASUALTY**

18.1 Tenant shall give immediate written notice to Landlord of any damage caused to the Demised Premises by fire or other casualty.

18.2 In the event that the Demised Premises shall be damaged or destroyed by fire, casualty or any event insurable under special form (sometimes referred to as "all-risk") property insurance and Landlord does not elect to terminate this Lease as hereinafter provided, Landlord shall proceed with reasonable diligence and at its sole cost and expense to rebuild and repair the Demised Premises. In the event (a) the building in which the Demised Premises is located is destroyed or substantially damaged by a casualty not covered by Landlord's insurance, (b) such building is destroyed or rendered untenable to an extent in excess of fifty percent (50%) of the first floor area by a casualty covered by Landlord's insurance, or (c) the holder of a mortgage, deed of trust or other lien on such building at the time of the casualty elects, pursuant to such mortgage, deed of trust or other lien, to require the use of all or part of Landlord's insurance proceeds in satisfaction of all or part of the indebtedness secured by the mortgage, deed of trust or other lien, then Landlord may elect either to terminate this Lease or to proceed to rebuild and repair the Demised Premises. Landlord shall give written notice to Tenant of such election within sixty (60) days after the occurrence of such casualty and if it elects to rebuild and repair, shall proceed to do so with reasonable diligence and at its sole cost and expense.

18.3 Landlord's obligation to rebuild and repair under this Article XVIII shall in any event be limited to restoring one of the following (as may be applicable): (a) if this Lease does not include an attached exhibit describing Landlord's initial construction responsibility ("Landlord's Work"), restoring the Demised Premises to substantially the condition in which the same existed prior to such casualty, exclusive of any alterations, additions, improvements, fixtures and equipment installed by Tenant and any items which Tenant is required to insure under Section 16.2 of this Lease; or (b) restoring Landlord's Work, as described in the applicable exhibit attached to this Lease (if such an exhibit is attached), to substantially the same condition in which the same existed prior to the casualty, exclusive of any items which Tenant is required to insure under Section 16.2 of this Lease. Tenant agrees that promptly after completion of such work by Landlord, Tenant will proceed with reasonable diligence and at Tenant's sole cost and expense to restore, repair and replace all alterations, additions, improvements, fixtures, signs and equipment installed by Tenant, or, if an exhibit describing Tenant's Work is attached hereto, all items of Tenant's Work as described in such exhibit, as the case may be.

18.4 Tenant agrees that during any period of reconstruction or repair of the Demised Premises, it will continue the operation of its business within the Demised Premises to the extent practicable. During the period from the occurrence of the casualty until Landlord's repairs are completed, the Minimum Guaranteed Rental shall be reduced to such extent as may be fair and reasonable under the circumstances; however, there shall be no abatement of the other charges provided for herein.

## **ARTICLE XIX**

### **EMINENT DOMAIN**

19.1 If more than thirty percent (30%) of the floor area of the Demised Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority.

19.2 If less than thirty percent (30%) of the floor area of the Demised Premises should be taken as aforesaid, this Lease shall not terminate; however, the Minimum Guaranteed Rental payable hereunder during the unexpired portion of this Lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority. Following such partial taking, Landlord shall make all necessary repairs or alterations to the remaining premises or, if an exhibit describing Landlord's Work is attached to this Lease, all necessary repairs within the scope of Landlord's Work as described in such exhibit, as the case may be, to cause the remaining portions of the Demised Premises to be an architectural whole.

19.3 If any part of the Common Area should be taken as aforesaid, this Lease shall not terminate, nor shall the rent payable hereunder be reduced, except that either Landlord or Tenant may terminate this Lease if the area of the Common Area remaining following such taking plus any additional parking area provided by Landlord in reasonable proximity to the Shopping Center shall be less than seventy percent (70%) of the area of the Common Area immediately prior to the taking. Any election to terminate this Lease in accordance with this provision shall be evidenced by written notice of termination delivered to the other party within thirty (30) days after the date physical possession is taken by the condemning authority.

19.4 All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Demised Premises or Common Area shall be the property of Landlord, and Tenant hereby assigns its interest in any such award to Landlord; provided, however, Landlord shall have no interest in any award made to Tenant for Tenant's moving and relocation expenses or for the loss of Tenant's fixtures and other tangible personal property if a separate award for such items is made to Tenant as long as such separate award does not reduce the amount of the award that would otherwise be awarded to Landlord.

## ARTICLE XX

### ASSIGNMENT AND SUBLETTING

20.1 Tenant shall not assign or in any manner transfer this Lease or any estate or interest therein, or sublet the Demised Premises or any part thereof or grant any license, concession or other right of occupancy of any portion of the Demised Premises, or enter into any management or similar agreement or otherwise fail to operate its business in the Demised Premises, without the prior written consent of Landlord. In this regard, Tenant further acknowledges and agrees that Landlord's acceptance of Rentals from an assignee or subtenant shall not be deemed to constitute Landlord's consent to such assignment or sublease (in fact, Tenant acknowledges that the Rental payment process is such that Landlord will not likely even be aware of the party from whom Rentals are received). Landlord agrees that it will not withhold consent in a wholly unreasonable and arbitrary manner (as further explained in Section 30.4 of this Lease); however, in determining whether or not to grant its consent, Landlord shall be entitled to take into consideration factors such as the existing uses in the Shopping Center, existing use restrictions affecting the Shopping Center, Landlord's desired tenant mix, the experience, reputation and net worth of the proposed transferee, and the then current market conditions (including market rentals). In addition, Landlord shall also be entitled to charge Tenant a \$1,500.00 fee for processing Tenant's request, regardless of whether or not Landlord grants its consent. Consent by Landlord to one or more assignments or sublettings shall not operate as a waiver of Landlord's rights as to any subsequent assignments and sublettings.

20.2 If Tenant is a corporation, partnership or other entity and if at any time during the term of this Lease the person or persons who own a majority of either the outstanding voting rights or the outstanding ownership interests of Tenant at the time of the execution of this Lease cease to own a majority of such voting rights, ownership interests or control (except as a result of transfers by devise or descent), the loss of a majority of such voting rights, ownership interests or control shall be deemed to be an assignment of this Lease by Tenant and, therefore, subject in all respects to the provisions of Section 20.1 above. The previous sentence shall not apply, however, if at the time of the execution of this Lease, Tenant is a corporation and the outstanding voting shares of capital stock of Tenant are listed on a recognized security exchange or over-the-counter market.

20.3 Any assignee or sublessee of an interest in and to this Lease shall be deemed, by acceptance of such assignment or sublease or by taking actual or constructive possession of all or any portion of the Demised Premises, to have assumed all of the obligations set forth in or arising under this Lease. Such assumption shall be effective as of the earlier of the date of such assignment or sublease or the date on which the assignee or sublessee obtains possession of all or any portion of the Demised Premises; however, with specific regard to any assignment, the assignee shall be responsible for all unsatisfied obligations of Tenant under this Lease, regardless of when such obligation arose and when such assumption became effective.

20.4 Notwithstanding any assignment or subletting, Tenant and any guarantor of Tenant's obligations under this Lease shall at all times remain fully responsible and liable for the payment of the Rentals herein specified and for compliance with all of its other obligations under this Lease (even if future assignments and sublettings occur subsequent to the assignment or subletting by Tenant, and regardless of whether or not Tenant's approval has been obtained for such future assignments and sublettings). Moreover, in the event that the rental due and payable by a sublessee (or a combination of the rental payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the Rental payable under this Lease, or if with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case may be. Finally, in the event of an assignment or subletting, it is understood and agreed that all rentals paid to Tenant by an assignee or sublessee shall be received by Tenant in trust for Landlord, to be forwarded immediately to Landlord without offset or reduction of any kind; and upon election by Landlord such rentals shall be paid directly to Landlord as specified in Article IV of this Lease (to be applied as a credit and offset to Tenant's rental obligation).

20.5 Tenant shall not mortgage, pledge or otherwise encumber its interest in this Lease or in the Demised Premises.

20.6 In the event of the transfer and assignment by Landlord of its interest in this Lease and in the building containing the Demised Premises to a person expressly assuming Landlord's obligations under this Lease, Landlord shall thereby be released from any further obligations hereunder, and Tenant agrees to look solely to such successor-in-interest of the Landlord for performance of such obligations. In addition, as described more fully in Section 27.3 of this Lease, any security deposit given by Tenant to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor-in-interest, and Landlord shall thereby be discharged of any further obligation relating thereto.

## ARTICLE XXI

### SUBORDINATION; ATTORNMEN; ESTOPPELS

21.1 Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter placed upon the Shopping Center or any portion of the Shopping Center which includes the Demised Premises, and to any renewals and extensions thereof. Tenant agrees that any mortgagee shall have the right at any time to subordinate its mortgage, deed of trust or other lien to this Lease; provided, however, notwithstanding that this Lease may be (or may become) superior to a mortgage, deed of trust or other lien, the mortgagee shall not be liable for prepaid rentals, security deposits and claims accruing during Landlord's ownership; and further provided that the provisions of a mortgage, deed of trust or other lien relative to the rights of the mortgagee with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord) and provisions relative to proceeds arising from insurance payable by reason of damage to or destruction of the Demised Premises shall be prior and superior to any

contrary provisions contained in this Lease with respect to the payment or usage thereof. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien hereafter placed upon the Demised Premises or the Shopping Center as a whole, and Tenant agrees upon demand to execute such further instruments subordinating this Lease as Landlord may request; provided, however, that upon Tenant's written request and notice to Landlord, Landlord shall use good faith efforts to obtain from any such mortgagee a written agreement that after a foreclosure (or a deed in lieu of foreclosure) the rights of Tenant shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to recognize and perform all of the covenants and conditions of this Lease.

