



# Pima County Clerk of the Board

Julie Castañeda

Melissa Manriquez  
Deputy Clerk

Administration Division  
130 W. Congress, 5<sup>th</sup> Floor  
Tucson, AZ 85701  
Phone: (520)724-8449 • Fax: (520)222-0448

Management of Information & Records Division  
1640 East Benson Highway  
Tucson, Arizona 85714  
Phone: (520) 351-8454 • Fax: (520) 791-6666

March 29, 2019

Kevin Arnold Kramber  
Charro Vida  
536 E. Wagon Bluff Drive  
Tucson, AZ 85704

RE: Arizona Liquor License Job No.: 52507  
d.b.a. Charro Vida

Dear Mr. Kramber:

Enclosed is a copy of the Affidavit of Posting relative to your Liquor License Application for a Series 12, Restaurant, which was received in our office on March 4, 2019. The Hearing before the Pima County Board of Supervisors has been scheduled for Tuesday, April 16, 2019, at 9:00 a.m. or thereafter, at the following location:

Pima County Administration Building  
Board of Supervisors Hearing Room  
130 W. Congress, 1st Floor  
Tucson, AZ 85701

Should you have any questions pertaining to this matter, please contact this office at (520)724-8449.

Sincerely,

A handwritten signature in black ink, appearing to read "Castañeda", is written over a horizontal line.

Julie Castañeda  
Clerk of the Board

Enclosure



Arizona Department of Liquor Licenses and Control  
 800 W Washington 5th Floor  
 Phoenix, AZ 85007-2934  
 www.azliquor.gov  
 (602) 542-5141

APR 28 19PM 1237 PCD KCF BD  
 AR3

**AFFIDAVIT OF POSTING**

Date of Posting: 3-7-2019 Date of Posting Removal: 3-27-2019

Applicant's Name: Charro Vida Kevin Arnold  
Last First Middle

Business Address: 7109 N. Oracle Road Tucson 85704  
Street City Zip

License #: 52507

I hereby certify that pursuant to A.R.S. 4-201, I posted notice in a conspicuous place on the premises proposed to be licensed by the above applicant and said notice was posted for at least twenty (20) days.

Brian Rutledge Process Server PCSD #8699 520-301-1212  
Print Name of City/County Official Title Phone Number

B. Rutledge 3-27-2019  
signature Date Signed

Return this affidavit with your recommendations (i.e., Minutes of Meeting, Verbatim, etc.) or any other related documents. If you have any questions please call (602) 542-5141 and ask for the Licensing Division.



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Phone: (520) 351-8454 • Fax: (520) 791-6666

TO: Development Services, Zoning Division  
FROM: Melissa Whitney  
Administrative Support Specialist Senior  
DATE: 3/5/19  
RE: Zoning Report - Application for Liquor License

Attached is the application of:

Kevin Arnold Kramber  
d.b.a. Charro Vida  
7109 N. Oracle Road  
Tucson, AZ 85704

Arizona Liquor License Job No. 52507  
Series 12, Restaurant  
New License ☒  
Person Transfer  
Location Transfer

ZONING REPORT

DATE: 3/14/19

Will current zoning regulations permit the issuance of the license at this location?

Yes ☒ No ☐

If No, please explain:

  
Pima County Zoning Inspector

When complete, please return to [cob\\_mail@pima.gov](mailto:cob_mail@pima.gov)

MAR 14 19 10 50 PC CLK OF HD

NW

**State of Arizona**  
**Department of Liquor Licenses and Control**

Created 02/28/2019 @ 03:20:46 PM

Local Governing Body Report

**LICENSE**

Number:		Type:	012 RESTAURANT
Name:	CHARRO VIDA		
State:	Pending		
Issue Date:		Expiration Date:	
Original Issue Date:			
Location:	7109 N ORACLE ROAD TUCSON, AZ 85704 USA		
Mailing Address:	536 E WAGON BLUFF DRIVE TUCSON, AZ 85704 USA		
Phone:	(520)235-5684		
Alt. Phone:			
Email:	KKRAMBER75@GMAIL.COM		

**AGENT**

Name:	KEVIN ARNOLD KRAMBER
Gender:	Male
Correspondence Address:	536 E WAGON BLUFF DRIVE TUCSON, AZ 85704 USA
Phone:	(520)235-5684
Alt. Phone:	
Email:	KKRAMBER75@GMAIL.COM

**OWNER**

Name:	1922 CASA LLC		
Contact Name:	KEVINA RNOLD KRAMBER		
Type:	LIMITED LIABILITY COMPANY		
AZ CC File Number:	1951251	State of Incorporation:	AZ
Incorporation Date:	02/25/2019		
Correspondence Address:	536 E WAGON BLUFF DRIVE TUCSON, AZ 85704 USA		
Phone:	(520)235-5684		
Alt. Phone:			
Email:	KKRAMBER75@GMAIL.COM		

**Officers / Stockholders**

Name:	Title:	% Interest:
-------	--------	-------------

MR 0419M0147PCC KCE BD  
mlw

CARLOTTA MARY FLORES  
RAYMOND GILBERT FLORES

MEMBER  
MEMBER

50.00  
50.00

### 1922 CASA LLC - MEMBER

Name: RAYMOND GILBERT FLORES  
Gender: Male  
Correspondence Address: 536 E WAGON BLUFF DRIVE  
TUCSON, AZ 85704  
USA  
Phone: (520)891-6310  
Alt. Phone:  
Email: RAY@ELCHARROCAFE.COM

### 1922 CASA LLC - MEMBER

Name: CARLOTTA MARY FLORES  
Gender: Female  
Correspondence Address: 536 E WAGON BLUFF DRIVE  
TUCSON, AZ 85704  
USA  
Phone: (520)488-9728  
Alt. Phone:  
Email: CARLOTTA@ELCHARROCAFE.COM

## APPLICATION INFORMATION

Application Number: 52507  
Application Type: New Application  
Created Date: 02/22/2019

## QUESTIONS & ANSWERS

### 012 Restaurant

- 1) If you intend to operate the business while your application is pending you will need an interim permit pursuant to A.R.S. §4-203.01. Would you like to apply for an Interim Permit?  
If yes, after completing this application, please go back to your Licensing screen, under New License Application choose "Interim Permit" from the drop-down window.  
Yes
- 2) Have you submitted a questionnaire? Each person listed must submit a questionnaire and mail in a fingerprint card along with a \$22. processing fee per card.  
Yes
- 5) Are you a tenant? (A person who holds the lease of a property; a lessee)  
Yes  
A Document of type LEASE is required.
- 6) Is there a penalty if lease is not fulfilled?  
Yes  
What is the penalty?  
1) loss of security deposit \$17,500 2) Landlord Lockout

- 7) Are you a sub-tenant. (A person who holds a lease which was given to another person (tenant) for all or part of a property)  
No
- 8) Are you the owner?  
No
- 9) Are you a purchaser?  
No
- 10) Are you a management company?  
No
- 11) Is the Business located within the incorporated limits of the city or town of which it is located?  
No  
If no, in what City, Town, County or Tribal/Indian Community is this business located?  
Pima County
- 12) What is the total money borrowed for the business not including the lease?  
Please list lenders/people owed money for the business.  
None-Capital Contribution
- 13) Have you provided a diagram of your premises?  
Yes
- 14) Is there a drive through window on the premises?  
No
- 15) If there is a patio please indicate contiguous or non-contiguous within 30 feet.  
Yes, contiguous
- 16) Is your licensed premises now closed due to construction, renovation or redesign or rebuild?  
No
- 17) Have you provided a Restaurant Operation Plan form?  
Yes
- 18) Have you provided a Records Required for Audit form?  
Yes

## DOCUMENTS

DOCUMENT TYPE	FILE NAME	UPLOADED DATE
DIAGRAM/FLOOR PLAN	Floor Plan.pdf	02/22/2019
LEASE	Lease.pdf	02/22/2019
LEASE	Charro-Landlord Sect 5 Letter.docx	02/22/2019
MENU	CHARRO VIDA MOCK LIQUOR MENU.pdf	02/22/2019
MENU	CHARRO VIDA MOCK MENU.pdf	02/22/2019
QUESTIONNAIRE	KAK Attach ASF Passport.pdf	02/22/2019
QUESTIONNAIRE	Carlotta Q.pdf	02/22/2019
QUESTIONNAIRE	Raymond Q.pdf	02/22/2019
QUESTIONNAIRE	Garret Mgr Q & Training Certs.pdf	02/22/2019
QUESTIONNAIRE	Kevin Business Name Amendment 2.pdf	02/22/2019
QUESTIONNAIRE	Calotta Business Name Amendment.pdf	02/22/2019
QUESTIONNAIRE	Raymond Business Name Amendment.pdf	02/22/2019
QUESTIONNAIRE	Boos Business Name Amendment .pdf	02/22/2019
LEASE	1922 Casa LLC Articles ACC Received 021419.pdf	02/22/2019

RECORDS REQUIRED FOR AUDIT

Records Required For Audit.pdf

02/22/2019

RESTAURANT OPERATION PLAN

Rest Op Plan.pdf

02/22/2019

Charro Vida-Rest Op Plan amendment  
022619.pdf

02/26/2019

**IP**

**State of Arizona**  
**Department of Liquor Licenses and Control**

Created 02/28/2019 @ 03:20:55 PM

Local Governing Body Report

**LICENSE**

Number:	INP100005047	Type:	INP INTERIM PERMIT
Name:	CHARRO VIDA		
State:	Active		
Issue Date:	02/28/2019	Expiration Date:	06/13/2019
Original Issue Date:	02/28/2019		
Location:	7109 N ORACLE ROAD TUCSON, AZ 85704 USA		
Mailing Address:	536 E WAGON BLUFF DRIVE TUCSON, AZ 85704 USA		
Phone:	(520)235-5684		
Alt. Phone:			
Email:	KKRAMBER75@GMAIL.COM		

**AGENT**

Name:	KEVIN ARNOLD KRAMBER
Gender:	Male
Correspondence Address:	536 E WAGON BLUFF DRIVE TUCSON, AZ 85704 USA
Phone:	(520)235-5684
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Contact Name:	KEVINA RNOLD KRAMBER		
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**Officers / Stockholders**

Name:	Title:	% Interest:
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RAYMOND GILBERT FLORES

MEMBER  
MEMBER

50.00  
50.00

### 1922 CASA LLC - MEMBER

Name: RAYMOND GILBERT FLORES  
Gender: Male  
Correspondence Address: 536 E WAGON BLUFF DRIVE  
TUCSON, AZ 85704  
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Correspondence Address: 536 E WAGON BLUFF DRIVE  
TUCSON, AZ 85704  
USA  
Phone: (520)488-9728  
Alt. Phone:  
Email: CARLOTTA@ELCHARROCAFE.COM

## APPLICATION INFORMATION

Application Number: 52511  
Application Type: New Application  
Created Date: 02/22/2019

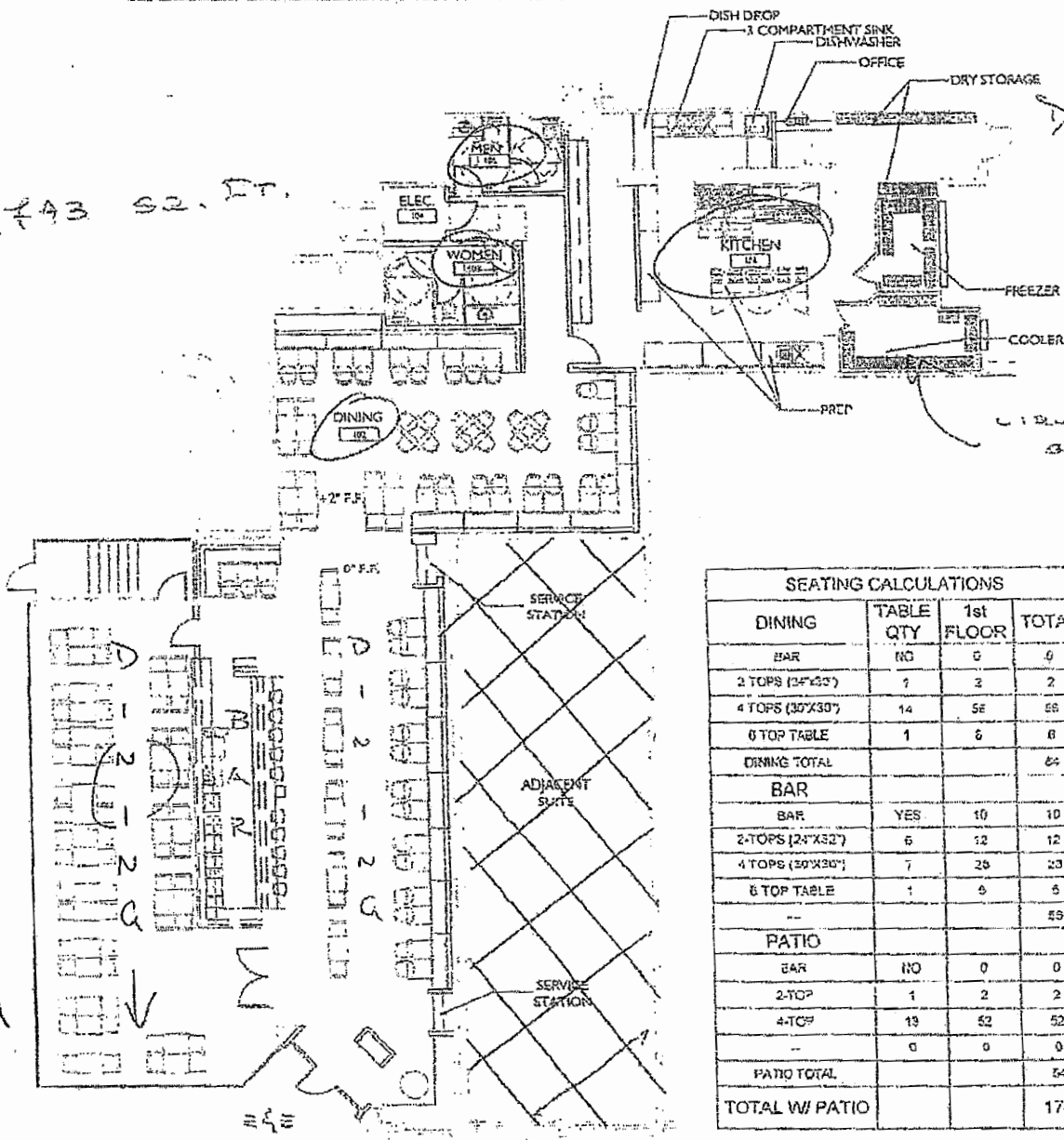
## QUESTIONS & ANSWERS

### INP Interim Permit

- 1) Enter License Number currently at location  
12104455  
Surrendered 08/24/2018
- 2) Is the license currently in use?  
No  
How long has it been out of use?  
08/24/2018
- 3) Please submit section 5, page 6, of the license application when you reach the upload page.  
Yes

ALL DIMENSIONS ARE REFERENCE ONLY INTERIOR  
DIMENSIONS AND FIELD VERIFICATION REQUIRED

3.743 SQ. FT.



SEATING CALCULATIONS			
DINING	TABLE QTY	1st FLOOR	TOTAL
BAR	NO	0	0
2 TOPS (24"x30")	1	2	2
4 TOPS (30"x30")	14	56	56
6 TOP TABLE	1	6	6
DINING TOTAL			64
BAR			
BAR	YES	10	10
2-TOPS (24"x32")	6	12	12
4-TOPS (30"x30")	7	28	28
6 TOP TABLE	1	6	6
--			56
PATIO			
BAR	NO	0	0
2-TOP	1	2	2
4-TOP	19	52	52
--	0	0	0
PATIO TOTAL			54
TOTAL W/ PATIO			174

OCCUPANT LOAD / EGRESS REQUIREMENTS												
BLDG./SPACE	AREA	OCC. FACTOR	#OCC.	ADA SEATING	WIDTH FACTOR	REQ. ED	PROVIDED	# EXIT REQ. ED	PROVIDED			
DINING	696 SF	1/100 GROSS	69	4	.2'	12.6"	80"	2	2			
		# OF CHAIRS	64									
BAR	1381 SF	1/200 GROSS	6	N/A	.2'	1.2"				60"	2	2
KITCHEN	1497 SF	1/200 GROSS	7	N/A	.2'	1.4"						
EXTERIOR PATIO	994 SF	1/100 GROSS	99	3			N/A					
		# OF CHAIRS	54									
TOTAL			174			34.8"	80"	2	2			
MAXIMUM EXIT ACCESS TRAVEL DISTANCE				250'	REF. 2012 IBC TABLE 1016.2							
CORRIDOR FIRE RESISTANCE RATING				0	REF. 2012 IBC TABLE 1018.1							

\* FULLY ENCLOSED  
INDOOR SEATING  
AREA W/10'  
WOOD FLOORING  
WITH BRICK

VIEWER



# EXHIBIT FLOOR PLAN

SCALE: 3/32" = 1'-0" DATE: 06.14.16 JOB#15100

223

303 South Canyon Ave  
Tomball, TX 77375  
281-296-9929

19 FEB 28 10:41 AM '16

# GRI CASAS ADOBES, LLC

C/O FIRST WASHINGTON REALTY, INC., 4350 EAST-WEST HIGHWAY, SUITE 400, BETHESDA,  
MARYLAND 20814 (301) 907-7800

February 22, 2019

VIA OVERNIGHT DELIVERY

Arizona Department of Liquor License and Control  
800 West Washington  
5<sup>th</sup> Floor  
Phoenix, Arizona 85007

Re: Former "Bird Modern Provisions & Bar"  
7109 North Oracle Road, Tucson, Arizona 85704  
Liquor License No. 12104455

To whom it may concern,

Please accept this letter as written evidence of the termination of the Lease Agreement with the Tenant, Fukushu 2, LLC. Their lease terminated on February 22, 2019.

We have now entered into a new lease agreement with 1922 Casa LLC and request that this letter coupled together with a copy of the fully executed lease will allow Mr. Flores to obtain an "interim permit" liquor license for the demised premise.

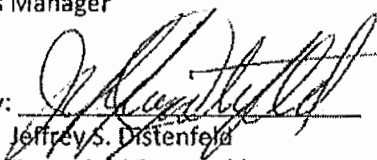
Please feel free to contact me with any additional questions or comments that may arise. Thank you for your time and consideration in this matter.

Sincerely,

GRI CASAS ADOBES, LLC,  
a Delaware limited liability company

By: Global Retail Investors, LLC,  
a Delaware limited liability company,  
its Sole Member

By: First Washington Realty, Inc.  
a Maryland corporation,  
its Manager

By:   
Jeffrey S. Distenfeld  
Executive Vice President

LEASE AGREEMENT

BY AND BETWEEN

GRI CASAS ADOBES, LLC, a Delaware limited liability company  
("LANDLORD")

AND

1922 CASA LLC, an Arizona limited liability company t/a Casa Charro  
("TENANT")

1922 CASA LLC

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Schedule of Exhibits:

<u>EXHIBIT A:</u>	Site Plan
<u>EXHIBIT A-1:</u>	Outdoor Seating Areas
<u>EXHIBIT A-2</u>	The Additional Outdoor Seating Area Conceptual Plans
<u>EXHIBIT A-3</u>	Valet Station
<u>EXHIBIT B:</u>	Work Agreement
<u>EXHIBIT B-1:</u>	Construction Rules and Regulations
<u>EXHIBIT B-2:</u>	Construction Insurance
<u>EXHIBIT C:</u>	Rules and Regulations
<u>EXHIBIT D:</u>	Commencement Date Agreement
<u>EXHIBIT E:</u>	Signage Criteria
<u>EXHIBIT F:</u>	Exclusive and Prohibited Uses

First Addendum to Lease Agreement  
Guaranty Agreement

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is dated as of \_\_\_\_\_, 2019 ("Effective Date") by and between GRI CASAS ADOBES, LLC, a Delaware limited liability company ("Landlord"), and 1922 CASA LLC, an Arizona limited liability company ("Tenant"). ]

### ARTICLE I DEFINITIONS

1.01 The following terms shall have the meanings set forth below for all purposes in this Lease

- (a) **Property:** The shopping center commonly known as Casas Adobes Plaza, Tucson, Arizona, as approximately shown on EXHIBIT A.
- (b) **Premises:** Space No. 19 containing approximately 3,743 square feet at the Property, as approximately shown cross-hatched on EXHIBIT A. The building of which the Premises is a part is referred to herein as the "Building".
- (c) **Lease Term:** Per Section 3.01 of this Lease, commencing as of the Delivery Date and continuing for ten (10) Lease Years (i.e., expiring May 31, 2029, or the earlier date on which this Lease is terminated in accordance with the provisions hereof or pursuant to applicable law, and as such date may be extended by the Extension Terms).
- (d) **Extension Terms:** Two (2) terms of five (5) Lease Years each.
- (e) **Delivery Date:** The earlier of (i) the date Landlord tenders possession of the Premises to Tenant with Landlord's Work (as defined in EXHIBIT B) Substantially Complete (as such term is defined below); and (ii) the date Landlord would have tendered possession of the Premises to Tenant with Landlord's Work Substantially Complete, but for any Tenant Delay (as defined in EXHIBIT B).

The term "Substantially Complete" shall mean that Landlord's Work has been completed, as determined by Landlord or Landlord's architect or general contractor, in accordance with the provisions of this Lease applicable thereto, except for minor details of construction, decoration and mechanical adjustments (i.e., "punch list" items), if any, the non-completion of which does not materially interfere with Tenant's ability to commence Tenant's Work or which, in accordance with good construction practices, would be completed after the completion of other work in the Premises.

- (f) **Rent Commencement Date:** June 1, 2019.
- (g) **Minimum Rent:**

#### Initial Lease Term:

Lease Year	Annually	Monthly
1 - 5	\$159,999.96	\$13,333.33
6 - 10	\$176,000.04	\$14,666.67

#### First Extension Term:

Lease Year	Annually	Monthly
10 - 15	\$193,600.08	\$16,133.34

Second Extension Term:

Lease Year	Annually	Monthly
16 - 20	\$212,960.04	\$17,746.67

(h) Percentage Rent Percentage: Six percent (6%).

(i) Gross Leasable Area: When used with respect to the Premises, the number of square feet set forth in Section 1.01(b) above. When used with respect to any other space in the Property, the number of leasable square feet on the first floor as reasonably determined by Landlord. As of the Effective Date, the Gross Leasable Area of the Property for purposes of calculating Tenant's pro rata share of Common Expenses is 92,483 leasable square feet, subject to future adjustment by Landlord from time to time pursuant to Section 6.03; provided, however, that notwithstanding the foregoing and/or anything to the contrary set forth in this Lease, in no event shall the Gross Leasable Area of the Property used in the denominator for purposes of calculating Tenant's pro rata share of Common Expenses be reduced from 92,483 by more than ten percent (10%), unless the Property's total Gross Leasable Area is reduced by a taking or condemnation by Governmental Authorities, in which case, Landlord and Tenant shall have any applicable termination rights set forth in Article XVIII of this Lease.

(j) Annual Breakpoint:

Initial Lease Term:

Lease Year	Annual Breakpoint
1 - 5	\$3,400,000.00
6 - 10	\$3,740,000.00

First Extension Term:

Lease Year	Annual Breakpoint
10 - 15	\$4,114,000.00

Second Extension Term:

Lease Year	Annual Breakpoint
16 - 20	\$4,525,400.00

(k) [Reserved].

(l) [Reserved].

(m) Security Deposit: Twenty Thousand and 00/100 Dollars (\$20,000.00), subject to reduction pursuant to the terms and conditions set forth in Section 24.01.

(n) Rent Deposit: None.

(o) Permitted Use: For the operation of a Mexican inspired, steak themed restaurant, with a menu including mariscos, a raw bar, seafood chocolate confections, and gourmet and related specialty products, in any event consistent in quality with other El Charro Restaurants (as defined in Section 8.01) as of the Effective Date, and incidental thereto, the sale of alcoholic beverages, which may include small batch tequilas and whiskeys, for on-premises consumption only (provided that Tenant has obtained all licenses, permits and governmental approvals necessary to conduct the retail sale of alcoholic beverages for on-Premises consumption and complies



with all Laws in connection with such permitting and sale), subject to the exclusives and prohibited uses set forth in EXHIBIT F, and for no other purpose or use. Notwithstanding anything to the contrary set forth in this Lease, in no event shall the Permitted Use include the operation of a fast food restaurant (it being understood and agreed the quality, and operation, of the restaurant operated in the Premises shall exceed that of a fast food restaurant). Any proposed change of the Permitted Use shall be subject to the Change of Use Limitations and Landlord's consent which shall be granted or withheld pursuant to the terms and conditions set forth in Section 8.01 of this Lease.

(p) Tenant's Advertised Name: Casa Charro, subject to change pursuant to Section 8.04.

(q) Tenant's Plans Due Date: Thirty (30) days after the Effective Date.

(r) Address for Notices to Tenant: 1922 Casa LLC  
847 East 18<sup>th</sup> Street  
Tucson, Arizona 85719

(s) Address for Notices to Landlord: c/o First Washington Realty, Inc.  
4350 East-West Highway, Suite 400  
Bethesda, Maryland 20814  
Attn: General Counsel

Address for Rent Payments to Landlord: GRI CASAS ADOBES, LLC  
PO BOX 664001  
Dallas, TX 75266-4001

(t) Guarantor: Raymond G. Flores and Carlotta M. Flores, husband and wife.

(u) Address of Guarantor: 3065 W. Glenn Point Lane  
Tucson, Arizona 85745

(v) Guaranty: refers to that certain Guaranty Agreement dated of even date herewith attached hereto and executed by the Guarantor for the benefit of Landlord, as the same may be amended from time to time. The Guaranty is a material part of this Lease. The Guarantor's liability for the Guaranteed Obligations is limited as expressly set forth in Section 13 of the Guaranty Agreement.

(w) Brokers: CBRE and NAI Horizon Real Estate

1.02 Simultaneously with Tenant's execution of this Lease, Tenant shall pay to Landlord the Security Deposit, which shall be held by Landlord pursuant to Article XXIV of this Lease.

1.03 This Lease includes and incorporates the following Exhibits, all of which are made a part hereof by this reference:

<u>EXHIBIT A:</u>	Site Plan
<u>EXHIBIT A-1:</u>	Outdoor Seating Areas
<u>EXHIBIT A-2:</u>	The Additional Outdoor Seating Area Conceptual Plans
<u>EXHIBIT A-3:</u>	Valet Station
<u>EXHIBIT B:</u>	Work Agreement
<u>EXHIBIT B-1:</u>	Construction Rules and Regulations
<u>EXHIBIT B-2:</u>	Construction Insurance
<u>EXHIBIT C:</u>	Rules and Regulations
<u>EXHIBIT D:</u>	Commencement Date Agreement
<u>EXHIBIT E:</u>	Signage Criteria
<u>EXHIBIT F:</u>	Exclusive and Prohibited Uses

First Addendum to Lease Agreement  
Guaranty Agreement

ARTICLE II  
PREMISES AND DELIVERY

2.01

(a) Landlord hereby leases to Tenant the Premises, and Tenant hereby rents the Premises from Landlord, for the Lease Term and upon the terms and conditions set forth in this Lease. Except for any Landlord's Work to be performed by Landlord pursuant to EXHIBIT B, Tenant hereby agrees that it has inspected the Premises and it accepts possession of the Premises in its "AS IS" physical condition as of the Delivery Date and acknowledges and agrees that Landlord is not obligated to (i) make any improvements or perform any work, alterations, repairs or replacements, (ii) obtain any building permits, certificates of occupancy or any other permits, licenses or governmental approvals, or (iii) spend any money, for the purpose of either putting Tenant in possession of, or improving or repairing, the Premises.

(b) Tenant understands and agrees that its acceptance of the Premises in "AS IS" condition includes without limitation the condition of the structural elements and mechanical, plumbing, and utility systems of the Premises at the time of tender of possession of the Premises to Tenant. Landlord makes no representations or warranties regarding the Premises or the suitability of the Premises for Tenant's business. Further, the taking of possession of, or commencement of work or operations in, the Premises (or any part thereof) by Tenant following Landlord's tender of possession of the Premises to Tenant shall, for all purposes of this Lease, be conclusive evidence that the Premises are in good condition and that all work and materials required to be performed or supplied by Landlord, including, without limitation, any Landlord's Work (whether or not then Substantially Complete), if any, was, in fact, achieved or deemed to have been achieved and is satisfactory; provided, however, that Tenant shall have thirty (30) days after the Delivery Date to give Landlord written notice of any punch list items as to Landlord's Work remaining to be completed, timely failing which shall constitute Tenant's irrevocable and unconditional waiver of any right that Tenant might otherwise have had whether under this Lease, or otherwise, to object to and to cause Landlord to complete any punch list items. For purposes of this Lease, the term "Laws" shall mean all present and future laws, orders, ordinances, directions, notices, rules and regulations of the federal government and of any state, county, city, borough and municipality, and of any division, agency, subdivision, bureau, office, commission, board, authority and department thereof, including, without limitation, the Americans With Disabilities Act, and any supporting regulations with respect to the foregoing, and all similar federal, state or local laws, regulations and ordinances, all as the same may be amended from time to time, and of any public officer or official, any quasi-governmental officials and authorities, and/or any private associations or other entities, in any case having or asserting jurisdiction over the Premises, the Property and/or the land on which they are located (each, a "Governmental Authority" and collectively, "Governmental Authorities"). Nothing contained in this Section 2.01 shall be deemed to relieve Landlord from any of its obligations under Section 10.04 of this Lease.

(c) In the event that (i) despite Tenant's good faith, commercially reasonable and diligent efforts, Tenant is prevented from obtaining any permits and approvals, which are required by applicable Laws for Tenant to perform Tenant's Work pursuant to Tenant's Approved Plans (but specifically excluding any permits or approvals relating to any signs to be installed by or on behalf of Tenant) (a "Required Permit"), solely as a result of any violations of Laws affecting the Common Areas, which violations existed prior to the Delivery Date and were not caused by the acts or omissions of Tenant or its agents, contractors or employees or Tenant's specific business, use or manner of use of the Premises (each, a "Violation" and collectively, the "Violations") (provided, however, that Landlord agrees that a Violation shall not be deemed triggered as a result of any Tenant's Work if any request for a building permit to perform work in the Premises would have triggered the violation), (ii) Tenant has provided Landlord with written notice of such Violation(s) (the "Required Permit Notice"), and (iii) Tenant has not commenced performance of Tenant's Work, or has commenced performance of Tenant's Work, but has subsequently been forced to cease performance thereof (and has actually ceased such performance), or has not opened for business in the Premises, as the case may be, solely as a result thereof, then Landlord shall, at its sole cost and expense, cure such Violation(s) or deposit into escrow with the appropriate Governmental Authorities any monies or bonds required or permitted such that Tenant is able to obtain the Required Permit(s) and the Rent Commencement Date shall be extended one (1) day for each day after the date that Landlord receives the Required Permit Notice that Tenant is so

prevented from obtaining any Required Permit until the earlier of the date that (x) such Violation(s) are cured and Tenant has received written notice thereof from Landlord, (y) any such Required Permit is issued, or (z) Tenant commences (or recommences) Tenant's Work or opens for business, as the case may be. Notwithstanding the foregoing and/or anything to the contrary set forth herein, in the event that the cost of curing any such Violations or otherwise satisfying the appropriate Governmental Authorities so that any Required Permit is issued to Tenant exceeds One Hundred Thousand and 00/100 (\$100,000.00) Dollars either individually or in the aggregate (the "Violations Cap"), then Landlord shall have the option to terminate this Lease upon notice to Tenant in which event this Lease shall terminate on the date set forth in such notice and each party shall be relieved of any further obligations under the Lease; provided, that Landlord shall promptly return to Tenant any Security Deposit delivered to Landlord; provided, further, that Tenant shall have the right exercisable by notice to Landlord received within fifteen (15) business days following Tenant's receipt of Landlord's termination notice pursuant to this Section to elect to pay to Landlord any reasonable, out-of-pocket costs which would be incurred in excess of the Violations Cap to cure such Violations or otherwise satisfy the appropriate Governmental Authorities so that the Required Permit is issued to Tenant, in which event Landlord's termination notice shall be null and void and any reimbursement by Tenant shall be paid to Landlord, as Additional Rent, within thirty (30) days of delivery to Tenant of invoices or other reasonable documentation thereof.

(d) Furthermore, If Landlord receives notice of a violation of applicable Laws in the Common Areas from the applicable Governmental Authority, and (1) the reason for such violation is that such Common Areas were not already compliant and such violation was not caused by (x) the particular use or manner of use of Tenant, (y) any cause or condition created by or on behalf of Tenant, including, without limitation, any Tenant's Work or other Alterations, or (z) the negligence of Tenant or any Tenant Parties or the breach of any of Tenant's obligations under this Lease, and (2) the failure to cure such violation would materially interfere with Tenant's Permitted Use, then and in such event the cost of any such modifications to make the Common Areas compliant shall be at Landlord's sole cost and expense (subject to inclusion in Common Expenses as set forth in Article VI).

### ARTICLE III TERM

3.01 This Lease is effective on the Effective Date. The Lease Term shall commence on the Delivery Date and continue for the period set forth in Section 1.01(c) above. The first (1<sup>st</sup>) "Lease Year" shall begin on the Rent Commencement Date and shall end twelve (12) full calendar months thereafter (which shall include any partial calendar month if the Rent Commencement Date is not the first (1<sup>st</sup>) day of a month). Thereafter, each Lease Year shall commence on the day following the expiration of the preceding Lease Year and shall end on the expiration of twelve (12) calendar months thereafter or, if earlier, the Expiration Date (as such term is defined below). The Lease Term shall include any and all Extension Terms to the extent properly exercised by Tenant, and extensions of the term of this Lease. The last day of the Lease Term, or the earlier date on which this Lease is terminated in accordance with the provisions of this Lease or pursuant to applicable Laws, is referred to herein as the "Expiration Date".

3.02 Within ten (10) days after the Effective Date (the "Liquor License Submittal Deadline"), Tenant shall, at Tenant's sole cost and expense, submit an application to the Arizona Department of Liquor Licenses and Control (the "Liquor Board") for a permanent liquor license permitting the restaurant to be operated by Tenant at the Premises to sell beer, wine, liquor and other alcoholic beverages for on-Premises consumption with the Premises in accordance with Tenant's Permitted Use (the "Liquor License"). Tenant shall in good faith and with due diligence pursue obtaining the Liquor License. Tenant is familiar with the requirements for obtaining a Liquor License, which include, without limitation, a satisfactory background check for each person actively involved in the day-to-day operations at the Premises, and Tenant represents and warrants that it is not aware of any reason or circumstances which would prevent the issuance of the Liquor License. Tenant shall give Landlord prompt written notice of (i) the actual Liquor License filing date, together with a dated stamped copy of the first page of Tenant's application to the Liquor Board showing the actual Liquor License filing date, (ii) the date the Liquor License is issued, and (iii) the actual date Tenant obtains its Liquor License, which notice shall be accompanied by a copy of such Liquor License. The Liquor License shall be deemed to have been issued (or obtained) on the earlier of the date (i) the Liquor License is available for Tenant to pick up (or obtain in electronic form) from the Liquor Board, or (ii) the Liquor Board sends the Liquor License to Tenant via mail or other delivery service. The term "due diligence" for purposes of obtaining the Liquor License shall mean that (1) Tenant's application for the Liquor License complies with all requirements of the Liquor Board, (2) Tenant diligently pursues the issuance of

the Liquor License, including paying all fees and charges in connection therewith, providing all requested information and data to the Liquor Board and any other applicable Governmental Authorities in a timely manner, responding to any questions or comments from the Liquor Board and any other applicable Governmental Authorities in a timely manner, and otherwise cooperating with all of the foregoing in an expeditious manner, (3) hiring Kevin A. Kramber, or a similarly qualified and suitable replacement, as Tenant's Liquor License consultant and expeditor, and (4) providing written status reports to Landlord every fifteen (15) days, commencing on the Liquor License Submittal Deadline (subsections (1) through (4) are referred to herein as the "Liquor License Conditions").

If Tenant does not receive the Liquor License on or before the date which is one hundred (100) days after the Effective Date (the "Liquor License Deadline"), then Tenant shall provide written notice of such failure to Landlord within ten (10) business days thereafter, and Landlord may, but shall have no obligation to, attempt, at any time thereafter, to obtain the Liquor License on Tenant's behalf at Tenant's sole cost and expense. Furthermore, if the Liquor License is not issued on or before the Liquor License Deadline, and Tenant has not waived the contingency under this Section 3.02 (the "Liquor License Contingency") in writing to Landlord, then Landlord shall have the right to terminate this Lease (the "Liquor License Termination Right") upon written notice of such termination (the "Liquor License Termination Notice") to Tenant at any time thereafter. So long as Tenant is not in an Event of Default under the Lease and Tenant has satisfied all of the Liquor License Conditions, then, if the Liquor License is not issued on or before the Liquor License Deadline and Tenant has not waived the Liquor License Contingency, Tenant shall also have the Liquor License Termination Right by delivering the Liquor License Termination Notice to Landlord within fifteen (15) days after the Liquor License Deadline. Notwithstanding the foregoing, the Liquor License Termination Right and any Liquor License Termination Notice (if given) shall automatically be deemed waived, null and void upon the issuance of the Liquor License prior to the Liquor License Termination Date (hereinafter defined). In the event Tenant has not delivered the Liquor License Termination Notice to Landlord within fifteen (15) days after the Liquor License Deadline, the Liquor License Termination Right shall be deemed waived by Tenant. If the Liquor License Termination Right is exercised pursuant to the requirements of this Section 3.02, then this Lease shall terminate on the tenth (10<sup>th</sup>) day following delivery of the Liquor License Termination Notice (the "Liquor License Termination Date"). Tenant shall surrender the Premises to Landlord on the Liquor License Termination Date in the same condition Tenant would have been required to surrender the Premises if this Lease had terminated on the original Expiration Date; provided, however, that notwithstanding anything to the contrary set forth in this Lease, Tenant shall in no event remove any of the equipment or other trade fixtures located in the Premises as of the Delivery Date, all of which shall be surrendered to Landlord in the same condition they were in on the Delivery Date. Additionally, Tenant shall reimburse Landlord for fifty percent (50%) of the costs incurred by Landlord to install the Condenser Unit within ten (10) days of receipt of reasonable supporting documentation of such costs, which reimbursement obligation shall survive the Liquor License Termination Date. From and after the Liquor License Termination Date, the parties hereto shall be released from any further liability and obligations under this Lease, excepting any liability or obligations accruing prior to such Liquor License Termination Date or which by their terms shall survive termination of this Lease, and the parties shall have no further obligations hereunder except those that expressly survive termination of the Lease. Tenant acknowledges and agrees that if this Lease is terminated pursuant to this Section 3.02, Landlord shall not be liable to Tenant for any costs or expenses Tenant may incur relating to such termination, including, without limitation, business closure and relocation expenses. Once Tenant obtains the Liquor License, Tenant's right to terminate this Lease pursuant to this Section 3.02 shall become null and void. Tenant agrees, throughout the Lease Term, to use its best efforts and diligence to maintain the Liquor License in full force and effect and good standing. Tenant acknowledges that Landlord makes no representations or warranties regarding the ability or likelihood of Tenant receiving from the Liquor Board the required Liquor License.

3.03 If Landlord fails, for any reason, to deliver possession of the Premises to Tenant within six (6) months after the date hereof, Landlord shall have the option, in Landlord's sole and absolute discretion, to terminate this Lease upon written notice to Tenant. Upon any such termination by Landlord, this Lease shall be deemed void ab initio and of no further force or effect and Landlord and Tenant shall each be released of all of their respective obligations and liabilities hereunder.

3.04 Within ten (10) days after Landlord's request, Tenant shall execute an agreement, substantially in the form set forth on EXHIBIT D ("Commencement Date Agreement"), confirming the Delivery Date, the Rent Commencement Date, and the "natural" Expiration Date and stating, among other things, that this Lease is in full

force and effect. If Tenant shall fail to execute the Commencement Date Agreement within ten (10) days after receipt of the Commencement Date Agreement from Landlord, the Delivery Date, the Rent Commencement Date, the "natural" Expiration Date and any other matters contained therein shall be conclusively deemed to be the dates as set forth by Landlord in the Commencement Date Agreement sent to Tenant by Landlord.

#### ARTICLE IV MINIMUM RENT, PERCENTAGE RENT AND ADDITIONAL RENT

4.01 Commencing on the Rent Commencement Date and continuing thereafter during the entire Lease Term, Tenant shall pay to Landlord the Minimum Rent set forth in Section 1.01(g) above. Minimum Rent shall be divided into equal monthly installments, and such monthly installments shall be due and payable in advance on the first (1<sup>st</sup>) day of each month without offset, deduction, abatement, counterclaim, recoupment or notice or demand therefor, together with any and all rental taxes, gross receipts taxes, transaction privilege taxes and sales taxes levied currently, or in the future, against Minimum Rent and any additional rent (as defined in Section 4.04) by any competent taxing jurisdiction, whether assessed against Landlord or assessed against Tenant and collected by Landlord, or both. If the Rent Commencement Date is a day other than the first (1<sup>st</sup>) day of a month, then Minimum Rent from the Rent Commencement Date until the first (1<sup>st</sup>) day of the following month shall be prorated on a per diem basis at the rate of one-thirtieth (1/30th) of the monthly installment of Minimum Rent payable during the first Lease Year, and Tenant shall pay such prorated installment of Minimum Rent in advance on the Rent Commencement Date.

#### 4.02

(a) In addition to Minimum Rent, Tenant shall pay to Landlord during each Lease Year (or portion thereof) during the Lease Term, percentage rent ("Percentage Rent") in an amount equal to the product of (a) the Percentage Rent Percentage multiplied by (b) the amount of Tenant's Gross Receipts which are in excess of the Annual Breakpoint during each such Lease Year. If Tenant is open for business for less than a Lease Year, for purposes of determining Percentage Rent only, the Annual Breakpoint set forth in Section 1.01(j) shall be deemed reduced by multiplying such amount by a fraction the numerator of which is the actual number of days during the Lease Year Tenant was open for business and the denominator of which is 365; provided, however, that this adjustment shall only affect the calculation of Percentage Rent and shall in no event affect the amount of Minimum Rent due and payable under this Lease.

(b) The term "Gross Receipts" shall mean the gross amount charged by Tenant or anyone on Tenant's behalf, or by any subtenants, concessionaires or licensees of Tenant, in connection with any and all sales of goods, wares, merchandise, food and beverages and all services to patrons, customers or other persons, in, at, from, or arising out of the use of the Premises, whether for wholesale, retail, cash, credit or otherwise, without reserve or deduction for inability or failure to collect. Gross Receipts shall include, without limitation, sales and services: (i) where the orders therefor originate in, at, from or out of the use of the Premises, whether delivery or performance is made from the Premises or from some other place; (ii) made or performed by internet (or other electronic means), electronic and other technology-based systems (whether now existing or in the future), catalog, mail, telephone (including through apps), or telegraph orders received or filled in, at or from the Premises; (iii) made or performed by mechanical or other vending devices in the Premises; or (iv) which Tenant or any subtenant, licensee, concessionaire or other person in the normal and customary course of its business would credit or attribute to its operations in any part of the Premises. Any deposit not refunded shall be included in Gross Receipts and the full value attributed to a trade-in item at the time the sale is made shall be included in Gross Receipts. Gross Receipts shall include all interest, finance charges and other forms of payment to be paid by a customer because of a charge, credit or deferred payment sale. If Tenant shall violate Section 8.02 of this Lease, then, in addition to any and all other rights and remedies available to Landlord, the amount of gross receipts of any such similar or competing business shall be included in Gross Receipts, and all the provisions of this Section 4.02 shall be applicable thereto. Discounts, interest charges, and other charges paid to credit card companies or finance companies shall not be deducted in computing Gross Receipts. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, regardless of the time when Tenant shall receive payment (whether full or partial) therefor. The following shall be excluded from Gross Receipts: (A) all refunds made to customers with respect to transactions otherwise included in Gross Receipts; (B) all city, county or state sales taxes which are collected from the patron or customer and paid by Tenant to such Governmental Authority, (C) any food allowances provided to Tenant's employees at the Premises for their personal use; (D) the amounts from any sale of Tenant's equipment or trade fixtures which



sale is not in the ordinary course of business, (E) the selling price of gift cards and gift certificates except when such gift cards and gift certificates are used purchase food or drinks at the Premises, (F) the selling price of non-edible promotional items, (G) service charges and tips paid to employees, (H) the value of any complimentary meals provided as a customer service or as part of Tenant's community marketing efforts, (I) receipts from catering or from orders placed at the Premises, but filled elsewhere, (J) the actual amount of bad checks, and uncollectible credit accounts and bank charge back fees ("bad debts"), provided such bad debts do not, in the aggregate exceed three percent (3%) of the Gross Receipts per Lease Year, in which case only the amount up to such three percent (3%) cut-off shall be permitted to be excluded, and if collection is subsequently made upon such bad debts after Tenant has deducted the amount thereof from Gross Revenue, then the amount of such collection less the reasonable costs of collection shall be added to Gross Receipts for the Lease Year in which collection was made, up to the amount of the previous deduction therefor, (K) any charge paid by Tenant as a finance charge for credit card services, and (L) insurance recoveries or other proceeds not related to sales from or services at the Premises.. No franchise tax, margin tax, capital stock tax, income tax or tax based upon income, profits, assets, net worth or gross receipts shall be deducted from Gross Receipts.