21.2 At any time when the holder of an outstanding mortgage, deed of trust or other lien covering Landlord's interest in the Demised Premises has given Tenant written notice of its interest in this Lease, Tenant may not exercise any remedies for default by Landlord hereunder unless and until the holder of the indebtedness secured by such mortgage, deed of trust or other lien shall have received written notice of such default and a reasonable time (not less than 30 days) shall thereafter have elapsed without the default having been cured.

21.3 Tenant agrees that it will from time to time upon request by Landlord execute and deliver to Landlord a written statement addressed to Landlord (or to a party designated by Landlord), which statement shall identify Tenant and this Lease, shall certify that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), shall confirm that Landlord is not in default as to any obligations of Landlord under this Lease (or if Landlord is in default, specifying any default), shall confirm Tenant's agreements contained above in this Article XXI, and shall contain such other information or confirmations as Landlord may reasonably require. If Tenant fails to do so within seven (7) days after the delivery of a written request from Landlord to Tenant, then in addition to all other rights and remedies accorded to Landlord pursuant to Article XXIII of this Lease, Landlord is also hereby irrevocably appointed and authorized as the agent and attorney-in-fact of Tenant to execute and deliver any such written statement on Tenant's behalf.

## ARTICLE XXII

### DIRECTION OF TENANT'S ENERGIES

22.1 Tenant acknowledges that Tenant's monetary contribution to Landlord (in the form of Rentals) and Tenant's general contribution to commerce within the Shopping Center (also important in Landlord's determination to execute this Lease with Tenant) will be substantially reduced if during the term of this Lease, either Tenant or any person, corporation, partnership, limited liability company or other entity, directly or indirectly controlling, controlled by or under common control with Tenant shall directly or indirectly operate, manage, conduct or have any interest in any establishment within commercial proximity of the Shopping Center. Accordingly, Tenant agrees that if during the term of this Lease, either Tenant or any person, corporation, or other entity, directly or indirectly controlling, controlled by or under common control with Tenant (and also, in the event Tenant is a corporation or other entity, if any officer or director thereof or shareholder or other owner owning more than ten percent (10%) of the outstanding stock or other ownership thereof, or any parent, subsidiary or related or affiliated corporation) either directly or indirectly commences operation of any store selling or otherwise sells or offers for sale any merchandise or services of the type to be sold by Tenant in the Demised Premises as provided in Section 1.1(r) hereof or similar or related items, or in any manner competes with the business provided herein to be conducted by Tenant at the Demised Premises, within a straight-line radius of three (3) miles of the Shopping Center, which Tenant acknowledges is a reasonable area for the purpose of this provision, then in such event, the Rentals payable by Tenant hereunder shall be adjusted as follows:

(a) thereafter the Minimum Guaranteed Rental shall be one hundred ten percent (110%) of the amount stipulated in Section 1.1(m) of this Lease; and

(b) intentionally deleted.

The above adjustment in Rental reflects the estimate of the parties as to the damages which Landlord would be likely to incur by reason of the diversion of business and customer traffic from the Demised Premises and Shopping Center to such other store within such radius, as the proximate result of the establishment of such other store. This provision shall not apply to any existing store presently being operated by Tenant as of the date hereof, provided there is no increase in the size, change in merchandise mix or trade name of such commercial establishment. Finally, Tenant agrees that Landlord may waive, for any reason whatsoever, any or all rights granted to Landlord pursuant to this Section 22.1 and may sever this Section from the remainder of this Lease (thereby keeping the remainder of this Lease unmodified and in full force and effect).

## ARTICLE XXIII

### DEFAULT BY TENANT AND REMEDIES

23.1 The following events shall be deemed to be events of default by Tenant under this Lease:

(a) Tenant shall fail to pay any installment of Rental or any other obligation under this Lease involving the payment of money and such failure shall continue for a period of five (5) days after written notice thereof to Tenant; **provided, however**, that if during the immediately preceding twelve (12) month period Landlord has already given Tenant a written notice of Tenant's failure to pay an installment of Rental, no notice shall be required for a Rental delinquency to become an event of default (i.e., the event of default will automatically occur on the sixth (6<sup>th</sup>) day after the date upon which the Rental becomes due).

(b) Tenant shall fail to comply with any provision of this Lease, other than as described in subsection (a) above, and either shall not cure such failure within fifteen (15) days after written notice thereof to Tenant, or shall cure that particular failure but shall again fail to comply with the same provision of the Lease within three (3) months after Landlord's written notice.



(c) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Tenant or any guarantor of Tenant's obligations under this Lease shall file a petition under any section or chapter of the federal Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof; or Tenant or any guarantor of Tenant's obligations under this Lease shall be adjudged bankrupt or insolvent in proceedings filed against Tenant or any guarantor of Tenant's obligations under this Lease.

(e) A receiver or trustee shall be appointed for the Demised Premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

(f) Tenant shall desert or vacate or shall commence to desert or vacate the Demised Premises or any substantial portion of the Demised Premises or at any time prior to the last month of the Lease Term shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial amount of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property.

(g) Tenant shall do or permit to be done anything which creates a lien upon the Demised Premises or upon all or any part of the Shopping Center.

23.2 Upon the occurrence of any such events of default, then in addition to the remedies available to Landlord under the other provisions of this Lease and all applicable laws, Landlord shall also have the option to pursue any one or more of the following remedies:

(a) Without any further notice or demand whatsoever, Tenant shall be obligated to reimburse Landlord for the damages suffered by Landlord as a result of the event of default, plus interest on such amount at the maximum contractual rate which could legally be charged in the event of a loan of such amount to Tenant (but in no event to exceed 18% per annum); and Landlord may pursue a monetary recovery from Tenant. In this regard, and without limiting the generality of the immediately preceding sentence, it is agreed that if Tenant fails to install a sign on the front of the Demised Premises within fifteen (15) days after the Commencement Date of this Lease, or if Tenant fails to open for business as required in this Lease or, having opened for business, subsequently deserts or vacates the Demised Premises or otherwise ceases to conduct business in the Demised Premises as required in this Lease, then Landlord at its option may seek monetary recovery for the loss of Tenant's anticipated contribution to commerce within the Shopping Center; moreover, Landlord and Tenant further agree that inasmuch as the exact amount of damages would be difficult to determine, liquidated damages will be due monthly (i) in an amount equal to the greater of the \$500.00 charge prescribed in Section 14.4 of this Lease or fifteen percent (15%) of the Minimum Guaranteed Rental payable for that month (i.e., Tenant will pay Minimum Guaranteed Rental equal to one hundred fifteen percent (115%) of the amount specified in Section 1.1(m) of this Lease) if Tenant opens for business but fails to install a sign, and (ii) in an amount equal to the greater of the \$500.00 charge prescribed in Section 14.4 of this Lease or twenty-five percent (25%) of the Minimum Guaranteed Rental payable for the month if Tenant fails to open for business as required in this Lease or, having opened for business, subsequently deserts or vacates the Demised Premises or otherwise ceases to conduct business in the Demised Premises as required by this Lease (including, but not limited to, failing to comply with the requirements of Section 10.1 of this Lease).

(b) Without any further notice or demand whatsoever, Landlord may take any one or more of the actions permissible at law to insure performance by Tenant of Tenant's covenants and obligations under this Lease. In this regard, and without limiting the generality of the immediately preceding sentence, it is agreed that if Tenant fails to open for business as required in this Lease or, having opened for business, deserts or vacates the Demised Premises, Landlord may enter upon and take possession of the Demised Premises in order to protect it from deterioration and continue to demand from Tenant the monthly Rentals and other charges provided in this Lease; moreover, although in such event Landlord shall use its good faith efforts to relet the Demised Premises and thus reduce the obligation of Tenant to pay Minimum Guaranteed Rentals and other charges due pursuant to this Lease (i.e., only to the extent of whatever amounts are actually received from the replacement tenant, and even then only after all payments prescribed by Section 23.5 below have been satisfied in full), the parties agree that Section 23.4 of this Lease shall be applicable to Landlord's reletting efforts. If Landlord does relet the Demised Premises, such action by Landlord shall not be deemed as an acceptance of Tenant's surrender of the Demised Premises unless Landlord expressly notifies Tenant of such acceptance in writing pursuant to this subsection (b), Tenant hereby acknowledging that Landlord shall otherwise be reletting as Tenant's agent and Tenant furthermore hereby agreeing to pay to Landlord on demand any deficiency that may arise between the monthly Rentals and other charges provided in this Lease and that actually collected by Landlord. It is further agreed in this regard that in the event of any default described in subsection (b) of Section 23.1 of this Lease, Landlord shall have the right to enter upon the Demised Premises by force if necessary without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to the Tenant from such action. Finally, it is agreed that in the event of any default described in subsection (g) of Section 23.1 of this Lease, Landlord may pay or bond around such lien, whether or not contested by Tenant; and in such event Tenant agrees to reimburse Landlord on demand for all costs and expenses incurred in connection with any such action, with Tenant further agreeing that Landlord shall in no event be liable for any damages or claims resulting from such action.