(c) Percentage Rent shall be payable in the following manner: Tenant shall deliver to Landlord, not later than thirty (30) days after the end of each calendar month, sales reports that summarize Gross Receipts for the immediately preceding month, certified as true and correct by Tenant's principal financial officer or accounting manager. Further, not later than thirty (30) days after the end of each calendar quarter during the Lease Term, Tenant shall submit to Landlord a written statement certified as true and correct by Tenant's principal financial officer or accounting manager, showing in detail the amount of Gross Receipts during the immediately preceding calendar quarter (including any partial month upon the commencement, or expiration, of the Lease Term). Accompanying such quarterly statement shall be Tenant's quarterly payment of Percentage Rent calculated pursuant to Section 4.02(a). Within thirty (30) days after the end of each Lease Year and within thirty (30) days after the Expiration Date, Tenant shall submit to Landlord a written statement setting forth Gross Receipts for each calendar month of the preceding Lease Year (or portion thereof, as applicable) which statement shall conform to, and be in accordance with, generally accepted accounting principles, consistently applied, and shall be certified as true and correct to Landlord by Tenant's principal financial officer or accounting manager (the "Yearly Final Certified Statement"). Simultaneously with the submission of such Yearly Final Certified Statement, Tenant shall pay to Landlord the amount of any Percentage Rent due but not yet paid for the preceding Lease Year (or applicable portion thereof). If the amount of Percentage Rent payable for such Lease Year (or applicable portion thereof) is less than the amount actually paid by Tenant as Percentage Rent for such Lease Year (or applicable portion thereof), then the excess shall be credited against the amount of Percentage Rent thereafter becoming due and payable by Tenant under this Lease or, if no further Lease Year remains, refunded to Tenant. Tenant shall cause any subtenant, concessionaire or licensee of Tenant to submit similar quarterly statements and annual audited statements to Landlord and Tenant; provided, however, that nothing in this sentence shall be construed as limiting Tenant's obligations specified in this Section 4.02.

(d) In order to enable Landlord to verify the amount of Percentage Rent payable hereunder, Tenant shall keep, maintain (and shall cause each subtenant, concessionaire or licensee to keep and maintain) at Tenant's offices in the metropolitan area where the Property is located true, correct and complete books of account and records with respect to all operations of the business conducted in the Premises and all Gross Receipts. All such books and records shall be kept in accordance with generally accepted accounting principles, consistently applied, and shall be segregated from all other matters. Tenant's Gross Receipts shall be recorded by computers which shall show, record and preserve, in complete detail all items making up Gross Receipts. All such books, records, and other documentation pertaining to the business conducted in the Premises during any Lease Year during the Lease Term shall be kept and maintained for at least three (3) years after the end of such Lease Year, notwithstanding the occurrence of the Expiration Date.

(e) At any time or from time to time, but on no more than one (1) occasion during any particular Lease Year, after notice to Tenant, Landlord or its agents and accountants, shall have the right to make any examination or audit of the books, records and other materials (of Tenant and of any subtenant, licensee, or concessionaire of Tenant) which Tenant has available, or is otherwise required to retain. Landlord may only audit Tenant's books, records and other materials hereunder with respect to a particular Lease Year, if Tenant receives a notice from Landlord exercising such audit right for a particular Lease Year within three hundred sixty-five (365) days after Landlord receives the Yearly Final Certified Statement with respect to such Lease Year. If Landlord does not notify Tenant in writing that Landlord desires to exercise such audit right within three hundred sixty-five (365) days

after Landlord receives the Yearly Final Certified Statement with respect to such Lease Year, then Landlord shall be deemed to have waived such audit right with respect to the Lease Year to which the Yearly Final Certified Statement applies and such Yearly Final Certified Statement shall be deemed to be correct for all purposes with respect to such Lease Year. If any such audit or inspection shall disclose that Percentage Rent payable for any period of time exceeds Percentage Rent theretofore paid or payable, whichever is greater, by Tenant for such period, then Tenant shall pay as additional rent (as defined in Section 4.04) hereunder (i) the amount of such excess plus interest thereon at the Default Rate (as defined in Section 19.09) for such period, and (ii) if such excess liability equals or exceeds five percent (5%) of the Percentage Rent paid or payable, whichever is greater, for such period, then the cost of such examination or audit. The acceptance by Landlord of payments of Percentage Rent or statements thereof shall be without prejudice, and shall not constitute a waiver of Landlord's rights either to claim a deficiency in the payments of Percentage Rent or to audit Tenant's books and records. If Tenant fails to deliver any quarterly or annual statement of Gross Receipts in the form required by, and within the period specified in, subsection (c) above and/or Section 4.03 below, as applicable, and Landlord employs an accountant to examine Gross Receipts, then Landlord shall have the right, in addition to any and all other rights and remedies available to deem the determination of Gross Receipts by such accountant to be binding on Landlord and Tenant, and Tenant shall pay to Landlord the cost of such examination as additional rent due hereunder.

(f) Nothing contained in this Lease shall be construed to indicate any intention or attempt on the part of Landlord to restrict the price at which Tenant may sell any goods or services permitted to be sold under this Lease. The provisions of this Section 4.02 shall survive the Expiration Date.

4.03 [Intentionally Omitted.]

4.04 All amounts to be paid by Tenant to Landlord pursuant to the terms of this Lease, other than Minimum Rent and Percentage Rent, are referred to herein as "additional rent". Unless otherwise provided for in this Lease, any additional rent shall be due within ten (10) days after Landlord's demand therefor. The term "Rent" shall mean and include Minimum Rent, Percentage Rent, and all additional rent. All Rent payable by Tenant under this Lease shall be paid to Landlord in legal tender of the United States, without offset, deduction, abatement, counterclaim, recoupment or notice or demand therefor, at the Address for Rent Payments to Landlord or at such other address as Landlord shall designate in writing. If Landlord shall at any time accept Rent after it shall have become due and payable, such acceptance shall not excuse a delay upon subsequent occasions or constitute a waiver of any of Landlord's rights hereunder. Any Rent payments received from Tenant or any other Person shall be conclusively presumed to have been paid on Tenant's behalf; however, in no event shall the foregoing be construed as requiring Landlord to accept any Rent from any Person other than Tenant. If on more than one (1) occasion during the Lease Term any check for Rent shall not be honored by the bank on which it is drawn, Landlord may thereafter require that all future payments from Tenant be made by EFT, ACH, certified check, cashiers' check, or immediately available funds. In addition, Landlord may assess a One Hundred and 00/100 Dollar (\$100.00) charge for any check from Tenant returned to Landlord for insufficient funds. The term "Person" shall mean and include an individual, firm, association, corporation, limited liability company, partnership, or any other entity.

#### ARTICLE V UTILITIES

5.01 Tenant, at its own expense, shall arrange with the appropriate utility companies for the provision of water, electricity, gas, telephone service and other utilities supplied, if any, to the Premises from and after the Delivery Date. Tenant shall pay to the appropriate utility companies all charges for such utilities consumed in the Premises as and when such charges become due and payable. If any utilities are submetered, on a monthly basis as and when billed by Landlord, Tenant shall pay to Landlord the submetered utility charges (without mark-up) for the Premises, plus Tenant's share of any meter reading charges incurred by Landlord. If Landlord is required or elects to supply water, gas, electricity, heat or sewer rentals, or any other utility service, then Tenant shall purchase the same from Landlord, and pay the charges therefor within ten (10) days after bills are provided to Tenant; provided, however, that any such utility service provided by Landlord shall be comparable to that which Tenant could obtain directly and such service will be provided at a cost reasonably competitive with that being charged by other service providers providing the applicable utility service(s) in the Tucson, Arizona metropolitan area and in no event shall Tenant be required to pay more for such service than paid by Landlord.. Tenant shall use reasonable diligence in conservation of utilities. The cost of any utilities under this Article V shall include any taxes, sewer rents,

surcharges and billing, meter-reading, and other service fees charged to Landlord or Tenant, as applicable, in connection therewith. Landlord shall not be liable to Tenant in damages or otherwise for the quality, quantity, failure, unavailability, or disruption of any utility service and the same shall not constitute a termination of this Lease, or an actual or constructive eviction of Tenant, or entitle Tenant to any abatement of Rent. Landlord may at any time alter any utility, and related equipment, serving the Property, provided that Landlord gives Tenant no less than five (5) business days' advance notice thereof (except in the event of an emergency when only such notice as is practicable under the circumstances, if any, shall be required) and any such alteration does not materially interrupt service to the Premises and does not unreasonably interfere with Tenant's business operations within the Premises.

#### ARTICLE VI COMMON EXPENSES

6.01 Tenant shall pay to Landlord Tenant's pro rata share of the Common Expenses incurred during each calendar year falling entirely or partly within the Lease Term commencing on the Rent Commencement Date.

6.02 The term "Common Expenses" shall mean the sum of Common Area Costs, Insurance Costs and Real Estate Taxes, as follows:

(a) The term "Common Area Costs" shall mean any and all costs, expenses and disbursements of any kind and nature incurred by or on behalf of Landlord in connection with the ownership, management, operation, maintenance, servicing and repair of the Property and Common Areas (as defined in Section 7.02), the facilities and improvements located thereon, and all appurtenances thereto, including, but not limited to: (1) the costs of operating, maintaining, repairing, replacing, lighting, cleaning and landscaping the Property (including, but not limited to, the roof of any building and any signage, including, without limitation, any pylon, monument or other identification signs for the Property); (2) gas, electricity, water, sanitary sewer, storm sewer and other utility systems and charges (including surcharges) of every type and nature for services provided to the Common Areas; (3) the costs of service and maintenance contracts; (4) management fees (which shall not exceed three and a half percent (3.5%) of the total of all receipts collected from the operation of the Property); (5) costs to employ personnel with respect to the Common Areas, including, but not limited to, salaries, wages, fringe benefits and other direct costs of engineers, superintendents, watchmen, porters and any other Property personnel; (6) removal of snow, ice, garbage, trash and debris from the driveways, alleyways, parking areas and sidewalks of the Property and all other maintenance and repair expenses and supplies which are deducted by Landlord in computing its Federal income tax liability; (7) periodic repainting and repairs of exterior walls, fascias and parapets of the buildings in the Property; (8) [reserved]; (9) [reserved]; (10) the rental charges for machinery and equipment to the extent used by Landlord and used in connection with the operation, maintenance and repair of the Property; (11) any payments made by Landlord or billed to Landlord pursuant to any declaration, covenant, easement, or other agreements relating to the Property; (12) [reserved]; (13) providing security services, if any, with respect to the Property; and (14) an overhead cost equal to ten percent (10%) of the total Common Area Costs exclusive of any Common Area Costs for utilities. The inclusion of any of the foregoing in Common Area Costs shall in no event be deemed to require Landlord to provide any of the foregoing with respect to the Property nor shall Landlord be liable in any way for the failure to provide any of the foregoing.

Notwithstanding anything to the contrary contained herein, the following items shall be specifically excluded from Common Area Costs, except that the following shall not in any way apply to, or limit, any payments made by, or billed to, Landlord pursuant to any declaration, covenant, easement, or other agreements relating to the Property: (1) Base rents under any ground lease or any other underlying lease wherein Landlord is the lessee, other than payments which, independent of the ground lease or underlying lease, would constitute Common Area Costs hereunder; (2) Interest or principal payments on any financing for the Property; (3) Leasing or brokerage commissions, or any fee in lieu of commissions, and advertising expenses, in any case incurred in connection with the leasing of the Property; (4) Any costs for which Landlord is reimbursed by tenant(s) of the Property (other than as part of such other tenant's proportionate share of Common Area Costs or similar charges); (5) the cost of any repair or replacement item which, by standard accounting practice, is required to be capitalized (a "Capitalized Expense"); provided, however, that Capitalized Expenses for painting, any roof replacements per Item No. (6) and any parking lot replacements per Item No. (7) may be included in Common Area Costs (and only those Capitalized Expenses may be included in Common Area Costs) and the cost of any such Capitalized Expense shall be



amortized over the life of the repair, replacement or improvement in accordance with generally accepted accounting principles, and the annual amortization cost shall be included in the Common Area Costs; provided, further, that in the event of any dispute as to whether an item is a Capitalized Expense, Landlord's accounting practices shall be determinative and binding on the parties; (6) any replacement of any roof in the Property which is a Capitalized Expense, which replacement of such particular roof occurs more frequently than once every twenty (20) years (it being understood and agreed that: (x) the first such replacement of any particular roof may be included in Common Area Costs and shall be amortized per Item No. 5 of this Paragraph, (y) nothing contained herein shall require the replacement of more than one roof at the Property at a time, and (z) maintaining and repairing the roof (including patching) shall in no event be subject to this Item No. 6, (7) any replacement of all or any portion of the parking area in the Property, which is a Capitalized Expense, which replacement of all or such particular portion of the parking area occurs more frequently than once every ten (10) years (it being understood and agreed that: (x) the first such replacement of all or any particular portion of the parking area may be included in Common Area Costs and shall be amortized per Item No. 5 of this Paragraph, (y) nothing contained herein shall require the replacement of all of the parking area at the same time, and (z) maintaining and repairing the parking area (including slurry sealing, restriping parking spaces and filling potholes) shall in no event be subject to this Item No. 7), (8) the cost of any repair or replacement required of Landlord pursuant to the reconstruction obligations of Landlord under any tenant leases on account of uninsured casualty damage, (9) Landlord's income taxes, gross profits, franchise, personal property or similar taxes or charges upon the profits, assets, franchise, employees or income of Landlord, (10) the removal or clean-up of Hazardous Materials (as defined in Section 8.06) from the Property, but excepting costs of routine periodic inspections, testing and monitoring which may be included, (11) any cost associated with the initial construction of the Property, (12) costs of correcting defects in the design or construction of the Property, (13) any repairs or work performed to any portion of the Property intended to be occupied by individual tenants, (14) any reserves for future expenditures not yet incurred, (15) costs incurred by Landlord from repair or restoration to the extent that Landlord is reimbursed by insurance or condemnation proceeds after subtracting therefrom any deductibles under Landlord's insurance policies (which deductibles shall not exceed the amount(s) of deductibles customarily carried by landlords of shopping centers of similar class, age and character in the area where the Property is located) or that the same is covered by a warranty, (16) costs, including permit license and inspection costs incurred with respect to the installation of improvements made for tenants or other occupants or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or occupants, (17) attorneys' fees, leasing commissions, and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants or other occupants of the Property, (18) the costs of any services rendered or costs reimbursed to a tenant, to the extent that such service is in excess of any service Landlord is obligated to furnish to Tenant at Landlord's expense (other than as part of such other tenant's proportionate share of Common Area Costs), (19) advertising and promotional expenditures and costs of the installation of signs identifying the owner and/or manager of the Property, (20) charitable contributions, and (21) costs incurred by Landlord due to the negligence or misconduct of Landlord or its agents, contractors, and employees or the violation by Landlord, due to its negligence or misconduct, of another lease of space or other agreements including this Lease.

(b) The term "Insurance Costs" shall mean premiums, fees and other charges incurred by Landlord with respect to casualty, rent loss, liability and all other insurance for the Property.

(c) The term "Real Estate Taxes" shall mean (1) all real estate and other ad valorem taxes, assessments and other governmental impositions, levies and charges of every kind and nature (including without limitation sewer taxes, front-foot benefit charges, school taxes, water and sewer rents and charges, governmental license and permit fees, charges for public or private easements benefitting the Property and taxes on other areas made available for the common use or benefit of tenants, and general and special assessments, if any), business and occupation taxes, local improvement district taxes, business improvement district taxes and metropolitan improvement district taxes and fees, which are imposed upon Landlord or assessed against the Property (including, without limitation, the underlying land), or are imposed in connection with, the use, occupancy or possession of the Property, and/or which appear as a charge on a tax bill given to Landlord by any official taxing authority, (2) any other present or future taxes or municipal or governmental charges (extraordinary as well as ordinary, foreseen and unforeseen) that are imposed upon Landlord, or assessed against the Property (including, without limitation, the underlying land) which are in the nature of, or in substitution for, real estate or other ad valorem taxes, including, but not limited to, any tax levied on or measured by the rents payable by tenants of the Property, (3) any and all assessments and/or taxes levied against Landlord for any reason whatsoever, by any Governmental Authority, as a direct result of the operation and existence of Tenant's business, (4) margin taxes

and any tax, license fee, or permit fee that is levied or assessed upon Landlord and attributable to or measured by the Rent reserved hereunder by any Governmental Authority acting under any present or future applicable Laws, and (5) costs (including, without limitation, third party attorneys' fees) incurred in reviewing, protesting or seeking a reduction of Real Estate Taxes. If Real Estate Taxes are increased, Tenant may request that Landlord contest such increase. In such event, Landlord shall use commercially reasonable judgment and consult with an independent, tax advisor, in determining whether to contest such increase and, if Landlord does so contest such increase, Landlord shall use commercially reasonable efforts to obtain a reduction thereof. Furthermore, if Landlord expands the current Gross Leasable Area of the Property (i.e., 92,483) by more than five percent (5%) and as a result thereof: (i) there is a re-assessment of the Property by the Pima County Assessor and (ii) such re-assessment results in an increase in the per square foot amount of Tenant's pro rata share of Real Estate Taxes which would otherwise be due and payable to Landlord hereunder, then Tenant shall not be liable for the amount of any such increase.

(d) See also Section 2 of the First Addendum.

6.03 Tenant's "pro rata share" with respect to Common Expenses shall be a fraction, the numerator of which shall be the Gross Leasable Area of the Premises (as set forth in Section 1.01(b)) and the denominator of which shall be the Gross Leasable Area of the Property from time to time (as determined pursuant to Section 1.01(i)); provided, however, if any tenant or segregated group of tenants of the Property (a) pays taxes pursuant to a separate tax assessment of its/their premises, building or areas, (b) maintains its/their own parcel, premises or building, or (c) insures its/their own parcel, premises or building, the amount of such Common Area Costs, Real Estate Taxes and/or Insurance Costs paid by such tenant(s) may, at Landlord's election, be excluded from the calculation of Tenant's pro rata share of Common Area Costs, Real Estate Taxes, and/or Insurance Costs, as the case may be, and if Landlord elects to exclude such amounts, then such tenant's premises shall be deducted in computing the square feet of Gross Leasable Area in the Property for purposes of computing Tenant's pro rata share of such item; provided, however, that as of the Effective Date, Tenant's pro rata share with respect to Common Expenses is 4.05%, which is subject to change as permitted under Section 1.01(i) and this Section 6.03; provided, however, that notwithstanding the foregoing and/or anything to the contrary set forth in this Lease, in no event shall the Gross Leasable Area of the Property used in the denominator for purposes of calculating Tenant's pro rata share of Common Expenses be reduced from 92,483 by more than ten percent (10%), unless the Property's total Gross Leasable Area is reduced by a taking or condemnation by Governmental Authorities, in which case, Landlord and Tenant shall have any applicable termination rights set forth in Article XVIII of this Lease. Additionally, Tenant's pro rata share of Real Estate Taxes shall be determined without regard to any abatement, credit, or other temporary reduction for the Property resulting from any investment in, on or about the Property or otherwise benefitting the Property by or on behalf of Landlord (including, by way of example only, and not limitation, tax credits resulting from Landlord's installation of energy-efficient systems), which abatement, credit or other temporary reduction shall inure to the benefit of Landlord.

6.04 Tenant shall make estimated monthly payments to Landlord on account of the Common Expenses that are expected to be incurred during each calendar year. The amount of such monthly payments shall be determined as follows: At the beginning of the Lease Term and at the beginning of each calendar year thereafter, Landlord shall submit to Tenant a statement setting forth Landlord's reasonable estimation of the Common Expenses that are expected to be incurred during such calendar year (or portion thereof) and the computation of Tenant's pro rata share of such estimated Common Expenses. Tenant shall pay to Landlord on the first day of each month following receipt of such statement an amount equal to one-twelfth (1/12) of Tenant's pro rata share of such estimated Common Expenses (determined on an annual basis without proration pursuant to Section 6.05). No later than one hundred twenty (120) days after the expiration of each calendar year (including the calendar year during which the Expiration Date occurs), Landlord shall submit to Tenant a statement showing (a) Tenant's pro rata share of the Common Expenses during the preceding calendar year, and (b) the aggregate amount of the estimated payments, if any, made by Tenant on account of such Common Expenses. If such statement indicates that the aggregate amount of such estimated payments, if any, exceeds Tenant's actual liability with respect to such Common Expenses, provided no Tenant default exists, Tenant shall deduct the net overpayment from its next estimated payment(s) pursuant to this Article VI, and, if no estimated payments are next due, then Landlord shall pay Tenant the amount of such credit. If such statement indicates that Tenant's actual liability with respect to such Common Expenses exceeds the estimated payments, if any, made by Tenant, then Tenant shall pay to Landlord the amount of such excess as additional rent due hereunder. If Tenant does not notify Landlord in writing of any objection to such statement within three hundred sixty-five (365) days after

receipt, then Tenant shall be deemed to have waived such objection and such statement shall be deemed to be correct for all purposes. Nothing contained herein shall be deemed to relieve Tenant at any time of its obligation to pay Tenant's pro rata share of Common Expenses at the times and in the manner herein designated for such payment.

6.05 If the Lease Term commences or expires on a day other than the first day or the last day of a calendar year, respectively, then the Common Expenses to be paid by Tenant for such calendar year shall be apportioned by multiplying Tenant's pro rata share of such Common Expenses for the full calendar year by a fraction, the numerator of which is the number of days during such calendar year falling within the Lease Term, and the denominator of which is three hundred sixty-five (365).

6.06 If Landlord shall furnish any utility or service which is included in the definition of Common Area Costs to less than one hundred percent (100%) of the Gross Leasable Area of the Property because any tenant or occupant is itself obtaining or providing any such utility or services, and the disproportionate effect of such circumstances upon the allocation of Common Area Costs to tenants of the Property is not equitably accounted for by application of the rules affecting the calculation of Tenant's pro rata share as set forth in Section 6.03 of this Lease, then the applicable Common Area Costs for such year shall be increased to equal the total expenses that Landlord reasonably estimates it would have incurred if Landlord had provided such utilities and services to all tenants and occupants in the Property, and shall be allocated by Landlord among the tenants or occupants who are not obtaining or providing any such utility or services. The intent of the foregoing sentence is to ensure that the reimbursement of all Common Area Costs is fairly and equitably allocated among the tenants receiving the utilities and services in question.

6.07 So long as Tenant has made all payments under this Lease that have been invoiced by Landlord and is not otherwise in default under this Lease, Tenant may review and audit (collectively, "audit") Landlord's books and records concerning a particular Common Area Costs statement (any such statement, the "Statement"), subject to the following terms and conditions: (i) Tenant shall give Landlord thirty (30) days' prior written notice of its intent to audit and no audit may occur during the months of December 1 of any given calendar year through April 30 of the following calendar year; (ii) the audit shall be conducted during Landlord's normal business hours at Landlord's principal offices, wherever Landlord maintains the records (or at another place in the county where the Property is located, as elected by Landlord), in accordance with generally accepted rules and auditing practice, by an auditor whose compensation is a fixed sum and in no way based upon the results of such audit; (iii) Tenant may audit the books and records only once during each calendar year of the Lease Term and Tenant may review only those records of Landlord that are specifically related to the Common Area Costs for the Statement (without limiting the foregoing, Tenant may not review any other leases or anchor agreements, or Landlord's tax returns or statements); (iv) Tenant may only conduct the audit of a calendar year's books and records if Landlord receives a notice from Tenant disputing the final Statement for such calendar year within three hundred sixty-five (365) days of Landlord's submission of such statement to Tenant, which notice shall set forth in reasonable detail the information that Tenant desires to review or the reason why such statement should not be binding on Tenant; (v) Tenant must perform any audit of Landlord's books and records diligently and continuously and complete the audit within a reasonable time; (vi) Tenant shall produce a report summarizing its conclusions with respect to the audit and shall provide a copy to Landlord, along with any other reports prepared in connection with the audit, within ten (10) days following the completion of the audit; and (vii) upon Landlord's request, any parties conducting the audit shall execute a confidentiality agreement with respect to any such audit permitted hereunder. All of the information obtained through said audit as well as any compromise, settlement, or adjustment reached between Landlord and Tenant relative to the results of the audit shall be held in strict confidence by Tenant, Tenant's auditor and their officers, agents and employees and shall not be revealed in any manner to any person except upon the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion, or if required pursuant to any litigation between Landlord and Tenant materially related to the facts disclosed by such audit, or if otherwise required by applicable Laws. Landlord shall have all rights allowed by applicable Laws or in equity if any of the foregoing parties violate the terms of this provision, including without limitation, the right to terminate Tenant's future right to audit pursuant to this Section 6.07. If (x) the audit is conducted in accordance with this Section 6.07, (y) the audit accurately determines that Tenant overpaid Tenant's pro rata share of the Common Area Costs for the period covered by the Statement and the audit, and (z) Tenant is not then in default under this Lease, then Landlord shall refund the overpayment to Tenant (less any amounts then owed to Landlord) within thirty (30) days following Tenant's written request therefor. If such audit discloses that the total amount invoiced to Tenant after year-end reconciliation for such year is less than Tenant's share of such expenses, Tenant shall pay the difference to Landlord within thirty (30) days following Tenant's receipt of the audit

results. Landlord may contest Tenant's audit results by giving Tenant written notice of protest within thirty (30) days following Landlord's receipt of the audit report. If the audit accurately determines that Landlord overcharged Tenant for the Common Area Costs for the period covered by the Statement and the audit by more than five percent (5%), then, provided that Tenant is not then in default under this Lease beyond any applicable notice or cure period, Landlord shall reimburse Tenant, within thirty (30) days following Tenant's written request therefor, for the reasonable and actual out-of-pocket cost paid to unaffiliated third parties for the audit, not to exceed Five Thousand and 00/100 Dollars (\$5,000.00), less any amounts then owed to Landlord.

## ARTICLE VII COMMON AREAS

7.01 Landlord will operate and maintain, or will cause to be operated and maintained, the Common Areas in a manner deemed by Landlord, in its sole discretion, to be appropriate for the Property. Tenant shall promptly give Landlord written notice of any necessary repair to such Common Areas. Landlord will have the right, without Tenant's consent, to: (a) enter into, modify and terminate easement and other agreements pertaining to the use and maintenance of such Common Areas or the Property; (b) close any or all portions of such Common Areas or the Property (including, without limitation, to such extent as may, in the opinion of Landlord, be necessary to maintain, repair, or replace same, or to prevent a dedication thereof or the accrual of any rights to any Person or to the public therein); (c) make or permit changes or revisions in such Common Areas or the Property or to the improvements located therein; (d) do and perform such other acts in and to such Common Areas or the Property as Landlord shall determine to be advisable; (e) institute and/or enforce parking charges (plus applicable taxes) (by operation of meters or otherwise); (f) use, or permit the use of, the Common Areas for promotions, special events, exhibits, displays, outdoor seating, food facilities and any other use which tends to attract customers to, or otherwise benefits, the Property; (g) change the area, location, designation and arrangement of parking areas and other facilities; (h) erect or remove buildings or other structures and make any changes and/or improvements in the Common Areas or Property, including, without limitation, expanding and/or subdividing the Property; and (i) use the exterior faces of the exterior walls of the Premises and the roof, gutters and downspouts of the Property; provided, however that outdoor advertising on the exterior walls of the Premises for anyone other than Tenant, or as approved by Tenant, shall be prohibited.

Notwithstanding anything to the contrary contained herein, Landlord shall not, in exercising its rights with respect to the Common Areas under Section 7.01, (i) subject to any recorded restriction affecting the Property and any leases or other occupancy agreements existing as of the Effective Date, allow any outdoor sales events, craft fairs, carnivals or seasonal sales within one hundred feet (100') of the main entrance to the Premises to last longer than ninety-six (96) consecutive hours or take place more frequently than (x) on four (4) separate occasions per calendar year, or (y) one (1) time during any thirty (30) days period, or which would result in a reduction of more than ten (10) parking spaces for Tenant and its customers, and which events may only be held if no less than thirty (30) days' prior advance written notice is given to Tenant, (ii) cause the "Access Point" marked on EXHIBIT A attached hereto to be removed, except that the Access Point may be moved up to one hundred fifty feet (150') along Oracle Highway in either direction, or (iii) reduce the number of parking spaces in the Property below that which is required by the applicable Governmental Authorities (subject to variances, grandfathering and/or special exceptions) (collectively, the "Common Area Limitations"). The Common Area Limitations shall be deemed null and void and of no force and effect if Tenant ceases to continuously operate for a period in excess of thirty (30) consecutive days (other than Permitted Closures) or if an Event of Default exists under this Lease. Additionally, for the sake of clarity, Tenant agrees that the Common Area Limitations shall in no event be deemed to apply to, or restrict any tenants or occupants of the Property from offering and/or providing, any outdoor seating areas (including, without limitation, hosting events or parties for their customers and other invitees therein), any sidewalk sales of their merchandise within the area in front of the storefront of their premises and/or any other outdoor sales areas, which are typically found in Similar Shopping Centers on a day-to-day basis (it being understood and agreed that this clarification shall not be deemed to expand the implications of Common Area Limitations). Furthermore, the provisions of this paragraph shall not apply in instances where access and/or parking is temporarily affected as a result of Force Majeure and/or repairs, remodeling, renovation or other construction to the Property.

7.02 The term "Common Areas" shall mean any existing or future improvements, equipment, areas and/or spaces (as the same may be enlarged, reduced, replaced, increased, removed or otherwise altered by Landlord from time to time) designated by Landlord from time to time for the non-exclusive, common and joint



use or benefit of Landlord, Landlord's invitees, Tenant and other tenants, occupants and users of the Property. The Common Areas may include, without limitation, the following (which shall not be deemed a representation of their availability at the Property): sidewalks, roofs, exterior walls (excluding storefronts), gutters and downspouts, parking areas (surface and subsurface and including, without limitation, any structured parking areas), parking lot lighting, access roads, driveways, landscaped areas, service drives and service roads, traffic islands, loading and service areas, stairs, ramps, storm water management facilities, elevators, escalators, comfort and first aid stations, public washrooms, and other similar areas and improvements.

7.03 The normal hours of operation of the Property will be 10:00 a.m. to 9:00 p.m. Monday through Saturday and 12:00 noon to 5:00 p.m. on Sunday, or such other hours, if any, as Landlord may determine from time to time. Landlord shall not be obligated to maintain or operate the Property at times other than the normal hours of operation of the Property unless special arrangements are made in advance by Tenant. If any Common Areas are kept open or services provided beyond the normal hours of operation of the Property as a result of Tenant's operation of the Premises beyond such normal hours of operation set forth above, then Tenant shall pay, as additional rent due hereunder, all additional costs incurred by Landlord by reason of keeping such facilities open for extended hours.

7.04 [Reserved.]

7.05 Tenant shall arrange for regular, prompt, and reliable trash removal for all trash generated at or associated with the Premises, at Tenant's sole expense, using containers and dumpsters approved by Landlord and at such times, in such manner, and in such locations as Landlord may reasonably direct as long as such containers and dumpsters are in reasonable proximity to the Premises and the parties acknowledge and agree that the location of such containers and dumpsters for Tenant's use as of the Effective Date is in reasonable proximity to the Premises. Tenant shall require that any contract entered into by Tenant for trash removal at the Premises be terminable by Tenant upon no more than thirty (30) days' notice. If Landlord establishes a recycling program at the Property or if otherwise required pursuant to applicable Laws, then Tenant shall separate recyclables (including without limitation clean white paper, cardboard, clean aluminum, plastic and glass bottles, and cans) and deposit them in separate trash receptacles as designated by Landlord, separate from any non-recyclable trash.

Notwithstanding the foregoing, Landlord may provide common dumpsters for the Property, or a portion of the Property, and/or arrange for trash pick-up for one (1) or more tenants of the Property. The charges that may be incurred by Landlord, whether directly or via third-party contract, for maintaining such common dumpsters and/or trash removal are referred to herein as "Trash Charges" and Tenant shall pay its allocated share of such applicable Trash Charges either (i) as additional rent after being billed for same by Landlord, or (ii) directly to the trash collecting company, in any event as determined by Landlord in its sole discretion. The amount of Tenant's allocated share of the Trash Charges specified above shall also be determined by Landlord based upon Tenant's particular use of the Premises.

#### ARTICLE VIII USE OF PREMISES

8.01 Notwithstanding anything to the contrary set forth in this Lease and in no way limiting the restrictions on the Permitted Use more fully set forth in Section 1.1(o), Tenant shall not use the Premises for any of the purposes set forth in EXHIBIT F (such uses referred to herein as the "Exclusive and Prohibited Uses"). Tenant shall use and occupy the Premises solely for the Permitted Use and for no other use or purpose, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed for any restaurant use, which is not a fast food operation and the quality and operation of which exceed that of a fast food restaurant, then under the ownership or management of the Flores family (e.g., El Charro, Charro del Rey etc.), and with an authenticity, price point and quality consistent with the authenticity, price, point and quality of such restaurant operations as of the Effective Date (such restaurants, as they may change from time to time, collectively, the "El Charro Restaurants"), and otherwise may be granted or withheld in Landlord's sole and absolute discretion. Without limiting the factors to be considered by Landlord in reasonably granting or withholding Landlord's consent, in no event may the new restaurant use (i) violate the exclusive or restrictive rights or conflict with the primary use of any other tenant in the Property; (ii) violate the Exclusive and Prohibited Uses; (iii) violate

or change the parking requirements for the Premises or Property or otherwise cause Landlord to obtain a parking variance; (iv) be illegal or noxious; (v) be a use which is inconsistent with the then existing tenant mix at the Property in Landlord's reasonable judgment; (vi) be a use which is not customarily found in similar shopping centers in the Tucson, AZ metropolitan area ("Similar Shopping Centers"); (vii) require any addition to (including improvements thereon) or modification of the Premises (unless Tenant is paying for the same and such modifications are approved by Landlord) or all or any portion of the Property, or any additional action by Landlord, in order to comply with building code or other governmental requirements; and/or (viii) involve any increased risk of the use, release or mishandling of any Hazardous Materials (the foregoing subsections (i) – (viii), collectively, the "Change of Use Limitations"). Other than with respect to the Valet Program pursuant to Section 9 of the First Addendum, Landlord agrees not to levy a charge against Tenant, its employees, agents or customers/clients for parking at the Property; provided, however, the foregoing restriction shall not apply to parking charges required to be instituted by Law or incurred for use of an electric vehicle charging station or any technological evolution of the same.

Tenant shall pay to Landlord as additional rent any additional costs incurred by Landlord as a result of the Permitted Use. Tenant shall not use or occupy the Premises for any unlawful purpose or in any manner that will violate Tenant's certificate of occupancy or that will constitute waste, nuisance or annoyance to Landlord or other tenants or users of the Property. Tenant shall comply with all present and future applicable Laws (including, without limitation, zoning ordinances and land use requirements, regulations and orders) concerning the use, occupancy and condition of the Premises and all machinery, equipment and furnishings therein, including, without limitation, any requirement to install fire protection systems and any recommendations required by Landlord's insurance carrier, safety engineers and loss prevention consultants as may from time to time be consulted by Landlord, all of which shall be complied with in a timely manner at Tenant's sole cost and expense. It is expressly understood that if any present or future applicable Laws requires an occupancy or use permit or license for the Premises or the operation of any business conducted therein, Tenant shall obtain and keep current such permit or license at Tenant's own expense and shall promptly deliver a copy thereof to Landlord. This Lease is subject and subordinate to all documents, covenants, conditions and restrictions of record, and Tenant shall not use the Premises in any manner which violates any such documents, covenants, conditions and restrictions of record. Landlord makes no representation as to whether the Permitted Use is allowable under applicable Laws, and Tenant bears sole responsibility for verifying the same. Landlord encourages Tenant to use commercially reasonable efforts to ensure the most effective and energy-efficient operation of the Building, and for the proper protection and functioning of the systems servicing the Premises. Tenant is encouraged to cooperate with Landlord in any energy conservation effort.

8.02 Tenant shall not directly or indirectly engage in any restaurant operation substantially similar to, or in competition with, the restaurant operation being conducted in the Premises within one (1) mile of the Property, calculated on a straight-line basis ("Radius Restriction"), which Radius Restriction Tenant acknowledges is a reasonable area for the purpose of this provision; provided, however, that any business owned by Tenant, which is open and in operation prior to the Effective Date and violates the Radius Restriction, shall not be subject to the Radius Restriction (provided, however, that such exclusion from the Radius Restriction shall not apply to any expansion or relocation of such prior business). For example, as long as Tenant's Permitted Use has not changed from that set forth in Section 1.01 (d) of this Lease, the Radius Restriction shall apply to any Mexican inspired steak themed and/or seafood restaurant, Notwithstanding anything to the contrary set forth in this Lease and/or the Guaranty, if this covenant is breached, then without notice or any further act, Section 13 of the Guaranty shall automatically be deemed deleted and the Guaranty shall be deemed a full guaranty, which shall be Landlord's sole remedy for a breach of the Radius Restriction under this Section 8.02. Furthermore, Tenant acknowledges that Landlord's obtaining a fair and equitable rent for the Premises under this Lease is dependent upon Tenant concentrating its business efforts within the geographical area in which the Property is located so as to maximize Gross Receipts and traffic to the Property generated by Tenant and therefore, commencing on the date the Radius Restriction is breached and continuing until such breach is cured, the gross receipts of any such competing store(s) (using the definition of Gross Receipts set forth in this Lease as if such definition referred to such competing store(s)) shall be added to the Gross Receipts derived from the Premises to determine the Percentage Rent and shall be subject to all of the provisions in this Lease with respect to Gross Receipts. For purposes of this Section 8.02 only, the term "Tenant" is defined as and shall include all of the following: (a) the Person(s) defined as Tenant; (b) if Tenant is a corporation, all officers, directors and principal shareholders of Tenant and their respective spouses and children; (c) if Tenant is a partnership or other unincorporated entity, all partners, trustees, beneficiaries or members of such entity and their respective spouses

and children; and (d) all corporations or other entities in which Tenant or its officers, directors, principal shareholders, partners, members or other principals shall have any majority or control interest.

8.03 Tenant shall open for business in the Premises for the Permitted Use fully fixtured, stocked and staffed on or before the Rent Commencement Date (the "Opening Requirement"). Thereafter, throughout the Lease Term and subject to Tenant's right to go-dark (as hereinafter set forth in this Section 8.03), Tenant shall (a) continuously, actively and diligently operate its business at the Premises and use the Premises in a first-class and reputable manner for the Permitted Use; (b) keep the Premises fully fixtured, fully stocked with each type of merchandise sold in the conduct of its business and fully staffed with adequately trained personnel; (c) keep the Premises open for business at least during the following hours: 4:00 p.m. to 12:00 a.m. ("Tenant's Minimum Hours"); and (d) abide by and observe the Rules and Regulations (as defined in Section 16.01). Tenant acknowledges that the aforesaid obligations are established to enhance the business activity and patronage of all stores in the Property, and that Tenant's failure to comply with such obligations would cause Landlord damages which might be difficult to measure accurately. Accordingly, if Tenant shall fail to fulfill any of the obligations specified in this Section 8.03, then, in addition to any other rights or remedies available to Landlord under this Lease, at law or in equity, upon demand and in addition to other Rent, Tenant shall pay to Landlord, as additional rent and as liquidated damages for such failure and not as a penalty, a sum equal to three (3) times the per diem Minimum Rent applicable during the period of such failure for each day of such failure. If Tenant fails to fulfill any of the obligations specified in this Section 8.03, the damages accruing to Landlord will be difficult to determine and the foregoing sum is a reasonable, partial damage for any such failure. Payment of such sum is intended to be only a partial and temporary remedy for Landlord during the continuance of such violation, and shall not relieve Tenant of any obligation under this Lease, excuse any default or waive Landlord's other remedies therefor. Tenant shall have the right, but not the obligation, to operate for Tenant's Permitted Use outside of Tenant's Minimum Hours, subject to compliance with all applicable Laws and provided that Tenant hereby acknowledges and agrees that Landlord shall have no obligation to keep any portion of the Common Areas lit, and/or patrolled by any security guards or other personnel, outside of the hours, if any, that Landlord customarily provides such services and Landlord shall not be subject to any liability as a result thereof. Tenant shall warehouse, store and stock in the Premises only such goods, wares and merchandise as Tenant intends to offer for retail sale at, in, from or upon the Premises. Tenant shall only use for warehouse, storage or stock purposes and office, clerical or other non-selling purposes those areas in the Premises as approved by Landlord in Tenant's Approved Plans.

Landlord recognizes that the Premises may be closed during certain of the Tenant's Minimum Hours on a very infrequent and incidental basis for (i) Force Majeure, (ii) inventory control (not to exceed a total of three (3) days in any Lease Year), (iii) necessary repairs to the Premises (not to exceed a total of three (3) days in any Lease Year, but this limitation shall not apply to closing to the extent caused by Casualty or condemnation damage), (iv) renovations (not to exceed a total of seven (7) days every five (5) Lease Years), and (v) Federal holidays (collectively, "Permitted Closures"). If Tenant is closed for one of the aforementioned reasons and such closing is reasonable in nature and does not exceed the permitted period of closure as set forth above and Tenant has notified Landlord in advance of such closing whenever reasonably possible under the circumstances, then the same shall not be considered an Event of Default under this Lease. Any day during the Lease Term on which Tenant has not been open for business to the public continuously during the entire Tenant's Minimum Hours shall be deemed a "closing" for the purpose of calculating the foregoing limitation.

Notwithstanding anything to the contrary contained in this Lease, provided Tenant has satisfied Opening Requirement and is not in default of the terms of this Lease, Tenant may thereafter elect to cease to be open to the public in the Premises ("go-dark"). Tenant shall provide Landlord not less than ninety (90) days' prior written notice of any such go-dark. Tenant shall continue to continuously operate in accordance with the terms of this Lease during said ninety (90)-day period. During any go-dark period, (i) Landlord shall have the right to install on the exterior of the Premises a customary "For Rent" sign and to show the Premises to prospective tenants; (ii) Tenant shall comply with all of Tenant's other obligations under this Lease, including, without limitation, continuing to pay all Rent otherwise due and payable under this Lease; and (iii) in recognition that a vacant store is subject to accelerated deterioration due to lack of use, neglect, the elements, vandalism and other security risks and such vacancy may result in a need for increased lighting and other security measures, Tenant shall (a) regularly inspect the Premises, (b) maintain adequate interior temperatures so as to prevent damage resulting from outside temperature extremes, (c) keep the storefront of the Premises well lighted, and (d) properly secure the Premises and undertake other reasonable security measures necessary to protect the Premises.

If at any time Tenant ceases to be open to the public in the Premises or does not operate on a continuous and consistent basis during Tenant's Minimum Hours (subject, however, to Permitted Closures) for more than one hundred eighty (180) days, then, notwithstanding anything to the contrary set forth in this Lease and in addition to any other rights and remedies Landlord then has under this Lease, at law or in equity, Landlord shall have the right to terminate this Lease upon written notice to Tenant given at any time thereafter, which notice shall specify the date this Lease shall terminate ("Go Dark Termination Date"). If Landlord elects to terminate this Lease pursuant to this grammatical paragraph, Tenant agrees that it shall surrender the Premises to Landlord on the Go Dark Termination Date in the same condition that Tenant would have been required to surrender it if this Lease had terminated on the original Expiration Date. From and after the Go Dark Termination Date hereunder, the parties hereto shall be released from any further liability and obligations under this Lease, excepting any liability or obligations accruing prior to the Go Dark Termination Date or which by their terms shall survive termination of this Lease. Tenant acknowledges and agrees that in the event Landlord exercises its right to terminate the Lease under this Section 8.03, Landlord shall have no further obligation to Tenant, except as otherwise expressly provided for herein. Landlord shall not be liable to Tenant for any costs or expenses Tenant may incur relating to termination of the Lease pursuant to this Section 8.03, including, without limitation, business closure expenses and relocation expenses.

8.04 Tenant shall not change Tenant's Advertised Name without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing and/or anything to the contrary set forth in this Lease, Tenant may change Tenant's Advertised Name without the prior written consent of Landlord to another trade name so long as (i) the day-to-day operations at the Premises continue to be controlled by the Flores family or another restaurateur that operates at least three (3) restaurants in addition to the restaurant at the Premises, (ii) such trade name does not conflict with the trade name of any other tenant or occupant in the Property or violate the provisions of such tenant or occupant's lease or occupancy agreement, and (iii) Tenant pays the cost of all necessary signage changes throughout the Property. Tenant agrees to provide Landlord at least thirty (30) days' prior written notice of the name change and to submit to Landlord for approval plans and specifications for such sign(s) prior to the installation of the new sign(s). Tenant's right to change Tenant's Advertised Name hereunder shall not serve to expand Tenant's rights to assign the Lease or sublet the Premises as set forth in Article IX of this Lease. If requested by Landlord, Tenant shall refer to the common name of the Property in all advertisements which designate the location of the Premises.