(c) Without any further notice or demand whatsoever, Landlord may enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying the Demised Premises or any part of the Demised Premises, by force, if necessary (except to the extent prohibited by Texas law), without being liable for prosecution or any claim for damages for such action. Such expulsion and removal by Landlord cannot be deemed a termination or forfeiture of this Lease or acceptance of Tenant's surrender of the Demised Premises unless Landlord expressly notifies Tenant in writing that Landlord is terminating or forfeiting this Lease or accepting Tenant's surrender of the Demised Premises. If Landlord expels or removes Tenant and any other person from the Demised Premises without terminating or forfeiting this Lease or accepting surrender of the Demised Premises, Landlord shall attempt in good faith to relet the Demised Premises; **provided, however**, that Landlord's obligations as to reletting activities shall be subject to Section 23.4 below. Until Landlord is able, through such efforts, to relet the Demised Premises, Tenant must pay to Landlord, on or before the first day of each calendar month, in advance, the monthly

Rentals and other charges provided in this Lease. At such time, if any, as Landlord relets the Demised Premises, Tenant must pay to Landlord on the twentieth (20<sup>th</sup>) day of each calendar month the difference between the monthly Rentals and other charges provided in this Lease for such calendar month and the amount actually collected by Landlord for such month from the occupant to whom Landlord has relet the Demised Premises. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord has the right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one (1) time. Any such suit cannot prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies.

(d) Landlord may terminate this Lease by written notice to Tenant, in which event Landlord shall have the right to enter upon the Demised Premises, and Tenant shall immediately surrender the Demised Premises to Landlord; and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which Landlord may have for possession or arrearages in Rentals (including any late charge or interest which may have accrued pursuant to Section 9.3 of this Lease), enter upon and take possession of the Demised Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim for damages therefor. Tenant hereby waives any statutory requirement of prior written notice for filing eviction or damage suits for nonpayment of rent. In addition, Tenant agrees to pay to Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of any termination effected pursuant to this subsection (d), said loss and damage to be determined by either of the following alternative measures of damages:

(i) Until Landlord is able, through good faith efforts (i.e., subject to Section 23.4 of this Lease), to relet the Demised Premises under terms satisfactory to Landlord, Tenant shall pay to Landlord on or before the first (1<sup>st</sup>) day of each calendar month, the monthly Rentals and other charges provided in this Lease. If and after the Demised Premises has been relet by Landlord, Tenant shall pay to Landlord on the twentieth (20<sup>th</sup>) day of each calendar month the difference between the monthly Rentals and other charges provided in this Lease for such calendar month and that actually collected by Landlord for such month. If it is necessary for Landlord to bring suit in order to collect any deficiency, Landlord shall have a right to allow such deficiencies to accumulate and to bring an action on several or all of the accrued deficiencies at one time. Any such suit shall not prejudice in any way the right of Landlord to bring a similar action for any subsequent deficiency or deficiencies. Any amount collected by Landlord from subsequent tenants for any calendar month in excess of the monthly Rentals and other charges provided in this Lease, shall be credited to Tenant in reduction of Tenant's liability for any calendar month for which the amount collected by Landlord will be less than the monthly Rentals and other charges provided in this Lease; but Tenant shall have no right to such excess other than the above-described credit.

(ii) When Landlord desires, Landlord may demand a final settlement. Upon demand for a final settlement, Landlord shall have a right to, and Tenant thereby agrees to pay, the difference between the total of all monthly Rentals and other charges provided in this Lease for the remainder of the term and the reasonable rental value of the Demised Premises for such period, such difference to be discounted to present value at a rate equal to the rate of interest which is allowed by law in the State of Texas when the parties to a contract have not agreed on any particular rate of interest (or, in the absence of such law, at the rate of six percent [6%] per annum).

If Landlord elects to exercise either the remedy prescribed in subsection 23.2(b) above or the remedy prescribed in subsection 23.2(c) above, such election shall in no way prejudice Landlord's right at anytime thereafter to cancel that election in favor of the remedy prescribed in this subsection 23.2(d), provided that at the time of such cancellation Tenant is still in default. Similarly, if Landlord elects to compute damages in the manner prescribed by subsection 23.2(d)(i) above, this election shall in no way prejudice Landlord's right at any time thereafter to demand a final settlement in accordance with subsection 23.2(d)(ii) above.

23.3 It is expressly agreed that in determining "the monthly Rentals and other charges provided in this Lease," as that term is used throughout Sections 23.2(c) and 23.2(d) above, the term "Rentals" includes all payments prescribed in Section 9.1 of this Lease.

23.4 In any situation in which Landlord is attempting to relet the Demised Premises in order to mitigate its damages resulting from an event of default by Tenant, Landlord will conclusively be deemed to have done so if Landlord lists the Demised Premises with a real estate broker or agent (which may be affiliated with Landlord), places a sign in a window of the Demised Premises (which, Tenant agrees, Landlord is authorized to do), and considers in good faith all written proposals for such space made by such broker or agent. Landlord's duty to act in good faith shall not be deemed to require Landlord to agree to any lease terms which it deems to be unacceptable; moreover, in no event will Landlord be obligated: (i) to solicit or entertain negotiations with any other prospective tenant(s) for the Demised Premises until Landlord has obtained full and complete possession of the Demised Premises, free of any claim by Tenant that it continues to have a right of occupancy with respect to the Demised Premises, (ii) to travel outside a radius of thirty (30) miles from either the Shopping Center or Landlord's principal office in order to meet with a prospective tenant, (iii) to pay leasing commissions in excess of then current market rates, (iv) to pay any expenses related to a prospective tenant's existing lease at another location (e.g., lease take-over payments or moving expenses) or any other non-typical expenses, (v) to expend monies for finish-out requested by a prospective tenant unless Landlord, in its sole discretion, believes that the excess rent Landlord will receive and the credit of the prospective tenant support such a decision, (vi) to cause or allow an existing tenant of the Shopping Center to move from its existing space to all or any portion of the Demised Premises, or (vii) to give preference to the Demised Premises over other spaces in the Shopping Center, with regard to prospective tenants inquiring as to available space in the Shopping Center. In attempting to relet or actually reletting the Demised Premises, Landlord may enter into a direct lease with the proposed replacement tenant and will not be deemed to be acting as Tenant's agent. Landlord agrees that the rentals and other collections which Landlord may actually receive from a substitute tenant of the Demised Premises, to the extent that any such rentals and/or other collections are attributable to any particular time period within the Lease Term of this Lease (and after reduction for all expenses incurred by Landlord in connection with such substitute tenant), will be credited against Tenant's obligations for the same time period; however, Tenant understands and agrees that it will not be entitled to any additional credit (for example, if Landlord receives amounts during a particular time period in excess of Tenant's obligations for the same time period, Landlord will not be required to credit such excess against Tenant's obligations for any other time period).

23.5 It is further agreed that, in addition to payments required pursuant to subsections 23.2(b) and 23.2(c) above, Tenant shall compensate Landlord for all expenses incurred by Landlord in repossession (including, among other expenses, any increase in insurance premiums caused by the vacancy of the Demised Premises), all expenses incurred by Landlord in reletting (including, among other expenses, repairs, remodeling, replacements, advertisements and brokerage fees), all concessions granted to a new tenant upon reletting (including, among other concessions, renewal options), all losses incurred by Landlord as a direct or indirect result of Tenant's default (including, among other losses, any adverse reaction by Landlord's mortgagee or by other tenants or potential tenants of the Shopping Center) and a reasonable allowance for Landlord's administrative efforts, salaries and overhead attributable directly or indirectly to Tenant's default and Landlord's pursuing the rights and remedies provided herein and under applicable law.

23.6 Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative and not exclusive of each other.

23.7 If on account of any breach or default by Tenant in its obligations hereunder, Landlord shall employ an attorney to represent, enforce or defend any of Landlord's rights or remedies hereunder, Tenant agrees to pay any reasonable attorneys' fees incurred by Landlord in connection therewith.

23.8 In the event of a default under subsection 23.1(a) above or in the event that any one or more provisions of this Article XXIII or Article XXV below authorizes Landlord to enter the Demised Premises, Landlord is entitled and is hereby authorized, without any notice to Tenant, to enter upon the Demised Premises by use of a duplicate key, a master key, a locksmith's entry procedures or any other means not involving personal confrontation, and to alter or change the door locks and/or other security devices on all entry doors of the Demised Premises, thereby depriving Tenant access to the Demised Premises. In such event, Landlord shall not be obligated to place any written notice on the Demised Premises explaining Landlord's action, nor shall Landlord be obligated to make the key available to Tenant during Tenant's business hours. If the Lease Term has expired or if Landlord has either (i) terminated this Lease pursuant to Section 23.2(d) above or (ii) terminated Tenant's right of possession of the Demised Premises pursuant to Section 23.2(c) above, then in any such event Landlord shall have no duty whatsoever to make the key available to Tenant. If the Lease Term has not expired and Landlord has not terminated this Lease or Tenant's right of possession of the Demised Premises, but if a reason for Landlord's action is the failure of Tenant to pay any one or more Rentals when due pursuant to this Lease, then Landlord shall not be required to provide the new key (if any) to Tenant until and unless all Rental defaults of Tenant have been fully cured.