8.05 Tenant shall pay before delinquency any business, rent or other taxes that are now or hereafter levied, assessed or imposed upon Tenant's use or occupancy of the Premises, the conduct of Tenant's business at the Premises, or Tenant's equipment, fixtures, furnishings, inventory or personal property. If any such taxes are enacted, changed or altered so that any of such taxes are levied against Landlord, or the mode of collection of such taxes is such that Landlord is responsible for collection or payment of such taxes, then Tenant shall pay, as additional rent, the amount of any and all such taxes.

8.06 Tenant shall maintain the Premises, and its operations thereon, in compliance with all federal, state and local laws, regulations, ordinances, statutes, rules, orders, and agency policies or guidelines regarding the environment, human health or safety (collectively, "Environmental Laws") that apply to the Premises or its use. Except for (i) de minimis quantities of ordinary and general office supplies typically used in the ordinary course of business, such as copier toner, liquid paper, glue and ink, and common household cleaning materials, and (ii) reasonable quantities of products which are necessary and customary in the conduct of Tenant's business in accordance with the Permitted Use, all of which shall be stored, used and disposed of in accordance with all Environmental Laws (including obtaining all necessary permits and inspections therefor, copies of which shall be provided to Landlord upon request), Tenant shall not cause, or permit, the storage, use, generation, release or disposal of hazardous substances or wastes, toxic substances or wastes, pollutants, or contaminants as those terms are defined by Environmental Laws, including but not limited to "hazardous substances" as defined under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. §§ 9601 et seq.); "hazardous wastes" as defined under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §§ 6901 et seq.); "toxic substances" as defined under the Toxic Substances Control Act (TSCA) (15 U.S.C. §§ 2601 et seq.); "hazardous materials" as defined under Occupational Safety and Health Administration (OSHA) laws and regulations; oil, petroleum products, or their derivatives; and PCBs, asbestos, explosives, radioactive materials and any other toxic, flammable, reactive, ignitable, corrosive or otherwise hazardous substances (collectively, hereinafter, "Hazardous Substances"). Tenant shall not install any storage tanks on the Premises, whether underground or above ground, without Landlord's prior written permission, which may be withheld in



Landlord's sole discretion. Tenant shall give Landlord written notice immediately upon Tenant's knowledge of any Hazardous Substances existing in the Property that impacts soil, groundwater, or surface water, or requires notification of any Governmental Authorities. Tenant shall, at its sole risk and expense, promptly commence to perform, and diligently prosecute to completion, all work necessary or required to remove, treat, clean up, dispose of, and otherwise remediate and cure, any spill, leak, discharge, or other release of Hazardous Substances from, on, about, or under the Premises, which work shall be approved by Landlord and performed to its satisfaction in accordance with Environmental Laws, including, without limitation, any OSHA laws, regulations, policies, or guidelines, but Tenant shall not be responsible for curing any Hazardous Substances caused by Landlord during the Lease Term. Tenant shall respond to any moisture (or mold) conditions that it discovers inside the Premises by notifying Landlord within twenty-four (24) hours after Tenant identifies such conditions and Tenant shall be responsible therefor. Tenant releases Landlord from any liability for any personal injury or damages to property caused by or associated with moisture or the growth of or occurrence of mold or mildew on or in the Premises. At any time, and from time to time, Landlord shall have the right to (i) inspect any of Tenant's environmental records with respect to the Premises, and (ii) conduct appropriate tests and site investigations of the Premises to determine whether contamination has occurred.

Notwithstanding the Expiration Date, if upon the Expiration Date there exists a violation of Environmental Laws at the Premises for which Tenant is liable or if Tenant has failed to fulfill its obligations under this Section 8.06, and if such violation or failure delays another tenant from commencing its work or operations at the Premises, Tenant shall reimburse Landlord for Landlord's lost rental plus the amount required for Landlord to cure the violation of Environmental Laws and/or to cure Tenant's default by fulfilling Tenant's obligations under this Lease, if possible.

Tenant shall indemnify, defend and hold Landlord and Landlord's managing agent and authorized agent and their partners, officers, shareholders, members, trustees, principals, agents, property managers, employees, contractors and any Mortgagee(s) (as defined in Section 21.01) (each a "Landlord's Indemnitee", and, collectively, "Landlord's Indemnitees") harmless from any and all liabilities, actions, demands, penalties, losses, costs and expenses (including reasonable counsel fees, consultants' fees and remedial costs), suits, costs of any settlement or judgment and claims which may be paid, incurred or suffered by, or asserted against, any of Landlord's Indemnitees arising out of or in any way related to (1) Tenant's and the Tenant Parties' (as hereinafter defined) use, handling, generation, treatment, storage, disposal, and other management or release of any Hazardous Substances from, on, about or under the Property or the Premises, whether or not Tenant and/or the Tenant Parties may have acted negligently with respect to such Hazardous Substances; or (2) Tenant's and/or the Tenant Parties' failure to comply with the provisions of this Section 8.06. Tenant's obligations and liabilities under this Lease shall survive the Expiration Date, and shall continue for so long as Landlord (including any successor or assignee) remains responsible or liable under Environmental Laws or otherwise for either any releases of Hazardous Substances (as releases is defined under Environmental Laws) or for any violations of Environmental Laws that occurred during Tenant's possession of the Premises, unless caused by Landlord. Tenant's failure to abide by the terms of this Section 8.06 shall be enforceable by injunction. The term "Tenant Parties" shall mean Tenant's employees, agents, invitees, assignees, subtenants, contractors, licensees, and concessionaires.

#### ARTICLE IX ASSIGNMENT AND SUBLETTING

9.01 Tenant (and any Transferee (as hereinafter defined)) shall not voluntarily or involuntarily, by operation of law or otherwise: (a) transfer, mortgage, encumber, pledge, hypothecate, or assign all, or any of, its interest in this Lease (either directly, indirectly or collaterally), or (b) sublet or permit the Premises, or any part thereof, to be used by others (including, without limitation, by concessionaires or licensees) or to be used for any purpose other than the Permitted Use, or (c) issue new stock (or membership interests or partnership shares), create additional classes of stock (or membership interests or partnership shares), or sell, transfer, assign, convey, endorse or otherwise transfer the outstanding stock (or membership interests or partnership shares) so as to result, directly or indirectly, in a change in the present control of Tenant or any of its parent companies (unless such sale or transfer is made by a publicly owned corporation, or involves the sale or issuance of securities registered under the Securities Act of 1933, as amended), or (d) sell, assign or otherwise transfer all, or substantially all, of Tenant's assets or of the interest in capital, profits, or losses of Tenant (if Tenant is a partnership or limited liability company or partnership); without, in each instance, obtaining the prior written consent of Landlord, which consent Landlord may not unreasonably withhold, condition or delay and which

reasonableness shall be subject, without limitation, to the provisions set forth in the immediately following paragraph. For purposes of this Article IX, the term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or rights, by contract, or otherwise. The transactions described in this Section 9.01 are sometimes referred to herein as a "Transfer", and the Person to whom Tenant's interest is transferred shall be referred to as a "Transferee." Notwithstanding anything to the contrary set forth in this Lease, subleases for less than the entire Premises are expressly prohibited. Notwithstanding anything to the contrary contained herein, Landlord's consent shall not be required to admit new investors into the business operated at the Premises and/or for future transfers of stock (or partnership shares or membership interests) between the current members of Tenant as of the Effective Date, by will, devise or otherwise; provided, however, that any such transfer or admission of new investors (x) is for a bona fide purpose and not to circumvent the provisions of this Article IX, (y) does not reduce the Tangible Net Worth of Tenant or reduce its liability for its obligations under the Lease, and (z) the Premises shall otherwise continue to operate for Tenant's Permitted Use pursuant to all the terms, covenants and conditions of the Lease.

Without limiting the generality of this Article IX, it will be reasonable for Landlord to refuse consent to any assignment of this Lease or any subletting of the entire Premises if, at the time Landlord receives Tenant's Request Notice, or the proposed commencement date thereof (i) there shall exist an Event of Default by Tenant or matter which will become an Event of Default of Tenant with passage of time or the giving of notice, or both, unless cured; (ii) the proposed Transferee is an entity (aa) with which Landlord is already in negotiation as evidenced by the issuance of a written proposal; or (bb) which is already an occupant of the Property; (iii) the Transferee proposes to use the Premises for any use other than the Permitted Use or an upscale, full-service restaurant, which in any event shall otherwise satisfy the Change of Use Limitations (it being understood and agreed that such limitations are merely examples and not an exclusive list of the grounds for Landlord's reasonably withholding consent to a change of use); (iv) the Tangible Net Worth (as defined below) of the Transferee, immediately prior to and following such assignment or subletting, is less than Five Million and 00/100 Dollars (\$5,000,000.00); (v) the Transferee has less than five (5) years' experience with respect to owning and operating a restaurant and does not own and operate a substantially similar restaurant in at least one (1) other location; (vi) the business reputation or character of the proposed Transferee or the business reputation or character of any of its affiliates is not reasonably acceptable to Landlord; (vii) Landlord has not received assurances acceptable to Landlord in its sole discretion that all past due amounts owing from Tenant to Landlord (if any) will be paid and all other defaults on the part of Tenant (if any) will be cured prior to the effectiveness of the proposed assignment or subletting; (viii) Landlord is not satisfied that the proposed Transferee's assets, businesses or inventory would not be subject to seizure or forfeiture under any Laws related to criminal or illegal activities; (ix) the Transferee will not qualify as a replacement tenant under any co-tenancy or other similar provision in any other lease or agreement in or affecting the Landlord or the Property; (x) the proposed Transferee's business and occupancy of the Premises would not generate at least substantially the same Percentage Rent as Tenant has been generating, on an average basis, during the two (2) Lease Years prior to the date of the proposed Transfer, and (xi) the Transferee is a governmental or quasi-governmental entity. In no event may Tenant mortgage, pledge or otherwise encumber its leasehold interest as collateral for a debt. The term "Tangible Net Worth" means the value of total assets (excluding goodwill, the value of any residential property, patents, trademarks, trade names and other like intangibles) less total liabilities, including, but not limited to, accrued and deferred income taxes.

9.02 Any Transfer without Landlord's consent shall automatically be null and void, shall not be binding upon Landlord, shall confer no rights upon any third party, and shall, without any notice or grace period of any kind, constitute an Event of Default. The consent by Landlord to any Transfer shall not be construed as a waiver or release of Tenant from liability for the performance of any covenant or obligation to be performed by Tenant under this Lease, nor shall the collection or acceptance of rent from any Transferee constitute a waiver or release of Tenant from any of its liabilities or obligations under this Lease. Notwithstanding any Transfer, Tenant shall at all times remain directly and primarily liable for the payment of Rent and for compliance with all of its other obligations under this Lease. Landlord's consent to any Transfer shall not be construed as relieving Tenant or any assignee, subtenant or occupant from the obligation of obtaining Landlord's prior written consent to any subsequent Transfer. For any period during which Tenant is in default hereunder, Tenant hereby assigns to Landlord the rent due from any Transferee of Tenant and hereby authorizes each such Transferee to pay said rent directly to Landlord. The collection of any Rent directly from a Transferee shall not be construed as a consent by Landlord to such Transfer or to release of Tenant from the further performance of Tenant's obligations nor

shall such acceptance of Rent be construed as a waiver of any Tenant violation under this Article or Article XIX. Any guaranty of Tenant's performance executed as consideration for this Lease shall remain in full force and effect before and after any Transfer. Landlord may require Tenant, and Tenant agrees, to execute a guaranty of this Lease before Landlord consents to any Transfer. Landlord may proceed directly against Tenant without first exhausting any remedies for default which Landlord may have against any Transferee. In the event of a termination, re-entry or dispossession by Landlord following a sublease by Tenant, Landlord may, but shall not be obligated to, at Landlord's option exercisable in its sole and absolute discretion, take over all of the right, title and interest of Tenant (as sublessor) under such sublease, and the subtenant shall, at Landlord's option, exercisable in Landlord's sole and absolute discretion, attorn to Landlord pursuant to the provisions of such sublease. Tenant shall pay to Landlord, as additional rent hereunder, the sum of One Thousand and 00/100 Dollars (\$1,000.00) for administrative expenses involved with the review, processing or preparation of any documentation in connection with a Transfer, whether or not Landlord's consent to such Transfer is required or obtained, plus all reasonable, out-of-pocket attorneys' fees incurred by Landlord in connection with Landlord's review of such request (collectively, the "Transfer Fee").

9.03 If at any time during the Lease Term Tenant desires to effect a Transfer, then in connection with Tenant's request to Landlord for Landlord's consent thereto, Tenant shall give notice to Landlord in writing ("Tenant's Request Notice") which Tenant's Request Notice shall include: (1) the identity of the proposed Transferee; (2) a description of the business to be operated by such Transferee; (3) the terms of the proposed Transfer; (4) the commencement date of the proposed Transfer, which shall be at least thirty (30) days after the date of Tenant's Request Notice (with respect to any proposed Transfer, such date is referred to herein as the "Proposed Transfer Commencement Date"); (5) if applicable, the area proposed to be sublet, licensed or operated by a concessionaire; (6) the most recent financial statement or other evidence of financial responsibility of such Transferee; and (7) a certification executed by Tenant and such proposed Transferee stating whether or not any premium or other consideration is being paid for the proposed Transfer. Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation which may be owing as a result of any proposed Transfer, whether or not the Premises are rented by Landlord to the proposed Transferee or any other tenant.

9.04 [Reserved].

9.05 If any Transfer (whether by operation of law or otherwise) provides that the Transferee thereunder is to pay any amount in excess of the rental and other charges due under this Lease, whether such excess be in the form of an increased monthly or annual rental, a lump sum payment, payment for the sale, transfer or lease of Tenant's fixtures, leasehold improvements, furniture and other personal property (and if the subleased space does not constitute the entire Premises, the existence of such excess shall be determined on a pro-rata basis), Landlord shall be paid seventy-five percent (75%) of any such excess or other premium applicable to the Transfer; it is understood and agreed, however, that acceptance of any payments by Landlord hereunder shall not be deemed to constitute approval by Landlord of any sublease, assignment or other Transfer, nor shall such acceptance waive any rights of Landlord hereunder. Any such premium shall be paid by Tenant to Landlord as additional rent upon such terms as shall be specified by Landlord and in no event later than ten (10) days after the date such amounts are due and payable to Tenant. Landlord shall have the right to inspect and audit Tenant's books and records relating to any Transfer. Any Transfer shall, at Landlord's option, be affected on forms supplied or approved by Landlord. Notwithstanding anything to the contrary contained herein, if Tenant sells the business being operated at the Premises (either directly or indirectly including without limitation by way of selling assigning and/or transferring control of Tenant) to any Person not controlled by or under common control with Tenant and other than a Permitted Transfer pursuant to Section 9.07, then Tenant shall pay to Landlord at the time of the closing of such sale Ten Thousand and 00/100 Dollars (\$10,000.00).

9.06 All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any Transferee, and Tenant shall cause such Persons to comply with such restrictions and obligations.

9.07 Notwithstanding the provision of Section 9.01 above, the Tenant first named herein and its affiliates may assign this Lease or sublet the entire Premises without Landlord's consent, but with at least thirty (30) days' advance notice to Landlord (which notice must include evidence of all of the information required under this Section 9.07 and under Section 9.03 with respect to Tenant's Request Notice for the proposed Transfer), if all of the following conditions are satisfied (any such Transfer, a "Permitted Transfer"): (i) the Transferee is an affiliate or an entity which will, as a result of an inter-corporate reorganization, merger or consolidation, succeed

to the entire business carried on by Tenant, provided the Tangible Net Worth of the Transferee immediately prior to, and following, such Transfer, shall not be less than the Tangible Net Worth of Tenant immediately prior to such Transfer; or (ii) the Transfer is part of a chain-wide assignment or sale of all of Tenant's stores, and the Transferee will have a Net Worth immediately prior to, and following, such Transfer, which shall not be less than the greater of the Net Worth of Tenant, on the Effective Date or on the date of the Transfer, whichever is greater, and provided that: (1) Tenant has no fewer than one (1) other location (not including Tenant's operation in the Premises) in the metropolitan area where the Property is located and the Transfer consists of all of Tenant's leasehold interest or of the entire Premises, as the case may be, and in the case of an assignment, shall transfer to the Transferee all of Tenant's rights in, and interest under, this Lease, including but not limited to, the Security Deposit, if any; and (2) at the time of such Transfer, this Lease is in full force and effect without an Event of Default thereunder on the part of the Tenant; and (3) the Transferee shall (x) assume, by written recordable instrument, in form and content satisfactory to Landlord, the due performance of all of Tenant's obligations under this Lease, including any accrued obligations as of the time of the Transfer, and (y) agree to perform and observe all of Tenant's representations, warranties, and duties under this Lease; and (4) a copy of the assignment or sublease and the original assumption agreement, both in form and content satisfactory to Landlord and fully executed and acknowledged by the Transferee, and, in the event the Transferee is a corporation, a certified copy of a properly executed corporate resolution authorizing such assumption agreement, shall have been delivered to Landlord within ten (10) days prior to the effective date of such Transfer; and (5) such Transfer shall be upon and subject to all the provisions, terms, covenants and conditions of this Lease including the requirement to use the Premises only for the Permitted Use; and (6) Tenant shall have obtained and furnished to Landlord the written consent of any Guarantors, wherein said Guarantor, in accordance with the terms of the Guaranty, agrees to continue to be guarantor of the terms, obligations and covenants of Tenant and Tenant's successor under this Lease notwithstanding such Transfer; and (7) the Transferee or its parent, subsidiaries or affiliates shall not be subject to any bankruptcy or insolvency proceedings at the time of such sale. The term "affiliate(s)" shall mean an entity that directly or indirectly controls or is controlled by, or is under common control, with Tenant. For this purpose, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding anything herein to the contrary, Tenant shall not exercise any of its rights under this Section 9.07 in a manner intended to circumvent restrictions otherwise contained in this Section 9.07 (e.g. a step transaction in which this Lease is assigned to a wholly owned subsidiary whose only asset is this Lease, followed by a sale of such subsidiary's stock to a third party).

#### ARTICLE X MAINTENANCE AND REPAIRS

10.01 Tenant, at Tenant's sole cost and expense, shall promptly make all repairs, perform all maintenance, and make all replacements, in and to the Premises that are necessary or desirable to keep the Premises in first class condition and repair, in a safe and tenantable condition, and otherwise in accordance with applicable Laws and the requirements of this Lease. Tenant shall maintain all fixtures, furnishings and equipment located in, or exclusively serving, the Premises in a clean, safe and sanitary condition, shall take good care thereof and make all required repairs and replacements thereto. Tenant shall suffer no waste or injury to any part of the Premises, and shall, at the Expiration Date, surrender the Premises in the same or better order and condition as on the date Tenant initially opened for business in the Premises, ordinary wear and tear excepted. Without limitation of the generality of the foregoing, Tenant, at Tenant's sole cost and expense, shall promptly make all repairs and replacements to (a) any pipes, lines, ducts, wires or conduits installed in, or exclusively serving, the Premises, (b) Tenant's signs, (c) any heating, air conditioning, electrical, ventilating, sprinkler or other fire protection, or plumbing equipment installed in, or exclusively serving, the Premises, (d) all glass, window panes and doors, (e) any loading dock or vertical transportation designated exclusively for Tenant's use or any exterior stairs, ramps, platforms or similar improvements that exclusively serve the Premises, and (f) any other mechanical systems or equipment (including, without limitation, utility meters) installed in, or exclusively serving, the Premises. Tenant shall be responsible, at Tenant's sole expense, for providing all janitorial and cleaning and pest and termite control services for the Premises. All such services shall be provided in accordance with standards customarily maintained for similar first class properties, and Tenant shall maintain, at Tenant's sole cost and expense, service contracts therefor. Tenant shall maintain, at Tenant's sole cost and expense, a maintenance contract on the heating, ventilation and air conditioning equipment and systems ("HVAC") in or serving the Premises, including, without limitation, the Existing HVAC Units (as defined on the First Addendum) and the Condenser Unit (as defined on EXHIBIT B) (collectively, the "Existing HVAC System") which HVAC

contract shall provide for monthly maintenance of all such HVAC. Such contract shall be with a contractor licensed to do business in the jurisdiction in which the Property is located and approved by Landlord, and shall cover all parts and labor with routine inspections and servicing as recommended by the manufacturer. From time to time, at Landlord's request, Tenant shall provide copies of all maintenance and service contracts to Landlord. In addition, Landlord reserves the right to establish a regular inspection and maintenance program for all equipment maintained by Tenant and to provide all necessary or appropriate maintenance and repairs at Tenant's expense.

10.02 Tenant shall install and maintain such fire extinguishers and other fire protection devices as may be required by any agency having jurisdiction over, or by the underwriters issuing insurance for the Property. Tenant agrees to perform routine inspections of fire protection devices by contractors acceptable to Landlord. If any Governmental Authority with jurisdiction over the Property requires the installation, modification, or alteration of the sprinkler system, or other equipment, by reason of Tenant's use and occupancy, or the location of any partitions, trade fixtures, or other contents of the Premises, then Tenant shall promptly install such sprinkler system or changes therein.

10.03 If any repairs and/or replacements required to be made by Tenant under this Article X are not made within ten (10) days after written notice thereof by Landlord to Tenant, then Landlord may, at its option, make any or all such repairs and/or replacements without further notice or any liability to Tenant for any loss or damage which may result to Tenant's business by reason of such repairs and/or replacements (including, without limitation, damage to Tenant's business). Notwithstanding the foregoing, Landlord may make any such repairs and/or replacements without notice to Tenant or without giving Tenant the benefit of the aforementioned cure period if necessary in the event of an emergency. If Landlord makes any of the foregoing repairs and/or replacements, Tenant shall pay Landlord, within five (5) days of demand therefor, the cost of such repairs and/or replacements plus an administrative fee equal to ten percent (10%) of the cost of such repairs and/or replacements.

10.04 Landlord shall, at Landlord's sole cost and expense (subject to reimbursement as part of Common Expenses, if applicable), repair and maintain the Common Areas and the following portions of the Premises in good order, condition and repair (reasonable wear and tear excepted): roof (excluding any Tenant specific roof penetrations); exterior walls (excluding doors, signs, windows, and glass); structural portions of the Premises (consisting only of the foundation and members supporting the roof); and any utility lines located outside the Premises that serve other premises in common with the Premises (including any sewage lines, pipes and conduits which do not exclusively serve the Premises), but only to the extent that such lines are not owned, operated or managed by any utility company or applicable governmental authorities. If any such repairs are necessitated by Tenant's breach of this Lease, or by any act or negligence of Tenant, its agents, employees, contractors, customers or invitees, Tenant shall reimburse Landlord for the reasonable cost incurred in completing such repairs, which payment shall be made to Landlord within thirty (30) days after Landlord's request therefor. Tenant shall promptly notify Landlord in writing of any repairs or maintenance for which Landlord is responsible hereunder.

#### ARTICLE XI

#### ALTERATIONS; MECHANIC'S LIENS; AND SURRENDER OF THE PREMISES

##### 11.01

(a) Tenant will not make, or permit anyone to perform any work and/or make, any alterations, additions, improvements or other changes (hereinafter referred to collectively as "Alterations"), structural or otherwise, in or to the Premises or the Property without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed with respect to Non-Structural Alterations (as hereinafter defined) and may be withheld or granted in Landlord's sole and absolute discretion with respect to Structural Alterations (as hereinafter defined). The term "Alterations" shall include Tenant's Work (as defined in EXHIBIT B). The term "Structural Alterations" shall mean the proposed Alterations (i) affect (x) the structural elements or exterior of any portion of the Property (including, without limitation, the Premises), and/or (y) any mechanical or utility systems serving the Property (including, without limitation, the Premises), and/or (ii) are visible from the exterior of the Premises. The term "Non-Structural Alterations" shall mean any Alterations, which are not Structural Alterations and do not require a building permit. Notwithstanding the foregoing, Tenant may, without Landlord's consent, make Non-Structural Alterations costing less than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) per occurrence either individually or in the aggregate with other such Non-Structural Alterations



performed within any Lease Year which are made in accordance with Tenant's standard interior decor and fixtures; provided, however, that Tenant gives Landlord prior written notice of any such Alterations.

(b) All Alterations shall be made: (i) in a good, workmanlike, first-class and prompt manner; (ii) by contractors approved by Landlord, which approval shall not be unreasonably withheld; provided, however, that all Alterations involving structural, electrical, mechanical or plumbing work, the HVAC and/or any roof-related work shall, at Landlord's option, be performed by Landlord's designated contractor at Tenant's expense; (iii) in accordance with plans and specifications approved in writing by Landlord and prepared by an architect licensed in the jurisdiction where the Property is located; (iv) in accordance with all applicable Laws and the requirements of any Governmental Authorities and any insurance company insuring the Property or portion thereof; (v) after having obtained any required consent of the holder of any Mortgage (as defined in Section 21.01); (vi) in compliance with all rules and regulations concerning the performance of Alterations as may be prescribed by Landlord from time to time with respect to the Property, which current rules and regulations are attached hereto as EXHIBIT B-1 (said rules and regulations set forth on EXHIBIT B-1, as the same may be modified by Landlord from time to time, are referred to in this Lease as the "Construction Rules and Regulations"), and (vii) after Tenant has obtained, and/or caused its contractor(s) to obtain, pay for and maintain, during the continuance of construction on or about the Premises the insurance coverages set forth on EXHIBIT B-2 in the form of, and with limits not less than, specified, and which insurance coverages shall be in addition to the insurance coverages required to be obtained and maintained by Tenant under Article XIV of this Lease. By approving any plans and specifications, including, without limitation, Tenant's Plans (as defined on EXHIBIT B) or not requesting changes thereto, Landlord shall not be deemed to have made any representation or warranty to Tenant, or have any liability, with respect to the safety, adequacy, correctness, efficiency, compliance of such plans with any Laws, including, but not limited to, City, State and Federal laws, rules and regulations on the disabled or handicapped, on fire safety and on Hazardous Substances, or any other matter relating thereto, it being expressly understood and agreed that Tenant shall be responsible, at its sole cost and expense, for any additional costs resulting from the non-compliance of any plans and specifications (including, without limitation, Tenant's Plans).

(c) Without diminishing Landlord's rights to approve Alterations, all Alterations performed by Tenant shall further comply with the following: (i) such Alterations shall not increase the parking requirement for the Premises or require any waivers for parking from applicable Governmental Authorities; (ii) such Alterations shall not prevent the continued use of the Premises as a single integrated unit; (iii) such Alterations shall not affect the structural integrity of the Premises; (iv) no Alterations shall be undertaken until Tenant shall have procured and paid for, so far as the same may be required from time to time, all governmental approvals and permits; (v) such Alterations shall be pursued diligently and in good faith to completion; (vi) such Alterations shall be performed in a manner so as to not interfere with the business or operations of Landlord or any other occupant of the Property, and (vii) such Alterations shall be architecturally harmonious with the remainder of the Property.

(d) Upon completion of any Alterations, Tenant shall obtain and deliver to Landlord written, unconditional waivers of mechanics' and materialmen's liens against the Premises and the Property from all contractors, subcontractors, laborers and material suppliers for all work, labor and services to be performed and materials to be furnished in connection with Alterations. If any Alterations are made without the prior written consent of Landlord, Landlord shall have the right at Tenant's expense to remove and correct such Alterations and restore the Premises and the Property to their condition immediately prior thereto, or to require Tenant to do the same. Further, if any alterations, additions, improvements or other changes in or to the Common Areas or exterior of the Building are necessitated by Tenant's particular use of, and/or Alterations in or to, the Premises, Tenant shall reimburse Landlord the cost of performing such alterations, additions, improvements or other changes within ten (10) days after Tenant's receipt of an invoice therefor.

11.02 All Alterations to the Premises or the Property made by either party shall immediately become the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof at the Expiration Date, unless Landlord otherwise designates in writing that any such Alterations shall be removed. Landlord shall make such designation during Landlord's review of any Tenant's plans and specifications (including, without limitation, Tenant's Plans) provided that Tenant includes with its submission to Landlord of any such plans and specifications, a separate written notice specifically referencing this provision and advising Landlord that Landlord is required to make such designation as part of any such consent given by Landlord hereunder. If Tenant is not in default under this Lease, then Tenant shall have the right to remove at any time all of its personal property, inventory and movable furniture, furnishings, trade fixtures and equipment, as well as

Tenant's signs and identification marks, installed, solely at the expense of Tenant, in or on the Premises (collectively, "Personal Property"), which shall in no event include, without limitation, plumbing fixtures, the HVAC and ceiling light fixtures). Tenant shall, prior to the Expiration Date, at Tenant's sole cost and expense, remove from the Premises all Personal Property and all wiring in the Premises designated by Landlord or if no such designation is made, that is not terminated at both ends at a connector or designated for future use. Tenant shall be responsible for all damage and injury to the Premises or the Property caused by any removal under this Section 11.02. If Tenant fails to remove any Personal Property or any other items required to be removed by Tenant hereunder by the Expiration Date or the date that Tenant abandons, vacates, or surrenders the Premises or is dispossessed by process of law, or otherwise, then such Personal Property and any other items shall be deemed abandoned by Tenant and, at the option of Landlord and without notice to Tenant or any other person (and without any obligation to account for them), shall become the property of Landlord, or may be removed by Landlord at Tenant's risk and expense, or may be placed in storage at Tenant's risk and expense, or may be sold or otherwise disposed of, in which event, subject to the next sentence of this Section 11.02, the proceeds of such sale or other disposition shall belong to Landlord. Landlord may sell the Personal Property at private sale and without legal process, for such price as Landlord may obtain, and apply the proceeds of such sale against any amounts due under this Lease from Tenant to Landlord and against any and all expenses incident to the removal, repair of any damage to the Premises resulting or caused by such removal, storage and sale of such Personal Property. If Tenant does not make any repairs as required by this Section 11.02, Tenant shall be liable for, and agrees to pay, Landlord's costs and expenses incurred in connection therewith. Tenant, on the Expiration Date, shall peaceably surrender to Landlord the Premises in broom-clean condition and in good repair and condition in accordance with the requirements of Section 10.01 hereof, and shall deliver to Landlord any and all keys (including, without limitation, access cards) furnished to, or otherwise procured by, Tenant relating in any way to the Premises or the Property, and shall inform Landlord of the combination of each lock, safe and vault, if any, in the Premises; provided, however, in no event shall the Premises be deemed surrendered until Tenant has provided Landlord with a certification from a reputable HVAC contractor that the HVAC is in good repair and condition unless Landlord waives such requirement in writing. Tenant hereby waives any and all notices to vacate. No act or thing done by Landlord or Landlord's agents during the Lease Term shall be deemed an acceptance of a surrender of the Premises and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employee of Landlord or Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease, and the delivery of keys to any such agent or employee shall not operate as a termination of this Lease or a surrender of the Premises. Tenant's obligations and covenants under this Section 11.02 shall survive the Expiration Date. Tenant hereby assigns to Landlord any assignable warranties with respect to any of the foregoing construction, installations, fixtures and equipment, to the extent any such warranties are provided to Tenant by any contractors, manufacturers or suppliers thereof.

11.03 Nothing contained in this Lease shall be construed as consent on the part of Landlord to subject Landlord's estate in the Premises or the Property to any lien or liability under any applicable Laws relating to liens. No work which Landlord permits Tenant to do shall be deemed to be for the immediate use and benefit of Landlord and no mechanics' lien or other claim, lien or other charge shall be allowed against the estate, rights, title or interests of Landlord by reason of any consent given by Landlord to Tenant to do work in or about the Premises or provide materials therefor. Tenant shall not suffer, permit or give cause for the filing of a lien against the Premises or the Property. If any mechanic's or materialman's lien or notice of lien shall at any time be filed against the Premises or the Property by reason of work, labor, services or materials performed or furnished to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall immediately cause the same to be bonded or discharged of record. If Tenant shall fail to cause such lien or notice of lien to be discharged or bonded within five (5) days after the filing thereof, then the same shall constitute a breach or default of this Lease and, in addition to any other rights and remedies available to Landlord at law, or in equity or under this Lease, Landlord may, but shall not be obligated to, discharge or bond off the same without further notice to Tenant, by paying the amount claimed to be due or posting a bond, and the amounts so paid by Landlord and all costs and expenses, including reasonable attorneys' fees and court costs, incurred by Landlord in paying, bonding off, procuring the discharge of such lien or notice of lien, or defending Landlord in any suit brought against Landlord, shall be due and payable by Tenant to Landlord as additional rent within ten (10) days of Landlord's demand therefor.

#### ARTICLE XII SIGNS

12.01 Except for moderately sized, first-class and professionally designed and manufactured credit card emblems and store hours, no sign, advertisement or notice referring to Tenant shall be inscribed, painted, affixed or otherwise displayed on any part of the exterior or the interior of the Property (including Tenant's windows and doors) without the prior written approval of Landlord. Tenant shall at no time utilize any hand-drawn signs, scotch plaid decal strips or flashing or neon signs or lights in or on the Premises, and the bulbs of all Tenant's permitted signs and lights shall be replaced as soon as they become defective or lose their intensity. If any sign, advertisement or notice that has not been approved by Landlord is exhibited or installed by Tenant, Landlord shall have the right to remove the same at Tenant's expense. All initial signage requests and plans shall be included in the Tenant's Plans (as defined in EXHIBIT B) and subject to all applicable terms and conditions with respect to Tenant's Plans. All initial signage, which has been approved by Landlord, shall be installed not later than the day Tenant opens for business at the Premises. All of Tenant's signs shall be: (a) installed after Tenant has obtained, at Tenant's sole cost and expense, all permits and licenses required therefor, and delivered copies thereof to Landlord; and (b) at Tenant's sole cost and expense, installed, maintained, repaired and replaced in accordance with all applicable Laws and the requirements of any Governmental Authorities and otherwise in a first class manner, which includes, but is not limited to, the requirement for Tenant, at Tenant's sole cost and expense, to replace any of Tenant's signs if the sign face becomes faded, discolored or begins to peel, subject to receipt of Landlord's prior written approval on such replacement sign. Tenant shall repair any signs that have been damaged within five (5) days after such damage occurs. If Tenant fails to repair or replace any of its signs as specified above, and such failure continues for a period of three (3) business days following receipt of notice from Landlord, Landlord shall have the right to make such repairs or replacement at Tenant's sole cost and expense. Landlord reserves the right to replace any Property-standard sign supplied by Landlord and to replace any exterior sign supplied by Tenant with a Property-standard sign. Landlord reserves the right to affix, install and display signs, advertisements and notices on any part of the exterior or interior of the Property, including without limitation the right, during the twelve (12) month period immediately prior to the Expiration Date, to display a "For Lease" or similar sign on the exterior of the Premises. Tenant's signage, including initial signage, must comply with the signage criteria attached hereto as EXHIBIT E. Landlord, in its sole, but reasonable, discretion, may modify the signage criteria from time to time upon no less than one hundred eighty (180) days' advance written notice to Tenant (such signage criteria, as the same may be modified by Landlord from time to time, is hereinafter referred to as the "Signage Criteria"), in which event, without a reduction of size, Tenant shall bring its sign into conformity with the new Signage Criteria at Tenant's sole cost and expense; provided, however, that Landlord shall reimburse Tenant for all of the reasonable, out-of-pocket costs incurred by Tenant to replace such sign within thirty (30) days after receipt of paid invoices and other reasonable evidence of all such costs incurred by Tenant.

12.02 Notwithstanding anything to the contrary set forth in this Lease, (a) subject to the Signage Criteria, Landlord's approval of the sign specifications and all applicable Laws and the requirements of any Governmental Authorities, Tenant shall have the right to install signs on the east and west sides of the exterior of the Premises; provided that the same are otherwise installed and maintained pursuant to the terms and conditions set forth in this Lease, and (b) Tenant's storefront sign(s) shall be kept illuminated at a minimum during the hours from dusk until dawn, seven (7) days per week, and in any case, at all other times Tenant is open for business. Tenant shall be responsible for all utility charges necessary to illuminate its sign(s).

12.03 Tenant acknowledges and agrees that Landlord has informed Tenant that Landlord does not currently have the right to install any parking directional sign in or on any portion of the Property where parking directional signage is not currently installed. For the first one hundred twenty (120) days after the Effective Date, Landlord shall reasonably cooperate with Tenant, without any cost or expense to Landlord, in obtaining any consent from applicable Governmental Authorities and any tenants or occupants under any leases or other occupancy agreements existing as of the Effective Date that limit signage on their premises, building or elsewhere in the Common Areas, in any case required in order for Tenant to install, at Tenant's sole cost and expense pursuant to the terms and conditions set forth in this Lease, any parking directional sign which has been approved in advance by Landlord (the "Parking Directional Sign Consent"); provided, however, that notwithstanding the foregoing and/or anything to the contrary set forth in this Lease, in connection with obtaining the Parking Directional Sign Consent Landlord shall not be obligated to (i) incur any cost or expense or grant any other economic concession, (ii) grant any non-monetary concession or comply with conditions or obligations which are not acceptable to Landlord, or (iii) institute any legal or other proceeding or cooperate with Tenant in connection with any appeal of any adverse ruling by any Governmental Authorities. Tenant shall be responsible for all costs associated with any parking directional sign installed by or on behalf of Tenant pursuant to this Section 12.03. In the



event that Tenant is unable to obtain the Parking Directional Sign Consent, this Lease shall nonetheless continue in full force and effect.

#### ARTICLE XIII INSPECTION BY LANDLORD

13.01 Tenant shall permit Landlord, its agents and representatives, to enter the Premises, upon at least forty-eight (48) hours' prior notice which may be given verbally or by e-mail to Tenant's general manager (except in the event of an emergency when no such notice shall be required), without charge therefor and without diminution of the Rent payable by Tenant, to examine, inspect and protect the Premises and the Property, to make such alterations and/or repairs as in the sole judgment of Landlord may be deemed necessary, and/or to exhibit the same to lenders and investors and during the last twelve (12) months of the Lease Term, to prospective tenants.

#### ARTICLE XIV INSURANCE

14.01 Tenant shall not conduct or permit to be conducted any activity, or place or permit to be placed any equipment or other item in or about the Premises or the Property, which will in any way increase the rate of fire insurance or other insurance on the Property, violate the terms of any insurance coverage on the Property carried by Landlord, prevent Landlord from obtaining such policies of insurance acceptable to Landlord or any Mortgagee or violate the rules, regulations, or recommendations of Landlord's insurers, loss prevention consultants, safety engineers or a similar body having jurisdiction over the Premises. If Tenant does so, then (whether or not Landlord has consented to such activity, equipment or other item) Tenant shall pay as additional rent due hereunder the amount of any increase in any such insurance premium. The statement of any applicable insurance company or insurance rating organization (or other organization exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions) that an increase is due to any such activity, equipment or other item shall be conclusive evidence thereof.

14.02

(a) On or before the Delivery Date and thereafter throughout the Lease Term, Tenant shall obtain and maintain insurance policies with the following coverages:

(1) Commercial general liability insurance (written on an occurrence basis and including personal injury liability), including products and completed operations, premises and operations liability, and contractual liability coverage, Damages to Premises You Rent, and business automobile liability insurance (covering automobiles owned by Tenant, and non-owned automobiles, which are leased, hired or operated by Tenant). Such commercial general liability insurance policy shall protect its insured against any liability which arises from any occurrence on or about the Premises or which arises from any matter against which Tenant is required to indemnify Landlord pursuant to Section 15.02 below. Such policies shall be in minimum amounts approved by Landlord from time to time, and shall name the following (collectively, the "Landlord Insured Parties") as additional insureds: Landlord, any Mortgagee, Landlord's property manager, and any other Person that Landlord designates in writing. As of the date hereof, such insurance shall be in the minimum amount of One Million and 00/100 Dollars (\$1,000,000.00) combined single limit per occurrence, Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate;

(2) Excess liability insurance on an occurrence basis that is in excess of the underlying commercial general liability, business automobile liability, and employer's liability insurance, and any "dram shop or "liquor legal liability" insurance, which is required pursuant to Section 14.02(a)(6) below, with limits of not less than Five Million and 00/100 Dollars (\$5,000,000.00) each occurrence. Such policy shall name the Landlord Insured Parties as additional insureds thereunder;

(3) Causes of Loss-Special Form property insurance (including earthquake and sprinkler leakage coverage, if applicable, flood coverage, if applicable, and equipment breakdown coverage) insuring one hundred percent (100%) of the full replacement cost of all Alterations, inventory, fixtures, equipment, Personal Property, HVAC equipment, signage, floor coverings and furnishings installed in and located on the Premises, without deduction for depreciation. Such policy shall name the Landlord Insured Parties as loss payees

as their interests appear. So long as this Lease shall remain in effect, any and all proceeds of such insurance shall be used only to repair or replace the insured items. Such insurance shall include business income insurance (formerly known as "business interruption coverage") on a one hundred percent (100%) (twelve (12) month) actual loss sustained basis;

(4) Plate glass insurance, naming the Landlord Insured Parties as loss payees as their interests appear and insuring against all risks, the full cost of repairing and/or restoring all of the plate glass in, at or about the Premises;

(5) Workers' compensation insurance for Tenant's employees, with a minimum limit as defined by the applicable Laws of the jurisdiction in which the Property is located (as the same may be amended from time to time), but no less than One Million and 00/100 Dollars (\$1,000,000.00), and employer's liability insurance for Tenant's employees, with a minimum liability limit of not less than One Million and 00/100 Dollars (\$1,000,000.00), and such workers' compensation and employer's liability insurance shall both, pursuant to Section 14.03 below, include a waiver of subrogation endorsement in favor of the Landlord Insured Parties;

(6) If dram shop liability is recognized in the state in which the Premises is located, and if Tenant is permitted to sell alcoholic beverages pursuant to the express terms of this Lease (it being understood and agreed that the foregoing shall not permit Tenant to sell alcoholic beverages if this Lease otherwise does not expressly grant Tenant the right to do so), then Tenant shall maintain "dram shop or "liquor legal liability" insurance, either as an endorsement to its commercial general liability policy or as a separate policy, at the same limits of liability designated above for commercial general liability and excess liability insurance coverage. Tenant shall provide Landlord with evidence of this insurance prior to selling or serving alcoholic beverage at or from the Premises;

(7) If Tenant uses or stores any flammable or toxic chemicals in the course of its business or if otherwise requested by Landlord, Tenant shall purchase and maintain Environmental Legal Liability insurance, including coverage for pollution clean-up with a limit of not less than One Million and 00/100 Dollars (\$1,000,000.00); and

(8) Such other insurance coverage against other insurable hazards as are from time to time reasonably requested by Landlord. Additionally, the coverages and minimum limits of coverage as set forth in this Section 14.02 may from time to time, at Landlord's reasonable discretion, be reasonably increased in a manner consistent with industry standards. Within thirty (30) days after Landlord's written notice of such additional or increased insurance requirements, Tenant shall provide Landlord with any evidence required by Landlord of the insurance required hereunder evidencing such change(s).

(b) Each such policy shall: (i) be issued by a company, which is authorized to do business in the jurisdiction in which the Property is located and which is rated "A-" or better (and is in a Financial Size Category of Class VII or higher) by A.M. Best Company and which shall otherwise be acceptable to Landlord in its reasonable judgment; (ii) contain an endorsement that such policy shall remain in full force and effect notwithstanding that the insured may have waived its right of action against any party prior to the occurrence of a loss, and shall provide that the insurer thereunder waives all right of recovery by way of subrogation against Landlord, its partners, agents, employees, and representatives, in connection with any loss or damage covered by such policy; (iii) be acceptable in form and content to Landlord; (iv) be primary and non-contributory with other insurance available to the Landlord Insured Parties; (v) initially be for a term of one (1) year and contain an endorsement prohibiting cancellation, failure to renew, reduction of amount of insurance or change in coverage without the insurer's first giving Landlord at least thirty (30) days' (which 30-day period shall be reduced to ten (10) days' for nonpayment of premium) prior written notice (by certified or registered mail, return receipt requested) of such proposed action; (vi) provide that an act or omission of one of the insureds, additional insureds, or loss payees thereunder which would void or otherwise reduce coverage, shall not void or reduce coverage as to the other insureds, additional insureds or loss payees, (vii) contain a standard mortgagee endorsement satisfactory to Landlord and Landlord's Mortgagee(s); and (viii) contain cross-liability coverage or a severability of interest clause in a commercially reasonable form. No such policy shall contain any deductible or self-insurance provision except as otherwise approved in writing by Landlord. Tenant shall deliver a certificate of such insurance (and, upon request, copies of all required insurance policies, including endorsements and declarations) to Landlord on or before the Delivery Date and at least annually thereafter. Neither the issuance of any insurance

policy required under, nor the minimum limits of liability specified in, this Lease shall be construed to limit or restrict in any way Tenant's indemnity obligations in this Lease or other liability hereunder. On insurance policies where Landlord Insured Parties are named as an additional insured or loss payee, the additional insured parties or loss payees, as applicable, shall be additional insureds or loss payees, as applicable, to the full limits of liability purchased by Tenant even if those limits of liability are in excess of those required in this Lease.