23.9 Tenant acknowledges its obligation to deposit with Landlord the sum stated in Section 1.1(q) above, to be held by Landlord for the performance by Tenant of Tenant's covenants and obligations under this Lease. Upon the occurrence of any event of default by Tenant, Landlord may, from time to time, without prejudice to any other remedy provided herein or provided by law, use such fund to the extent necessary to make good any arrears of Rentals and any other damage, injury, expense or liability caused to Landlord by such event of default; and in such event, Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount.

23.10 In the event of any default described in subsection (d) of Section 23.1 of this Lease, any assumption and assignment must conform with the requirements of the Bankruptcy Code which provides, in part, that the Landlord must be provided with adequate assurances (i) of the source of rent and other consideration due under this Lease; (ii) that the financial condition and operating performance of any proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of Tenant and its guarantors, if any, as of the date of execution of this Lease; (iii) intentionally deleted; (iv) that any assumption or assignment is subject to all of the provisions of this Lease (including, but not limited to, restrictions as to use) and will not breach any such provision contained in any other lease, financing agreement or other agreement relating to the Shopping Center; and (v) that any assumption or assignment will not disrupt any tenant mix or balance in the Shopping Center.

(a) In order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Tenant must fulfill the following obligations, in addition to any other reasonable obligations that Landlord may require, before any assumption of this Lease is effective: (i) all defaults under subsection (a) of Section 23.1 of this Lease must be cured within ten (10) days after the date of assumption; (ii) all other defaults under Section 23.1 of this Lease other than under subsection (d) of Section 23.1 must be cured within fifteen (15) days after the date of assumption; (iii) all actual monetary losses incurred by Landlord (including, but not limited to, reasonable attorneys' fees) must be paid to Landlord within ten (10) days after the date of assumption; and (iv) Landlord must receive within ten (10) days after the date of assumption a security deposit in the amount of six (6) months' Minimum Guaranteed Rental (using the Minimum Guaranteed Rental in effect for the first full month immediately following the assumption) and an advance prepayment of Minimum Guaranteed Rental in the amount of three (3) months' minimum guaranteed rent (using the minimum guaranteed rent in effect for the first full month immediately following the assumption), both sums to be held by Landlord in accordance with Section 23.9 above but deemed to be Rentals under this Lease for the purposes of the Bankruptcy Code as amended and from time to time and in effect.

(b) In the event this Lease is assumed in accordance with the requirements of the Bankruptcy Code and this Lease, and is subsequently assigned, then, in addition to any other reasonable obligations that Landlord may require and in order to provide Landlord with the assurances contemplated by the Bankruptcy Code, Landlord shall be provided with (i) a financial statement of the proposed assignee prepared in accordance with generally accepted accounting principles consistently applied, though on a cash basis, which reveals a net worth in an amount sufficient, in Landlord's reasonable judgment, to assure the future performance by the proposed assignee of Tenant's obligations under this Lease; or (ii) a written guaranty by one or more guarantors with financial ability sufficient to assure the future performance of Tenant's obligations under this Lease, such guaranty to be in form and content satisfactory to Landlord and to cover the performance of all of Tenant's obligations under this Lease.

23.11 No agreement to accept a surrender of the Demised Premises and no act or omission by Landlord or Landlord's agent during the Lease Term shall constitute an acceptance or surrender of the Demised Premises unless made in writing and signed by Landlord. No reentry or taking possession of the Demised Premises by Landlord shall constitute an election by Landlord to terminate this Lease unless a written notice of such intention is given to Tenant. Pursuit of any of the above remedies shall not preclude pursuit of any other remedies prescribed in other sections of this Lease and any other remedies provided by law. Forbearance by Landlord to enforce one or more of the remedies herein

provided upon an event of default shall not be deemed or construed to constitute a waiver of such default or any remedy therefor.

## **ARTICLE XXIV**

### **LANDLORD'S CONTRACTUAL SECURITY INTEREST**

24.1 In addition to the statutory landlord's lien, Landlord shall have at all times a valid security interest to secure payment of all Rentals and other sums of money becoming due hereunder from Tenant, and to secure payment of any damage or loss which Landlord may suffer by reason of the breach by Tenant of any covenant, agreement or condition contained herein, upon all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant which is presently or may hereafter be situated on the Demised Premises, and all proceeds therefrom, and such property shall not be removed without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord or to become due to Landlord hereunder shall first have been paid and discharged and all the covenants, agreements and conditions hereof have been fully complied with and performed by Tenant. Upon the occurrence of an event of default by Tenant, Landlord may, in addition to any other remedies provided herein, enter upon the Demised Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, improvements and other personal property of Tenant situated on the Demised Premises, without liability for trespass or conversion, and sell the same at public or private sale, with or without having such property at the sale, after giving Tenant reasonable notice of the time and place of any public sale or of the time after which any private sale is to be made, at which sale the Landlord or its assigns may purchase unless otherwise prohibited by law. Unless otherwise provided by law, and without intending to exclude any other manner of giving Tenant reasonable notice, the requirement of reasonable notice shall be met if such notice is given in the manner prescribed in this Lease at least five (5) days before the date of sale. Any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if (a) the sale is held in one of the following locations (the choice of which location to be in Landlord's sole discretion): (i) in an office of Landlord's management company located within the State of Texas, (ii) in the Demised Premises, or (iii) elsewhere in the Shopping Center; and (b) before the sale is held, the time, place of sale and a general description of the type(s) of property to be sold have been advertised in a daily newspaper published in the county in which the sale is to be held, for five (5) consecutive days before the date of the sale. The proceeds from any such disposition, less any and all expenses connected with the taking of possession, holding and selling of the property (including reasonable attorneys' fees and legal expenses), shall be applied as a credit against the indebtedness secured by the security interest granted in this paragraph. Any surplus shall be paid to Tenant or as otherwise required by law; the Tenant shall pay any deficiencies forthwith.

24.2 Tenant hereby acknowledges and agrees that the applicable provisions of the Uniform Commercial Code, as adopted in the State of Texas, permit Landlord to file a financing statement without Tenant's signature; and Tenant hereby consents to such a filing by Landlord. Tenant nevertheless further agrees that if and upon request by Landlord, Tenant will execute and deliver a financing statement as pursuant to the Uniform Commercial Code to Landlord.

24.3 Notwithstanding Section 24.1, Landlord agrees that it will subordinate its security interest and landlord's lien to the security interest of Tenant's supplier or institutional financial source for as long as the Rental account of Tenant under this Lease is current (or is brought current), provided that Landlord approves the transaction as being reasonably necessary for Tenant's operations at the Demised Premises, and further provided that the subordination must be limited to a specified transaction and specified items of the fixtures, equipment or inventory involved in the transaction.

## **ARTICLE XXV**

### **HOLDING OVER**

25.1 In the event Tenant remains in possession of the Demised Premises after the expiration of this Lease and without the execution by Landlord and Tenant of a new lease, then Tenant shall be deemed to be occupying the Demised Premises as a tenant at will, with an obligation to pay Landlord a daily Rental equal to one-thirtieth of the sum of (i) the monthly Rental (including Minimum Guaranteed Rental and all additional Rentals) which Tenant was paying in the final month of the Lease Term, plus (ii) an additional amount equal to fifty percent (50%) of the Minimum Guaranteed Rental which Tenant was paying in the final month of the Lease Term. Tenant's occupancy during the hold-over period shall otherwise be subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a tenancy at will. Notwithstanding the preceding sentences, however, if prior to the end of the Lease Term Landlord has delivered a written notice to Tenant informing Tenant of Landlord's need to use the Demised Premises immediately after the conclusion of the Lease Term, or if during the hold-over period Landlord delivers such notice to Tenant, then in either such event Tenant's occupancy shall be characterized as a tenancy at sufferance; and in either such event, in addition to the payments prescribed above in this Article XXV, Tenant shall indemnify Landlord (a) against claims for damages by any other tenant or prospective tenant to whom Landlord may have leased all or part of the Demised Premises, and (b) for all other losses, costs and expenses, including reasonable attorneys' fees, incurred by reason of such holding over by Tenant. Tenant further agrees that during any period when Tenant's status is as a tenant at sufferance pursuant to this Section 25.1, Landlord may utilize any of the remedies available at law and under this Lease; and in this regard Tenant agrees that one of Landlord's rights shall be to enter upon the Demised Premises, without any notice to Tenant, by use of a duplicate key, a master key, a locksmith's entry procedures or any other means not involving personal confrontation, and to alter or change the door locks and/or other security devices on all entry doors of the Demised Premises, thereby depriving Tenant access to the Demised Premises.