(c) If any evidence required by Landlord of the insurance policies required pursuant to this Section 14.02 is not received by Landlord on or before the date Landlord is prepared to tender possession of the Premises to Tenant, then until such evidence is received by Landlord: (i) Tenant shall not be permitted to perform any Alterations on the Premises or otherwise use or occupy the Premises, and (ii) Landlord shall have no obligation to deliver the keys to, or tender possession of, the Premises to Tenant. In addition, if Tenant fails to timely provide any evidence required by Landlord of the insurance policies required under this Section 14.02, Landlord shall have the right, (but not the obligation) without notice to Tenant and at any time and from time to time, to acquire such insurance, and Tenant shall be obligated to pay Landlord, as additional rent, the amount of the premium and all sums incurred by Landlord applicable thereto within five (5) days following notice from Landlord.

14.03 Notwithstanding anything in this Lease to the contrary, Tenant and Landlord hereby waive and release any and all rights of subrogation or recovery, whether arising in contract or tort, against the other, including their employees and agents, arising during the Lease Term, for any and all loss or damage (i) to the Premises, to any property located therein, or to the Property, which loss or damage arises from the perils that could be insured against under a standard all-risk or Special Form - Causes of Loss policy, (ii) that could be insured under time element insurance (e.g., business interruption insurance), including without limitation loss of earnings or rents resulting from loss or damage caused by such a peril, and (iii) to the extent permitted by law, arising from a worker's compensation insurance claim, in all of the foregoing cases, whether or not the party suffering the loss or damage actually carries such insurance, recovers under such insurance, or self-insures the loss or damage. Deductibles and self-insured retentions shall be deemed insurance for all purposes hereunder. This mutual waiver is in addition to any other waiver or release contained in this Lease. If there is a conflict between this Section 14.03 and any other provision of this Lease, this Section 14.03 shall control. Landlord and Tenant shall cause each of the following insurance policies carried by either of them: (i) any worker's compensation, if any, and (ii) property insurance insuring the Premises, the contents thereof, or the Property, to provide that the insurer waives all rights of recovery by way of subrogation or otherwise against the other party hereto in connection with any loss or damage which is covered by such policy or that such policy shall otherwise permit, and shall not be voided by the releases provided for above. In the event of a permitted sublease or other occupancy agreement with respect to the Premises, the subtenant or occupant shall expressly agree in writing to be bound by the provisions of this Section 14.03 (as if such subtenant or occupant were Tenant hereunder) for the benefit of Landlord.

14.04 Neither Tenant's obligations under this Lease nor Tenant's underlying liability shall be deemed limited in any way by the insurance requirements set forth in this Lease or Landlord's review and approval of any insurer or insurance policy. The insurance requirements set forth in this Lease merely prescribe the minimum amounts and forms of insurance coverage that Tenant and/or its contractors are required to carry.

14.05 Tenant agrees that Landlord may, from time to time during the Lease Term, authorize an insurance compliance agent ("Compliance Agent") to, among other things, collect and review evidence of insurance from tenants of the Property. Tenant agrees to comply with all commercially reasonable requests sent to Tenant directly by any Compliance Agent relating to Tenant's insurance obligations under this Lease, including, but not limited to, providing evidence of insurance to any Compliance Agent.

#### ARTICLE XV LIABILITY OF LANDLORD

15.01 Neither Landlord nor any of Landlord's Indemnitees shall be liable to Tenant or the Tenant Parties, or to any other Person for any damage (including indirect and consequential damages and lost profits), injury, loss, or claim (including claims for the interruption of or loss to the business being conducted in the Premises) based on or arising out of any cause whatsoever (except as otherwise provided in this Section 15.01),

including but not limited to the following: repair to any portion of the Premises or the Property; interruption in the use of the Premises or any equipment therein; any accident or damage resulting from the use or operation (by Landlord, Landlord's Indemnitees, Tenant or any other Person) of the heating, cooling, electrical, sewerage, or plumbing equipment or apparatus; termination of this Lease by reason of the destruction of the Premises or the Property; any fire, robbery, theft, vandalism, mysterious disappearance and/or any other casualty; actions of any other tenants of the Property or of any other Person; and leakage in any part of the Premises or the Property from water, rain, ice or snow that may leak into, or flow from, any part of the Premises or the Property, or from drains, pipes or plumbing fixtures in the Premises or the Property. Any failure or inability to furnish any service required hereunder shall not be considered an eviction, actual or constructive, of Tenant from the Premises and shall not entitle Tenant to terminate this Lease or to an abatement of any Rent payable hereunder. Any Personal Property placed by Tenant or any Tenant Parties in or about the Premises or the Property shall be at the sole risk of Tenant, and Tenant hereby waives any and every right or cause of action against Landlord and Landlord's Indemnitees for any and all loss of, or damage to, any of such Personal Property (whether or not such loss or damage is caused by the fault or negligence of Landlord, Landlord's Indemnitees or anyone for whom Landlord and Landlord's Indemnitees may be responsible).

15.02 To the fullest extent permitted by law, Tenant shall reimburse Landlord and Landlord's Indemnitees for, and shall indemnify, defend upon request and hold harmless Landlord and Landlord's Indemnitees from and against all costs, damages, claims, liabilities and expenses (including, without limitation, attorneys' fees), losses and court costs suffered by or claimed against Landlord and Landlord's Indemnitees, directly or indirectly, based on or arising out of, in whole or in part, (i) use and occupancy of the Premises or the business conducted therein, (ii) any act or omission by Tenant or any Tenant Parties, (iii) any breach or default in the performance or observance of Tenant's covenants or obligations under this Lease, or (iv) injury or death to individuals or damage to property within the Premises. Furthermore, Tenant's indemnification obligations under this Lease shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts. The parties acknowledge that the foregoing provisions and waivers in this Section 15.02 have been specifically negotiated.

15.03 If any landlord hereunder (including Landlord) transfers the Property or such landlord's interest therein, said landlord shall not be liable to Tenant for any obligations or liabilities based on or arising out of events or conditions occurring on or after the date of such transfer. Within five (5) days after request, Tenant shall attorn to such transferee.

15.04 Tenant shall not have the right to set off or deduct any amount allegedly owed to Tenant pursuant to any claim against Landlord from any Rent or other sums payable to Landlord. Tenant's sole remedy for recovering upon such claim shall be to institute an independent action against Landlord. If Tenant or any of the Tenant Parties is awarded a money judgment against Landlord, then recourse for satisfaction of such judgment shall be limited to execution against the estate and interest of Landlord in the Property, subject in any case to the interests of any Mortgagee. No other asset of Landlord or any Landlord's Indemnitee shall be available to satisfy or subject to such judgment, nor shall Landlord or any Landlord's Indemnitee have personal liability for satisfaction of any claim or judgment against Landlord or any Landlord's Indemnitee. In furtherance of the foregoing and in consideration of the benefits accruing hereunder, Tenant and all successors and assigns covenant and agree that, in the event of any actual or alleged failure, breach or default hereunder by Landlord or any Landlord's Indemnitee: (a) the sole and exclusive remedy shall be against Landlord's interest in the Property, as aforesaid; (b) no Landlord's Indemnitee shall be sued or named as a party in any suit or action (except as may be necessary to secure jurisdiction of Landlord); (c) no service or process shall be made against any Landlord's Indemnitee (except as may be necessary to secure jurisdiction of Landlord); (d) no partner, member, shareholder, officer, agent or employee of Landlord shall be required to answer or otherwise plead to any service of process; (e) no judgment will be taken against any Landlord's Indemnitee; (f) any judgment taken against any Landlord's Indemnitee may be vacated and set aside at any time nunc pro tunc; (g) no writ of execution will ever be levied against the assets of any Landlord's Indemnitee; and (h) these covenants and agreements are enforceable both by Landlord and also by any Landlord's Indemnitee. Notwithstanding anything in this Lease to the contrary, in no event shall Landlord or any Landlord's Indemnitee ever be liable for consequential, speculative or punitive damages, or lost profits.

#### ARTICLE XVI

## RULES AND REGULATIONS

16.01 Tenant and all Tenant Parties shall at all times abide by and observe the rules and regulations attached hereto as EXHIBIT C. In addition, Tenant and the Tenant Parties shall abide by and observe all rules or regulations that Landlord may promulgate from time to time for the operation and maintenance of the Property. Upon notice thereof to Tenant, all such rules and regulations shall be binding upon Tenant and enforceable by Landlord as if they were contained within this Section 16.01. The rules and regulations set forth on EXHIBIT C, as the same may be modified by Landlord from time to time, are referred to in this Lease as the "Rules and Regulations". Nothing contained in this Lease shall be construed as imposing upon Landlord any duty or obligation to enforce any Rules or Regulations, or the terms, conditions or covenants contained in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for the violation of such rules or regulations by any other tenant or its employees, agents, assignees, subtenants, invitees or licensees.

## ARTICLE XVII DAMAGE OR DESTRUCTION

17.01 Tenant shall give immediate written notice to Landlord of any damage caused to the Premises or Property by fire or other casualty ("Casualty").

17.02 If the Premises or the Property are totally or partially damaged or destroyed by Casualty thereby rendering the Premises totally or partially inaccessible or unusable, Landlord shall diligently restore and repair the Premises to substantially the same condition as on the Delivery Date and shall restore the Property to again render the Premises accessible (collectively, "Landlord's Restoration Work"). Notwithstanding the foregoing and/or anything to the contrary set forth in this Lease, if (i) in Landlord's sole judgment, Landlord's Restoration Work cannot be completed within two hundred seventy (270) days after the occurrence of such Casualty and Landlord's commercially reasonable estimate of the time needed for effecting a satisfactory settlement with any insurance company involved, removal of debris, preparation of plans and issuance of all required governmental permits, or (ii) such Casualty occurred within twenty-four (24) months prior to the expiration of the Lease Term, or (iii) Landlord's insurance is insufficient to pay the full cost of Landlord's Restoration Work and/or any other repairs and restoration Landlord reasonably elects to perform, or (iv) any Mortgagee fails or refuses to make such insurance proceeds available for Landlord's Restoration Work and/or any other repairs and restoration Landlord elects to perform, or (v) zoning or other applicable Laws or regulations do not permit Landlord's Restoration Work and/or any other repairs and restoration Landlord elects to perform, or (vi) there is a Casualty to the Property or the Building that exceeds fifty percent (50%) of the replacement value of the Property or such Building, whether or not the Premises are damaged or destroyed, which replacement value shall be determined by the company(ies) insuring Landlord against the damage or destruction, or, if there is no such determination, by a qualified party reasonably selected by Landlord to determine the replacement value, then, in any of the aforementioned events, Landlord shall have the right, at its sole option, to terminate this Lease by giving written notice of termination to Tenant within forty-five (45) days after the occurrence of such Casualty. If this Lease is terminated pursuant to the preceding sentence, then Minimum Rent shall be apportioned and paid to the date of termination. If this Lease is not terminated as a result of such Casualty, then until Landlord's Restoration Work to the Premises is substantially complete, Tenant shall not be required to pay Minimum Rent. If this Lease is not terminated as a result of such Casualty, then except as otherwise specified in Section 17.03, Landlord shall bear the costs and expenses of Landlord's Restoration Work and any other repairs and restoration Landlord elects to perform; provided, however, that if such Casualty was caused by the act or omission of Tenant or any of the Tenant Parties, then Tenant shall pay to Landlord the amount by which such costs and expenses exceed the insurance proceeds, if any, actually received by Landlord on account of such Casualty.

17.03 Notwithstanding anything above to the contrary, if Landlord performs Landlord's Restoration Work, as provided in Section 17.02, Landlord's obligations shall be limited to the extent of insurance proceeds made available to Landlord and Landlord's ability to obtain the necessary permits. Landlord's Restoration Work shall in no event include, and Landlord shall not be required to repair, restore or replace, any decorations, Alterations or improvements to the Premises previously made by Tenant or any Personal Property belonging to Tenant. It shall be Tenant's sole responsibility to repair, restore or replace all such items to substantially their same condition prior to such Casualty and Tenant shall promptly commence, and diligently pursue to completion, such repairs, restoration and replacement to a substantially similar conditions as existed prior to such Casualty.

Tenant shall reopen for business to the public for the Permitted Use at the Premises as soon as is practicable, but in any event within sixty (60) days after substantial completion of Landlord's Restoration Work.

17.04 If at any time after the date hereof, Landlord, in its sole discretion, shall elect to demolish or replace all or any portion of the Property, Landlord shall have the right to terminate this Lease by sending written notice of such termination to Tenant. Such notice shall specify a termination date not less than ninety (90) days after the date of such notice.

17.05 The rights contained in this Article XVII shall be Tenant's sole and exclusive remedies in the event of any Casualty and Tenant hereby waives any statutory or common law right of termination which may arise by reason of any Casualty.

#### ARTICLE XVIII CONDEMNATION

18.01 If the whole or a substantial part (as hereinafter defined) of the Premises, or the use or occupancy of the Premises, shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including a sale thereof under threat of such a taking), then this Lease shall terminate on the date title thereto vests in such governmental or quasi-governmental authority, and all Minimum Rent payable hereunder shall be apportioned as of such date. If less than a substantial part of the Premises, or if the use or occupancy of less than a substantial part of the Premises, is taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose (including a sale thereof under threat of such a taking), then this Lease shall continue in full force and effect as to the portion of the Premises not so taken or condemned, except that as of the date title vests in the governmental or quasi-governmental authority Tenant shall not be required to pay Minimum Rent with respect to the portion of the Premises taken or condemned. For purposes of this Section 18.01, a "substantial part" of the Premises shall be considered to have been taken if more than one-third (1/3) of the Gross Leasable Area of the Premises is rendered unusable as a result of such condemnation.

18.02 All awards, damages, just compensation and other compensation paid by the condemning authority on account of such taking or condemnation (or sale under threat of such a taking) shall belong to Landlord, and Tenant hereby waives and assigns to Landlord all rights to such awards, damages and compensation. Tenant agrees not to make any claim against Landlord or the condemning authority for any portion of such award or compensation attributable to damages to the Premises, the value of the unexpired Lease Term, the loss of profits or goodwill, leasehold improvements or severance damages. Nothing contained herein, however, shall prevent Tenant from pursuing a separate claim against the condemning authority for relocation expenses and the value of Personal Property installed in the Premises at Tenant's expense and which Tenant is entitled pursuant to Section 11.02 to remove at the Expiration Date, provided that such claim shall in no way diminish the award or compensation payable to or recoverable by Landlord in connection with such taking or condemnation.

18.03 Notwithstanding anything to the contrary contained herein, if twenty-five percent (25%) or more of the Property or the Building is taken, condemned, or sold under threat of such a taking, then, whether or not any portion of the Premises is condemned, Landlord shall have the right, in Landlord's sole discretion, to terminate this Lease as of the date title vests in the governmental or quasi-governmental authority.

18.04 The rights contained in this Article XVIII shall be Tenant's sole and exclusive remedies in the event of taking or condemnation and Tenant hereby waives any statutory or common law right of termination which may arise by reason of any taking or condemnation.

#### ARTICLE XIX DEFAULT

19.01 Each of the following shall be deemed to be an "Event of Default" by Tenant under this Lease: (a) Tenant's failure to make when due any payment of Rent which failure continues for a period of fifteen (15) days after written notice thereof to Tenant; provided, however, if Landlord provides Tenant with written notice of failure to timely pay any Rent on two (2) occasions during any twelve (12)-month period, then during the twelve



(12)-month period following such second (2<sup>nd</sup>) notice, Landlord shall not be required to give Tenant notice of any late payment of Rent and Tenant's failure to pay any installment of Rent within fifteen (15) days after the due date thereof shall constitute an Event of Default under this Lease; (b) Tenant's failure to perform or observe any covenant or condition (other than with respect to any of the other events set forth in Section 19.01(a) above or hereinafter set forth in this Section 19.01), which failure continues for a period of thirty (30) days after written notice thereof to Tenant, unless such condition cannot reasonably be cured within such 30-day period, in which case Tenant must commence such cure within such 30-day period and diligently pursue said cure to completion within forty-five (45) days after Tenant has notice thereof or such longer period of time as is reasonably necessary to correct the failure, not to exceed one hundred twenty (120) days (provided, however, that if such breach or failure violates the terms or conditions of an existing Mortgage, lease or other occupancy agreement at the Property and/or creates a hazard, public nuisance or dangerous situation, said 10-day grace period shall be reduced to twenty-four (24) hours after Tenant's receipt of notice); (c) Tenant's failure to deliver Tenant's Plans to Landlord on or before the Tenant's Plans Due Date, which failure continues for twenty-five (25) days after Tenant has notice thereof; (d) Tenant's failure to open for business in the Premises on or before the Rent Commencement Date; (e) Tenant abandons, deserts or vacates the Premises (or any substantial portion thereof) or removes, without the prior written consent of Landlord, all or a substantial amount of the Personal Property therefrom; (f) an Event of Bankruptcy as specified in Article XX; (g) a dissolution or liquidation of Tenant; or (h) any event that is deemed an Event of Default elsewhere in this Lease.

19.02 If there shall be an Event of Default, including without limitation an Event of Default prior to the Delivery Date, then the provisions of this Article shall apply, and Landlord shall have the right, at its sole option and without any notice or demand whatsoever, to exercise any or all of the following remedies: (i) terminate this Lease and/or any services provided to Tenant under this Lease by giving notice of such termination to Tenant specifying the date of such termination, whereupon this Lease shall automatically cease and terminate, and Tenant shall be obligated to immediately quit the Premises; (ii) with or without terminating this Lease, terminate Tenant's right of possession and take possession of the Premises; (iii) without terminating this Lease, terminate all renewal and expansion options granted to Tenant pursuant to this Lease; and/or (iv) pursue all rights and remedies available to Landlord at law or in equity (including, without limitation, an injunction or specific performance against Tenant).

19.03 If Landlord elects to terminate this Lease and/or elects to terminate Tenant's right of possession, everything in this Lease to be done and performed by Landlord shall cease without prejudice, and Tenant shall remain liable for all Rent and other sums accrued through the later of termination of this Lease or Landlord's recovery of possession. Landlord may relet the Premises or any part thereof, alone or together with other premises, for such term(s) (which may extend beyond the date on which the Lease Term would have expired but for Tenant's default) and on such terms and conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its sole discretion, may determine, but Landlord shall not be liable for, nor shall Tenant's obligations hereunder be diminished by reason of, any failure by Landlord to relet or attempt to relet all or any portion of the Premises or any failure by Landlord to collect any rent due upon such reletting. In no event shall Tenant be entitled to any excess of any rental obtained by re-letting over and above the rental herein reserved.

19.04 Whether or not this Lease is terminated, Tenant nevertheless shall remain liable for any Rent or damages, which may be due or sustained prior to such default (or if the Lease is terminated, prior to such termination), and all costs, fees and expenses (including, but not limited to, attorneys' fees, costs to recover the Premises, brokerage fees and commissions, and any costs and expenses incurred in placing the Premises in first-class rentable condition and remodeling, renovating and otherwise preparing the Premises for reletting, advertising expenses, and any concessions given to any successor tenant such as a rental abatement or an improvement allowance) incurred by Landlord in pursuit of its remedies hereunder and in renting the Premises to others from time to time. Tenant also shall be liable for additional damages which, at Landlord's election, shall be either one or any combination of the following:

(a) an amount equal to Minimum Rent, Percentage Rent (if applicable) and additional rent which would have become due during the remainder of the Lease Term (or what would have been the end of the Lease Term but for any termination thereof), less the amount of rental, if any, which Landlord receives during such period from others to whom Landlord may (but is not required to) rent the Premises (other than any additional rent received by Landlord as a result of any failure of such other Person to perform any of its obligations to



Landlord) which shall be computed and payable in monthly installments, in advance, on the first (1<sup>st</sup>) day of each calendar month following Tenant's default and continuing until the date on which the Lease Term would have expired but for Tenant's default. Separate suits may be brought to collect any such damages for any month(s), and such separate suits shall not in any manner prejudice the right of Landlord to collect any damages for any subsequent month(s), or Landlord may defer initiating any such suit until after the expiration of the Lease Term (in which such deferral shall not be construed as a waiver of Landlord's rights as set forth herein and Landlord's cause of action shall be deemed not to have accrued until the expiration of the Lease Term), and it is further understood and agreed that if Landlord elects to bring suits from time to time prior to reletting the Premises, Landlord shall be entitled to its full damages through the date of the award of damages without regard to any Minimum Rent, Percentage Rent (if applicable), additional rent and other sums that are or may be projected to be received by Landlord upon reletting of the Premises; or

(b) an amount equal to the present value (as of the date of Tenant's Event of Default) of the Minimum Rent, Percentage Rent (if applicable), and additional rent which would have become due under this Lease through the end of the Lease Term (or what would have been the end of the Lease Term but for any termination thereof), which liquidated and agreed final damages shall be payable to Landlord in one lump sum on demand; provided, however, that notwithstanding the foregoing, any damages under this subsection 19.04(b) shall in no event exceed an amount equal to three (3) year's Minimum Rent, Percentage Rent (if applicable), and additional rent had the Lease not been terminated. For purposes of this Section 19.04(b), "present value" shall be computed by discounting such amount at a rate equal to two (2) whole percentage points below the prime rate published in The Wall Street Journal; or

(c) an amount equal to: (i) the worth, at the time of the award, of the unpaid Rent that had been earned at the time of termination of this Lease; (ii) the worth, at the time of the award, of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (iii) the worth, at the time of the award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which in the ordinary course of things would be likely to result therefrom. The phrase, "the worth, at the time of the award," as used in clauses (i) and (ii) above, is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. The phrase "the worth, at the time of the award," as referred to in clause (iii) above, is to be computed by discounting the amount at a rate equal to two (2) whole percentage points below the prime rate published in The Wall Street Journal. For the purpose of determining the unpaid rent in the event of a termination of this Lease, the monthly rent reserved in this Lease shall be deemed to be the sum of Minimum Rent, Percentage Rent and additional rent.

Tenant shall pay all expenses (including, without limitation, court costs and reasonable attorneys' fees) incurred by Landlord in connection with any Event of Default whether or not a suit is instituted. The provisions contained in this Section 19.04 shall be in addition to, and shall not prevent the enforcement of, any claim Landlord may have against Tenant for anticipatory breach of this Lease. Nothing herein shall be construed to affect or prejudice Landlord's right to prove, and claim in full, unpaid Rent accrued prior to any termination of this Lease.

Landlord and Tenant agree that because of the difficulty or impossibility of determining Landlord's damages from the loss of anticipated Percentage Rent from Tenant (if applicable), for the purposes of this Article, in determining the Percentage Rent payable by Tenant there shall be included, in lieu of any other determination of Percentage Rent, an amount equal to the Percentage Rent payable by Tenant for the twenty-four (24) full calendar months immediately preceding the Event of Default giving rise to Landlord's remedies hereunder (or for such lesser period of the Lease Term, annualized, if the Event of Default occurs prior to the twenty-fourth (24<sup>th</sup>) full calendar month of the Lease Term). In addition, future Common Expenses shall be calculated to include the monthly average of all such amounts payable to Landlord during the twelve (12) month period prior to the Event of Default giving rise to Landlord's remedies hereunder.

Notwithstanding any of the terms and provisions in this Lease to the contrary, to the extent required by applicable Laws of the State where the Property is located to mitigate damages or to use efforts to do so, Landlord and Tenant shall each use commercially reasonable efforts to mitigate any damages resulting from a default of

the other party under this Lease. Landlord's obligation to mitigate damages after an Event of Default by Tenant under this Lease shall be satisfied in full if Landlord undertakes to lease the Premises to another tenant (a "Substitute Tenant") in accordance with the following criteria: (a) Landlord shall have no obligation to solicit or entertain negotiations with any other prospective tenants for the Premises until Landlord obtains full and complete possession of the Premises, including, without limitation, the final and unappealable legal right to re-let the Premises free of any claim of Tenant; (b) Landlord shall not be obligated to lease or show the Premises, on a priority basis, or to offer the Premises to a prospective Substitute Tenant when other premises in the Property suitable for that prospective tenant's use are (or soon will be) available; (c) Landlord shall not be obligated to lease the Premises to a Substitute Tenant for a rent less than the then current fair market rent prevailing for similar retail uses in comparable shopping centers in the same market area as the Property, nor shall Landlord be obligated to enter into a new lease under other terms and conditions which are unacceptable to Landlord under Landlord's then current leasing policies for comparable space in the Property; (d) the Substitute Tenant shall use the Premises for the Permitted Use or another use reasonably acceptable to Landlord and it shall be reasonable for Landlord to withhold its consent if the proposed change of use would (i) disrupt the tenant mix or balance of the Property; (ii) violate any restriction, covenant or requirement contained in the lease of another tenant of the Property; (iii) adversely affect the reputation of the Property; or (iv) be incompatible with the operation of the Property as a first class shopping center, (e) Landlord shall not be obligated to enter into a lease with a Substitute Tenant that is a governmental entity, (f) Landlord shall not be obligated to enter into a lease with any proposed Substitute Tenant that does not have a tangible net worth equal to or greater than \$5,000,000.00 and sufficient financial resources or operating experience to operate the Premises in a first class manner, and (g) Landlord shall not be required to expend any amount of money to alter, remodel or otherwise make the Premises suitable for use by a proposed Substitute Tenant unless (i) Tenant pays any such sum to Landlord in advance of Landlord's execution of a lease with the Substitute Tenant (which payment shall not be in lieu of any damages or other sums to which Landlord may be entitled as a result of Tenant's default under this Lease), or (ii) Landlord, in Landlord's sole discretion, determines that any such expenditure is financially justified in connection with entering into a lease with the Substitute Tenant. Upon compliance with the above criteria respecting the reletting of the Premises after a default by Tenant, Landlord shall be deemed to have fully satisfied Landlord's obligation to mitigate damages under this Lease and under any law or judicial ruling in effect on the Effective Date or at the time of Tenant's default. Notwithstanding the foregoing, the burden of proof as to the reasonableness of a party's efforts shall be borne by the defaulting party in any litigation between the parties.

19.05 In addition to any other rights and remedies which Landlord may have at law, in equity or under this Lease, if (a) Tenant fails to timely deliver to Landlord any evidence required by Landlord of the insurance policies required under Section 14.02 of this Lease; (b) Tenant fails to deliver Tenant's Plans to Landlord on or before the Tenant's Plans Due Date and/or timely send to Landlord any required revisions to Tenant's Plans, in either case pursuant to EXHIBIT B; (c) Tenant fails to timely submit to Landlord any initial signage requests and plans (or subsequent revisions thereto), and/or install and maintain such signage, in either case in accordance with Section 12.01 of this Lease; (d) Tenant fails to deliver the statements of Gross Receipts to Landlord pursuant to Section 4.03 of this Lease; and/or (e) Tenant uses the Common Areas for a purpose not permitted in this Lease; Tenant shall pay to Landlord, upon demand, a late charge of Five Hundred Dollars (\$500.00) for each day during which any such failure shall continue. Tenant agrees that if Tenant fails to comply with the provisions set forth in above, the damages accruing to Landlord will be difficult to determine and that the charge set forth herein is a reasonable, partial damage for such failure.

19.06 If, as the result of Tenant's Event of Default at any time prior to the date Tenant completes Tenant's Work and opens to the public for the Permitted Use in the Premises, this Lease shall be terminated, Landlord and Tenant agree that, at Landlord's sole option, Tenant shall pay to Landlord on account of such Event of Default, as additional rent and as liquidated damages (and not as a penalty), immediately upon demand by Landlord, a sum equal to such amount as would have constituted one (1) year's Rent had the Rent Commencement Date occurred (notwithstanding any abatement period that may have applied thereafter), the amount of any brokerage and legal fees incurred by Landlord in connection with entering into this Lease with Tenant and any and all costs and expenses incurred by Landlord in performing any part of Landlord's Work as set forth in EXHIBIT B.

19.07 All rights and remedies of Landlord set forth in this Lease are cumulative and in addition to all other rights and remedies available to Landlord at law or in equity (including, without limitation, specific performance of Tenant's obligations hereunder). The exercise by Landlord of any such right or remedy shall not

prevent the concurrent or subsequent exercise of any other right or remedy. No delay or failure by Landlord to exercise or enforce any of Landlord's rights or remedies or Tenant's obligations shall constitute a waiver of any such rights, remedies or obligations. Landlord shall not be deemed to have waived any default by Tenant unless such waiver expressly is set forth in a written instrument signed by Landlord. If Landlord waives in writing any default by Tenant, such waiver shall not be construed as a waiver of any covenant, condition or agreement set forth in this Lease except as to the specific circumstances described in such written waiver. The acceptance of Rent by Landlord shall not be deemed a waiver of Landlord's right to enforce any term or provision hereof.

19.08 If Landlord shall institute proceedings against Tenant and a compromise or settlement thereof shall be made, then the same shall not constitute a waiver of the same or of any other covenant, condition or agreement set forth herein, nor of any of Landlord's rights hereunder. Neither the payment by Tenant of a lesser amount than the monthly installment of Minimum Rent, Percentage Rent (if applicable), and additional rent due hereunder nor any endorsement or statement on any check or letter accompanying a check for payment of Rent or other sums payable hereunder shall be deemed an accord and satisfaction. Landlord may accept the same without prejudice to Landlord's right to recover the balance of such Rent or other sums or to pursue any other remedy. Notwithstanding any request or designation by Tenant, Landlord may apply any payment received from Tenant to any payment then due. Further, any payment by Tenant of less than the total Rent due shall be treated as a payment on account. No re-entry by Landlord, and no acceptance by Landlord of keys from Tenant, shall be considered an acceptance of a surrender of this Lease.

19.09 If Tenant fails to make any payment to any third party or to do any act herein required to be made or done by Tenant, then Landlord may, but shall not be required to, make such payment or do such act. The taking of such action by Landlord shall not be considered a cure of such default by Tenant or prevent Landlord from pursuing any remedy it is otherwise entitled to in connection with such default. If Landlord elects to make such payment or do such act, then all expenses incurred by Landlord, plus interest thereon at a rate ("Default Rate") equal to the greater of eighteen percent (18%) per annum or the rate per annum which is five (5) whole percentage points higher than the prime rate published in The Wall Street Journal, from the date incurred by Landlord to the date of payment thereof by Tenant, shall constitute additional rent due hereunder; provided, however, that nothing contained herein shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate then allowed by applicable Laws. In performing any obligations of Tenant, Landlord shall not incur any liability for any loss or damage that may accrue to Tenant, the Premises or the Personal Property by reason thereof.

19.10 If Tenant fails to make any payment of Minimum Rent, Percentage Rent (if applicable), or any additional rent on or before the date such payment is due and payable (without regard to any grace period specified in Section 19.01), then Tenant shall pay to Landlord a late charge of five percent (5%) of the amount of such payment. In addition, if Tenant fails to make any payment of Minimum Rent, Percentage Rent (if applicable), or any other additional rent on or before such payment is due and payable (without regard to any grace period specified in Section 19.01), then Tenant shall pay, upon demand, interest at the Default Rate after the date such payment or late fee, respectively, became due to the date of payment thereof by Tenant; provided, however, that nothing contained herein shall be construed as permitting Landlord to charge or receive interest in excess of the maximum rate then allowed by applicable Laws. Such late charge and interest shall constitute additional rent due hereunder but payment thereof shall not excuse or waive the late payment of Rent or any default. Tenant agrees that such late charge and interest are a reasonable estimate of the damages as a result of Tenant's violation of the applicable terms and conditions of this Lease and that it would be impracticable or extremely difficult to determine Landlord's actual damages.

19.11 As security for the performance of Tenant's obligations, Tenant grants to Landlord a lien upon and a security interest in Tenant's existing or hereafter acquired Personal Property, which are located in the Premises or used in connection with the business to be conducted in the Premises, including all equipment and furnishings and all stock and partnership interests now or hereafter owned by Tenant, legally or beneficially, in any entity which manages, owns or operates the business to be conducted in or upon the Premises. Such lien shall be in addition to all rights of distraint available under applicable Laws. Within five (5) days after request, Tenant shall execute, acknowledge and deliver to Landlord a financing statement and any other document evidencing or establishing such lien and security interest which may be requested by Landlord. During any period Tenant is in default under this Lease, Tenant shall not sell, transfer or remove from the Premises such Personal Property. In connection with any public or private sale under the Uniform Commercial Code of the state in which

the Property is located, if applicable, Landlord shall give Tenant ten (10) days prior written notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition thereof is to be made, which is agreed to be a reasonable notice of such sale or other disposition.

19.12 Tenant hereby expressly waives, for itself and all Persons claiming by, through, or under it, any right of redemption or for the restoration of the operation of this Lease under any present or future applicable Laws, including, without limitation, any such right which Tenant would otherwise have in case Tenant shall be dispossessed for any cause, or in case Landlord shall obtain possession of the Premises as herein provided.

19.13 If more than one Person shall sign this Lease as Tenant, then the liability of each such Person to pay the Rent and perform all other obligations hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with or to any one of such Persons shall be deemed to have been given or made by, with or to all of them. In like manner, if Tenant shall be a partnership or other legal entity, the partners or members of which are, by virtue of any applicable Laws, subject to personal liability, then the liability of each such partner or member under this Lease shall be joint and several and each such partner or member shall be fully obligated hereunder and bound hereby as if each such partner or member had personally signed this Lease.

19.14 [Intentionally Omitted.]

19.15 The obligations of Tenant under this Article XIX shall survive the Expiration Date.

#### ARTICLE XX BANKRUPTCY

20.01 An Event of Bankruptcy shall mean and include: (a) Tenant, a guarantor or any general partner (a "General Partner") of Tenant becoming insolvent, as that term is defined in Title 11 of the United States Code ("Bankruptcy Code"), or under the insolvency laws of any state ("Insolvency Laws"); (b) appointment of a receiver or custodian for any property of Tenant, a guarantor or a General Partner, or the institution of a foreclosure or attachment action upon any property of Tenant, a guarantor or a General Partner; (c) filing of a voluntary petition by Tenant, a guarantor or a General Partner under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Tenant, a guarantor or a General Partner as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (1) is not dismissed within thirty (30) days after filing, or (2) results in the issuance of an order for relief against the debtor; or (e) Tenant's, a guarantor's or a General Partner's making or consenting to an assignment for the benefit of creditors or a composition of creditors.

20.02 Upon occurrence of an Event of Bankruptcy, Landlord shall have all rights and remedies available pursuant to Article XIX; provided, however, that while a case ("Case") in which Tenant is the subject debtor under the Bankruptcy Code is pending, Landlord's right to terminate this Lease shall be subject, to the extent required by the Bankruptcy Code, to any rights of Tenant or its trustee in bankruptcy (collectively, "Trustee") to assume or assign this Lease pursuant to the Bankruptcy Code. Trustee shall not have the right to assume or assign this Lease unless Trustee promptly (a) cures all defaults under this Lease, (b) compensates Landlord for damages incurred as a result of such defaults, (c) provides adequate assurance of future performance on the part of Tenant as debtor in possession or Tenant's assignee, and (d) complies with all other requirements of the Bankruptcy Code. If Trustee fails to assume or assign this Lease in accordance with the requirements of the Bankruptcy Code within sixty (60) days after the initiation of the Case, then Trustee shall be deemed to have rejected this Lease. Adequate assurance of future performance shall require that the following minimum criteria be met: (1) if Tenant is obligated under this Lease to pay Percentage Rent, Gross Receipts during the thirty (30) days preceding the Case must be greater than the then applicable Annual Breakpoint (calculated on monthly basis); (2) if Tenant is obligated under this Lease to pay Percentage Rent, both the average and median of Gross Receipts (calculated on a monthly basis) during the seven (7) months preceding the Case must be greater than the then applicable Annual Breakpoint (calculated on a monthly basis); (3) Trustee must pay its estimated pro-rata share of the cost of all services performed or provided by Landlord (whether directly or through agents or contractors and whether or not previously included as part of Minimum Rent) in advance of the performance or provision of such services; (4) Trustee must agree that Tenant's business shall be conducted in a first-class manner, and that no liquidating sale, auction or other non-first-class business operation shall be conducted in the Premises; (5) Trustee must agree that the use of the Premises as stated in this Lease shall remain unchanged and that no prohibited use

shall be permitted; (6) Trustee must agree that the assumption or assignment of this Lease shall not violate or affect the rights of other tenants of the Property; (7) Trustee must pay at the time the next monthly installment of Minimum Rent is due, in addition to such installment, an amount equal to the monthly installments of Minimum Rent, estimated Percentage Rent (if applicable) and additional rent due for the next six (6) months thereafter, such amount to be held as a security deposit; (8) Trustee must agree to pay, at any time Landlord draws on such security deposit, the amount necessary to restore such security deposit to its original amount; and (9) all assurances of future performance specified in the Bankruptcy Code must be provided.

#### ARTICLE XXI SUBORDINATION

21.01 This Lease is subject and subordinate to the lien, provisions, operation and effect of all mortgages, deeds of trust, ground leases or other security instruments which encumber the Property as of the Effective Date (each, a "Mortgage" and collectively, "Mortgages", and the holder of any note or obligation secured by a Mortgage, each a "Mortgagee" and collectively, "Mortgagees"), to all funds and all indebtedness intended to be secured by such Mortgages, and to all and any renewals, extensions, modifications, recastings or refinancings thereof. This Lease shall be subordinate to any and all Mortgages that may hereafter be placed upon the Property (the holders thereof, collectively, the "Future Mortgagees" and each, a "Future Mortgagee"), provided that such subordination is conditioned upon Landlord first securing from any Future Mortgagee and delivering to Tenant a subordination, non-disturbance and attornment agreement on the Future Mortgagee's market standard form taking into consideration the size of the Premises and the then the Permitted Use (each, an "SNDA"), which SNDA Tenant agrees to execute within ten (10) days after receipt thereof. With respect to any Future Mortgage, provided Landlord has used commercially reasonable efforts to obtain an SNDA from a Future Mortgagee (i.e., Landlord has requested that the Future Mortgagee deliver an SNDA to Tenant), the inability of Landlord to obtain such SNDA shall not be deemed a default on Landlord's part of its obligations hereunder, or impose any claim in favor of Tenant against Landlord by reason thereof, or affect the validity of this Lease; provided, however, that, as aforesaid, any subordination of this Lease to a Future Mortgagee shall be conditioned upon Landlord first securing from the Future Mortgagee, and delivering to Tenant, an SNDA. Landlord's agreement to use commercially reasonable efforts to obtain an SNDA from a Future Mortgagee shall not impose any obligation upon Landlord to (i) incur any cost or expense or grant any other economic concession, (ii) grant any non-monetary concession or comply with conditions or obligations which are not acceptable to Landlord, or (iii) institute any legal or other proceeding. If Tenant shall fail to execute, acknowledge and return any such SNDA within ten (10) days after receipt thereof, and such failure shall continue for five (5) days after notice of such failure shall have been given to Tenant, then Tenant shall be deemed to have executed and delivered such SNDA and Landlord will be deemed to have obtained such SNDA for the benefit of Tenant, notwithstanding the fact that Tenant has not, in fact, executed and delivered such SNDA. Further, in the event any Mortgagee elects to have the Lease be a prior lien to its Mortgage then and in such an event, upon such Mortgagee notifying Tenant to that effect, this Lease shall be deemed prior in lien to said Mortgage, whether or not this Lease is dated prior to or subsequent to the date of said Mortgage.

21.02 If the Property or Landlord's interest therein is sold at a foreclosure sale or by deed in lieu of foreclosure, and this Lease is not extinguished upon such sale or by the purchaser following such sale, then, at the request of such purchaser, Tenant shall attorn to such purchaser and shall recognize such purchaser as the landlord under this Lease, and Tenant waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event any such foreclosure proceeding is prosecuted or completed or in the event of any such sale. Tenant agrees that upon such attornment, such purchaser shall not be (a) bound by any payment of Minimum Rent, Percentage Rent (if applicable) or additional rent for more than one (1) month in advance, except prepayments in the nature of security for the performance by Tenant of its obligations under this Lease but only to the extent such prepayments have been delivered to such purchaser, (b) bound by any amendment of this Lease made without the consent of the holder of each Mortgage existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior landlord, or (d) subject to any offsets or defenses which Tenant might have against any prior landlord.

21.03 In confirmation of the foregoing subordination and/or attornment provisions, Tenant shall, at Landlord's request, promptly execute any requisite or appropriate certificate or other document. Tenant agrees that its failure to return a certificate or document required by this Article XXI could affect Landlord's ability to refinance or sell the Property and that damages for such failure may be difficult to determine. Therefore, if Tenant



fails to return any such certificate or document within ten (10) days after Landlord's request therefor, the same may, at Landlord's election, constitute an automatic Event of Default.

#### ARTICLE XXII HOLDING OVER

22.01 If Tenant (or anyone claiming under Tenant) shall not immediately surrender the Premises (or any portion thereof) on the Expiration Date, then (i) the tenancy of Tenant shall automatically be deemed a tenancy at sufferance and said tenancy shall not constitute a renewal hereof or an extension for further term, and shall be subject to all of the conditions and covenants of this Lease insofar as such covenants and conditions are applicable, (ii) [reserved], (iii) Tenant shall pay Landlord for each day Tenant retains possession of the Premises or any part thereof after the Expiration Date, an amount which is the greater of (a) the daily rate of fair market rent for the Premises as determined by Landlord, or (b) one and one-half (1 ½) times the daily rate of Minimum Rent and additional rent and other sums payable by Tenant under this Lease, including any increases in Minimum Rent provided for herein calculated as if the holdover period during which Tenant's possession continues were originally included within the Lease Term, and (iv) Tenant shall pay all direct and consequential damages sustained by Landlord as a result of such holdover (Tenant hereby acknowledging that any holding over without Landlord's express written consent may compromise or affect Landlord's ability to enter into new leases with prospective tenants regarding the Premises and/or otherwise cause Landlord to incur damages). This in no way, however, shall be construed as permitting Tenant to holdover or as a waiver of Landlord's rights to recover possession of the Premises immediately upon the Expiration Date. Landlord's acceptance of such rent from Tenant shall not in any manner impair or adversely affect Landlord's other rights and remedies hereunder, including, but not limited to, (a) Landlord's right to evict Tenant from the Premises, and (b) Landlord's right to recover damages pursuant to this Lease and such other damages as are available to Landlord at law or in equity. Despite Landlord's acceptance of any such rent, Tenant hereby waives any requirement of a thirty (30) days' notice to quit the Premises and any and all other notices to quit. If Tenant holds over beyond the Lease Term, any guarantor's obligations shall extend to such hold over period and apply with respect to the full and faithful performance and observance of all of the covenants, terms, and conditions of this Lease and of any modification thereof. The provisions of this Section 22.01 shall not be deemed to constitute a waiver of any other rights or remedies of Landlord provided herein or at law.

#### ARTICLE XXIII COVENANTS OF LANDLORD

23.01 Landlord covenants that it has the right to make this Lease for the Lease Term, and that if Tenant shall pay all Rent when due and punctually perform all the covenants, terms, conditions and agreements of this Lease to be performed by Tenant, Tenant shall, during the Lease Term have the right to occupy and enjoy the full possession of the Premises without hindrance by Landlord or any party claiming by, through or under Landlord, but not otherwise, subject, however, to the provisions of this Lease, to all matters of record and to the rights of the parties presently or hereafter secured by any Mortgage.

23.02 Subject to the Common Area Limitations set forth in the second paragraph of Section 7.01, Landlord hereby reserves to itself and its successors and assigns the following rights (all of which are hereby consented to by Tenant): (i) to change the street address and/or name of the Property; (ii) to install, maintain, use, repair and replace pipes, ducts, cables, conduits, plumbing, vents, utility lines and wires to, in, through, above and below the Premises and other parts of the Property; (iii) to exclusively use and/or lease the roof areas, and the sidewalks and other exterior areas; (iv) to make changes and modifications to the site plan, the plans and specifications for the Property and to the configuration of the Premises; and (v) to subdivide the Property or to combine the Property with other lands, and to sell all or any portion of the Property. Landlord may exercise any or all of the foregoing rights without being deemed to be guilty of an eviction, actual or constructive, or a disturbance or interruption of the business of Tenant or of Tenant's use or occupancy of the Premises. If Landlord should subdivide and/or develop the Property into separately salable and/or transferable units, Tenant hereby agrees to attorn to any purchaser of any unit which shall consist of the Premises and recognize such purchaser as Landlord under the terms and provisions of this Lease. Landlord reserves the right to change, at any time and from time to time, the name of the Property. Landlord also reserves the right to determine all tenancies in the Property, and Tenant does not rely on, nor does Landlord represent, the tenancy of any specific tenant(s). Furthermore, nothing described in EXHIBIT A shall limit or prevent Landlord from effecting any change or