## **ARTICLE XXVI**

### **NOTICES**

26.1 Wherever any notice is required or permitted under this Lease, such notice shall be in writing. Any notice or document required or permitted to be delivered under this Lease shall be deemed to be delivered when it is actually

received by the designated addressee or, if earlier and regardless of whether actually received or not, when it is either (i) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, or (ii) delivered to the custody of a reputable messenger service or overnight courier service, addressed to the applicable party to whom it is being delivered at the respective address for such party as is set out in Section 1.1 above (or for deliveries to Tenant, and at Landlord's option, to Tenant at the Demised Premises), or at such other address as such applicable party may have theretofore specified to the delivering party by written notice.

26.2 If and when included within the term "Landlord" as used in this Lease there be more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such notice specifying some individual at some specific address for the receipt of notices and payments to the Landlord; if and when included within the term "Tenant" as used in this Lease there be more than one person, firm or corporation, all shall jointly arrange among themselves for their joint execution of such a notice specifying some individual at some specific address for the receipt of notices and payments to Tenant. All parties included within the terms "Landlord" and "Tenant," respectively, shall be bound by notices and payments given in accordance with the provisions of this Article to the same effect as if each had received such notice or payment. In addition, Tenant agrees that notices to Tenant may be given by Landlord's attorney, property manager or other agent.

## **ARTICLE XXVII**

### **SECURITY DEPOSIT**

27.1 The security deposit prescribed in Section 1.1(q) of this Lease shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the security deposit shall not be considered an advance payment of Rental or a measure of Landlord's damages in case of default by Tenant. Landlord may commingle the security deposit with Landlord's other funds. As prescribed in Section 23.9 of this Lease, Landlord may, without prejudice to any other remedy, use the security deposit to the extent necessary to make good any Rental delinquencies or to satisfy any other covenant or obligation of Tenant hereunder; and following any such application of the security deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount.

27.2 Within thirty (30) days after Tenant (i) has surrendered the Demised Premises to Landlord (which, Landlord and Tenant agree, includes turning over to Landlord's representative all keys to the Demised Premises), and (ii) has provided Landlord with a forwarding address, Landlord shall return to Tenant the portion of the security deposit remaining after deducting all damages, charges and other amounts permitted by the terms of this Lease and applicable law. Tenant acknowledges and agrees that if Tenant has breached this Lease before or during Tenant's surrendering the Demised Premises to Landlord, then Landlord shall be entitled to deduct from the security deposit being returned to Tenant (if any) all damages and losses that Landlord has suffered or that Landlord reasonably estimates that it will suffer as a result of such breach of this Lease by Tenant.

27.3 If Landlord transfers its interest in the Demised Premises during the term of this Lease, Landlord may assign the security deposit to the transferee; and upon such transfer and the transferee's acknowledgement of responsibility to Tenant for the security deposit (which acknowledgement will be deemed to have been effected if the transferee assumes the obligations of the Landlord under this Lease, i.e., even without a specific mention of the security deposit), Landlord shall thereafter have no further liability for the return of the security deposit.

## **ARTICLE XXVIII**

### **COMMISSIONS; ADVICE FROM AGENT**

28.1 Landlord shall pay to Weitzman Management Corporation, doing business as Weitzman ("Agent"), a commission for negotiating this Lease, in accordance with a separate agreement between Landlord and Agent, which separate agreement is hereby incorporated into this Lease and made a part hereof for all purposes. Landlord further agrees that Agent's right to such a commission shall irrevocably vest upon the execution of this Lease, notwithstanding any subsequent default by Landlord or Tenant or any amendment, modification or termination of this Lease. Landlord also agrees to pay to Agent additional commissions on any renewals, extensions, holdovers, new leases or Rental agreements (as long as Tenant continues to occupy all or a portion of the Demised Premises) and expansions or substitutions of lease space within the Shopping Center, made by Landlord with Tenant or its subtenants or assignees. Except as may be otherwise specifically provided in the above-mentioned separate agreement between Landlord and Agent, all of said commissions shall be paid by Landlord to Agent, at Agent's principal office in the county where the Demised Premises is located (or if Agent does not have an office in such county, then in Agent's principal office in Dallas County, Texas). Landlord further agrees to pay to Agent an additional sales commission in the amount of six percent (6%) of the gross sales price for all property purchased, in the event that Tenant or any assignee or subtenant shall purchase the Demised Premises (separately or together with all or any portion of the Shopping Center) pursuant to a contract entered into at any time prior to the tenth anniversary of this Lease.

28.2 The provisions of this Article XXVIII shall be binding upon Landlord and Landlord's heirs, personal representatives, assigns and successors-in-interest, and shall inure to the benefit of Agent and its successors-in-interest; provided, however, that in the event of any assignment of this Lease by Landlord or the sale of all or any part of the Demised Premises, both Landlord and such assignee or purchaser, and the assigns and successors of each, shall be jointly and severally liable for all commissions due and to become due hereunder, unless Landlord shall cause the assignee or purchaser to assume and agree to perform, in writing delivered to Agent before or immediately following the transfer, the covenants, duties and obligations of Landlord under this Article, in which event Landlord shall be released.

28.3 In the event Agent employs an attorney to represent, enforce or defend any of Agent's rights hereunder, the party that failed to comply with its obligations with regard to Agent's rights shall pay any reasonable attorneys' fees incurred by Agent in connection therewith.

28.4 Landlord hereby acknowledges that Agent advised Landlord at the time of execution of the commission agreement (or, if this Article XXVIII itself constitutes the commission agreement, then in this Section 28.4) that the Broker's and Appraiser's Lien on Commercial Real Estate Act, Chapter 62 of the Texas Property Code, provides Agent the right to claim a lien on the Shopping Center.

28.5 Tenant hereby acknowledges that at the time of the execution of this Lease, Agent advised Tenant by this writing that Tenant should have an abstract covering the real estate upon which the Shopping Center and the Demised Premises is located examined by an attorney of Tenant's own selection or, at Tenant's option, that Tenant should obtain a leasehold owner's policy of title insurance.

28.6 Tenant also acknowledges that Agent has advised Tenant that because Agent has no expertise with respect to toxic or otherwise hazardous substances, Tenant should, prior to executing this Lease, have qualified experts conduct proper inspections of the Demised Premises in order to determine whether or not toxic or otherwise hazardous substances exist in, under or around the Demised Premises.

## **ARTICLE XXIX**

### **LAWS AND REGULATIONS**

29.1 Landlord and Tenant each represent and warrant to the other that the representing party is not, and shall not become during the Lease Term, a person or entity with whom the other party is restricted from doing business under applicable laws relating to national security (such as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, commonly known as the "USA Patriot Act") and executive orders and regulations relating to such applicable laws. Each party agrees to take all reasonable measures throughout the Lease Term in order to assure the continued validity of its representation and warranty in this Section 29.1; moreover, each party will provide further assurances and information to the other party if and to the extent required by such applicable laws.

29.2 Landlord and Tenant acknowledge that there are in effect federal, state, county and municipal laws, orders, rules, directives and regulations (collectively referred to hereinafter as the "Regulations"), and that additional Regulations may hereafter be enacted or go into effect, relating to or affecting the Demised Premises or the Shopping Center. Subject to the express rights granted to Tenant under the terms of this Lease, Tenant agrees that it will not cause or permit to be caused any act or practice, by negligence, omission or otherwise, that would violate any of said Regulations. Without limiting the foregoing, Tenant shall secure all permits or certificates required related to any work performed by Tenant, including, without limitation, those from the Texas Department of Licensing and Regulation with respect to the compliance of Tenant's work with the Americans with Disabilities Act or any similar type of law, whether state, local or federal, and Tenant shall pay any penalties or costs incurred by Landlord as a result of Tenant's failure to do so. In addition, and notwithstanding any other provisions of this Lease, Tenant shall have no claim against Landlord by reason of any changes Landlord may make to the Shopping Center or the Demised Premises pursuant to said Regulations or any charges imposed upon Tenant, Tenant's customers or other invitees pursuant to same.

29.3 If, by reason of any Regulations, the payment to, or collection by, Landlord of any Rental or other charge (collectively referred to hereinafter as "Lease Payments") payable by Tenant to Landlord pursuant to the provisions of this Lease is in excess of the amount (the "Maximum Charge") permitted thereof by the Regulations, then Tenant, during the period when the Regulations shall be in force and effect (the "Freeze Period") shall not be required to pay, nor shall Landlord be permitted to collect, any sum in excess of the Maximum Charge. Upon the earlier of (i) the expiration of the Freeze Period, or (ii) the issuance of a final order or judgment of a court of competent jurisdiction declaring the Regulations to be invalid or not applicable to the provisions of this Lease, Tenant, to the extent not then proscribed by law, and commencing with the first day of the month immediately following, shall pay to Landlord as additional Rental, in equal monthly installments during the balance of the term of this Lease, a sum equal to the cumulative difference between the Maximum Charges and the Lease Payments during the Freeze Period. If any provisions of this section, or the application thereof, shall to any extent be declared to be invalid and unenforceable, the same shall not be deemed to affect any of the other provisions of this section or of this Lease, all of which shall be deemed valid and enforceable to the fullest extent permitted by law.

## **ARTICLE XXX**

### **MISCELLANEOUS**

30.1 Nothing in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

30.2 Tenant shall not for any reason withhold or reduce Tenant's required payments of Rentals and other charges provided in this Lease, it being agreed (i) that the obligations of Landlord under this Lease are independent of Tenant's obligations except as may be otherwise expressly provided in this Lease and (ii) that to the maximum extent permitted under applicable law, Tenant hereby waives all rights which it might otherwise have to withhold Rentals. The immediately preceding sentence shall not be deemed to deny Tenant the ability of pursuing all rights granted it under this Lease or at law (with the exception of any right of Tenant to offset or withhold the payment of Rentals, which right is hereby waived to the maximum extent permitted by applicable law); however, as contemplated in Texas Rule of Civil Procedure 174(b), as amended from time to time, at the direction of Landlord, Tenant's claims in this regard shall be litigated in proceedings different from any litigation involving Rental claims or other claims by Landlord against Tenant (i.e., each party may proceed to a separate judgment without consolidation, counterclaim or offset as to the claims asserted by the other party).

30.3 The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the proceeds of sale on execution of the interest of Landlord in the Demised Premises; and Landlord shall not be personally liable for any deficiency, except that Landlord shall, subject to the provisions of Sections 20.6 and 27.3 of this Lease, remain liable to account to Tenant for any security deposit under this Lease. This Section 30.3 shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord.

30.4 In all circumstances under this Lease where the prior consent of one party (the "consenting party"), whether it be Landlord or Tenant, is required before the other party (the "requesting party") is authorized to take any particular type of action, such consent shall not be withheld in a wholly unreasonable and arbitrary manner; however, the requesting party agrees that its exclusive remedy if it believes that consent has been withheld improperly (including, but not limited to, consent required from Landlord pursuant to Section 10.2 or Section 20.1) shall be to institute litigation either for a declaratory judgment or for a mandatory injunction requiring that such consent be given (with the requesting party hereby waiving any claim for damages, attorneys' fees or any other remedy unless the consenting party refuses to comply with a court order or judgment requiring it to grant its consent).

30.5 One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

30.6 Whenever a period of time is herein prescribed for action to be taken by Landlord, Landlord shall not be liable or responsible for, and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord.

30.7 Intentionally Deleted.

30.8 If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby.

30.9 If this Lease is in fact a sublease, Tenant accepts this Lease subject to all of the terms and conditions of the underlying lease under which Landlord holds the Shopping Center as lessee. Tenant covenants that it will do no act or thing which would constitute a violation by Landlord of its obligation under such underlying lease; provided, however, that Tenant's agreement in this regard is premised on Landlord's assurances to the effect that the terms of this Lease do not violate such underlying lease.

30.10 The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Lease. Except to the extent required otherwise by applicable law, the venue for any court action or other legal proceeding under this Lease shall be **THE COUNTY IN WHICH RENTALS ARE DUE** pursuant to Section 9.2 and Section 1.1(b) of this Lease.

30.11 **WAIVER OF JURY TRIAL.** Landlord and Tenant hereby agree that in any court action or other legal proceeding relating to this Lease, they hereby mutually WAIVE TRIAL BY JURY of any or all issues arising in such court action or other legal proceeding. Each party to this Lease acknowledges that this WAIVER OF JURY TRIAL is being made voluntarily, knowingly and with full awareness of the legal consequences of this waiver.

30.12 The captions used herein are for convenience only and do not limit or amplify the provisions hereof. Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

30.13 The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors-in-interest and legal representatives except as otherwise herein expressly provided.

30.14 This Lease contains the entire agreement between the parties, and no rights are created in favor of either party on account of any condition or event—for example, a future vacancy of space in the Shopping Center or future road repair or construction adjacent to the Shopping Center—other than as specified or expressly contemplated in this Lease. No brochure, rendering, information or correspondence shall be deemed to be a part of this agreement unless specifically incorporated herein by reference. In addition, no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

30.15 **LANDLORD AND TENANT HEREBY ACKNOWLEDGE THAT THEY ARE NOT RELYING UPON ANY BROCHURE, RENDERING, INFORMATION, REPRESENTATION OR PROMISE OF THE OTHER, OR OF THE AGENT OR COOPERATING AGENT, EXCEPT AS MAY BE EXPRESSLY SET FORTH:**

[PLACE AN "X" OR OTHER MARK DESIGNATING A CHOICE ON THE APPROPRIATE LINE]:

  X   IN THIS LEASE.  
       IN \_\_\_\_\_ AS WELL AS IN THIS LEASE.

NOTE: IF NO "X" (OR OTHER MARK DESIGNATING A CHOICE) IS PLACED IN EITHER BOX IN THIS SECTION 30.15, THEN THE FIRST BOX WILL BE DEEMED TO HAVE BEEN MARKED.

30.16 STRIKE IF NOT APPLICABLE:

**TENANT IS HEREBY ADVISED THAT THE ENTITY COMPRISING LANDLORD INCLUDES INDIVIDUALS WHO ARE ALSO OFFICERS OF WEITZMAN MANAGEMENT CORPORATION, DOING BUSINESS AS WEITZMAN ("WEITZMAN") (WHICH MAY INCLUDE THE SALES PERSON OR SALES PERSONS SIGNING FOR WEITZMAN IN**

**THIS LEASE). UNLESS TENANT HAS A WRITTEN AGREEMENT TO THE CONTRARY FROM WEITZMAN, WEITZMAN IS REPRESENTING LANDLORD IN THIS TRANSACTION AND THEREFORE HAS NO FIDUCIARY DUTIES TO TENANT.**

30.17 This Lease consists of thirty articles and **Exhibits "A" through "D"**. With the exception of Article VII, in the event any provision of an exhibit or other attached page shall be inconsistent with a provision in the body of this Lease, the provision as set forth in the exhibit or other attached page shall be deemed to control.

30.18 Tenant shall not, without prior written consent from Landlord, disclose any of the financial terms of this Lease or of any future modification of this Lease or of any waiver by Landlord of any obligation of Tenant under this Lease to any other tenant or prospective tenant or other third party; provided, however, that this provision shall not preclude disclosures to Tenant's attorney or accountant as reasonably required to permit Tenant to enforce this Lease or to prepare tax returns or any other report required by law.

**The submission by Landlord of this instrument to Tenant for examination, negotiation or signature does not constitute an option for, or a representation by Landlord regarding, a prospective lease. This Lease shall be effective if and when (and only if and when) it has been executed by both Landlord and Tenant.**

*[The remainder of this page intentionally left blank.]*



EXECUTED to be effective as of the later of the dates accompanying a signature by Landlord or Tenant below; **provided, however**, that if the later of the dates accompanying a signature by Landlord or Tenant below is different from the date specified as the "Date of This Lease" on the initial page of this Lease (i.e., the page which contains the table of contents), then the date so specified on the initial page of this Lease shall be deemed to be the "Date of This Lease" for all purposes.

**LANDLORD:**  
**SEC REDBIRD COCKRELL HILL, LTD.,**  
**a Texas limited partnership**

By: Weitzman Management Corporation,  
d.b.a. Weitzman, its Agent

By: 

Name printed: **EVAN SMITH**

Title: **ASSET AND DEVELOPMENT MANAGER**

Date of Signature: 2/15, 2019

Taxpayer Identification No.: \_\_\_\_\_

**TENANT:**  
**CANALES LUNA GROUP LLC**  
**a Texas limited liability company**

By: 

Name printed: Lilitiana Mitchell

Title: President

Date of Signature: 2/15, 2019

Taxpayer ID / Soc. Sec. No.: \_\_\_\_\_

Driver's License Information of Signing Party:  
State: \_\_ Number: \_\_\_\_\_

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

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

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

Date of Signature: \_\_\_\_\_, 20\_\_

Taxpayer ID / Soc. Sec. No.: \_\_\_\_\_

Driver's License Information of Signing Party:  
State: \_\_ Number: \_\_\_\_\_

EXHIBIT " A "

SITE PLAN



This site plan is presented solely for the purpose of identifying the approximate location and size of the buildings currently contemplated by the Landlord. Building sizes, site dimensions, access and parking areas, existing tenant locations and identities are subject to change at Landlord's sole discretion, except as otherwise expressly restricted in this Lease. No representation, warranty, or covenant is to be implied by any other information shown on this Exhibit.

## EXHIBIT "B"

### CONSTRUCTION: TENANT ACCEPTANCE OF SPACE "AS-IS"

#### ARTICLE I

##### TENANT'S OBLIGATIONS

Tenant hereby accepts the Demised Premises "As-Is" and "turned over to Tenant for finish-out". Prior to the commencement of any construction, Tenant shall adhere to the following:

##### A. PRE-CONSTRUCTION OBLIGATIONS

- (1) Plans, diagrams, schedules and other data relating to work to be performed by Tenant must be furnished by Tenant to Landlord complete, sufficient to comply with all applicable laws and to obtain a building permit, and ready for Landlord's consideration and final approval within fifteen (15) days after execution of this Lease (or at such other time as may be specified in this exhibit). Without limiting the generality of the immediately preceding sentence, Tenant's submissions must (a) comply with the requirements of any interior design specifications which may be attached hereto as Exhibit B-1 and (b) include a site plan, a floor plan, a reflected ceiling plan, a plumbing, electrical and HVAC design plan, elevations of walls and a fixture plan. All drawings shall be at scale of either 1/8" or 1/4". Tenant shall reimburse Landlord for any loss or extra cost which may result to Landlord by reason of failure on the part of Tenant to submit any such plans, diagrams, schedules, specifications and/or other data within said period of time.
- (2) Tenant shall secure Landlord's written approval of all designs, plans, specifications, materials and contractors for work to be performed by Tenant before beginning the work (including following whatever "work letter" instructions, if any, which Landlord may deliver to Tenant in connection with the work), and shall secure all necessary licenses and permits to be used in performing the work. Tenant's finished work shall be in accordance with all such approved items, as well as any other specifications provided by Landlord, and shall be subject to Landlord's approval and acceptance. If required by the applicable municipality, Tenant shall, at Tenant's expense, obtain an asbestos survey of the Demised Premises from a person or company which is properly licensed to prepare such a survey. Tenant shall provide a copy of the asbestos survey to Landlord within ten (10) days following the completion of the survey.
- (3) The insurance requirements under Article XVI of this Lease and the waiver requirements under Article XVII of this Lease shall apply during the construction contemplated in this exhibit, and Tenant shall provide evidence of appropriate insurance coverage (including, unless waived by Landlord, what is commonly referred to as "builder's all-risk" insurance) prior to beginning any of Tenant's Work. Tenant shall also provide Landlord with evidence of insurance covering both Tenant and Tenant's contractor against damage to their personal property, as well as against third-party liability and worker's compensation claims arising out of all construction and associated activities. All policies of insurance shall be subject to Landlord's prior approval and shall be endorsed showing Landlord and Landlord's property manager as additional named insureds (or if permitted by Landlord, may provide a waiver of subrogation against Landlord and Landlord's property manager).

##### B. DESCRIPTION OF TENANT'S WORK

- (1) Signs: Tenant shall pay for all signs and the installation thereof, including the electrical hook-up, subject to the provisions of Section 14.1 of this Lease.
- (2) Utilities: All meters or other measuring devices in connection with utility services shall be provided by Tenant. All service deposits shall be made by Tenant at Tenant's expense.
- (3) All work undertaken by Tenant (i) shall be at Tenant's expense, (ii) shall not damage the building or any part thereof, and (iii) shall be completed in a manner which does not disturb other tenants in the Shopping Center. Any roof penetration shall be performed by Landlord's roofer, or, at Landlord's option, by a bonded roofer approved in advance by Landlord. The work shall be begun only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's plans to include materials acceptable to Landlord in order to prevent injury to the roof and to spread the weight of the equipment being installed. Tenant shall also be responsible for obtaining, and paying for, professional inspections of any structural work (including, without limitation, any roof work or concrete work).
- (4) Upon completion of Tenant's Work, Tenant shall (i) notify Landlord that the work is complete and ready for Landlord's review, (ii) deliver to Landlord a true copy of Tenant's certificate of occupancy (or similar governmental permit), (iii) deliver to Landlord all insurance documentation prescribed in Article XVI of this Lease, and (iv) provide documentation acceptable to Landlord that all bills have been paid to Tenant's contractors, subcontractors and professionals.

\* \* \*

EXHIBIT "C"

REDBIRD OAKS SHOPPING CENTER

DALLAS, TEXAS  
SIGN CRITERIA  
REVISED 5/20/2016

**THE PURPOSE:** The purpose of these sign criteria is to create a graphic environment that is individual and distinctive in identity for the Tenant, and also compatible with other signs within the Center. The total concept should give an impression of quality, professionalism and instill a good business image.

**PROCEDURES:** Tenant is required to submit to Landlord for their review and approval three (3) copies of scaled and dimensioned PDF drawing of the proposed sign indicating the exact construction details, materials and positioning of proposed SIGNAGE on the building elevations. The Landlord must review and approve the conformance to this established sign criteria **in writing** for all Tenant exterior SIGNAGE before manufacturing and installation. An "Approved" copy will be returned to the Tenant upon meeting the compliance requirements as set forth in **these criteria**. If a conflict or variation to these criteria is found to exist, the submittal will be returned to the Tenant for revision. Lessor shall make all final and controlling determinations concerning interpretations of these sign criteria.

**NOTICE**

**WRITTEN APPROVAL AND CONFORMANCE WITH THIS SPECIFICATION DOES NOT IMPLY CONFORMANCE WITH LOCAL CITY AND OTHER APPLICABLE SIGN CODES. YOUR SIGN MUST BE PERMITTED AND MUST COMPLY WITH THE CITY SIGN AND ELECTRICAL CODES AS WELL AS LANDLORD'S REQUIREMENTS. A RECEIPT OF A SIGN PERMIT MUST BE RECEIVED PRIOR TO MANUFACTURING AND INSTALLATION OF ALL SIGNS. IF THIS CRITERIA AND THE CITY CODE VARY, THE MORE RESTRICTIVE REQUIREMENT WILL APPLY.**

**A. GENERAL REQUIREMENTS**

1. No signs, advertisements, notices, or other lettering shall be displayed, exhibited, inscribed, painted or affixed in any manner to any part of the building exterior except as approved in writing by landlord.
2. Signage installed without first obtaining said approvals will be subjected to immediate removal at Tenant's expense.
3. Each electrical sign, and the installation thereof, shall comply with all local building and electrical codes. U.L. approved watertight penetrations must be utilized for all electrical connections through the building structure.
4. Tenant shall obtain all necessary permits for signs as well as the construction and installation of signs.
5. No label shall be placed on exposed surfaces of signs except those required by local ordinances. Required labels shall be applied in inconspicuous locations.
6. All penetrations of the building structure required for sign installation shall be neatly and properly sealed against water intrusion. All mounting and attachment mechanisms need to be non-corrodible (e.g. stainless steel or galvanized).
7. Sign copy shall be limited to Tenant's proper name and shall not include the names of items, goods, products or service lines.
8. The use of a crest, shield, logo, or other established corporate insignia which has been displayed or associated with Tenant's name may be permitted subjected to Landlord's review and written approval.
9. Signs shall be designed to reflect the character of the establishment that is being identified.

**B. TYPE OF SIGN**

1. Individual face illuminated channel letters with background plate mounted on a wire way.
2. Box type signs **not** permitted.
3. Trailer and temporary signs **not** permitted.
4. Roof or box signs **not** permitted.
5. Iridescent painted signs **not** permitted.
6. Cloth signs or streamers hanging in front of business **not** permitted.

**C. SIZE OF SIGNS**

1. Depth- 6" channel letters.
2. Letter height:  
At typical brick building face- single row letters not to exceed 30" and double row letters not to exceed 30".
3. Minimum Letter Size- 12".

4. The overall sign length shall not exceed 75% of the total linear storefront width measurement of the leased space or 50'-0", whichever is less.
5. The space between rows of letters to be 25% of letter height minimum.
6. The background plate is to extend beyond the outside of the letters. See diagram.
7. Background plate to be continuous around sign.
8. Background plate allowed to be split between letters and rows only when distance exceeds 8".
9. Background plate to provide 2" minimum coverage of wire way.

#### **D. LETTER TYPE FOR SIGNS**

1. Sign must be legible from the parking lot.
2. Upper and lower case letters allowed
3. Block style or script style is allowed but must be legible. Block style is preferred.
4. All lines of letters must run horizontally.
5. Letters mounted or painted on illuminated panels are **not** permitted.

#### **E. COLOR OF SIGNS**

1. Recommended colors : #7328 White Plexiglas, 3M Red overlay, 3M Vivid Green overlay, 3M Intense Blue overlay, 3M yellow overlay. Use #7238 White Plexiglas for white and color overlays. Overlay material to be 3M Scotchcal translucent graphic film.
2. Face colors are not limited by these criteria; however, Landlord reserves the right to reject certain colors that may not be compatible with the design of the project.
3. Returns to be black anodized.
4. Trimcaps to be 1" Jewelite matching face color.
5. Background color to be black or aluminum.
6. Wire way painted to match background plate.
7. Paint interior of sign letters with reflective white paint "Star Bright Finish".
8. No clear face letters permitted.

#### **F. CONSTRUCTION OF LETTERS**

1. Channel Letter:
  - A. Individual face lit, internally- illuminated LED, channel letters
  - B. Letters 24" or less will have 1/8" Plexiglas faces; 24" or larger will have 3/16" Plexiglas faces.
2. Returns and Backs:
  - A. 24" tall letters or smaller, use .063 aluminum backs and .040 aluminum sides.
  - B. 24" tall letters or larger, use .090 aluminum backs and .063 aluminum sides.
3. Background:
  - A. Background plate shall be 1/8" thick aluminum minimum.
4. Wire way:
  - A. Wire way to be 4" x 10" for smaller signs and 4" x 12" for larger signs.
  - B. Wire way to be .090 aluminum
  - C. No armor or wood in the manufactured returns or backs may be used.

#### **G. PLACEMENT AND INSTALLATION**

- A. General Notes:
  1. Letters are to be located on signage area of building as determined by Lessor. The assigned position for each Tenant shall be as close to a center- of- frontage location as possible, subject to allowance for positioning corner store signs and suitable space between adjacent Tenant signs, as determined by Lessor.
  2. Refer to the attached drawings for datum and baselines on the building fascia where signage will be allowed.
  3. Mount sign assemble to structure behind fascia wall, provide wire way box between wall surface and background plate. Letters and background plate are to be pre-assembled. Attachment of signage is to meet U.L. standards. No exposed wiring is permitted and all signs are to be U.L. labeled.
  4. Tenant will be responsible for all damage to the building incurred during sign installation or removal.
  5. Signs are to be on datum line centered top to bottom on parapet façade of leased store front.
  6. All attachment mechanisms must be non-corrosive, i.e. Stainless steel, galvanized, etc.
  7. Properly seal all penetrations in façade from water intrusion with Sonneyborn NPI sealant or equal. Any damage/s resulting from water intrusion from improperly sealed penetrations will be the Tenants responsibility.

## **H. LIGHTING AND ELECTRICAL**

1. All internal illumination shall be white LED; illumination is to be commercially acceptable per industry standards. No shadows or dark spots will be accepted.
2. No exposed raceways, wiring, or power supplies will be permitted.
  - a. All LED power supplies are to be concealed behind the fascia
  - b. All secondary wiring shall be concealed in the wire way
3. Penetration of structure shall be kept to a minimum and must have proper insulation for voltage cable.
4. All electrical components must be U.L. and no exposed wiring permitted.
5. Routing and location of other required items shall **not** be visible on front of fascia.
6. A licensed electrician will perform final electrical connection of sign.

## **I. ADDRESS SIGNS**

1. Each store is required to display a street address and suite number above storefront door and service door of 3-4" 3M exterior vinyl. Address should be as written in the Lease. Color: White. Letter style: Helvetica.

## **J. REAR ENTRY SIGNS**

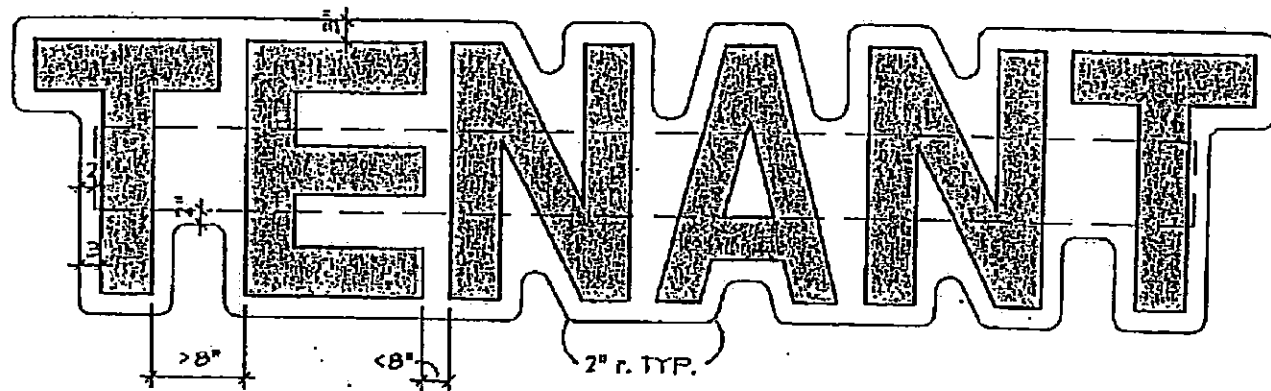
1. The Tenant may apply maximum 2" high vinyl die-cut letters on its rear door with their name and suite number only. Submit three (3) ¼"=1'-0" scaled drawing for approval. Color: White Letter style: Helvetica.

## **K. WINDOW SIGNS**

1. Company name only will be allowed in white vinyl letters not exceeding 3" in height. Submit three (3) copies of ¼"-1'-0" scaled drawings for approval. Tenant shall not apply any other signs to the interior or exterior face of the storefront glass or other materials.

## **L. DETAIL DRAWING SUBMITTAL FOR APPROVAL**

1. Prior to awarding a contract for fabrication and installation, Tenant shall submit drawings that indicate the following specifications: type, color, and thickness of all sign components and overlay, type of illumination and mounting method, attachment mechanisms, type and thickness of material used for backs, returns, and trim caps, including color; finish used on all. Tenant's sign contractor shall first visit the site to verify existing conditions prop to preparation of shop drawing; information needed to prepare submittals shall also be obtained during this visit.
2. Drawings must include fascia cross- section showing electrical connections.
3. Three (3) copies of a complete and detailed drawing shall be submitted for final approval to  
Weitzman  
Attn.: Construction Department  
3102 Maple Avenue, Suite 500  
Dallas, TX 75201
4. Elevation of building fascia and sign shall be drawn using a minimum ¼" to 1' scale and showing **all dimensions**.



1. BACKGROUND PLATE TO BE 3" OUTSIDE OF LETTERS CONTINUOUSLY.
2. BACKGROUND PLATE TO PROVIDE 2" MINIMUM COVERAGE OF RACEWAY BOX.
3. MINIMUM INSIDE AND OUTSIDE RADIUS TO BE 2" TYPICAL.
4. BACKGROUND TO "SPLIT" BETWEEN LETTERS ONLY WHEN DISTANCE EXCEEDS 8".

EXHIBIT " D "

GUARANTY

In order to induce SEC REDBIRD COCKRELL HILL, LTD., a Texas limited partnership ("Landlord") to execute the foregoing Shopping Center Lease (the "Lease") with CANALES LUNA GROUP LLC, a Texas limited liability company ("Tenant"), for a certain Demised Premises in REDBIRD OAKS Shopping Center, City of Dallas, Dallas County, Texas, the undersigned (whether one or more than one) has guaranteed, and by this instrument does hereby guarantee, the payment and performance of all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Tenant under the terms of the Lease, as if the undersigned has executed the Lease as Tenant hereunder.

The undersigned hereby waives notice of acceptance of this Guaranty and all other notices in connection herewith or in connection with the liabilities, obligations and duties guaranteed hereby, including notices of default by Tenant under the Lease, and waives diligence, presentment and suit on the part of Landlord in the enforcement of any liability, obligation or duty guaranteed hereby.

The undersigned further agrees that Landlord shall not be first required to enforce against Tenant or any other person any liability, obligation or duty guaranteed hereby before seeking enforcement thereof against the undersigned. Suit may be brought and maintained against the undersigned by Landlord to enforce any liability, obligation or duty guaranteed hereby without joinder of Tenant or any other person. The liability of the undersigned shall not be affected by any indulgence, compromise, settlement or variation of terms which may be extended to Tenant by Landlord or agreed upon by Landlord and Tenant, and shall not be impaired, modified, changed, released or limited in any manner whatsoever by any impairment, modification, change, release, or limitation of the liability of Tenant or its estate in bankruptcy, or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the federal Bankruptcy Act, or any similar law or statute of the United States or any state thereof. Landlord and Tenant, without notice to or consent by the undersigned, may at any time or times enter into such extensions, renewals, amendments, assignments, subleases, or other covenants with respect to the Lease as they may deem appropriate, and the undersigned shall not be released thereby, but shall continue to be fully liable for the payment and performance of all liabilities, obligations and duties of Tenant under the Lease as so extended, renewed, amended, assigned or otherwise modified.

It is understood that other agreements similar to this Guaranty may, at Landlord's sole option and discretion, be executed by other persons with respect to the Lease. This Guaranty shall be cumulative of any such agreements and the liabilities and obligations of the undersigned hereunder shall in no event be affected or diminished by reason of such other agreements. Moreover, in the event Landlord obtains another signature of more than one guarantor on this page or by obtaining additional guarantee agreements, or both, the undersigned agrees that Landlord, in Landlord's sole discretion, may (i) bring suit against all guarantors of the Lease jointly and severally or against any one or more of them, (ii) compound or settle with any one or more of the guarantors for such consideration as Landlord may deem proper, and (iii) release one or more of the guarantors from liability. The undersigned further agrees that no such action shall impair the rights of Landlord to enforce the Lease against any remaining guarantor or guarantors, including the undersigned.

If the party executing this Guaranty is a corporation, then the undersigned officer personally represents and warrants that the Board of Directors of such corporation, in a duly held meeting, has determined that this guaranty may reasonably be expected to benefit the corporation.

The undersigned agrees that if Landlord shall employ an attorney to present, enforce or defend all of Landlord's rights or remedies hereunder, the undersigned shall pay any reasonable attorney's fees incurred by Landlord in such connection.

This agreement shall be binding upon the undersigned and the successors, heirs, executors and administrators of the undersigned, and shall inure to the benefit of Landlord and Landlord's heirs, executors, administrators and assigns.

EXECUTED this 15th day of February, 2019, to be effective the same day as the effective date of the Lease.

GUARANTOR(S):

CANALES V.C. INVESTMENTS LLC, a Texas limited liability company

Name of Guarantor (printed or typed)

Limited Liability Company

Type of Guarantor (e.g., individual, corporation, trust)\*

Address (printed or typed):

2202 E Randol Mill Road

Arlington, Texas 76011

SS#/Taxpayer Identification No.

Elizabeth Moreno
WITNESS OR ATTEST

By: Lilitiana Mitchell
SIGNATURE OF GUARANTOR

Printed Name: Lilitiana Mitchell

\* If, and only if, the Guarantor is a corporation, trust or other entity and the Signatory is signing as the officer of such Guarantor, specify the title of the Signatory: