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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

GATEWAY TRIANGLE DEVELOPMENT,
LLC, a California limited liability company,

Plaintiff,

vs.

REDEEMER BIBLE CHURCH, an Arizona
nonprofit corporation.

Defendant.

Case No. CV2026-030895

**MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM, TO
DISMISS FOR FAILURE TO JOIN
AN INDISPENSABLE PARTY, AND
FOR A MORE DEFINITE
STATEMENT**

AND

**REQUEST FOR ATTORNEY'S FEES
AND COSTS PURSUANT TO A.R.S.
§ 12-349**

(Assigned to the Honorable Jay Polk)

1 Gateway Triangle Development, LLC (“Gateway”) filed a Complaint against
2 Redeemer Bible Church (“Redeemer”) seeking relief on four separate grounds. First,
3 Gateway asserts that Redeemer is not permitted to operate a church on property owned by
4 Redeemer. Second, Gateway argues that Redeemer must execute an entirely unconditional
5 written waiver of its property rights (including its rights related to the operation of a church).
6 Third, Gateway argues that this Court should strip property rights from a third-party that
7 Gateway intentionally omitted as a party to this lawsuit. Fourth, Gateway makes an
8 ambiguous request for an ill-defined right of first refusal on Redeemer’s property. With
9 respect to each ground, and the entirety of Gateway’s Complaint, Redeemer files the below
10 motions under Rule 12 and a request for an award of its fees and costs pursuant to A.R.S.
11 §§ 12-341, 12-341.01, and 12-349.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. USE RESTRICTION CLAIMS – DISMISSAL – RULE 12(B)(6)**

14 Gateway has filed this action to stop Redeemer from using property it recently
15 purchased in the Lakeview Village Shopping Center as a church. The Lakeview Village
16 Shopping Center is governed by the Lakeview Village Declaration of Easements, Covenants
17 and Restrictions dated November 14, 1986, recorded at Maricopa County Recorder
18 document no. 86-631267, as amended (the “Declaration,” attached as Exhibit A).

19 The question before the Court is this: Does the Declaration exclude churches from
20 operating in the Lakeview Village Shopping Center? As discussed in detail below, the plain
21 language of the Declaration does not ban churches; and, if it did, such a prohibition would
22 be void, invalid, and unenforceable as against public policy and would violate A.R.S. § 32-
23 2107.01. Therefore, Gateway has failed to state a claim upon which relief may be granted,
24 and its property use claims must be dismissed pursuant to Ariz. R. Civ. P. 12(b)(6).

25 **A. Facts Regarding Use Restriction Alleged in Complaint**

26 According to the allegations in the Complaint, the Lakeview Village Shopping Center
27 (the “Shopping Center”) in Gilbert, Arizona is a commercial development governed by a
28 recorded Declaration containing covenants and restrictions. (Complaint ¶ 3.) The Shopping

1 Center is made up of multiple parcels and tracts. (Complaint ¶ 86.) Various entities own
2 parcels and tracts within the Shopping Center including Gateway. (Complaint ¶¶ 100, 106.)
3 Gateway is also the Developer under the Declaration. (Complaint ¶ 82.)

4 Redeemer is an Arizona nonprofit corporation. (Complaint ¶ 26.) On June 17, 2026,
5 Redeemer purchased Lot 12, Tract D and E, of the Shopping Center (the “Dillon Parcel”).
6 (Complaint ¶ 5.) There is a 62,000 square foot building on the Dillon Parcel, which is referred
7 to as the “Fry’s Building” because the first occupant of the building was a Fry’s supermarket.
8 (Complaint ¶¶ 5, 8.) The Fry’s Building has stood vacant since 2020. (Complaint ¶ 9.)

9 Redeemer purchased the Dillon Parcel with the intention “to remodel the old Fry’s
10 building and move its church onto the property.” (See Complaint, Exhibit B, at 1.) More than
11 2,000 people attend Redeemer’s church services each weekend. (Complaint ¶ 169.) In
12 addition to worship services, Redeemer engages in other activities associated with its
13 religious tenets, including a bookstore, counseling services, educational programs, offices,
14 conferences, and other ancillary operations. (Complaint ¶ 289.) Redeemer also anticipates
15 operating a café once it has moved into the Dillon Parcel. (Complaint ¶ 293.) Redeemer has
16 employees, ministers, administrators, educators, and other individuals with professional
17 credentials. (Complaint ¶ 288.)

18 The Declaration contains various provisions related to permissible and prohibited
19 uses of parcels at the Shopping Center. Section 2.1’s “Commercial Purposes” provision sets
20 forth, generally, the type of occupant that may operate in the complex. It reads:

21 The Shopping Center shall be used for commercial purposes only. Such
22 purposes shall be limited to the development, construction, leasing, operation
23 and maintenance of **mercantile, business, medical facilities, services and
professional establishments, and related facilities ...**

24 (Exhibit A, Declaration, § 2.1) (emphasis added).

25 Even if an occupant has a commercial purpose under Section 2.1, that occupant’s
26 operations may nevertheless be restricted under other provisions in the Declaration.
27 According to Section 2.7 of the Declaration, certain commercial purposes are expressly
28 banned from the Shopping Center under any circumstance, and others are only permitted in

1 certain locations. (*Id.*) For example, the following operations are permitted only if they are
2 located more than 350 feet from the Fry's Building: (a) restaurants; (b) theaters; (c) offices;
3 (d) health spas, gyms, and exercise studios; (e) places of public amusement, training or
4 educational facilities; and (f) Army, Navy or government surplus stores. (*Id.*) Bars, taverns,
5 nightclubs, cocktail lounges or other similar businesses are not permitted in the Shopping
6 Center except when they are an incidental part of a restaurant and when the occupant has
7 Developer approval. (*Id.*) Other operations are totally prohibited from the Shopping Center
8 under any circumstance. (*Id.*) These include any operations involving pornography, drug
9 paraphernalia, sexual paraphernalia, or X rated movies. (*Id.*) Gambling, bingo, bawdy
10 houses, and funeral parlors are totally banned. (*Id.*) Acts or conditions which "shall be lewd,
11 obscene or licentious" are also banned. (*Id.*) The list of prohibited operations in Section 2.7
12 of the Declaration does not include churches. (*Id.*)

13 **B. Law Regarding Use Restriction**

14 In evaluating a motion to dismiss for failure to state a claim, "Arizona courts look
15 only to the pleading itself." *Cullen v. Auto Owners Ins. Co.*, 218 Ariz. 417, 419, 189 P.3d
16 344, 346 (2008). Courts must "assume the truth of the well-pled factual allegations" and
17 resolve all reasonable inferences in the plaintiff's favor. *Id.* But conclusory statements "are
18 insufficient to state a claim upon which relief can be granted." *Id.* Dismissal is appropriate
19 if "as a matter of law...the plaintiff would not be entitled to relief under any interpretation
20 of the facts." *Bunker's Glass Co. v. Pilkington PLC*, 202 Ariz. 481, 484, 47 P.3d 1119, 1122
21 (App. 2002).

22 1. Restrictive Covenants Must Be Interpreted to Give Effect to the Intention of the 23 Parties, Ascertained from an Instrument's Language, Creation, and Purposes.

24 Real property restrictive covenants are contracts, and their interpretation is a matter
25 of law. *Powell v. Washburn*, 211 Ariz. 553, 555, 125 P.3d 373, 375 (2006). "[W]hen a
26 restrictive covenant is unambiguous, it is enforced so as to give effect to the intent of the
27 parties." *Id.* at 556. When a restrictive covenant "is ambiguous or does not expressly prohibit
28 a particular use of the property," the court must follow the Restatement approach and

1 ascertain and effectuate “the likely intentions and legitimate expectations of the parties”
2 when the contract was made. *Id.* To determine intent, a court should construe the document
3 as a whole. *Ariz. Biltmore Estates Ass’n v. Tezak*, 177 Ariz. 447, 449, 868 P.2d 1030, 1032
4 (App. 1993). According to the Restatement, “[a] servitude should be interpreted to give
5 effect to the intention of the parties ascertained from the language used in the instrument, or
6 the circumstances surrounding creation of the servitude, and to carry out the purpose for
7 which it was created.” *Id.* at 557, quoting Restat 3d of Prop: Servitudes, § 4.1.

8 When one proposed interpretation would violate public policy (*see* section I.(B)(2)
9 *infra*), the court should give weight to the interpretation that does not violate public policy.
10 *See* Restat 3d of Prop: Servitudes, § 4.1 (“a servitude should be interpreted to avoid violating
11 public policy. Among reasonable interpretations, that which is more consonant with public
12 policy should be preferred.”). When a restrictive covenant cannot be salvaged, Arizona
13 courts apply the “blue pencil” approach, striking out “grammatically severable, unreasonable
14 provisions.” *Valley Med. Specialists v. Farber*, 194 Ariz. 363, 372, 982 P.2d 1277, 1286
15 (1999). Courts must not write in unwritten terms that were not foreseeable to the original
16 authors. *Kalway v. Calabria Ranch Hoa, LLC*, 252 Ariz. 532, 538, 506 P.3d 18, 24 (2022).

17 The Arizona Supreme Court in *Kalway* declined to read unwritten terms into CC&Rs.
18 252 Ariz. at 538. In that case, the HOA sought to amend the CC&Rs even though the original
19 declaration did not forecast the type of amendment contemplated by the HOA. *Id.* The Court
20 ruled that it would “not enforce unknown terms which are beyond the range of reasonable
21 expectation.” *Id.* (internal citation omitted). It further held that “an HOA cannot create new
22 affirmative obligations where the original declaration did not provide notice to the
23 homeowners that they might be subject to such obligations.” *Id.*

24 In *Powell*, on the other hand, the Arizona Supreme Court looked at the plain language
25 of the CC&Rs and the purpose for which the restrictions were created to determine that the
26 airpark community at issue was designed exclusively for three specific types of homes, all
27 of which were expressly identified in the CC&Rs with specific detail given as to their size
28 and appearance limits and a requirement that they each have a hangar: mobile homes,

1 constructed homes, and hangar-houses. *Id.* The Court thus concluded that the CC&Rs only
2 allowed for these specific types of residences at the airport. *Id.* at 559-60; *see also Swain v.*
3 *Bixby Vill. Golf Course Inc.*, 247 Ariz. 405, 410, 450 P.3d 270, 275 (App. 2019) (holding
4 that the restriction “the Property shall be used for no purposes other than golf courses” meant
5 that the property must be used as a golf course).

6 As further discussed below, the Declaration at issue here includes an *unambiguous*
7 and *very broad* restrictive covenant governing the permissive uses at the Shopping Center
8 and an *unambiguous* and *very narrow* restrictive covenant governing the prohibited uses.
9 The former permits all businesses (regardless of their religious affiliation) to use the
10 Shopping Center, and the latter does not exclude churches.

11 2. Restrictive Covenants Based on Religion are Void, Invalid, and Unenforceable.

12 Although private landowners generally have the right to enter into restrictive
13 covenants, that right is limited when the covenant violates public policy. *Westwood*
14 *Homeowners Ass’n v. Tenhoff*, 155 Ariz. 229, 237, 745 P.2d 976, 984 (App. 1987). Such a
15 covenant must be declared void and unenforceable as against public policy. *Id.* In *Westwood*
16 *Homeowners Ass’n*, the Court of Appeals ruled that a restrictive covenant that banned homes
17 for the care or treatment of the physically or mentally disabled from a residential
18 neighborhood was unenforceable as against public policy. *Id.* The Court evaluated the
19 Developmental Disabilities Act which created “a strong public policy aimed at facilitating
20 the state-wide integration of residential facilities into neighborhood communities.” *Id.* at
21 233. It concluded that this clear public policy invalidated any restrictive covenant that barred
22 such group homes. *Id.* at 237.

23 In 2000, the Arizona Legislature passed a law that expressly prohibited and declared
24 void, invalid, and unenforceable restrictive covenants based on religion.

25 It is the law of this state that any covenants or restrictions that are based on
26 race, religion, color, disability status or national origin are invalid and
27 unenforceable. If the invalid covenant or restriction is contained in a
document that is recorded in this county, it is hereby declared void.

28 A.R.S. § 32-2107.01(A). Because the Legislature has established an express prohibition

1 against – and a clear public policy against – restrictive covenants that discriminate on the
2 basis of religion, any such covenant must be blue-penciled and declared void, invalid, and
3 unenforceable.

4 C. Argument Regarding Use Restriction

5 Gateway’s requests for declaratory and injunctive relief arising out of Redeemer’s
6 intended use of the Dillon Parcel as a church must be dismissed for the following reasons:

- 7 (1) Redeemer’s intended use of the Dillon Parcel as a church is *permitted* by the
8 Declaration.
- 9 (2) Redeemer’s intended use of the Dillon Parcel as a church is *not prohibited*
10 by the Declaration.
- 11 (3) If the Declaration did exclude churches, as Gateway suggests, such a
12 provision would be *void, invalid, and unenforceable* as against public policy.

13 1. Redeemer’s Intended Use of the Dillon Parcel as a Church is Permitted by the 14 Declaration.

15 The Declaration lists broad categories of commercial entities that are permitted to use
16 the Shopping Center. (Declaration § 2.1.) Unless one of the prohibitions in Section 2.7 of
17 the Declaration applies, the Shopping Center may be used by any entity that has a
18 commercial purpose. (Declaration § 2.1.) The Declaration defines the term “commercial
19 purposes” as the “operation and maintenance of mercantile, business, medical facilities,
20 services and professional establishments, and related facilities.” (Declaration § 2.1)
21 (emphasis added). Unlike the restrictive covenant at issue in *Powell*, this Declaration does
22 not provide any specificity at all about the type of operation that would qualify as having a
23 “commercial purpose” – only that it must be commercial and must involve the operation of
24 a business, mercantile, medical facility, service establishment, professional establishment,
25 or related facility. (Declaration § 2.1.)

26 Redeemer “is an Arizona nonprofit corporation organized and existing under the laws
27 of the State of Arizona.” (Complaint ¶ 26.) It is a business, despite being a nonprofit
28 corporation. The Declaration does not specify that only for-profit corporations may operate

1 in the Shopping Center, and that was not the common understanding of the word “business”
2 under Arizona law at the time the Declaration was executed. *See, e.g., Drumwright v. Lynn*
3 *Eng’g & Mfg.*, 14 Ariz. App. 282, 482 P.2d 891, 892 (App. 1971) (evaluating the then-
4 existing business records rule, which defined “business” as “every kind of business,
5 profession, occupation, calling or operation of institutions, whether or not carried on for
6 profit” (emphasis added)). Nor does the Declaration specify that only non-religious
7 corporations may operate in the Shopping Center (and if it did, such a provision would be
8 void, invalid and unenforceable as against public policy as further discussed below).

9 Redeemer is a business, a mercantile, a service establishment, and a professional
10 establishment. “In normal legal usage, business includes every trade, occupation, and
11 profession.” *Business*, Black’s Law Dictionary (12th ed. 2024). For example, a lawyer’s
12 “business, i.e., that which busies him” may be “the arguing of cases, or ... the preparation of
13 briefs, or the care of trust property, or the drawing of deeds, or the searching of titles.” *Id.*
14 (internal quotation omitted). Redeemer is a business – a corporate entity that employs
15 ministers, administrators, educators, and other individuals who engage in tasks (*i.e.*, that
16 which busies them) in furtherance of their trades, occupations, and professions. (Complaint
17 ¶¶ 26, 288.)

18 The term “mercantile” refers to “merchants or trading.” *Mercantile*, Black’s Law
19 Dictionary (12th ed. 2024). Redeemer is a mercantile because it sells books in its bookstore
20 and plans to open a café. (Complaint ¶¶ 289, 293.)

21 “Service” is any “intangible commodity in the form of human effort, such as labor,
22 skill or advice.” *Service*, Black’s Law Dictionary (12th ed. 2024). Redeemer is a service
23 establishment because it provides counseling services, educational programs, and
24 conferences. (Complaint ¶ 289.)

25 A “profession” is a “vocation requiring advanced education and training; esp., one of
26 the three traditional learned professions – law, medicine, and the ministry.” *Profession*,
27 Black’s Law Dictionary (12th ed. 2024) (emphasis added). Redeemer is a professional
28 establishment because its employees, ministers, administrators, educators, and other

1 individuals who have professional credentials and are engaged in a profession that requires
2 academic learning as preparation. (Complaint ¶ 288.) Many of Redeemer’s employees,
3 ministers, administrators, and educators have advanced education and training in one of the
4 three traditional learned professions – namely, the ministry. (*Id.*)

5 Redeemer is a multi-faceted operation that offers a variety of goods, services,
6 professional occupations, and experiences, all of which qualify as commercial under the
7 plain meaning of the Declaration. Redeemer’s operations are not rendered non-commercial
8 merely because Redeemer endeavors to perform its operations in accordance with biblical
9 principles.

10 Section 2.7 of the Declaration provides further evidence of the wide permissive net
11 cast by Section 2.1. It specifies the “Prohibited Operations” at the Shopping Center. Each
12 of the businesses listed in Section 2.7 would qualify as having a “commercial” purpose and
13 be permitted in the Shopping Center were it not for the specific exclusions and location
14 limitations set forth in that section. If these businesses did not fall under the umbrella of
15 “commercial” in Section 2.1, then they would not need to be listed as “Prohibited
16 Operations” in Section 2.7, as they would already be excluded as non-commercial.

17 Section 2.7 expressly states that a business need not have *customers* to qualify as
18 “commercial.” Were it not so, beauty schools, barber colleges, and other operations or
19 activities “designed primarily for students or trainees rather than customers” would not
20 require a proximity restriction. (*See* Declaration § 2.7(e).) Again, this is a restriction that
21 only applies to businesses located within 350 feet of the Fry’s Building. These non-customer-
22 based activities are permitted in any other location within the Shopping Center.

23 Section 2.7 also states that a business need not *sell goods or services* to qualify as
24 commercial, as suggested by Gateway (*see* Complaint ¶ 287). Were it not so, reading rooms,
25 concert venues, gymnasiums, pool halls, and bingo parlors would not require a proximity
26 restriction under the Declaration. (*See* Declaration § 2.7(b), (d), and (e).) The foregoing
27 establishments are places where an experience is provided, rather than where a good or
28 service is sold. Additional evidence that businesses are not required to sell goods or services

1 can be found in Section 2.7(h), which reflects that displays of pornographic materials, drug
2 paraphernalia or sexual paraphernalia are banned, whether or not they are offered for sale.

3 Gateway argues that a church cannot operate in the Shopping Center “because its
4 primary function is religious worship and assembly, not the operation of a commercial
5 enterprise.” (Complaint ¶ 283.) Gateway misinterprets the plain meaning of the Declaration.
6 There is nothing in the definition of “commercial purposes” in Section 2.1 that excludes a
7 nonprofit corporation, the primary function of which is religious worship and assembly. And
8 the inclusion of reading rooms in Section 2.7 leads to the opposite conclusion. (Declaration
9 § 2.7(e).) The most prevalent type of reading room is a Christian Science Reading Room,
10 which is a religious space where people pray, read, and find answers to spiritual questions.
11 These religious operations are allowed in the Shopping Center as long as they are not located
12 within 350 feet of the Fry’s Building. (Declaration § 2.7(e).) The fact that this type of
13 establishment was included in Section 2.7 is further evidence of the fact that religious entities
14 may qualify as having commercial purposes within the plain meaning of the Declaration, so
15 long as they are a business, mercantile, medical facility, service establishment, or
16 professional establishment.

17 Section 2.1’s “Commercial Purposes” limitation was not designed to thwart uses such
18 as Redeemer’s intended use. The Declaration, read as a cohesive whole, clarifies that many
19 types of commercial purposes are welcome at the Shopping Center. The breadth of
20 possibilities is illuminated by the few express limitations. The Declaration’s openness to
21 medical facilities, service establishments, professional establishments, mercantiles, and
22 businesses all at the same location offers an endless array of permutations that could
23 permissibly occupy the Shopping Center. A healing crystals business, a Christian Science
24 Reading Room, a psychic, and a psychiatrist can all occupy the Shopping Center together
25 without running afoul of the Declaration’s restrictions.

26 Redeemer’s intended use of the Dillon Parcel will be for a commercial purpose, as
27 defined by the Declaration, and Gateway’s Complaint concedes that it will. (Complaint ¶¶
28 288–89.) Redeemer currently sells goods, provides services, employs professionals,

1 maintains offices, provides training, and hosts conferences, and will continue to do so (and
2 in its new location, will also operate a café). (*Id.*) It is of no consequence, under the terms of
3 the Declaration, that Redeemer will engage in these activities with a non-profit and religious
4 motivation. And again, to preclude a use for this reason would violate Arizona law and public
5 policy and would render such a restriction void, invalid, and unenforceable.

6 The Court must assume Gateway's well-pled facts as true, including that Redeemer
7 intends to use the Dillon Parcel as a "house of worship and place of religious assembly."
8 (Complaint ¶ 1.) But the Court should not accept, and rather should disregard, Gateway's
9 *ipse dixit* conclusory statements that "[a] house of worship and place of religious assembly
10 is not among the uses permitted under the Declaration for the Dillon Parcel." (Complaint
11 ¶ 281.) Gateway's asserted "house of worship and place of religious assembly" phrase is one
12 that Gateway has apparently coined specifically for this dispute. Nothing in the Declaration
13 indicates that Gateway's phrase is cognizable under the Declaration. To presume the
14 Declaration's authors intended (but did not expressly state) that houses of worship and places
15 of religious assembly were prohibited is "beyond the range of reasonable expectation."
16 *Kalway*, 252 Ariz. at 538.

17 2. Redeemer's Intended Use of the Dillon Parcel is Not Prohibited by the
18 Declaration.

19 As discussed above, the Declaration includes a list of "Prohibited Operations," some
20 of which merely set limitations on an entity's location within the Shopping Center and others
21 create a total ban. If the drafters of the Declaration had intended to ban churches, they could
22 have (unlawfully) done so by including churches among the lengthy list of types of
23 commercial entities that are prohibited or restricted in the Shopping Center. They did not.
24 (Declaration § 2.7.)

25 The Declaration gets very specific when it intends to ban a particular type of
26 commercial entity from the Shopping Center. But it does not ban churches, houses of
27 worship, or places of religious assembly.

1 3. Assuming *Arguendo* the Declaration did Exclude Churches, Such a Prohibition
2 Would be Void, Invalid, and Unenforceable Pursuant To A.R.S. § 32-2107.01
3 and as Against the Express Public Policy of the State Of Arizona.

4 If the Court were to conclude that Gateway's reading is correct and that the
5 Declaration somehow contains an unstated, implied restriction banning Redeemer from
6 using the Dillon Parcel as a "house of worship and place of religious assembly," such a
7 hidden provision in the Declaration would be invalid under A.R.S. § 32-2107.01. Gateway's
8 interpretation would require the Court to read an unlawful and unenforceable "no churches"
9 restriction into the Declaration. If Gateway's suggested language were written in the
10 Declaration (it is not), then the court would have to blue pencil it out of the Declaration.

11 Under Gateway's reading, a corporation can operate in the Shopping Center, and
12 perhaps even a *nonprofit* corporation, but Gateway unlawfully draws the line at a *religious*
13 nonprofit corporation that hosts gatherings for people to worship or practice their religion
14 communally. If that conclusion were correct (again, the Declaration includes no such
15 prohibition), then A.R.S. § 32-2107.01 would invalidate such restriction. "It is the law of
16 this state that any covenants or restrictions that are based on...religion...are invalid and
17 unenforceable. If the invalid covenant or restriction is contained in a document that is
18 recorded in this county, it is hereby declared void." A.R.S. § 32-2107.01(A).

19 Because the logical result of Gateway's suggested reading results in a violation of
20 Arizona law and stated public policy prohibiting religious discrimination, the Court must
21 interpret the Declaration to avoid resulting in such an invalid restriction. "Among reasonable
22 interpretations, that which is more consonant with public policy should be preferred." Restat
23 3d of Prop: Servitudes, § 4.1(2). Based on the lack of express prohibition on churches,
24 religious uses, religious purposes, or any mention whatsoever of a "house of worship and
25 place of religious assembly" in the Declaration, and the clear contrary public policy,
26 Gateway's interpretation, and its phrases coined and utilized specifically for this dispute,
27 must be discarded. Redeemer's interpretation – that the term "commercial purposes" as used
28 in the Declaration embraces church operations – should be adopted instead, both because it

1 is consistent with the language of the Declaration and the drafters' intent and because it is
2 aligned with the laws and public policy of the State of Arizona.

3 **D. Gateway's Use Restriction Claims Fail as a Matter of Law**

4 Redeemer's intended use of the Dillon Parcel as a church: (i) is permitted by the
5 Declaration because it falls under the Declaration's definition of "commercial purposes" (*see*
6 Declaration § 2.1.); (ii) is not barred by Section 2.7 of the Declaration; and (iii) if it were, as
7 Gateway's interpretation suggests, such a restriction would be void, invalid, and
8 unenforceable under A.R.S. § 32-2107.01 and as against the stated public policy of the State
9 of Arizona. The use restriction claims in the Complaint must be dismissed because Gateway
10 has failed to state a claim upon which relief may be granted. Ariz. R. Civ. P. 12(b)(6).

11 **II. ASSUMPTION STATEMENT CLAIMS – DISMISSAL - RULE 12(b)(6)**

12 Section 18.4 of the Declaration, attached as Exhibit A, requires Redeemer to "execute
13 and deliver to the other [Lakeview Village owners] a written statement in which ...
14 [Redeemer] shall acknowledge its obligation to be bound by this Declaration and perform
15 all obligations hereunder in accordance with the provisions of this Declaration" (the
16 "Assumption Statement"). After Redeemer acquired the Dillon Parcel, it mailed an
17 Assumption Statement that complied with Section 18.4 to all Lakeview Village owners. (*See*
18 Complaint, at Exhibit B.) In its Assumption Statement, Redeemer acknowledged its
19 obligation to be bound by, and perform all of its obligations under, the Declaration but
20 merely preserved its rights under Arizona and federal law. (*See* Complaint, at Exhibit B.)

21 Gateway seeks an order from the Court compelling Redeemer to execute an
22 "unconditional" Assumption Statement that includes a waiver of Redeemer's rights.
23 (Complaint ¶¶ 313, 315.) Ironically, Gateway seeks this order while simultaneously
24 advocating for an unlawful interpretation of the Declaration that would deprive Redeemer of
25 its religious liberties. Pursuant to Ariz. R. Civ. P. 12(b)(6), Redeemer moves to dismiss
26 Gateway's claims related to the Assumption Statement because Redeemer complied with the
27 requirements of the Declaration when it sent the Assumption Statement attached as Exhibit
28 B to the Complaint. The Declaration does not require the Assumption Statement to be

1 “unconditional” or to include waivers of rights that exist under Arizona and federal law.
2 Therefore, Gateway has failed to state a claim upon which relief may be granted.

3 **III. SECTION 22.T CLAIMS – DISMISSAL – RULE 12(b)(7)**

4 When Redeemer purchased the Dillon Parcel from the previous owner, Jabbel
5 Holdings, LLC (“Jabbel”), Redeemer and Jabbel entered into a Purchase and Sale Agreement
6 (“PSA”). (Complaint ¶ 160.) Section 22.T of the PSA grants a property interest to Jabbel
7 that “shall run with the land.” (Complaint ¶ 244.) Gateway seeks a declaration from this
8 Court that would invalidate or restrict Jabbel’s property interest. (See Complaint ¶¶ 316-330;
9 Prayer for Relief (A)(vi), (G).) Gateway acknowledges that this property interest arises out
10 of a private agreement between Jabbel and Redeemer. (Complaint ¶ 322.) Yet, Gateway
11 intentionally omitted Jabbel as a party to this action.

12 “When declaratory relief is sought, all persons shall be made parties who have or
13 claim any interest which would be affected by the declaration, and no declaration shall
14 prejudice the rights of persons not parties to the proceeding.” A.R.S. § 12-1841(A). “The
15 test of indispensability in Arizona is whether the absent person’s interest in the controversy
16 is such that no final judgment or decree could be entered, doing justice between the parties
17 actually before the court and without injuriously affecting the rights of others not brought
18 into the action.” *Copper Hills Enters., Ltd. v. Ariz. Dep’t of Revenue*, 214 Ariz. 386, ¶ 21
19 (App. 2007), quoting *Town of Gila Bend v. Walled Lake Door Co.*, 107 Ariz. 545, 549, 490
20 P.2d 551, 555 (1971).

21 Because Jabbel’s rights would be injuriously affected by the declaratory relief sought
22 by Gateway, it is an indispensable party. Therefore, all claims concerning Section 22.T of
23 the PSA between Redeemer and Jabbel must be dismissed under Ariz. R. Civ. P. 12(b)(7)
24 for failure to join an indispensable party.

25 **IV. RIGHT OF FIRST REFUSAL CLAIM – MORE DEFINITE STATEMENT –**
26 **RULE 12(e)**

27 Rule 8 requires a pleading to set forth “a short and plain statement of the claim
28 showing that the pleader is entitled to relief. Ariz. R. Civ. P. 8(a). “Arizona follows a notice

1 pleading standard, the purpose of which is to give the opponent fair notice of the nature and
2 basis of the claim.” *Cullen*, 218 Ariz. at 419. When a claim is not set forth with sufficient
3 specificity, the deficiency may be corrected through a motion for more definite statement.
4 *Folk v. Phoenix*, 551 P.2d 595, 600, 27 Ariz. App. 146, 151 (1976). In *Folk*, the plaintiff
5 sought a declaratory judgment concerning an alleged prescriptive property right but failed to
6 set forth the exact nature of the right being requested. *Id.* The Court of Appeals held that a
7 motion for more definite statement was the proper vehicle for a property-related claim that
8 lacks clarity. *Id.*

9 Gateway alleges that Section 18.5 of the Declaration, as amended by the Third
10 Amendment to the Declaration, gave Gateway a right of first refusal on the Dillon Parcel.
11 (Complaint ¶¶ 196-203.)¹ Gateway concedes that the right of first refusal is limited; it only
12 applies to a transfer of the Dillon Parcel to an owner not affiliated with Kroger or Fry’s.
13 (Complaint ¶ 204.) Gateway alleges that Jabbel sold the Dillon Parcel to Redeemer on June
14 17, 2026. (Complaint ¶ 208.) Neither Jabbel nor Redeemer are affiliated with Kroger or
15 Fry’s, but Gateway alleges Fry’s was a tenant in the Dillon Parcel when Jabbel first
16 purchased the Dillon Parcel in December 2013. (Complaint ¶¶ 192-193.)

17 Gateway alleges this right of first refusal requires that the “seller of the Dillon Parcel
18 [Jabbel] must give the Developer [Gateway] written notice of a bona fide offer” to purchase
19 the Dillon Parcel and 45-days “within which the Developer may elect to meet that offer.”
20 (Complaint ¶¶ 205-206.) Gateway alleges that when Jabbel sold the Dillon Parcel to
21 Redeemer, “Jabbel did not afford Gateway the forty-five-day opportunity to purchase
22 required by Section 18.5 of the Declaration before that sale.” (Complaint ¶ 209.)

23 Gateway alleges that its right of first refusal “was triggered by Jabbel’s transfer of the
24 Dillon Parcel to [Redeemer].” (Complaint ¶ 21) (emphasis added). Gateway then alleges the
25 opposite is true – that “the notice and forty-five-day election period required by Section 18.5
26

27 ¹ For purposes of this motion only, Redeemer will assume Gateway had a right of first
28 refusal on the Dillon Parcel, and without waiving the right to contest such alleged fact if this
litigation proceeds.

1 were never properly triggered” because the sale to Redeemer “did not constitute a qualifying
2 bona fide offer under Section 18.5.” (Complaint ¶¶ 210, 213) (emphasis added). This
3 contradiction is significant. If Gateway contends the right of first refusal was triggered, then
4 is the assertion that Jabbel had an obligation to give Gateway notice and an opportunity to
5 meet the terms of the offer? If Gateway contends the right of first refusal was not triggered,
6 then is the assertion that Jabbel did not have any such duty?

7 Having alleged that the right of first refusal was both “triggered” and “never properly
8 triggered,” Gateway then “contends that the right of first refusal granted under Section 18.5
9 of the Declaration remains valid and enforceable as to the Dillon Parcel.” (Complaint ¶ 207.)
10 Gateway seeks a declaration that its “right of first refusal under the Declaration continues to
11 apply to [Redeemer].” (Complaint ¶ 22.)

12 It is not at all clear what declaratory relief Gateway seeks. Does Gateway wish to
13 indefinitely preserve the opportunity to purchase the Dillon Parcel on the same terms that
14 Redeemer purchased it for on June 17, 2026 (which would run counter to the Declaration’s
15 45-day timeframe)? Does Gateway wish to preserve the opportunity to exercise a right of
16 first refusal on a hypothetical future sale of the Dillon Parcel by Redeemer, but only if the
17 Dillon Parcel becomes re-affiliated with Fry’s or Kroger prior to such sale?

18 Gateway’s claim regarding its alleged right of first refusal at best lacks clarity and, at
19 worst, is internally contradictory and in direct conflict with the terms of the Declaration.
20 Gateway has not given Redeemer fair notice of the nature and basis of the claim. *Cullen*, 218
21 Ariz. at 419. Gateway’s claim “is so vague and ambiguous that [Redeemer] cannot
22 reasonably be required to frame a responsive pleading.” Ariz. R. Civ. P. 12(e). Accordingly,
23 Redeemer requests that the Court order Gateway to provide a more definite statement.

24 **V. CONCLUSION**

25 For the reasons set forth above, Redeemer respectfully requests: (1) that all of
26 Plaintiff’s claims, apart from the portion of Count One that concerns the right of first refusal,
27 be dismissed *with prejudice*, that all the relief requested concerning such claims be denied,
28 and that Redeemer be awarded its attorneys’ fees and costs incurred therein pursuant to

1 A.R.S. § 12-341 and §12-341.01; and (2) that the Court order Gateway to provide a more
2 definite statement of its claim concerning the right of first refusal set forth in a portion of
3 Count One pursuant to Rule 12(e) of the *Arizona Rules of Civil Procedure*.

4
5 **REQUEST FOR ATTORNEY'S FEES AND COSTS**

6 **PURSUANT TO A.R.S. § 12-349**

7 In the event the Court grants Redeemer's Motion to Dismiss Gateway's claims that
8 seek to bar Redeemer's use of the property as a church, Redeemer also seeks an award of
9 attorney's fees and costs under A.R.S. § 12-349(A)(1) and (A)(2), as Gateway brought these
10 claims against Redeemer without substantial justification and solely or primarily for the
11 purpose of harassment. "Without substantial justification" means that the claim "is
12 groundless and not made in good faith." A.R.S. § 12-349(A)(1).

13 Prior to purchasing the Dillon Parcel, Redeemer was made aware that Gateway had
14 previously leased one of Gateway's parcels to a tenant named Journey Church. In its lease
15 with Journey Church dated September 29, 2021 (the "Journey Church Lease"), Gateway
16 agreed that the "Permitted Use of Premises" would be

17 **Solely for the operation of a religious bookstore and church and for no**
18 **other purpose**, subject to and condition [sic] upon that Tenant's use and/or
19 operation of its business at the Premises (i) does not violate prohibited
20 operations as set forth in the attached Exhibit "G" hereto, (ii) is not in
21 violation of any of the terms and conditions of the Declarations [sic] (as
defined in Section 64 below), and (iii) is compatible with a first class retail
and commercial shopping center.

22 (See Declaration of Philip Watts, attached as Exhibit B, at Exhibit 1, pg. 1) (emphasis added).
23 Exhibit "G" to the Journey Church Lease contains a copy of Section 2.1 and 2.7 of the
24 Declaration. (See Declaration of Philip Watts, Exhibit B, at Lease Exhibit "G".)

25 Contrary to Gateway's position in this litigation, Gateway's Journey Church Lease
26 acknowledges that a church with a religious bookstore is compliant with Section 2.1 and 2.7
27 of the Declaration. The Journey Church Lease further acknowledges that it is possible for a
28 church with a religious bookstore to be compatible with a first-class retail and commercial

1 shopping center.

2 This was Gateway's *own* lease with *its* tenant, Journey Church. Yet now, just a few
3 years later, for purposes of this Complaint, Gateway takes the opposite position. Notably,
4 Gateway seeks to block a church from operating in the Shopping Center *when it will receive*
5 *no rent from such church*, but it was willing to allow a church to operate in the Shopping
6 Center *when it would receive rental income from it*. Gateway even expressly agreed that the
7 operation of a religious bookstore and church did **not** violate the very Declaration upon
8 which it now sues Redeemer.

9 Worse yet, Exhibit "F" to the Journey Church Lease contains a list of declarations
10 that Journey Church was obligated to follow, and those declarations specifically state
11 (consistent with the public policy discussed in Section I.(B)(2) in the Motion *supra*) that any
12 restrictive covenant applicable to the Shopping Center is "delet[ed]" in the event it indicates
13 a "preference, limitation or discrimination based on ... religion." (See Declaration of Philip
14 Watts, Exhibit B, at Lease Exhibit "F".) Of course, as explained above, there are no terms
15 in the Declaration that exclude churches or religious businesses. But even if there were,
16 Gateway's own lease with Journey Church explains that such a term would have to be
17 deleted. Yet, in this litigation, Gateway has taken the completely opposite position
18 concerning the same Declaration.

19 Gateway did not bring its use restriction claims against Redeemer in good faith. They
20 are groundless and asserted in bad faith, and Gateway's own Journey Church Lease proves
21 this is the case. An award of attorney's fees and costs is appropriate because Gateway's
22 claims are without substantial justification and solely or primarily for the purpose of
23 harassment in violation of Arizona law and public policy.

24 //

25 //

26 //

1 RESPECTFULLY SUBMITTED this 18th day of September, 2026.

2 **SCHMITT SCHNECK**
3 **EVEN & WILLIAMS, P.C.**

4 By: /s/ Lacy A. N. Cooper
5 James L. Williams
6 Lacy A. N. Cooper
7 Dominic R. Mendoza
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9 Phoenix, Arizona 85014-5540
10 *Attorneys for Redeemer Bible Church*

11 **COPY** of the foregoing e-filed and
12 e-mailed this 18th day of September, to:

13 Eric D. Gere
14 **Spencer Fane LLP**
15 2415 E. Camelback Road, Ste. 600
16 Phoenix, Arizona 85016
17 *Attorneys for Gateway Triangle*
18 *Development, LLC*

19 /s/ M. Cordes

GOOD FAITH CONSULTATION CERTIFICATE

On August 14, 2026, counsel for Defendant Redeemer Bible Church engaged in a meet and confer discussion with counsel for Plaintiff Gateway Triangle Development, LLC by telephone concerning the above motions to dismiss for failure to state a claim pursuant to Ariz. R. Civ. P. 12(b)(6), motion to dismiss for failure to join an indispensable party pursuant to Ariz. R. Civ. P. 12(b)(7), and motion for a more definite statement pursuant to Ariz. R. Civ. P. 12(e). In advance of the call, Redeemer's counsel provided Gateway's counsel with a written list of topics for the meet and confer and outlined each of the forthcoming motions. During the call, Redeemer's counsel alerted Gateway's counsel to a possible request for sanctions pursuant to A.R.S. § 12-349.

On August 20, 2026, Redeemer's counsel obtained a copy of the lease between Gateway and Journey Church. Redeemer's counsel then had a follow-up call with Gateway's counsel concerning the implications of the Journey Church Lease, the forthcoming motion to dismiss the use restriction claims, and the forthcoming request for sanctions under A.R.S. § 12-349.

Counsel have exchanged numerous additional letters and emails, and had telephone calls and Teams calls, concerning the claims contained in this dispute and other matters. However, the parties have not been able to resolve these claims.

EXHIBIT A

(Part 1)

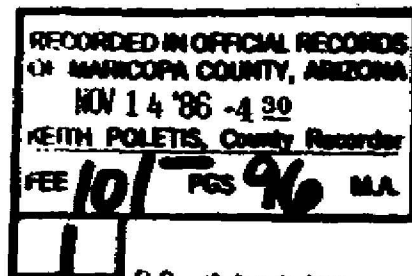
**LAKEVIEW VILLAGE DECLARATION OF EASEMENTS, COVENANTS
AND RESTRICTIONS RECORDED NOVEMBER 14, 1986**

TICOR TITLE INSURANCE COMPANY

WHEN RECORDED RETURN TO:

Gerard R. Cleere
 Ridenour, Swenson, Cleere & Evans
 2350 Valley Bank Center
 201 North Central Avenue
 Phoenix, Arizona 85073

11/05/86 fry05



LAKEVIEW VILLAGE
 DECLARATION OF EASEMENTS,
 COVENANTS AND RESTRICTIONS

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Exhibits

- "A" - Shopping Center Parcel (see Recital A)
- "A-1" - Dillon Parcel (see Recital B)
- "A-2" - Developer Parcels (see Recital B)
- "B-1" - Lakeview Village Center Site Plan (see Recital C)
- "B-2" - Preliminary Plat (see Recital C)
- "C" - Merchants' Association (see Section 14.2)

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**LAKEVIEW VILLAGE
DECLARATION OF EASEMENTS,
COVENANTS AND RESTRICTIONS**

THIS DECLARATION is made this 11th day of November, 1986, by VAL VISTA LAKES DEVELOPMENT, an Arizona partnership ("Developer") with its principal place of business at 1600 East Lakeside Drive, Gilbert, Arizona 85234, and DILLON REAL ESTATE CO., INC., a Kansas corporation ("Dillon") with its principal place of business at c/o Fry's Food Stores of Arizona, Inc., Post Office Box 6016, Phoenix, Arizona, 85005.

RECITALS:

A. The real property which is the subject of this Declaration is located generally at the Southeast corner of Baseline Road and Val Vista Drive, Town of Gilbert, Maricopa County, Arizona, and is more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Shopping Center Parcel").

B. Dillon is the owner of the portion of the Shopping Center Parcel that is described on Exhibit "A-1" attached hereto and made a part hereof (the "Dillon Parcel") and Developer is the owner of the remaining portions of the Shopping Center Parcel which are described in Exhibit "A-2" attached hereto and made a part hereof (the "Developer Parcels").

C. The Parcels are contiguous and adjacent as shown on the Lakeview Village Center Site Plan and the Preliminary Plat that are attached hereto as Exhibits "B-1" and "B-2", respectively, and made a part hereof (collectively, the "Site Plan").

D. The Shopping Center Parcel, as improved with buildings, parking areas, landscaping and pedestrian areas in accordance with the Site Plan, is hereinafter referred to as the "Shopping Center".

E. Developer and Dillon intend to develop and operate their respective Parcels in conjunction with each other as

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integral parts of a shopping center, and Developer intends to sell portions of the Developer Parcels to other Persons. To effectuate the common development, use and operation of a shopping center, the Parties desire to enter into certain covenants and agreements as part of a general plan for beneficial use of the Parcels and to grant each to the other certain reciprocal easements in, to, over and across certain portions of the Parcels, all as set forth hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, Developer and Dillon agree as follows:

1. DEFINITIONS

Each reference in this Declaration to any of the following terms shall mean:

1.1 Accounting Period: Each calendar year commencing January 1, except that the first Accounting Period shall commence on the date that Fry's opens for business in the Fry's Building, and the last Accounting Period shall end on the termination of this Declaration.

1.2 Allowed Gross Floor Area: The maximum Gross Floor Area allowed to be contained within the boundaries of any Building Area, as specified in Section 2.4.

1.3 Buildings: The structures that are to be constructed on the Building Areas, Future Building Areas and Pads by Owners in accordance with the Site Plan and this Declaration.

1.4 Building Areas: Those areas shown on the Site Plan to be utilized for construction of Buildings and improvements intended for commercial or other shopping center related use by Owners and other Occupants, together with, by way of example and not limitation, appurtenant overhangs, drive-thrus and similar structures, loading docks, truck tunnels, ramps and wells. When a Pad or Future Building Area is improved with a Building, it

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shall, together with such appurtenant items automatically thereafter be deemed to be a Building Area.

1.5 Common Area: All areas of the Shopping Center, other than Buildings and building canopies, support columns, pilasters, overhangs and footings and building truck docks, wells and tunnels located within Building Areas or projecting into the Common Area, encompassing without limitation all those facilities within or upon the Parcels for the non-exclusive use of Owners, Occupants and Users in common, including but not limited to, Parking Area, service areas, driveways, areas of ingress and egress, sidewalk and other pedestrian ways, perimeter sidewalks adjacent and contiguous to Buildings, areas containing structures used in connection with the maintenance of the Common Area, roadways, delivery areas, landscaped areas (including planters and areas located between perimeter sidewalks and Buildings or next to exterior Building walls), areas containing signs or structures advertising the name of the Shopping Center, together with the signs and structures constructed thereon, areas containing signs of structures advertising the names of Occupants (other than sign areas on the Fry's Building), common corridors, public restrooms and comfort stations accessible from pedestrian passageways not within the leased space of any Occupant, and all Future Building Areas so long as used as Common Area. Any enlargement of or addition to Common Area as provided herein shall be included in the definition of Common Area for purposes of this Declaration.

1.6 Common Area Maintenance Costs. The total of all monies paid out by the Party maintaining the Common Area under Article 5 for reasonable costs and expenses actually incurred for the operation, maintenance and repair of the Common Area in fulfillment of the requirements of Article 5. Common Area Maintenance Costs include:

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(i) Rental Charges. All rental charges for or the cost of acquisition of maintenance equipment (including reasonable financing charges, if approved by Dillon);

(ii) Supervision. All costs of policing, supervision and traffic direction control and regulation of the Common Area;

(iii) Insurance. All premiums for public liability insurance required to be carried pursuant to Article 10, and for any fire and extended coverage insurance carried on the Common Area;

(iv) Taxes. All personal property taxes levied or assessed on Common Area improvements and, with respect to Developer, Owners and Occupants (but not the owner of the Dillon Parcel) all real estate taxes attributable to the Common Area;

(v) Trash Removal. All costs of cleaning, collection, storage and removal of rubbish, dirt and debris;

(vi) Landscaping. All costs of landscaping maintenance and supplies;

(vii) Utilities. All charges for utilities services, together with all costs of maintenance of lighting fixtures;

(viii) Finance Charges. All debt service and carrying costs for purchases which are financed with the approval of Dillon; and

(ix) Parking Area. All costs associated with cleaning, sweeping, striping, repairing, lighting and resurfacing the Parking Area.

(x) Security Guards. All costs of providing security in the Shopping Center.

Notwithstanding anything to the contrary herein contained, Common Area Maintenance Costs shall not include:

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(i) Late Charges. Any late charges incurred in connection with financing for capital improvements or purchases;

(ii) Real Property Taxes. Real estate taxes or assessments on any portion of the Common Area on the Dillon Parcel;

(iii) Other Costs. Any other costs and expenses which are excluded from Common Area Maintenance Costs pursuant to this Declaration; and

(iv) Administrative and Overhead. Administrative, overhead, and all other similar expenses of the Party maintaining the Common Area under Article 5, including, without limitation, wages or salaries paid to management or supervisory personnel.

Common Area Maintenance Costs shall be determined in accordance with generally accepted accounting principles consistently applied, except that Common Area Maintenance Costs shall not include depreciation for any item or capital expenditure unless such item or capital expenditure was not paid for through financing obtained for such purpose or directly by the Parties, in which case depreciation shall be included, but only at straight-line rates over reasonable periods of time related to the actual useful life of the depreciated item. The amount realized on any item utilized in Common Area maintenance disposed of by the Party maintaining the Common Area shall be credited against each Party's Pro Rata Share of Common Area Maintenance Costs in the accounting period in which such item is disposed of or, if Dillon has withdrawn its Common Area pursuant to Section 6.6, such amount or amounts shall be promptly repaid to Dillon.

1.7 Developer: Val Vista Lakes Development, an Arizona partnership. All references herein to Developer shall mean and refer to the Owner of the Developer Parcels, whether Val Vista Lakes Development or its successors or assigns; provided,

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however, that Val Vista Lakes Development and any successor Developer shall be permitted to assign, convey or transfer its interest in the Shopping Center only with the prior written consent of Dillon and such consent shall be automatic as long as D.Thomas Stapley, Donald T. Stapley, T. Dennis Barney, William Raymond Olsen and Gerald J. Ricke, jointly or severally, comprise fifty percent (50%) or more of the ownership interest of the successor Developer.

1.8 Developer Parcels: The real property described in Exhibit "A-2" attached hereto and made a part hereof.

1.9 Dillon: Dillon Real Estate Co., Inc., a Kansas corporation. All references herein to Dillon shall mean and refer to the Owner of the Dillon Parcel, whether Dillon or its successors or assigns.

1.10 Dillon Parcel: The real property described in Exhibit "A-1" attached hereto and made a part hereof.

1.11 Fry's: Fry's Food Stores of Arizona, Inc., a California corporation. All references herein to Fry's shall mean and refer to the Occupant of the Fry's Building, whether Fry's or its successors or assigns.

1.12 Fry's Building: The Building that is to be constructed in the Building Area on the Dillon Parcel.

1.13 Future Building Areas: Those parcels shown as 5, 7, 8, 9, 10 and 14 on the Site Plan and existing in Phases 1B, 2B, 4 and 5 where additional Buildings and improvements may be located at some future time pursuant to this Declaration. When a Future Building Area is improved with a Building, it shall automatically become a Building Area. Prior to such improvement, each Future Building Area shall be maintained by and at the expense of the Owner of the Parcel upon which such Future Building Area is located.

1.14 Gross Floor Area: The total floor area contained within the boundaries of the exterior surface of exterior walls

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of any Building, including mezzanines used for retail sales purposes and all stories of any multiple story building, but excluding any mezzanine storage space, mezzanine office space or mezzanines for mechanical equipment in the interior of any Building, truck tunnels, truck ramps and wells, loading docks, areas for trade loading and unloading (to the extent such facilities lie outside exterior building lines) utility and/or mechanical equipment vaults, rooms, penthouses or areas (including without limitation any rooftop areas and vaults, whether located partially or wholly outside of such exterior walls), building canopies, pilasters and overhangs, and recessed openings of Buildings. Whenever and during any period in which a Building or other improvement is rebuilt, repaired, replaced or razed for any reason whatsoever, the Gross Floor Area of such Building shall be deemed to be the same as the Gross Floor Area of such Building immediately prior to such period. Within thirty (30) days after completion of initial construction, and any reconstruction, remodeling or improvement of any Building the Owner thereof shall cause its architect to certify to the Parties the number of square feet of Gross Floor Area on its Parcel, which, in the case of the Fry's Building, but not in the case of any other Building, shall thereafter constitute the Gross Floor Area for the Dillon Parcel for all purposes under this Declaration, until affected by subsequent construction, reconstruction, remodeling or improvement. In no event will the Gross Floor Area of a Building exceed its Allowed Gross Floor Area as stated in subsection 2.4(b) hereof.

1.15 Occupant or Occupants: Any Person, including without limitation, Fry's, who shall from time to time be entitled to the use and occupancy of any portion of the Building Area on any Parcel under this Declaration or under any lease, license or concession agreement, or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy.

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Occupant shall include the officers, directors, employees and agents of such Persons. Each Party and each Owner is an Occupant.

1.16 Owner or Owners: Any Person, other than the Parties, who shall from time to time be the record owner of fee title to any Parcel.

1.17 Pad or Pads: Those non-contiguous Building Areas shown on the Site Plan where additional Buildings and improvements may be located at some future time pursuant to this Declaration. Prior to such improvement, each Pad shall be maintained by and at the expense of the Owner of the Parcel upon which such Pad is located.

1.18 Parcel or Parcels: The Dillon Parcel, the Developer Parcels, and any portion of a Parcel created by and as shown on a duly approved and recorded parcel, subdivision or other map effecting a division of such Parcel.

1.19 Parking Area: That portion of the Common Area used for parking of motor vehicles, including without limitation, incidental and interior driveways, roadways, walkways, curbs and landscaping within the areas used for such parking, together with all improvements which at any time are erected thereon, but excluding Building Area truck ramps, tunnels and wells and loading or delivery areas located in the Common Area. Any enlargement or addition to the Parking Area shall be included in the definition of Parking Area for purposes of this Declaration.

1.20 Party or Parties: Each Person executing this Declaration, or its respective successor in interest as a Party with respect to its Parcel, determined by the provisions of Article 17 hereof as of the time in question, as shown on the official records of the County where the Shopping Center is located.

1.21 Person or Persons: Individual, partnership, firm, association, corporation, trust, governmental agency,

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administrative tribunal, or any other form of business or legal entity.

1.22 Pro Rata Share. Except as otherwise specifically provided in this Declaration, whenever a Party or an an Owner is required to pay its Pro Rata Share hereunder, that Pro Rata Share shall be calculated in the ratio that the total square feet of Allowed Gross Floor Area permitted by this Declaration within the Party's or Owner's Parcel bears to the total square feet of Allowed Gross Floor Area permitted on all Parcels. For purposes of this Declaration, the present Pro Rata Share of each Party shall be as follows and Developer's Pro Rata Share shall be apportioned among other Owners as its sells portions of its Parcels:

<u>Parcel</u>	<u>Pro Rata Share</u>	<u>Allowed Gross Floor Area</u>
Dillon Parcel	13.333%	60,000 sq. ft.
Developer Parcels	86.667%	390,000 sq. ft.

1.23 Shopping Center: The Parcels, as improved in accordance with the Site Plan, including Buildings and Common Area improvements. Any enlargement of or addition to the Shopping Center, as provided herein, shall be included in the definition of Shopping Center for purposes of this Declaration.

1.24 Shopping Center Parcel: The real property described in Exhibit "A" upon which the Buildings and Common Area improvements are to be constructed.

1.25 Site Plan: The drawings attached hereto as Exhibits "B-1" and "B-2" and made a part hereof, showing the Building Areas and Common Area of the Shopping Center, which may from time to time be modified as provided in subsection 2.4(b).

1.26 Users: The customers, patrons, employees, suppliers, licensees and invitees of each Party, Owner and Occupant.

1.27 Other Terms: Certain other terms shall have the meaning set forth for each such term in this Declaration.

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2. USES AND RESTRICTIVE COVENANTS

2.1 Commercial Purposes. The Shopping Center shall be used for commercial purposes only. Such purposes shall be limited to the development, construction, leasing, operation and maintenance of mercantile, business, medical facilities, service and professional establishments, and related facilities such as the Common Area, all in accordance with the requirements of this Declaration. The Occupant of the Dillon Parcel shall at times have the right to stock, sell and lease such merchandise, and offer such services, as are from time to time offered by grocery supermarkets generally, including without limitation, the items referred to in Section 2.2, household products, soft and hard good of all kinds, electronic equipment, clothing, makeup, furniture, accessories, financial, banking, insurance and real estate services. There is no requirement that the Occupant of the Dillon Parcel remain open for business or operate continuously in the Fry's Building.

2.2 Fry's Exclusive. At all times during the term of this Declaration, Fry's and its successors and assigns shall have the exclusive right to operate a grocery supermarket, drugstore and pharmacy in the Shopping Center, and neither Developer nor any Owner shall at any time permit or suffer the use or operation, whether by an Occupant or otherwise, of any Building (other than the Fry's Building), or any space therein, for the sale of groceries, meats, baked goods, drugs (whether or not by prescription), pharmacy items or supplies, or for convenience store, meat market, supermarket or similar purposes; or for a delicatessen, gourmet food and beverage shop, specialty food store, or similar operation having a Gross Floor Area larger than two thousand (2,000) square feet. In addition, neither Developer nor any Owner shall at any time permit or suffer the use or operation, whether by an Occupant or otherwise, of any Building (other than the Fry's Building) or any space therein, for the

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sale of package liquor, beer or wine for off-premises consumption; provided, however, that a delicatessen, gourmet food and beverage shop, specialty food store or similar operation having a Gross Floor Area of less than two thousand (2,000) square feet, may sell such items as an incidental or minor part of its business. The restrictions contained in this Section 2.2 are a material inducement to Dillon's purchase of the Dillon Parcel and they may be modified from time to time but only with the prior written consent of Dillon which shall be given or withheld in its sole discretion.

2.3 Uniform General Plan for Shopping Center. Any Building or other improvement erected or constructed, any remodeling or reconstruction work undertaken on any existing Buildings, and any alteration or addition to the Common Area (which is consented to by the Parties in accordance with Article 13) shall be in accordance with Section 11.2 and shall at all times be of first quality construction and architectural design. The Parties intend by this Declaration to create a uniform general plan for the Shopping Center. Any development or construction in any Building Area, remodeling or reconstruction of any Building or alteration or addition to the Common Area (which is consented to by the Parties) shall at all times conform substantially to the original design concepts of the Shopping Center so that the exterior of all such Buildings, including, without limitation, exterior elevations and color thereof, and all such other improvements will be architecturally and aesthetically compatible and harmonious with the other Buildings and improvements in the Shopping Center. Buildings constructed on the Pads may have special design criteria if required by the Occupants thereof; provided, however, that (i) the uses of the Buildings by such Occupants conform to the requirements of this Declaration, and (ii) any such special design does not differ substantially from the architecture and aesthetics of the other parts of the Shopping Center.

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2.4 Building Area and Height Limitations.

(a) Building Area Limit Lines. Buildings and structures shall only be placed or constructed within the Building Area on each Parcel as shown on the Site Plan (see Exhibit "B-2"). In no event shall any Building or structure be erected by any Owner within the Common Area except as specifically permitted herein.

(b) Allowed Gross Floor Area. For purposes of this Agreement, the Allowed Gross Floor Area of the Building on each Building Area shall be as set forth in the Site Plan which may be modified from time to time by the Parties by means of a recorded amendment to the Site Plan; provided, however, that (i) the maximum number of parking spaces in the Common Area which is available for use by customers of Fry's shall not be adversely affected by any such modification, and (ii) with respect to any modifications in Phases 1A, 2A, and 3, the owner of the Dillon Parcel shall be a party thereto and its consent to any such modification may be given or withheld in its sole discretion.

(c) Height Limits. No Building developed and constructed in the Shopping Center any part of which is located closer than three hundred fifty (350) feet from any part of the Fry's Building shall exceed one (1) story or forty (40) feet in height. For purposes of the height limitation herein contained, the height of any Building or other permanent improvement constructed within such 350-foot area shall be measured from the elevation of the finish grade of the pad for the Building Area to which the height limit applies as shown on the final grading plan for the Shopping Center approved by the Parties, to the top of the highest single portion of the Building or other improvement

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measured, including without limitation, any parapet, mechanical equipment, sign or similar structure.

(d) Certain Utilities. All utilities servicing each Building Area shall be separately metered, and all costs in connection therewith shall be borne by the Party or Owner thereof at no cost or expense to the other Owners.

2.5 Remodeling and Replacement. Buildings and improvements located in any Building Area may be remodeled or replaced, and Buildings and improvements may be developed in Pads and Future Building Areas, upon compliance with the provisions of this Declaration concerning approval of plans, the uniform general plan for the Shopping Center, and the construction requirements set forth in Articles 3 and 11; provided, however, that no such requirement for plan approval shall apply in the case of proposed repair or reconstruction of Buildings or improvements which have been damaged or destroyed by fire or other casualty or which have become worn out or obsolete, so long as such repair or reconstruction will not substantially alter the size, height, bulk and exterior appearance of the Building or improvements as they existed prior to the event or condition requiring repair or reconstruction, and provided that notice of intent so to repair or reconstruct (together with a brief explanation of the cause and nature of the proposed work) is given by the Party or Owner proposing such work to the Parties at least thirty (30) days prior to the commencement of any work thereon. Buildings and improvements located within a Building Area on the Dillon Parcel may be razed, demolished and removed in accordance with Article 10 without complying with this Section 2.5, but the owner of the Dillon Parcel shall make reasonable efforts to make the Fry's Building compatible to the rest of the Shopping Center and all costs and expenses associated with any alteration from Fry's standard plan to the Fry's Building shall be borne by Developer.

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Alterations and additions to the Common Area may be made only in accordance with Article 13.

2.6 Nuisances. Unless the Parties determine otherwise in their sole discretion from time to time, no Party or Owner shall use or permit the use of its Parcel, or any portion thereof, whether by an Occupant or otherwise (i) for the conduct of any offensive, noisy or dangerous trade, business, manufacturing activity or occupation, including, without limiting the generality of the foregoing, burning of trash, refuse or waste materials, (ii) for the maintenance of any nuisance or the conduct of any activity which violates public policy, (iii) for any activity which physically and substantially interferes with the business of any other Occupant of the Shopping Center, (iv) in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction over the Shopping Center or any portion thereof, (v) for any "sidewalk sales", sales outside the exterior walls of any Building, display of merchandise in the Common Area or any similar use except in areas specifically approved for such purpose by each of the Parties in writing (which approvals may be arbitrarily or unreasonably withheld); provided, however, that the Occupant of the Fry's Building may, at its option, from time to time conduct such sales and displays on the sidewalks in front of the Fry's Building if the sales and displays do not interfere unreasonably with the clean appearance of the Shopping Center or unreasonably obstruct pedestrian traffic, or (vi) for any other unreasonable use of its Parcel not compatible with the operation of a first-class retail and commercial shopping center including, without limitation, Occupant advertising media which can be heard or experienced from the exterior of any Building or other improvement from which it emanates, such as search lights, loud speakers, phonographs, radios or televisions.

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2.7 Prohibited Operations. The following activities, uses or purposes, any part of which is located closer than three hundred fifty (350) feet from any part of the Fry's Building, shall be prohibited in the Shopping Center:

(a) Restaurants -- No restaurant of any kind (including, without limitation, take-out, fast-food or sit-down restaurants) shall be permitted within such 350-foot area.

(b) Theaters -- No theater of any kind (including, without limitation, motion picture theaters and facilities for the presentation of "live" performances or concerts) shall be permitted within such 350-foot area.

(c) Offices -- No office of any kind (other than offices that are incidental to the conduct of permitted activities, uses or purposes) shall be permitted within such 350-foot area. Outside such area, office uses that are customary and compatible with a first-class shopping center, such as real estate brokers, finance companies, title insurance companies, banks, savings and loan associations, health care service facilities, dentists and other service-oriented businesses, shall be permitted.

(d) Health Spas, Gymnasiums and Exercise Studios -- No health spa, gymnasium or exercise studio of any kind shall be permitted within such 350-foot area.

(e) Place of Public Amusement, Training or Education Facility -- No billiard room, pool hall, athletic facility, game arcade, bowling alley, skating rink, dance hall, discotheque, or other place of public amusement, and no training or education facility (including, without limitation, a beauty school, barber college, reading room or other operation or activity designed primarily for students or trainees rather than customers) shall be permitted within such 350-foot area.

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(f) Army, Navy or Government Surplus Store -- No Army, Navy or government surplus store shall be permitted within such 350-foot area.

(g) No bar, tavern, night club, cocktail lounge or similar business shall be permitted in any part of the Shopping Center except as an incidental part of a restaurant that is permissible under subsection 2.7(a) and then only with the approval of Developer which approval may be withheld with or without cause or reason.

(h) There shall not be any displaying, selling, advertising for sale or distributing of any pornographic books, magazines, literature or other printed matter; or drug paraphernalia or sexual paraphernalia; or the showing, displaying, viewing, renting or selling or advertising for sale movie films which would be classified or rated as "X Rated" under present standards or criteria for such classification and rating; and provided that insofar as movie films, whether present or future, are shown, displayed, viewed, rented or sold in the Shopping Center preference shall be given to those films which shall meet the standards and criteria presently existing for classification and rating as "G Rated" or "PG Rated".

(i) There shall not be any gambling or Bingo (or similar activities) in the Shopping Center, nor shall there be any bawdy-houses or funeral parlors.

(j) There shall be no act or condition which shall be lewd, obscene or licentious.

Every lease of any of the Shopping Center shall contain either the language of subsections 2.7(h), (i) and (j) or incorporate it by reference. Failure of a lease to contain the language or a reference to such subsections (or any other Section of this Agreement) shall not affect the enforceability of this or any other provisions.

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The Person maintaining the Common Area shall do so in accordance with the requirements of Section 5.1, but each Occupant operating a restaurant that is permitted under subsection 2.7(a) shall, at its own cost and expense, take all necessary measures to keep and shall keep the Common Area clean and free of all debris and rubbish caused by such use and no part of the cost therefor shall be included in Common Area Maintenance Costs. All leases to any Occupants operating restaurants shall include appropriate provisions consistent with and implementing the foregoing conditions.

2.8 Fry's Trucks. The area to the rear of the Fry's Building that is labelled as "Maneuvering Area for Fry's Trucks" on the Site Plan shall at all times be available for the exclusive use of trucks and other vehicles making deliveries to the Fry's Building. No obstruction of any kind shall be placed or permitted in such area, and the Occupant of the Fry's Building is hereby granted the right to remove any such obstruction, including without limitation, parked vehicles, by any legal means and by using such force as shall be necessary; provided, however, that Dillon hereby agrees to indemnify and hold the Developer and all Owners harmless from all claims and expenses arising from the use of such right. Developer shall not be responsible for any actions taken by the Occupant of the Fry's Building pursuant to this Section 2.8.

2.9 Contest of Laws. Each Party and Owner, without cost or expense to any other Party or Owner shall promptly comply or cause compliance with all laws, ordinances, rules and regulations of any governmental authority having jurisdiction which may at any time be applicable to the Buildings and improvements contained within the Building Area on its Parcel; provided, however, that each Party and Owner shall have the right to contest, by appropriate legal or administrative proceedings diligently conducted in good faith, the validity or application

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of any such law, ordinance rule or regulation and may delay compliance until a final decision has been rendered in such proceedings and appeal is no longer possible, unless such delay would (i) render the Shopping Center, or any portion thereof, liable to forfeiture, involuntary sale or loss, or (ii) result in involuntary closing of any business conducted thereon, or (iii) subject any other Party, Owner or Occupant to civil or criminal liability, in any of which events the affected Party or Owner shall immediately take such steps as may be necessary to prevent any of the foregoing, including posting bonds or security or complying with such law, ordinance, rule or regulation. If compliance with any such law, ordinance, rule or regulation would prevent the Party or Owner to whose Parcel such law applies from performing any of its obligations under this Declaration, and such Party or Owner does not contest the applicability or validity of such law, ordinance, rule or regulation, any other Party or Owner may contest the same at such Party's or Owner's expense in accordance with the procedures and subject to the limitations hereinabove set forth, and during the pendency of such contest, the Party or Owner whose Parcel is affected shall delay compliance in accordance with the provisions contained hereinabove. Each non-contesting Party or Owner shall cooperate to the fullest extent necessary with any contesting Party or Owner in any proceeding undertaken pursuant to this Section 2.9, including execution of necessary documents or consents to such contest, provided that all costs and expenses incurred with respect to such cooperation shall be paid by the contesting Party or Owner and provided, further, that a Party or an Owner or its Parcel shall not thereby incur any civil or criminal liability. This Section 2.9 shall not apply to any tax contest or Appropriation which is subject to Article 15 or Section 21.2, respectively. Nothing contained herein shall affect the

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obligation of any Party, Owner, Occupant or User to comply with a Court Order.

2.10 Employee Parking and Deliveries. The Parties may from time to time establish (i) employee parking regulations, and (ii) regulations with respect to delivery, service, Shopping Center use-related vehicles, times of delivery and places of delivery. Such regulations shall apply to the entire Shopping Center in order to ensure that the maximum number of convenient parking spaces in the Parking Area are available for use by Users who are customers of the Shopping Center. Developer shall enforce the regulations promulgated hereunder against all Occupants of the Shopping Center in a reasonable and nondiscriminatory manner as part of Developer's obligation to operate and maintain the Common Area under Article 5.

2.11 Parking Area Levies. No Party, Owner or Occupant shall impose or attempt to impose any charge, service fee or exact any other consideration in exchange for the right of a User to enter or depart from or park a motor vehicle in the Parking Area in connection with use of the Common Area for purposes contemplated herein unless such charges are lawfully ordered by appropriate governmental authority having jurisdiction over the Shopping Center. To the extent permitted by such governmental authority, any such charge shall be paid for by Developer as a part of Common Area Maintenance Costs under Article 5, but if the governmental authority does not permit such treatment of the charge, but requires that it be collected directly from Users for the privilege of using the Shopping Center and/or Parking Area, then Developer shall collect such charge and shall credit the amount received from Users, less collection expenses and amounts required to be paid to the governmental authority, against Common Area Maintenance Costs.

2.12 No Walls, Fences or Barriers. Subject to the provisions contained in Article 3 concerning construction activities

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and Article 9 concerning clear areas, and except as shown on the Site Plan as modified from time to time in accordance with subsection 2.4(b), no walls, fences or barriers of any sort or kind shall be constructed or erected in the Shopping Center, or any portion thereof, by any Person which shall prevent or impair the use or exercise of any of the rights of easements granted herein, or the access and movement of Occupants and Users, including without limitation pedestrians and vehicular traffic, between the various Parcels as contemplated by this Declaration; provided, however, reasonable traffic control signs and devices, directional barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as access driveways to the Parking Area and the Shopping Center are not closed or blocked and the traffic circulation pattern of the Common Area, as shown on the Site Plan, is not changed or affected in any way.

2.13 Signs and Shopping Center Name.

(a) Signs. No monument or pylon signs shall be located in the Shopping Center except in the areas designated for the location of such signs on the Site Plan. No such signs shall be erected without the prior written approval of the Parties as to size and appearance, including, without limitation, style, priority and arrangement of names, wording, and height. Unless the owner of the Dillon Parcel elects not to participate, each monument or pylon sign shall have one-fourth (1/4) of the available space thereon used for the name of the Shopping Center, one-fourth (1/4) by the Occupant of the Dillon Parcel, and one-half (1/2) jointly by the other Occupants of space in the Shopping Center. All Occupant signs within the Shopping Center shall conform to the Sign Criteria that shall from time to time be established by the Parties. Deviations from

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the Sign Criteria shall be permitted only with the prior written consent of the Parties.

(b) Shopping Center Name. Unless and until changed with the prior written consent of the Parties, the Shopping Center shall be operated and maintained under the name "Lakeview Village". The Parties' right of approval for the Shopping Center name shall apply to each name change proposed for the Shopping Center.

3. CONSTRUCTION AND INSTALLATION

3.1 Construction Work Generally. All construction, alteration or repair work (other than Common Area maintenance in accordance with Section 5.1) undertaken by any Party or Owner upon any part of the Shopping Center Parcel pursuant to any easement granted herein, or permitted by any other provision of this Declaration, shall be accomplished in an expeditious, diligent and speedy manner, and with good faith efforts to minimize interference with Users and the operation of the Shopping Center. The Party or Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Shopping Center Parcel upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. In addition, the Party or Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify, defend and hold the other Parties and Owners harmless from all damages, losses or claims, including attorneys' fees, attributable to the performance of such work. Except with respect to emergency repairs which are referred to in Section 3.5, all such work shall be undertaken only after giving the other Parties and Owners thirty (30) days prior written notice of the work to be undertaken, the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed. Such notice shall include any plans or

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specifications for the work which is to be accomplished on the affected Parcel.

3.2 Utility Connections. Any work performed by a Party or an Owner to connect to, repair, relocate, maintain or install any storm drainage system, utility line, sewer, water line, gas line, telephone conduits, cable television or any other public utility service shall be accomplished using good faith efforts to minimize interference with the provision of such services to any other Party or Owner. No Party or Owner shall interfere with any such public utilities and services if such interference would disrupt the orderly development and operation of the businesses conducted by any other Party, Owner or Occupant on any other Parcels unless, in the notice provided pursuant to Section 3.1, the nature and duration of any such interference is described and an offer is made to each other affected Party or Owner to permit that Party or Owner to require that such work be carried on at such times as would minimize or prevent the disruption of the orderly development and operation of any business conducted on the other Party's or Owner's Parcel. The Party or Owner performing such work shall bear the cost of any overtime or other additional expense necessitated by such request. Any work of installation, alteration, replacement or repair of utility installations which requires interference with the paving in the Common Area shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all Users to the various business establishments in the Shopping Center.

3.3 Plans and Law. All construction work undertaken by any Party or Owner pursuant to this Declaration shall comply with any plans and specifications therefor approved pursuant to Section 11.2, and the requirements of all applicable governmental authorities, public bodies or quasi-public agencies. Each Party

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and Owner shall secure all licenses and permits necessary for its construction.

3.4 Timing Restriction on Construction. Except for the initial construction of the Buildings and improvements comprising the Shopping Center, and except as specifically permitted in accordance with Article 13, no construction activity, including storage of construction equipment or materials, shall be conducted or permitted in the Common Area unless such construction activity is conducted only within a Building Area without obstruction of any part of the Common Area, or unless such construction activity is conducted within an enclosed part of the Common Area without obstruction of any of the Parking Area or is required in connection with emergency repairs or as a result of a casualty.

3.5 Emergency Work. Notwithstanding any other notice provision contained in this Article 3, in the event of emergency conditions threatening life or property, any Party or Owner may undertake the necessary construction work to remedy the emergency condition, provided that the Party or Owner undertaking such work does so in good faith, gives notice thereof to the other Parties or Owners upon the occurrence of the emergency condition or as soon thereafter as possible, and otherwise conforms to the applicable provisions of this Article 3.

3.6 Fencing Off Construction. From and after the date that Fry's opens for business to the public in the Fry's Building, each Party, Owner and Occupant, at its own cost and expense, shall, at the request of either Party, fence off or cause to be fenced off any development, construction, repair, alteration or remodeling work performed by the Party, Owner or Occupant on any Parcel. Fencing shall be six (6) feet high chain-link fencing sufficient to protect existing facilities in the Shopping Center from debris and other inconveniences occasioned by such work. No

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signs or advertising material shall be placed upon the fence without the prior written approval of the Parties.

3.7 Utility Easements. The Parties and Owners shall cooperate with one another and permit installation of any necessary utility and service lines, sanitary or storm water drainage sewers, water lines, telephone conduits or lines, and all other public utilities jointly and mutually to serve the Parcels and Building Areas. Except as approved by the Parties, any such utilities shall not be located under any Building Area, shall be constructed as promptly as is reasonably possible so as not to interfere unduly with the overall development and operation of each Parcel by the Parties and Owners and shall otherwise conform to the applicable requirements of this Declaration. All such utilities for the respective uses of the Building Areas on each Parcel, and the Common Area, shall be separately metered or separately assessed.

3.8 Maintenance of Utility Facilities. All separate utility facilities installed by any Party or Owner pursuant to the easements granted under this Declaration designed to serve exclusively the Building Area on such Party's or Owner's Parcel shall be installed, maintained, repaired and removed by such Party or Owner without cost or expense to any other Parties or Owners; provided, however, that if any other Party or Owner connects into or utilizes such separate utility facilities pursuant to any easement granted under this Declaration, then each Party or Owner connecting into or utilizing such separate utility facilities shall be responsible for installation, maintenance, repair and removal in connection with its utilization of such separate utility facilities. All other installation, maintenance, repair and removal of utility facilities shall be undertaken by the Party maintaining the Common Area pursuant to Article 5.

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3.9 Indemnification by Parties and Owners. Each Party and Owner shall indemnify, defend and hold the other Parties and Owners harmless of and from any and all loss, cost, damage, injury or expense (including without limitation reasonable attorneys' fees) arising by reason of injury to or death of Parties or Owners, damage to property or claims of lien for work or labor performed, materials or supplies furnished arising out of or in connection with use by the indemnifying Party or Owner of the easements granted hereunder or the exercise by such Party or Owner of the rights granted to it in this Declaration. Any Party or Owner may contest any lien or claim of lien asserted against such Party or Owner or the Parcel affected by such Party's or Owner's use of any of the easements or rights granted hereunder or the exercise by such Party or Owner of the rights granted to it in this Declaration; provided, however, that such Party or Owner shall pay and fully discharge any such claim of lien within five (5) days after entry of final judgment adverse to such Party or Owner in any action to enforce or foreclose the same, which judgment shall be deemed final when it can be enforced by execution or judicial sale and no such judgment shall be considered final for the purposes hereof during the pendency of a stay of execution in connection with an appeal. If any Party or Owner contests any claim of lien, such Party or Owner shall, as a condition to such Party's or Owner's right so to contest, procure and record a bond of a responsible corporate surety in such amount as may be required to release the lien from the Parcel of any other Party or Owner upon which such lien has been imposed; provided, however, that any Party or Owner given the right to self-insure under this Declaration shall not be required to procure and record such bond, unless such claim interferes with any proposed sale, financing, refinancing, or other transaction affecting another Party's or Owner's Parcel which such other Party or Owner has either commenced or is about

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to commence, in which case, upon the written request of such other Party or Owner, the contesting Party or Owner shall either (i) record a bond of a responsible corporate surety of such kind and in such amount as may be required to release the lien from the affected Parcel, or (ii) provide such indemnities as may be required to induce the title insurance company insuring the affected Parcel with respect to the proposed transaction to issue its policy of title insurance not showing the lien claim as an exception to title to the Parcel.

4. EASEMENTS

4.1 Grant of Easements by Parties. Each Party and Owner grants to the other Party and Owners easements over, across, in, under and through (i) the Common Area of its Parcel appurtenant to and for the benefit of the other Parcels, for the uses and purposes set forth in Section 4.2, (ii) the Building Areas and Future Building Areas of its Parcel appurtenant to and for the benefit of the other Parcels, for the uses and purposes set forth in Section 4.3, and (iii) in each case for the duration specified in each instance in Section 4.4. Each easement granted herein shall in each instance be (A) appurtenant to and for the benefit of the Parcel owned by the grantee of such easement, and (B) non-exclusive for use in common with the grantor by the grantees, all Users and Occupants, solely for the purpose of developing and operating the Parcels as the Shopping Center pursuant to a common plan of beneficial use.

4.2 Common Area Easements. The Common Area on each Parcel shall be used only for the following purposes related to the businesses and activities conducted in the Shopping Center:

(a) Parking. Parking of motor vehicles.

(b) Ingress and Egress. Ingress and egress by any Users and any motor vehicles of such Users to and from any portion of the Common Area, and User access to and from the public streets adjacent to the Common Area.

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(c) Utilities. Installation, maintenance and operation of utility lines and related facilities and services for the Common Area, Building Area or Future Building Area, together with and including, without limitation, vaults, manholes, meters, transformers, pipelines, valves, hydrants, sprinkler controls, conduits, sewage facilities, and all related facilities, all of which shall whenever and wherever reasonably feasible be located below the surface of the Common Area, or the surface of any other above ground improvements located thereon; provided, however, that in any event, (i) all of the foregoing permitted utilities and installations, which are located above the surface of the Common Area, shall be placed so as not to interfere with, restrict, or impede other uses of Common Area provided for herein, and (ii) no such utilities and installations, which must be located above the surface of the Common Area, shall be placed upon any Parcel without the prior written consent of the Parties.

(d) Pedestrian Traffic. Pedestrian traffic by Users between business establishments in the Building Areas, between the Building Areas and Common Area, and for Shopping Center pedestrian access to and from the public streets adjacent to the Common Area.

(e) Comfort and Convenience. Minor comfort and convenience facilities for Users, such as mailboxes, public telephones, benches and landscaped areas, as each Party and Owner may from time to time deem appropriate to construct or permit to be constructed on its Parcel; provided, however, that no such minor convenience facilities shall interfere with, restrict or impede other Users.

(f) Temporary Construction Activity. Construction, maintenance, repair, replacement, rearrangement and remodeling permitted under this Declaration of Buildings and

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improvements within Building Areas, Pads, Future Building Areas and Common Area. Good faith efforts shall be made to insure that all such work shall be conducted in an expeditious manner to minimize interference with use of the Common Area, shall be prosecuted to completion, and shall otherwise be performed in compliance with the provisions of Section 3.1. In connection with work of construction performed within Building Areas, Pads or Future Building Areas, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, store-front barricades and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work expeditiously pursued. Common Area may be utilized (i) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein, and (ii) temporary storage of materials and vehicles being utilized in connection with such construction in areas designated and approved by the Parties, subject to all of the other terms of this Declaration.

(g) Service and Delivery Vehicles. Ingress, egress, and temporary parking of delivery and service vehicles traveling to and from the Building Areas, or any portion thereof, and the public streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise, furniture, fixtures, supplies and equipment, and the rendition of services to any Occupant.

(h) Doors and Exits. The opening onto the Common Area of doors and other exits of Buildings that are contiguous to the Common Area.

(i) Foundations, Footings, Overhangs and Canopies. Installation, repair, replacement and maintenance of

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Building foundations and footings extending from any portion of the Building Area of any Parcel, over, onto, under and into the Common Area; provided, however, that Building foundations and footings shall not extend beyond a lateral distance of five feet (5') from the Building Area limit line within which the Building is located, as shown on the Site Plan.

(j) Encroachments. Minor encroachments of Building overhangs, canopies and support columns, eaves and signs, and pilasters and other Building columns or pillars extending from a Building Area over, into and onto the Common Area; provided, however, that no such encroachment may in any event extend beyond the vertical plane of the outside edge of a sidewalk in the Common Area adjoining the Building Area perimeter, and shall not unreasonably restrict the visibility of any Building constructed or to be constructed.

(k) Fire Exiting. Ingress, egress and access over each Owner's Parcel leading from adjacent Building Areas to the Common Area, if required from time to time by applicable building, fire and safety codes.

(l) Drive-thrus. Drive-thru facilities immediately adjacent to and used in conjunction with Buildings on Pads, but no costs with respect thereto shall be included in Common Area Maintenance Costs.

(m) Repairs, Maintenance and Replacement. Ingress, egress and access over, along, and under each Party's and Owner's Parcel (other than Gross Floor Area contained in Buildings) for the purpose of effectuating any necessary repairs, maintenance or replacements in connection with the exercise of the common nonexclusive easements and other rights granted under this Declaration with respect to each Parcel, as permitted under this Declaration.

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4.3 Building Area, Pads and Future Building Area Easements.

The Building Areas, Pads and Future Building Areas on each Parcel shall be subject to the following uses for the benefit of the other Parcels:

(a) Foundations and Footings. Installation, repair, replacement and maintenance of Building foundations and footings required in connection with construction of improvements in the Building Area or Common Area on the Parcels; provided, that any such installation, repair, replacement or maintenance by a Party or an Owner on another Party's or Owner's Parcel shall not materially interfere with improvements on such other Owner's Parcel; provided, further, that any such installation, repair, replacement or maintenance by an Owner on another Owner's Parcel shall not materially increase the cost of operation or maintenance of the improvements on such other Owner's Parcel, unless the Owner performing such installation, repair, replacement or maintenance agrees in writing, in a form reasonably acceptable to such other Owner, to reimburse such other Owner for such increased costs; and provided, further, that such foundations and footings shall not extend beyond a lateral distance of five feet (5') from the Building Area limit line within which the Building is constructed or from the improvements located in the Common Area.

(b) Encroachments. Unless an easement has been granted by a Party for construction errors pursuant to subsection 2.5(e) of the Development Agreement between the Parties, minor encroachments of Building overhangs, support columns, canopies and eaves, but only if (i) approved in writing by the Party or Owner owning or occupying the burdened Parcel and (ii) such minor encroachment upon the Building Area of another Party's or Owner's Parcel does not

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materially interfere with improvements on such other Party's or Owner's Parcel.

(c) Utility Connections. Connection to or with utility installations; provided, however, that (i) no such use shall be utilized or allowed in a manner which unreasonably burdens the affected Parcel, results in interference with the improvements thereon, including but not limited to the Common Area, inconveniences unreasonably the Users or Occupants thereof, or adversely affects the fire insurance rating standard of the Building on the affected Parcel, and (ii) no common utilities facilities may be located on or under the Building Area of any Parcel without the consent of the Party or Owner owning or occupying the affected Parcel, which consent may be withheld in such Party's or Owner's sole and arbitrary discretion, whether reasonable or unreasonable.

4.4 Duration and Termination of Easements.

(a) Parking, Etc. The easements created under Sections 4.2(a), (e) and (f) shall automatically terminate and be extinguished upon the expiration or prior termination of this Declaration pursuant to Section 22.2.

(b) Doors, Etc. The easements created under Sections 4.2(h), (i) and (j) and Sections 4.3(a), (b) and (c) shall remain in existence after the termination of this Declaration under Section 22.2 only so long as the Building or other improvements benefited by such easements remain in existence and such easements shall terminate on the removal, razing or destruction of such Building or improvements and its non-replacement within two (2) years after such removal, razing or destruction.

(c) Ingress, Etc. Subject to the provisions of Section 4.6 regarding abandonment and termination, the easements created under Sections 4.2(b), (c), (d), (g), (k) and

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(1) shall be perpetual, except that after expiration or prior termination of this Declaration under Section 22.2, each such easement shall be limited solely to the purpose of providing reasonably necessary fire lanes and fire hydrant easements and necessary access to the benefitted Parcel over the burdened Parcel from adjacent public streets or for reasonably necessary utility connections to the benefitted Parcel over the burdened Parcel. Following expiration or prior termination of this Declaration and subject to a re-allocation of responsibility as provided in Section 4.5, maintenance and repair of any of the easements created under Sections 4.2(b), (c), (d), (g) and (1) and Section 4.3(c) shall be the obligation of the Party owning or occupying the Parcel benefitted by such easement.

4.5 Relocation of Access and Utility Easements. At any time during or after the term of this Declaration, the Party or Owner owning or occupying the Parcel burdened by any of the easements created under Sections 4.2(c) and 4.3(c), and at any time following expiration or prior termination of this Declaration under Section 22.2, the Party or Owner owning or occupying the Parcel burdened by any of the easements created under Section 4.2(b), (d) and (g), shall have the right to relocate on its Parcel any such easements and the improvements with respect thereto, provided that such relocation is performed only after thirty (30) days written notice of such Party's or Owner's intention so to relocate given to the Party or Owner owning or occupying the benefitted Parcel, and such relocation: (i) will not unreasonably interfere with or diminish the enjoyment of the easement by the Party or Owner owning or occupying the benefitted Parcel; (ii) will not reduce or unreasonably impair the usefulness or function of any of such easement; and (iii) is performed without cost or expense to the Party or Owner owning or occupying the Parcel benefitted by such

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easement. Notwithstanding any such relocation, maintenance and operation of any easements so relocated shall continue to be the obligation of the Party or Owner owning or occupying the Parcel benefitted by such easement unless there is any material increase in maintenance or operations costs resulting from such relocation, in which event the Party or Owner effecting such relocation shall bear such excess. Notwithstanding termination or expiration of this Declaration under Section 23.2, the provisions of Section 3.1 shall remain in effect and govern maintenance, repair, relocation and construction with respect to the easements created under Sections 4.2(b), (c), (d), (g), (k) and (l) and Section 4.3(c), until termination of each easement under Section 4.6.

5. COMMON AREA MAINTENANCE AND OPERATION
AND BUILDING MAINTENANCE

5.1 Common Area Maintenance and Operation. Developer shall operate and maintain the Common Area, including but not limited to the Parking Area, and all sidewalks, drinking fountains, owned and leased maintenance equipment, landscaping, drainage, public utilities, lighting facilities and public entertainment areas. Developer shall maintain and operate the Common Area in a first-class condition. Except as provided in Section 3.5, no Party or Owner shall undertake work in the Common Area which would unreasonably interfere with the use thereof by either Party without scheduling such work in a manner that is satisfactory to the Parties. Developer's obligation to operate and maintain the Common Area shall include but not be limited to the following, any of which work can be performed by independent contractors who satisfy Developer that they have adequate Worker's Compensation coverage:

- (a) Paved Areas. Maintaining all paved surfaces and curbs of the Common Area in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repainting,

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repairing, replacing, resealing and resurfacing of the Common Area, and curbs, using surfacing material of a quality equal or superior to the original surfacing material, and such work shall be performed by contractors who shall have been approved by Dillon.

(b) Debris and Refuse. Removal of all papers, debris, filth, refuse, and sweeping the Common Area to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. Developer shall have trash and debris collectors to keep the Shopping Center free of trash, debris and rubbish, and the cost of collection shall be a Common Area Maintenance Cost. Each Party and Owner shall install, operate and properly maintain, or cause to be so installed, operated and maintained, on its Parcel, screened from the view of the general public shopping at the Shopping Center, sufficient trash compactors, bailers and/or enclosed trash bins, for use in connection with storage of all trash, refuse and waste materials of the Party, Owner and Occupants of such Parcel and each Party and Owner shall take, or cause to be taken, all necessary measures to keep the Parcels free from all debris and rubbish caused by or emanating from such facilities, and no part of the cost therefor shall be included in Common Area Maintenance Costs.

(c) Signals and Markers. Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines, including, without limitation, signs and markers for handicapped persons.

(d) Common Area Lighting. Operating, keeping in repair, cleaning and replacing when necessary such Common Area lighting facilities as may be reasonably required, including all lighting necessary or appropriate for Common Area security and exterior lights attached to Buildings which are intended to illuminate the Common Area. Lighting

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representing twenty-five percent (25%) of full intensity of the Common Area lighting system, uniformly distributed throughout the Common Area, shall remain on each day during hours of darkness for security purposes, unless the Owner of the Dillon Parcel consents to a lesser amount of security lighting in writing, or unless otherwise restricted by any applicable law, rule, statute or ordinance then in effect, in which event the standard prescribed by such restrictions shall be adhered to while in effect. The Dillon Parcel and the Developer Parcels shall each have separate lighting in the Common Area that is located on their respective Parcels with separate controls and timing and a separate meter located in a commonly controlled area. The costs and expenses of such lighting shall not be part of Common Area Maintenance Costs, and Dillon and Developer shall each pay for Common Area lighting used on their Parcels, with Developer having the right to assess Owner's for their Pro Rata Shares of the cost thereof. If "special" lighting (other than lighting necessary for Shopping Center security) is required or if regular lighting is required by any Owner or Occupant for a time when the Fry's Building is closed, then the electricity to service such lighting requirements shall be separately metered and all expenses thereof shall be paid by such Party, Owner or Occupant who requires the special service. If such separate metering is not reasonably feasible, then the cost of such special lighting shall be determined on a prorated basis in accordance with the special usage and all such prorated expenses shall be paid by such Party, Owner or Occupant which requires the special service. All Common Area lighting facilities shall be shielded from view of neighboring residences.

(e) Landscaped Areas. Cleaning and maintaining all landscaped areas, including landscaping and planters

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adjacent to exterior walls of Buildings, repairing automatic sprinkler systems or water lines in the Common Area, weeding, pruning, fertilizing or making replacement of shrubs and other landscaping as necessary; provided, however, that if any Party, Owner or Occupant requires or installs "special" landscaping other than that normal and consistent with the landscaping requirements of the remainder of the Shopping Center, the maintenance and cost thereof shall be borne solely by such Party, Owner or Occupant without cost or expense to the other Parties and Owners and shall not be included in Common Area Maintenance Costs.

(f) Utilities. Maintaining, cleaning and repairing any and all common storm drains, utility lines, sewers and other common utility systems and services located in the Common Area which are necessary for the operation of the Common Area and the Building Areas, other than the separate utilities for any Building Area installed under Section 3.8, which separate utilities shall be operated and maintained by the Party or Owner thereof without cost or expense to the other Parties or Owners, and without inclusion in Common Area maintenance costs.

(g) Obstructions. Keeping the Common Area free from obstructions not required or permitted hereunder, specifically (but without limitation) keeping the Common Area free from any obstructions caused by sale or display of merchandise outside the exterior walls of Buildings, other than those sales or displays that are permitted pursuant to Section 2.6 or that are approved by Developer, the Occupant of the Fry's Building and the Merchants Association referred to in Section 14.2.

(h) Shopping Center Signs. Maintaining and repairing any and all monument or pylon signs that are permitted in the Common Area pursuant to this Declaration. The costs of

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installation, maintenance, illumination and repair shall be apportioned among the Occupants in proportion to the area of sign face used by each Occupant.

(i) Sidewalks. Cleaning (including washing and/or steam cleaning), maintenance and repair of all sidewalks, including perimeter sidewalks adjacent and contiguous to Buildings. Sidewalks may only be cleaned between the hours of 10:00 p.m. and 8:00 a.m.

(j) Governmental Requirements. Complying with all applicable requirements of governmental agencies pertaining to the Common Area, including without limitation any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about the Common Area under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to the Common Area.

5.2 Insurance. Subject to the provisions herein contained, Developer shall maintain public liability insurance for the Common Area against the risks of bodily injury, property damage and personal injury liability with a limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) (or such greater amounts as may from time to time be specified by the Parties) for each occurrence, coverage to be in a comprehensive general liability form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; (iii) providing for blanket contractual coverage, broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; and (iv) providing for coverage of employers automobile nonownership liability. Developer shall furnish Dillon with a duplicate copy of such policy of insurance or a certificate of the insurer evidencing the same. Such insurance shall name each Party as additional insureds, shall be

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primary, and not require contribution from any insurer under any public liability insurance carried by any Party, Owner or Occupant. The insurer shall also furnish a waiver of subrogation in favor of each Party named as additional insured. Each Party shall also have the right to require that such insurance name any other persons as additional insureds, provided that any increase in premiums caused by the addition of such other persons shall be borne entirely by the requesting Party, and shall not be included as a Common Area Maintenance Cost. Developer shall also provide Worker's Compensation insurance as required by law, together with a contingent employer's liability endorsement in favor of each Party, covering all employees used or hired in connection with the maintenance and operation of the Common Area. Each policy of insurance hereunder (other than Worker's Compensation) shall provide that it shall not be subject to cancellation or modification except on thirty (30) days prior written notice to each insured Person.

5.3 Building Maintenance. All Buildings shall be maintained in a first-class condition by the fee owner thereof and in accordance with all applicable governmental rules and regulations and those of the Architectural Committee referred to in Section 11.2.

6. COMMON AREA MAINTENANCE COSTS

6.1 Payment by Developer. All Common Area Maintenance Costs, including any direct labor costs, shall be paid directly by Developer promptly and prior to delinquency. Developer shall expend only such monies reasonably necessary for the operation, maintenance and insurance of the Common Area and shall operate the same on a "nonprofit" basis (except for the management fee that is referred to in Section 6.2) to the end that the expense thereof will be kept to a minimum. The owner of the Dillon Parcel and each other owner shall reimburse Developer for its Pro

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Rata Share of all Common Area Maintenance Costs paid by Developer in the manner and at the times hereinafter specified.

6.2 Payment of Pro Rata Shares. No later than thirty (30) days prior to the end of each calendar quarter (January to March, April to June, July to September, and October to December), Developer shall submit to the Owners and the owner of the Dillon Parcel an estimate of their respective estimated Pro Rata Shares of Common Area Maintenance Costs for such quarter. Subject to the provisions of Section 6.8, each Owner, Developer and Dillon shall pay its Pro Rata Share of such estimate within twenty (20) days after the mailing of the statement, and, contemporaneously, Developer shall be entitled to receive a management fee as determined by separate agreement between Developer and each Owner or Occupant, including the owner of the Dillon Parcel. Developer and Dillon have at the date hereof agreed upon the management fee by separate agreement which shall be applicable throughout the term hereof and is hereby incorporated herein by reference. The initial Pro Rata Shares for Developer and Dillon are set forth in Section 1.22. Upon any sales by Developer of portions of the Developer Parcels, Developer's Pro Rata Share shall be allocated to the Owners thereof. In addition to setting forth the Pro Rata Share of each Owner, the statement of actual Common Area Maintenance Costs shall summarize by appropriate categories the Common Area Maintenance Costs for such quarter. Developer shall, within thirty (30) days after the end of each calendar quarter, submit to the Owners a statement setting forth (i) an itemization of all Common Area Maintenance Costs for the prior quarter (ii) a summary and recapitulation for such quarter of the total of all Common Area Maintenance Costs, and (iii) the Pro Rata Share of Common Area Maintenance Costs paid hereunder by the Parties and each Owner during such quarter, setting forth any amounts or credits due from or to such Owner or Party, and if there has been an underpayment each Owner and Party shall pay its Pro Rata Share

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of the deficiency immediately. If there has been an overpayment it shall be credited against the next quarterly estimated payment. Upon request of the owner of the Dillon Parcel, each such statement hereunder sent to the owner of the Dillon Parcel shall be accompanied by such documents as may be reasonably necessary to enable the owner of the Dillon Parcel to verify the accuracy of the statement.

6.3 Books and Records. Developer shall, in accordance with good bookkeeping practices, maintain a complete record of each and every item of Common Area Maintenance Cost, and any Party or Owner may from time to time demand that an audit of such expenses be made by an independent certified public accountant. Developer shall make such records available during normal business hours for inspection, preliminary accounting review or audit by the owner of the Dillon Parcel and the other Owners or their designated representatives, accountants, agents or attorneys. Developer shall pay the cost of any audit if such audit discloses an overstatement by Developer of four percent (4%) or more of (i) Common Area Maintenance Costs for any year, or (ii) the Pro Rata Share of any Owner, otherwise the cost of the audit shall be paid by the Person requesting it and shall be divided equally among such Persons if there are more than one. Developer shall also promptly repay the actual amount of any overpayment, and/or the Owners shall make such payments and give such credits as may be necessary to reflect the correct Pro Rata Share of each Owner based on such audit. Developer shall keep and maintain all records and books herein required for a period of three (3) years from the end of the year to which they apply. All records and books hereunder shall be kept by Developer at its principal place of business specified herein, or at such other address of which all Parties and Owners are given written notice not less than ten (10) days before the change is effected.

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6.4 Rights With Respect to Statements. Each Party and Owner shall have the right to request from Developer copies of such additional documents and records, such as paid invoices and cancelled checks, as may be necessary to verify the accuracy and content of each annual statement hereunder and Developer shall supply such documents and records immediately upon request. Any Party or Owner may object in writing to all or portions of any statement hereunder within thirty (30) days after receipt thereof, setting forth in reasonable detail the grounds for objection. If a Party or an Owner so objects, such Party or Owner shall pay to Developer the portion of the Party's or Owner's Pro Rata Share of Common Area Maintenance Costs to which such Party or Owner does not object within such thirty (30) day period. Developer and the objecting Party or Owner shall cooperate reasonably to settle any such dispute. In the event that it is finally determined that the objecting Party or Owner is obligated to Developer in respect to some or all of those costs and expenses objected to, the amount thereof shall bear per annum interest at the higher of fourteen percent (14%) per annum or three percent (3%) above the published prime interest rate of The Valley National Bank of Arizona, as in effect from time to time, but no more than is allowed by law.

6.5 Permitted Expenses. Developer shall submit to Dillon on or before November 1 of each year an estimated budget of the Common Area Maintenance Costs for the next calendar year. Dillon, within thirty (30) days after the receipt of the estimated budget, shall either approve or disapprove the same; provided, however, that Dillon shall not withhold its approval of the budget if it calls for maintenance and expenditures that are substantially equivalent to those of other shopping centers in the Phoenix, Arizona metropolitan area that are similar to the Shopping Center. If Dillon disapproves, it shall set forth in reasonable detail in writing its grounds for disapproval. Dillon

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shall in such event consult with Developer to establish a final approved budget hereunder. Developer shall operate and maintain the Common Area under this Article 6 in accordance with the final approved budget and shall not incur or make any Common Area Maintenance Costs for such maintenance and operation not included in the final approved budget without the prior written approval of Dillon. If Developer and Dillon cannot agree upon a budget, either of them may submit the matter to arbitration as provided in Section 16.8.

6.6 Assumption of Operation and Maintenance Duties.

(a) The Occupant of the Dillon Parcel may at any time, and from time to time, assume all or a portion of the duties of Developer pursuant to Section 5.1 pertaining to the part of the Common Area located on the Dillon Parcel. Prior to any such assumption, such Occupant shall give Developer written notice specifying, in its reasonable judgment, those conditions of maintenance and operation of the Common Area, or those failures by Developer so to maintain and operate, which such Occupant deems necessitates its assumption of the maintenance and operation of such Common Area hereunder. Developer shall have ten (10) such days from the date of such notice to cure or to commence to cure, to such Occupant's satisfaction, the conditions or failures specified in the notice. Upon expiration of such ten (10) day time period, if such Occupant is not satisfied with Developer's attempt to cure such conditions or failures, it shall so notify Developer in writing, which notice shall specify which of the duties imposed by Section 6.1 such Occupant is assuming with respect to the part of the Common Area located on the Dillon Parcel. Upon delivery of such notice to Developer, the Occupant of the Dillon Parcel shall be responsible for the duties specified in its notice, and

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Developer shall remain responsible for all duties not assumed, if any.

(b) Assumption of Responsibility. If the Occupant of the Dillon Parcel assumes responsibility pursuant to subsection 6.6(a), the applicable provisions of Article 5 shall apply to such Occupant in the same manner as they would otherwise apply to Developer (other than the provisions of this Section 6.6), and to the extent of such Occupant's assumption of obligations, Developer shall assume the applicable rights and obligations of Dillon under Article 5 (other than the right to assume maintenance and operation of Common Area under this Section 6.6). The assumption of responsibility by the Occupant of the Dillon Parcel pursuant to subsection 6.6(a) shall not cause such Occupant to become liable for the acts or omissions of Developer prior to the effective date of assumption for the duties assumed, or relieve Developer of its responsibility or liability for such acts or omissions, if any. Developer and the Occupant of the Dillon Parcel shall cooperate and assist each other in the maintenance and operation of the Common Area in order to maintain the entirety of the Common Area in first-class condition and repair in accordance with the provisions of Article 5.

(c) Transfer of Records and Equipment. Upon assumption by the Occupant of the Dillon Parcel of maintenance and operation duties under this Section 6.7, Developer shall provide any and all information and documentation to effectuate the transfer of responsibility hereunder, and the transfer of the insurance policies that are provided for herein. Developer shall also permit the Occupant of the Dillon Parcel to use any and all equipment and machinery used by Developer in connection with the operation and maintenance of the Common Area hereunder, provided that such

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Occupant pays its Pro Rata Share of the cost of acquisition, operation and maintenance of such equipment and machinery, and its Pro Rata Share of any insurance cost related thereto.

(d) Retransfer of Maintenance Duties. The Occupant of the Dillon Parcel may by written notice to Developer require Developer to reassume the responsibility for the maintenance and operation previously assumed by such Occupant. Such reassumption of responsibility by Developer shall be effective thirty (30) days after the giving of notice thereof (which notice shall describe the responsibilities to be reassumed) and such Occupant shall provide all necessary information and documentation to effectuate the transfer of responsibility back to Developer. Developer shall thereupon reassume responsibility for the duties described in such Occupant's notice.

(e) Costs and Expenses. In the event the Occupant of the Dillon Parcel assumes all or a portion of the duties of Developer for the operation and maintenance of the Common Area hereunder (including only the Common Area located on its Parcel), Developer and each Owner shall, from and after the effective date of such assumption, reimburse such Occupant for its Pro Rata Shares of all costs and expenses incurred and paid by such Occupant in connection with such operation and maintenance, together with a fee equal to the fee agreed upon by Developer and Dillon in the separate agreement that is referred to in Section 6.2. The Occupant of the Dillon Parcel shall submit statements to Developer and all Owners of all such costs and expenses quarterly on the tenth day of the month following the quarter to which the statement applies. All amounts due from Developer and Owner as shown thereon shall be paid by Developer and each Owner within thirty (30) days of the date of each statement.

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The Occupant of the Dillon Parcel shall also, within sixty (60) days of the end of each calendar year, submit to Developer and all Owners statements summarizing and recapitulating for such year the totals of all such costs and expenses and the total amount paid hereunder by Developer and each Owner during such year, setting forth any amounts or credits due from or to such Occupant. If the amount paid by Developer or any Owner for the calendar year to which the statement applies is less than that shown to be due by the statement, Developer and Owner shall, within thirty (30) days of the date of the statement, pay the difference due the Occupant of the Dillon Parcel as shown on such statement. If the amount paid by Developer and each Owner for the calendar year to which the statement applies is greater than that shown to be due by the statement, Developer and each Owner shall receive a credit for the excess amount against payments due for the current calendar year.

6.7 Designation of Managing Agent. Developer may, at its option, but subject to the prior written approval of the owner of the Dillon Parcel, which approval shall not be withheld unreasonably, designate an independent management company to perform Developer's obligations under Articles 5 and 6, but such designation shall not excuse or release Developer from any of its obligations. If the owner of the Dillon Parcel does not object to such designation within thirty (30) days after request by Developer, the designation shall be deemed to have been approved. The management company shall be paid a fee by Developer which shall not be part of Common Area Maintenance Costs.

6.8 Adjustments to Pro Rata Computation for Taxes. Notwithstanding anything herein to the contrary appearing, with respect to the amount of liability each Owner and Party has with respect to the real property taxes included within Common Area

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Maintenance Costs, Dillon shall pay the real estate taxes attributable to the Common Area located on its Parcel and the Owners or Occupants and Developer shall be responsible on a pro rata basis (computed on the basis of their Pro Rata Shares) among themselves only for the balance of the real property taxes due on the Common Area.

7. DAMAGE OR DESTRUCTION TO COMMON AREA

7.1 Repair of Damage. In the event of any damage or destruction to the Common Area during the term of this Declaration from any cause (whether or not covered under insurance required to be carried by any Party or Owner under this Declaration), Developer shall, unless the Parties agree otherwise, promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damage or destroyed Common Area to a condition equal to or better than the condition existing prior to the event of damage or destruction, to the same general appearance as existed immediately prior to such damage or destruction and in accordance with the applicable standards of this Declaration for an integrated shopping center pursuant to a uniform general plan. Developer shall undertake such work in a manner which will cause as little disruption of and interference with the use of the remainder of the Common Area and Building Areas as reasonably possible in accordance with the applicable requirements of this Declaration. Developer shall use all due diligence to complete restoration and repair of the Common Area hereunder as expeditiously as possible so that the same may be available for use and operating as part of the Shopping Center with as little delay and as little disruption as circumstances will permit. Any contractor retained by Developer to undertake such work of repair and restoration of the Common Area and any contract with such contractor shall be subject to the prior written approval of Dillon.

7.2 Payment of Costs. Any insurance proceeds paid to any Party or Owner on account of such damage or destruction, and not

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attributable to damage or destruction of that Party's or Owner's Building, shall be made available to Developer for use in reconstruction and repair of the Common Area hereunder. In the event that such amounts are insufficient to cover the cost of the work hereunder, the Parties and Owners shall each bear their respective Pro Rata Shares of the costs which exceed such amounts. The amount of any available insurance proceeds and each Party's and Owner's Pro Rata Share of any excess amount shall be made available by the Parties and Owners to Developer on a progressive payments basis during the work of repair and restoration of the Common Area hereunder.

8. LIENS

The Person maintaining the Common Area pursuant to Article 6 shall keep the Shopping Center free from any and all liens arising out of any work performed, materials furnished to or obligations incurred in connection with the maintenance and operation of the Common Area under this Declaration. The Person maintaining the Common Area shall, within thirty (30) days after the date of the imposition of any such lien, pay the lien claim in full, unless it desires to contest any such lien claim, in which case it shall, within such thirty (30) day period and as a condition precedent to its right so to contest, record a bond of a responsible corporate surety, in accordance with Arizona Revised Statutes, Section 33-1004, in such amount as may be required to release the lien from the affected Parcels.

9. CLEAR AREAS

In the event that, at any time during the term of this Declaration and after the fencing requirement set forth in Section 3.6 is applicable, there are Building Areas, Pads or Future Building Areas upon which no Building has been constructed, or from which existing Buildings have been razed and not replaced, the Party or Owner owning each such Building Area, Pads or Future Building Area shall maintain such Building Area or

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Future Building Area in a safe, neat and attractive condition, free of weeds and debris, and take necessary and appropriate measures to prevent and control the emanation of dust and dirt from such Building Area, Pads or Future Building Area, which may include use of gravel, grass, ground cover or the sealing of the ground surface. In the event that construction of a Building or other improvement is not commenced on such Building Area, Pads or Future Building Area within two (2) years after the date of completion of construction of the Fry's Building, or the razing of the Buildings thereon, the Party or Owner owning such Building Area, Pads or Future Building Area shall plant ground cover thereon, or landscape the Building Area, Pads or Future Building Area, in a manner that is compatible and harmonious with the Shopping Center landscaping, and maintain the same until construction of Buildings or other improvements on such Building Area, Pads or Future Building Area is commenced. Upon the start of any construction thereon, the Party or Owner owning such Building Area or Future Building Area shall fence off such Building Area, Pads or Future Building Area, in accordance with Section 3.6 if the Owner of the Dillon Parcel so requests.

10. INDEMNIFICATION, INSURANCE, DAMAGE AND DESTRUCTION

10.1 Common Area Indemnity. Each Party and Owner shall indemnify, defend and hold the other Parties and Owners harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any person or any accident, injury, loss or damage, howsoever caused, to any person or property as shall occur in or about the Common Area located on such Party's or Owner's Parcel, except claims resulting from the negligence or willful act or omission of the indemnified Party or Owner or any Occupant or User of any such Party's or Owner's Parcel, wherever the same may occur.

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10.2 Building Area Indemnity. Each Party and Owner shall indemnify, defend and hold the other Parties and Owners harmless from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to or as a result of the death of any person or any accident, injury, loss or damage, howsoever caused, to any person or property as shall occur in or about the Building Areas located on each Party's and Owner's Parcel, or caused by the negligence or willful act or omission of such Party or Owner or any Occupant of any such Party's or Owner's Parcel, or the agents, servants or employees of such Party, Owner or Occupant, wherever the same may occur, except (i) claims released under Section 10.10, but only to the extent of such release, (ii) claims resulting from the negligence or willful act or omission of the indemnified Party or Owner or any Occupant or User of any such Party's or Owner's Parcel, wherever the same may occur, and (iii) mechanic's liens which arise from work performed for the benefit of one Party or Owner on another Owner's Parcel (i.e. utility systems, access routes). Where a Party or the Owner of a Parcel agrees to allow a utility or other easement to be constructed on his Parcel for the benefit of another Party or Owner, the Party or Owner who benefits from such an easement agrees to indemnify and hold harmless the Party or Owner of the Parcel from and against any and all claims, expenses, liabilities, loss, damage and costs, including reasonable attorney's fees, and any actions or proceedings in connections therewith, incurred in connection with, arising from, due to or as a result of the death of any person or any accident, injury, loss or damage, however caused, to any person or property as shall occur in connection with the construction, use, and maintenance of such easement.

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10.3 Public Liability Insurance. Each Party, Occupant and Owner shall at all times during the term hereof maintain or cause to be maintained comprehensive public liability insurance covering the Building Areas located on such Party's or Owner's Parcel, insuring against the risks of bodily injury, property damage and personal injury liability with respect to such Building Areas located on such Parcel, and providing contractual liability coverage for the indemnity obligations contained in Sections 10.1 and 10.2, with a limit not less than Five Million Dollars (\$5,000,000.00) per occurrence, coverage to be in a comprehensive general liability form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage, (ii) including employees as additional insureds, (iii) providing for blanket contractual coverage, broad form property damage coverage, products completed operations, owner's protective and personal injury coverage, and (iv) providing for coverage of employers automobile non-ownership liability. If Dillon so elects, its insurance hereunder may provide for a "deductible" in an amount equal to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) as to any portion of the coverage. If Developer (but not any successor or assignee, even if the successor or assignee becomes a Party) so elects, its insurance hereunder may provide for a "deductible" in an amount equal to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) as to any portion of the coverage. Each policy of insurance maintained by a Party or an Owner hereunder shall name the other Parties and Owners as additional insureds. All such insurance shall be primary and non-contributory; shall provide for severability of interests; shall provide that an act or omission of one of the insureds or additional named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the insured or other additional named insureds as the case may be; and shall afford coverage for all claims based on acts,

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missions, injury and damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. The limits of insurance specified herein may be reviewed by Dillon not more often than at five (5) year increments and Dillon may thereupon require higher limits.

10.4 Fire Insurance and Rebuilding. Each Party and Owner shall carry fire insurance, with extended coverage for normal insurable risks including but not limited to, vandalism and malicious mischief endorsements, upon all Buildings upon its Parcel, with coverage in an amount of not less than ninety percent (90%) of the full replacement cost thereof (excluding foundations or excavations). If Dillon so elects, its insurance hereunder may provide for a "deductible" in an amount equal to not more than ten percent (10%) of the coverage referred to above. The loss, if any, covered by such insurance shall be paid to the insured Party or Owner, unless payment of all or a portion of said insurance is required to be paid to a mortgagee, deed of trust beneficiary or leaseback lessor, as its interest may appear. Each Party and Owner shall have the right and power to adjust and settle any loss with its insurer. In the event of any damage to or destruction of any Building from any cause for which insurance is required to be maintained under this Section 10.4, the affected Party or Owner shall, unless the damage or destruction is to the extent of more than sixty percent (60%) of the replacement cost thereof, repair any such damage or destruction and reconstruct the Building in accordance with (i) the concept of an integrated Shopping Center, and (ii) the provisions of this Declaration. Upon any damage to or destruction of a Building to an extent exceeding sixty percent (60%) of its replacement cost, or upon any substantial damage to or destruction of the Fry's Building, the affected Party or Owner may elect not to repair or reconstruct its Building. If Dillon so elects not to repair or reconstruct, Developer may, at its option,

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exercisable at any time within thirty (30) days after receipt of a notice of election from Dillon, elect to purchase the Dillon Parcel for a purchase price equal to its then fair market value as determined by three appraisers who shall each be a member of the American Institute of Real Estate Appraiser (MAI). One such appraiser shall be appointed by Developer, one by Dillon, and the one by the two so appointed. The closing shall occur within sixty (60) days after Developer's election and Dillon shall transfer title by special warranty deed free from all monetary liens and encumbrances.

10.5 Obligations On Rebuilding. Whenever a Party or an Owner is required under this Article 10 to rebuild, replace or repair any Building or other improvement damaged or destroyed from any cause whatsoever, the work of such rebuilding, replacement or repair shall be completed with all due diligence and as soon as possible after the event of damage or destruction occurs. The work of rebuilding, replacement or repair shall be undertaken by the Party or Owner in accordance with all the terms of this Declaration, including the provisions of Section 11.2 with respect to the approval of plans. Such Party or Owner shall prosecute completion of the improvements as expeditiously as possible so that the same may be open for business and operating as part of the Shopping Center with as little delay and disruption as circumstances will permit. The proceeds of all insurance shall be used by the affected Party or Owner in payment for the restoration and reconstruction of the Building. The affected Party or Owner shall commence restoration and reconstruction as herein provided as soon as possible after receipt of the proceeds of insurance therefor and shall use all due diligence to repair or reconstruct within a reasonable period of time thereafter.

10.6 Obligations When Party or Owner Need Not Rebuild. In the event of any damage or destruction to any Building or

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improvement located on the Building Area of any Party's or Owner's Parcel, which damage or destruction the Party or the Owner of the Parcel is not obligated to repair under this Declaration, such Party or Owner shall, at its sole cost and expense, either (i) repair, restore, or rebuild the same with due diligence in accordance with the applicable requirements of this Declaration, or (ii) raze and demolish such Building or improvement (or such part thereof that has been damaged or destroyed), clear the affected area of all debris and thereafter comply with the applicable requirements of Article 9 with respect to clear areas.

10.7 Self Insurance. Any insurance required to be maintained by Dillon hereunder may be maintained either under a plan of self-insurance or from a carrier which specializes in providing coverage to or for Dillon or its affiliates or firms in the same or related businesses; provided, however, that Dillon shall be entitled to utilize such self-insurance or special coverage only for such periods as the net worth of Dillon or any affiliate corporation that shall provide a certificate of self-insurance for and on behalf of Dillon or Fry's exceeds Fifty Million Dollars (\$50,000,000.00).

10.8 Blanket Coverage. Any policy required to be maintained by a Party or an Owner hereunder may be maintained under a so-called "blanket policy" insuring other persons and other locations so long as the amount of insurance required to be provided hereunder is not thereby diminished.

10.9 Other Insurance Requirements. Any policy of insurance required to be carried by a Party or an Owner under this Declaration shall provide that such policy may not be cancelled or modified without at least thirty (30) days prior written notice to the other Owners. Each Party or Owner shall furnish to the other Parties or Owners on or before the effective date of any policy of insurance required to be carried under this

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Declaration, a certificate thereof stating that such insurance is in full force and effect, that the premiums therefor have been paid, that the other Parties and Owners (and any other Person required to be so named) have been named additional insureds where required, evidencing that the policy contains the required waivers of subrogation and that such insurance may not be cancelled or modified without at least thirty (30) days prior written notice to the other Parties and Owners.

10.10 Mutual Release. To the extent permitted by law, each Party and Owner for itself, and, to the extent it is legally possible for it to do so and without affecting the coverage provided by insurance required to be maintained by any Party or Owner hereunder, on behalf of its insurer, hereby releases and waives any right to recover against the other Parties and Owners from any liability for (i) damages for injury to or death of Persons, (ii) any loss or damage to property, including without limitation the property of any Party, Owner, Occupant or User located upon or in the Shopping Center, (iii) any loss or damage to Buildings or other improvements or the contents thereof, (iv) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is covered by the insurance required to be carried hereunder by such Party or Owner or is otherwise insured, or (v) claims arising by reason of any of the foregoing. Each Party and Owner shall, to the extent such insurance endorsement is available, obtain or cause to be obtained, for the benefit of the other Parties and Owners, a waiver of any such right of subrogation which the insurer of such Party or Owner may acquire against the other Parties and Owners by virtue of the payment of any such loss covered by such insurance.

11. PADS, FUTURE BUILDING AREA AND OTHER CONSTRUCTION

11.1 Additional Buildings. Subject to the provisions contained in this Declaration, Developer may develop and con

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struct within any Pad or Future Building Area on the Developer Parcels additional Buildings and improvements, and each Party and Owner may remodel and reconstruct existing Buildings and improvements located in the Building Area on its Parcel. Developer may remodel and reconstruct or make alterations in or additions to the Common Area, but only in accordance with Article 13.

11.2 Approval of Plans. Prior to the commencement of any development, construction, remodeling or reconstruction referred to in Section 11.1, the Party or Owner proposing such work shall submit to the Architectural Committee which shall have been appointed by the Parties, for review and approval scaled elevations and a scaled exterior foot print, including, without limitation, exterior design concepts, material selection, color and signing for the exterior surfaces of the affected Building or other improvement. The Architectural Committee shall either approve, disapprove or make recommendations for change in the plans so submitted by notice in writing given within thirty (30) days after receipt thereof. Any disapproval or recommendation for change shall specify with particularity the reason therefor and justify the disapproval or recommendation by reference to the criteria set forth in this Declaration. Upon any such disapproval or recommendation for change, the Party or Owner proposing such work and the Architectural Committee shall mutually consult to establish a final plan for the proposed work. The Architectural Committee shall not arbitrarily or unreasonably withhold approval of the plan or recommend changes in a plan which otherwise conforms with the requirements of this Declaration. No approval of any plan shall constitute assumption of responsibility for the accuracy, sufficiency or propriety of the plan or a representation or warranty that the plan calls for construction of economic improvements or improvements which comply with applicable laws. No material change shall be made in

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any plans approved hereunder or work of construction hereunder unless the plan for the work as so changed is first approved by the Architectural Committee as herein provided.

The Architectural Committee shall consist of three (3) members who shall serve at the pleasure of the Parties: one appointed by Developer; one appointed by Dillon; and an architect jointly appointed by Developer and Dillon.

12. ADDITION OF PROPERTY TO SHOPPING CENTER

No real property (other than the Buildings and improvements on the Parcels which are contemplated or permitted by this Declaration) may be added to, become integrated into, become part of, or be developed for use in conjunction with Phases 1A, 2A and 3 of the Shopping Center without the prior written consent of the Parties which may be withheld in each Party's sole discretion.

13. COMMON AREA ALTERATION

No change in the Common Area which (i) reduces the number of parking spaces therein, or (ii) calls for construction of additional Common Area (including any parking structures), or (iii) changes in any manner the parking layout or pattern of traffic flow thereon, or (iv) makes any other material change in the Common Area configuration, shall be made except by amending this Declaration pursuant to Section 22.2, in order to among other things, substitute a new Site Plan showing such changes in the Common Area. No other change may be made in the Common Area without the prior written approval of the Parties. The recording by the Parties of an amended Site Plan pursuant to subsection 2.4(b) shall be deemed an amendment within the meaning of Section 22.2.

14. AREA LIMITATIONS AND MERCHANTS ASSOCIATION

14.1 Limitations on Expansion. No Person shall make any extensions or enlargements of Buildings or structures in the

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Building Areas located, including without limitation, basements, second story levels, and upstairs, which will create Gross Floor Area in excess of the Allowed Gross Floor Area provided in Section 2.4 for such Building Area and/or Parcel.

14.2 Merchants' Association. Each Occupant, other than the Occupant of the Dillon Parcel and any other Occupants which Developer in its sole discretion shall elect to exclude, shall join a Merchants' Association which shall be formed by Developer in accordance with the requirements set forth in Exhibit "C" attached hereto and made a part hereof.

15. CONDEMNATION

15.1 Distribution. Any award of compensation or damages, whether the same be obtained by agreement or by judgment, verdict or order in a legal proceeding resulting from a taking of any Parcel, or any portion thereof, by exercise of right of condemnation or eminent domain or resulting from a requisitioning of any Parcel, or a portion thereof, by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance shall be distributed in accordance with the terms of the agreement, or judgment, verdict, or order made in the proceedings. In the event of any sale of any Parcel or any portion thereof under threat of condemnation, such Parcel or portion thereof shall for all purposes be deemed to have been "taken" as that term is used in this Article 15, and the net price received therefor after deduction of the expenses of the sale borne by the Owner of the Parcel taken shall be deemed to constitute an "award" as that term is used herein.

15.2 Condemnation of Common Area. In the event that condemnation or eminent domain or other taking (hereinafter collectively referred to as an "Appropriation") results in a permanent taking of the Common Area on the Parcel of any Party or Owner, or a temporary taking for a period of more than sixty (60) days, so that the number of parking stalls in the Shopping Center is reduced more than ten percent (10%), or in the event that the

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number of parking stalls on the Dillon Parcel is reduced more than twenty percent (20%), or in the event of an Appropriation of abutter's rights, access or other actions which reduces the efficiency of the Common Area of the Shopping Center or on any Parcel by more than twenty percent (20%), or in the event of any other Appropriation which, in Dillon's reasonable discretion, substantially and materially restricts ingress and egress to the Shopping Center from adjoining streets, or which substantially impairs the internal automobile circulation and/or traffic flow pattern within the Common Area, in any of such events, the Parties shall immediately consult to attempt to provide functionally equivalent replacement Common Area and/or access, traffic flow and circulation in the Shopping Center. The Parties and Owners shall devote the net proceeds of the awards received by each Party and Owner attributable to an Appropriation of Common Area to provide the replacement Common Area hereunder. In the event that such amounts are insufficient to cover the cost of providing replacement Common Area hereunder, the Parties and Owners shall each bear their respective Pro Rata Share of the cost which exceeds such amounts. In the event that such amounts exceed the cost of providing replacement Common Area hereunder, the excess proceeds will be distributed among the affected Party(s) or Owner(s) based on their respective Pro Rata Share of the common area condemned. Except as provided in Section 15.3, no Appropriation resulting in a taking of the Common Area on the Parcel of any Party or Owner shall terminate this Declaration without the written consent of the Parties. All reconstruction necessitated by condemnation will be completed in accordance with the standards and procedures set forth in Section 7.1.

15.3 Certain Termination Rights. If (i) an Appropriation results in a taking of more than ten percent (10%) of the Gross Floor Area of the Fry's Building and it is not possible, in Dillon's or Fry's judgment to utilize the remaining available

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Building in order to restore the Gross Floor Area so taken so that the Gross Floor Area within the Fry's Building equals at least eighty percent (80%) of that existing prior to the Appropriation, or (ii) an Appropriation of Common Area which reduces the number of parking stalls or the efficiency of the Common Area as specified in Section 15.2 by more than twenty percent (20%) and the Parties are unable to agree on replacement Common Area under Section 15.2 within one hundred eight (180) days of the date of the Appropriation, then either Party shall have the right to terminate this Declaration upon not less than sixty (60) days prior written notice to the other Party. In the event that a Party whose property is partially condemned does not exercise an option to terminate, the Party will reconstruct its remaining improvements in accordance with the standards and procedures set forth in Section 10.5. Upon any termination pursuant to this Section 15.3, the Parties and Owners shall grant to each other permanent reciprocal access easements not less than thirty (30) feet in width over and across their respective Parcels in order to provide access to all contiguous public roadways. Such easements shall be located so as to provide reasonable vehicular and pedestrian access and they may be relocated from time to time so long as reasonable access is maintained.

15.4 Interests Affected. Nothing contained in this Declaration shall entitle any Party or Owner to share in any award made to any other Party or Owner whose Parcel is taken by eminent domain, other than as provided in Section 15.2 and, to the extent an award is made, for the interests of a Party or an Owner created by this Declaration in the Parcel taken.

16. RIGHTS UPON DEFAULT

16.1 Right to Cure. If any Party, Owner or Occupant defaults in the performance of any of the obligations of this

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Declaration, the non-defaulting Party or Parties, and each of them, shall have the right, but not the obligation, upon twenty (20) days written notice, if the defaulting Party, Owner or Occupant does not commence to cure within such twenty-day period and thereafter diligently prosecute the cure to completion within a reasonable time to cure such default for the account of and at the expense of the defaulting Party, Owner or Occupant; provided, however, that in the event of emergency conditions constituting default, the non-defaulting Party or Parties acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the Party giving such notice proposes to take in order to cure the claimed default. To effectuate any such cure, the non-defaulting Party shall have the right to enter upon the Parcel of the defaulting Party, Owner or Occupant (but not any Buildings on such Parcel) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party, Owner or Occupant. Each Party and Owner shall be responsible hereunder for the default of its Occupants.

16.2 Legal and Equitable Relief. Each Party and Owner shall have the right to prosecute any proceedings at law or in equity against any Party, Owner or Occupant, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, in order to prevent the violating or defaulting Party, Owner or Occupant, or any such Person from violating or attempting to violate or defaulting upon the provisions of this Declaration and to recover damages for any such violating or default. The remedies available under this Section 16.2 shall include, by way of illustration but not

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limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Declaration.

16.3 Costs of Cure. All costs and expenses reasonably incurred by any Party to cure a default of a defaulting Party, Owner, Occupant or Person under the provisions of Section 16.1, together with interest thereon, at four percent (4%) in excess of the prime interest rate of The Valley National Bank of Arizona as published from time to time, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to any Party by an order of court pursuant to Sections 16.2 and 16.4, shall be assessed against and paid by the defaulting or violating Party, Owner, Occupant or Person.

16.4 Lien. Costs and expenses accruing and/or assessed pursuant to Section 16.3 and pursuant to Article 5 shall constitute a lien against the defaulting Party's or Owner's Parcel or the interest therein of the Person in default hereunder. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County in which the Shopping Center is located, by the Party making the claim. The claim of lien shall include the following:

- (a) Name. The name of the lien claimant;
- (b) Basis of Claim. A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party;
- (c) Identification of Owner. An identification of the Party, Owner or reputed Owner of the Parcel or interest therein against which the lien is claimed.
- (d) Parcel Description. A description of the Parcel against which the lien is claimed.

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(e) Work Performed. A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and

(f) Statement of Claim. A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date and recorder's number hereof.

The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party or Owner against whom the lien is claimed, by personal service or by mailing pursuant to Section 22.8 and by personal service at or mailing to the address given for the mailing of tax statements in the Office of the Tax Collector of the County in which the Shopping Center is located for the Parcel or interest against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of Arizona.

16.5 Removal of Lien. If the Party or Owner against whom a lien is claimed posts either (i) a bond executed by an approved corporate surety, or (ii) an irrevocable letter of credit executed by a national banking association, which bond or letter of credit (aa) names as the principal or payee, and is in form satisfactory to, the Party imposing the lien, (bb) is in the amount of 1-1/2 times the claim of lien, and (cc) unconditionally provides that it may be drawn upon by the claiming the lien in the event of a final judgment entered by a court of competent jurisdiction in favor of such Party, then the Party imposing the lien shall record a notice extinguishing the lien or take such action as may be reasonably required by a title insurance company requested to furnish a policy of title insurance on such Parcel deleting the lien as an exception thereto. The defaulting Party

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or Owner shall post the bond or letter of credit by delivery to the Party claiming the lien. All costs and expenses to obtain the bond or letter of credit, and all costs and expenses incurred by the Party or Owner required to extinguish a lien claim hereunder shall be borne by the Party or Owner against whom the lien is claimed, unless such Party or Owner shall be the prevailing party in any litigation challenging the asserted lien.

16.6 Waiver and Remedies Cumulative. No waiver by any Party or Owner of any default under this Declaration shall be effective or binding on such Party or Owner unless made in writing by such Party or Owner and no such waiver shall be implied from any omission by a Party or an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provisions contained in this Declaration. All of the remedies permitted or available to the Parties and Owners under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

16.7 Estoppel Certificate. Any Party or Owner may, at any time and from time to time, in connection with the sale or transfer of the Party's or Owner's Parcel, or in connection with the financing or refinancing of the Party's or Owner's Parcel by mortgage, deed of trust or sale-leaseback made in good faith and for value, deliver written notice to the other Parties and Owners requesting such Parties and Owners to certify in writing that to the knowledge of the certifying Party or Owner, the requesting

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Party or Owner is not in default in the performance of its obligations under this Declaration, or, if in default, to describe therein the nature and amount of any and all defaults. Each Party or Owner receiving such request shall execute and return such certificate within thirty (30) days following the receipt thereof. Failure by a Party or an Owner to execute and return such certificate within the specified period shall be deemed an admission on such Party's or Owner's part that the Party or Owner requesting the certificate is current and not in default in the performance of such Party's or Owner's obligations under this Declaration. The Parties and Owners acknowledge that such certificate may be relied upon by transferees, mortgagees, deed of trust beneficiaries and leaseback-lessors.

16.8 Arbitration. In addition to its rights and options hereunder in the event of default, a non-defaulting Party or Parties shall have the right to initiate an arbitration proceeding in Phoenix, Arizona according to the rules of the American Arbitration Association and judgment upon the award may be entered in any court having jurisdiction.

17. TRANSFERS OF INTEREST, RIGHTS, POWERS AND OBLIGATIONS

Wherever in this Declaration the Parties reserve to themselves rights, powers and obligations, such rights, powers and obligations are personal to the Parties, and each of them, and may not be exercised or undertaken by other Owners or transferees except as herein set forth. In no event shall the rights, powers and obligations conferred upon the Parties pursuant to this Declaration be at any time transferred or assigned by either of the Parties except through a transfer of their respective interests in their respective Parcels, and then only to the extent and in the manner hereinafter provided:

(a) Transfer of Entire Interest. In the event of the transfer, conveyance or termination of the whole of the interest of any Party in its Parcel (or any leasehold

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interest in a Parcel) without retaining any beneficial interest therein other than as beneficiary under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate, or any other similar interest, then the rights and powers conferred upon and the obligations under this Declaration of the transferring Party shall be transferred and assigned with its interest, or termination thereof.

(b) Retention of Interest. In the event that (i) the whole of the interest of either Party in its Parcel is transferred or conveyed, but a new interest is created in the transferring Party simultaneously with the conveyance of its previous interest, by way of leasehold, life estate, or any other similar interest, or (ii) the transferring Party shall convey its interest in its Parcel, or a portion thereof, by deed of trust, mortgage or other security instrument as security for any obligation or indebtedness of such Party, then none of the rights and powers conferred upon or obligations under this Declaration of the transferring Party shall be transferred or assigned with the transfer or conveyance of its interest, but all of the rights and powers conferred upon and obligations under this Declaration of the transferring Party shall remain in such Party so long as such Party retains, under (i) above, the new interest in and to its Parcel (other than as beneficiary under the terms of a deed of trust or mortgage), or so long as such Party remains, under (ii) above, the beneficial owner of its Parcel. Upon the termination of the new interest created in the transferring Party as specified in this subsection (b), the rights and powers conferred upon, or the obligations of such Party shall vest in accordance with subsection (a) or (c) hereof, whichever is applicable,

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as if the new interest created in such Party had never existed, subject only to the provisions of Article 18.

(c) Multiple Ownership. In the event that either Party or any Owner transfers or conveys its interest in its Parcel, or any portion of its Parcel or interest in its Parcel, other than Pads, in such manner as to vest ownership of the Parcel or interest therein in more than one Person, then the Persons owning all of such interest in such Parcel, other than Pads, shall be jointly considered a single Owner and such Persons, other than the Owner of Pads, shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Declaration and to receive any notices required hereunder. If an Owner fails to make such a designation, notice may be given to any one of such Persons.

(d) Effect of Designation. In the absence of such written designation, the acts of the Owner whose interest is so divided with respect to the performance of the provisions of this Declaration shall be binding upon all of the Persons owning any interest in such Parcel, until such time as the written designation is properly served and recorded as provided by this Article 17, and whether or not such Owner retains any interest in the Parcel or Parcels in question. The exercise or performance of any rights, powers or obligations of an Owner under this Declaration by the Person designated to represent such Owner shall be binding upon all Persons having an interest or right in such Parcel and/or upon all Persons having an interest in such Owner. So long as such designation remains in effect, all Persons having an interest or right in the Parcel and/or all Persons having an interest or right in such Owner shall act only through such Person designated hereunder and the other Owners shall have the right to deal exclusively with and rely solely upon the

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acts or omissions of such Person in the performance or provisions of this Declaration.

(e) Removal of Designated Person. Any Person designated hereunder may be removed by the Persons so designating, in accordance with any procedure agreed to between them, provided that written notice of such removal and designation of a new Person to act as the Owner on behalf of all such Persons under this Declaration is given and made in the manner specified in this Article 17, and in the absence of any such written notice and designation, the previous designation shall continue in effect and the acts of the Person previously designated with respect to the performance of the provisions of this Declaration shall be binding upon all such Persons until such time as the written notice and designation is properly served as provided by this Article 17.

(f) Designation of Person by Other Owners. Notwithstanding anything to the contrary herein contained, if (i) at any time after a Person has been designated to act on behalf of an Owner hereunder, such Person is removed or dies, becomes incapacitated or is dissolved and no new Person is designated to act on behalf of such Owner pursuant to this Article 17, or (ii) if a Person has not been designated hereunder within thirty (30) days after any other Owner receives notice of any change in ownership of any portion of a Parcel which would give rise to the requirements for designation under this Article 17, or (iii) if the designation of a Person to act on behalf of an Owner earlier than the expiration of such thirty- (30) day period is reasonably necessary to enable or entitle any other Owner to comply with any of its obligations under this Declaration, or to take any other action which may be necessary or permitted to carry out the purposes of this Declaration,

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then in any such event, the other Owners acting jointly or, upon failure of such joint action, any other Owner at any time may make such designation of a Person to act as the Owner on behalf of all such Persons comprising such Owner under this Declaration, which designation shall be made and given in accordance with the applicable provisions of this Article 17. Such designation made hereunder shall retain in full force and effect until the Persons comprising such Owner make a new designation pursuant to the provisions of this Article 17.

(g) Status of Designated Person. Any Person designated pursuant to the provisions of this Article 17 shall be the agent of each of its principals, hereby irrevocably appointed for such purpose, and upon whom service of any process, writ, summons, order or other mandate of any nature of any court in any action, suit or proceeding arising out of this Declaration may be made, and service upon such designated Person shall constitute due and proper service of any such matter upon each of its principals, provided a copy of such matter is also mailed to such principals at the principals' last addresses known to the sender.

(h) Interests in Owners and Encumbrances. Nothing contained herein shall affect or impair the right of each Owner to issue and transfer ownership interests in itself, or to encumber its interest in the Shopping Center.

18. RELEASE UPON SALE OF INTEREST

18.1 Sale by Party or Owner. Upon the assignment, conveyance, sale or other transfer by any Party or Owner of its entire right, title and interest in its Parcel, that Party or Owner shall be released from the obligations of this Declaration as a Party and the Owner of such Parcel arising subsequent to the effective date of such sale or transfer (other than those obligations arising from any default by such Party or Owner in

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the performance of any provision of this Declaration prior to such sale or transfer, including payment of any amounts which may then be due and owing under this Declaration), provided that such Party or Owner shall have given notice to all other Parties and Owners of such transfer and delivered the assumption statement required by Section 18.4 concurrently with the filing for record of the instrument effecting the transfer.

18.2 Sale by Party Maintaining Common Area. In addition to the provisions of Section 18.1, upon transfer by the Party maintaining the Common Area under Article 5 of its entire right, title and interest in its Parcel, such Party shall be released from the obligations of this Declaration only if it has delivered to the other Party a final closing statement detailing the Common Area Maintenance Costs as of the effective date of the transfer of its right, title and interest in its Parcel. Any amounts due such Party pursuant to the provisions of this Declaration at the time of such transfer shall be paid in accordance with the provisions of this Declaration at the times herein specified, but the amounts due shall be appropriately prorated or otherwise broken down so that those amounts due for costs and expenses paid by such Party shall be paid to such Party, and those amounts due for costs paid by any successor to such Party shall be paid to that successor.

18.3 Liability of Transferor. In no event shall any transferee of any Party or Owner be liable for any default under this Declaration of the transferring Party or Owner which occurred prior to the effective date of the transfer of all right, title and interest in the affected Parcel to the transferee; provided, however, that nothing contained in this Section 18.3 shall affect the existence, priority, validity or enforceability of any lien placed upon the affected Parcel under the provisions of Section 16.4 of this Declaration prior to the effective date of the transfer.

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18.4 Assumption Statement. Concurrently with the transfer of all right, title and interest in any Parcel by any Party or Owner, the transferee shall execute and deliver to the other Parties and Owners a written statement in which: (i) the name and address of the transferee shall be disclosed, and (ii) the transferee shall acknowledge its obligation to be bound by this Declaration and perform all obligations hereunder in accordance with the provisions of this Declaration. Failure to deliver any such written statement shall not affect the running of any covenants herein with the land as provided by Section 20.1, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Declaration, but such failure shall constitute a default by the transferee hereunder.

18.5 Right of First Refusal. Should Dillon elect to convey, sell or otherwise transfer all of its right, title and interest in its Parcel to a purchaser which is not associated or affiliated with Kroger Company, Inc., Fry's, or any subsidiary corporation thereof, without retaining any beneficial interest therein or without simultaneously acquiring a new interest by way of leasehold, life estate, or any other similar interest, Dillon shall give Developer notice, in writing, of the bona fide offer to purchase. Developer shall have the right of first refusal to meet any such bona fide offer within forty-five (45) days after its receipt of such notice. Upon the expiration of the forty-five (45) day period, Dillon shall be free to sell its Parcel to such bona fide purchaser in accordance with the terms and conditions of its offer and this right of first refusal shall be of no further force or effect; provided, however, that in the event the sale to such bona fide purchaser is not consummated, the right of first refusal given to Developer in this Section 18.5 shall remain in full force and effect.

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however, that Val Vista Lakes Development and any successor Developer shall be permitted to assign, convey or transfer its interest in the Shopping Center only with the prior written consent of Dillon and such consent shall be automatic as long as D.Thomas Stapley, Donald T. Stapley, Jr., T. Dennis Barney, William Raymond Olsen and Gerald J. Ricke, jointly or severally, comprise fifty percent (50%) or more of the ownership interest of the successor Developer.

1.8 Developer Parcels: The real property described in Exhibit "A-2" attached hereto and made a part hereof.

1.9 Dillon: Dillon Real Estate Co., Inc., a Kansas corporation. All references herein to Dillon shall mean and refer to the Owner of the Dillon Parcel, whether Dillon or its successors or assigns.

1.10 Dillon Parcel: The real property described in Exhibit "A-1" attached hereto and made a part hereof.

1.11 Fry's: Fry's Food Stores of Arizona, Inc., a California corporation. All references herein to Fry's shall mean and refer to the Occupant of the Fry's Building, whether Fry's or its successors or assigns.

1.12 Fry's Building: The Building that is to be constructed in the Building Area on the Dillon Parcel.

1.13 Future Building Areas: Those parcels shown as 5, 7, 8, 9, 10 and 14 on the Site Plan and existing in Phases 1B, 2B, 4 and 5 where additional Buildings and improvements may be located at some future time pursuant to this Declaration. When a Future Building Area is improved with a Building, it shall automatically become a Building Area. Prior to such improvement, each Future Building Area shall be maintained by and at the expense of the Owner of the Parcel upon which such Future Building Area is located.

1.14 Gross Floor Area: The total floor area contained within the boundaries of the exterior surface of exterior walls

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19. EFFECT OF BREACH UPON PURCHASERS AND MORTGAGEES

19.1 No Termination. The breach of this Declaration shall not entitle any Party, Owner or Person to cancel, rescind or otherwise terminate this Declaration, or any conditions, covenants, easements or restrictions hereunder.

19.2 Mortgagee Protection. This Declaration, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Party, Owner and Parcel, shall be superior and senior to any lien placed upon any Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any Person (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

19.3 Subordination As To Encumbrance Prior To Lien Claim. Any lien created pursuant to the provisions of Section 16.4 shall be subject and subordinate to the interests of any bona fide purchaser or encumbrancer of all or any part of a Parcel, or any interest therein, for fair value, who acquired its interest prior to the date of recordation of the claim of lien, notwithstanding the fact that the claim of lien may be asserted with respect to work performed or costs incurred prior to the date the claim was duly recorded.

19.4 Subordination As To Encumbrance Whether Prior To Lien Claim Or Not. In addition, any lien claim pursuant to the provisions hereof shall be subject and subordinate to the interest held by any bona fide encumbrancer under a mortgage, deed of trust or the holder of title under a sale and leaseback

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arrangement (which title is subject to no prior contractual encumbrance securing payment of money), contracted in good faith and for fair value in connection with financing on customary and usual terms with respect to the Parcel, or portion thereof, which is the subject of the claim of lien, regardless of the date of filing thereof. For purposes of this mortgagee protection clause, a sale and leaseback shall be entitled to the benefits of the clause provided for herein in the event that title to a Parcel (or portion thereof) is transferred by a Party or the Owner against whom the lien is claimed subject to no encumbrance securing an obligation for payment of money (other than a lien to secure payment of real estate taxes) and the Parcel (or portion thereof) is leased back in its entirety by the Party or Owner against whom the lien is claimed, which Party or Owner assumes in the leaseback arrangement full responsibility for performance of all obligations to be performed hereunder.

20. COVENANTS AND RECORDATION

20.1 Covenants Run With the Land. All of the provisions, agreements, rights, powers, covenants, conditions and obligations contained in this Declaration shall be binding upon and inure to the benefit of the Parties, Owners, their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, Occupants and all other Persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever; provided, however, that the rights, powers and obligations of the Parties are personal to each of them and may be transferred only in accordance with Article 17. All of the provisions of this Declaration shall constitute equitable servitudes and be covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel (i) is for the benefit of each other Parcel and is a burden upon each other

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Parcel, (ii) runs with each Parcel, and (iii) shall benefit or be binding upon each successive Owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any Owner of any Parcel, or any portion thereof. Each covenant may be enforced as part of the uniform general plan for the Shopping Center.

20.2 Recordation. This Declaration shall become effective and binding upon all Parties, Owners, Occupants and Users, and their respective successors in interest in accordance with the provisions of this Article 20 upon recordation of this Declaration in the office of the County Recorder of the County in which the Shopping Center is located. Recordation shall be effected by Dillon. All costs of recordation shall be borne equally by the Parties. Upon recordation of this Declaration, Dillon shall deliver to Developer a copy of the recorded Declaration.

21. PROPERTY TAXES

21.1 Payment of Property Taxes. Each Party and each Owner or Occupant shall pay or cause to be paid directly when due all real property taxes and other special taxes and assessments which may be levied or assessed against its Parcel or Building Area (including without limitation, any tax or assessment attributable to any interest created by this Declaration), and any and all real property taxes and other special taxes and assessments levied or assessed against the portion of the Common Area lying within each Party's and Owner's or Occupant's Parcel, Pad or Building Area. If after the execution of this Declaration there is a period of time in which the Parcels, Pads and Building Area have not been segregated for tax purposes, then each Party and Owner or Occupant will pay its Pro Rata Share of any taxes attributable to its Parcel and in any event will pay its Share or Pro Rata Share, as the case may be, of the taxes attributable to the Common Area.

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21.2 Contest of Property Taxes. Each Party and Owner may contest (or allow to be contested) in good faith any real property tax or other special tax or assessment levied upon its Parcel. Any such contested tax or assessment shall be paid, however, prior to the time when the affected Parcel can be subjected to sale under any applicable law pursuant to a proceeding which may result in impairment of the rights created hereunder or terminate any provision hereof as applied to any Parcel. The Parties and Owners who are not parties to such contest shall execute such documents as may be necessary to establish or evidence the contesting Party's or Owner's right to contest any such tax, assessment or charge. The Party or Owner making such contest shall indemnify the other Parties and Owners against any loss, cost, damage, injury or expense arising out of or relating to the conduct of such contest, but no Party or Owner shall be charged with responsibility as a result of any such contest for any increased taxes allegedly resulting therefrom or as a result thereof.

21.3 Effect of Contest. No Party or Owner shall contest the assessed value of its Parcel by making a claim that its assessed value is reduced by virtue of the covenants, easements and restrictions contained in this Declaration unless all Parties and Owners claim such a reduction and file similar contests. If all Parties and Owners contest the assessed value of their Parcels due to the covenants, easements and restrictions agreed upon herein, the value of the appurtenant rights under the easement(s) in question will be added to each individual Parcel on a pro rata basis.

22. MISCELLANEOUS

22.1 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Parties or any Owners, Users or Occupants in their respective businesses or otherwise, nor shall it cause them

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to be considered joint venturers or members of any joint enterprise. This Declaration is not intended nor shall it be construed to create any third party beneficiary rights in any person who is not a Party, or an Owner or Occupant, unless expressly otherwise provided.

22.2 Termination and Amendment. Except as otherwise specified in this Declaration, this Declaration may be cancelled, changed, modified or amended in whole or in part only by written and recorded instrument executed by the Parties. Notwithstanding any other provisions of this Declaration to the contrary, all the provisions hereof shall terminate upon the eightieth (80th) anniversary date of the recordation hereof.

22.3 Approvals. Unless otherwise herein provided, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of any Party, Owner, Occupant or User, it shall not be unreasonably withheld. Unless provision is made for a specific time period, approval shall be deemed given within thirty (30) days after receipt of the written request for approval, and if a Party, Owner, Occupant or User shall neither approve nor disapprove within such thirty (30) day period, or other time period as may be specified in this Declaration for approval, that Person shall then be deemed to have given its approval. If a Party, Owner, Occupant or User shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party, Owner, Occupant or User to or of any act or request by any other Party, Owner, Occupant or User shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

22.4 First Class. The term "first class" when used in this Declaration in connection with the maintenance, operation or condition of the Shopping Center, or any portion thereof, shall refer to a comparative standard of quality judged in accordance

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with other similar well-maintained shopping centers within the same geographical location as the Shopping Center.

22.5 Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center, or of any Parcel, or portion thereof, to the general public, for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Declaration shall be strictly limited to and for the purposes herein expressed for the development, maintenance and operation of a private shopping center on private property solely for the benefit of the Parties. Pursuant to the provision of this Section 22.5, and notwithstanding any other provision to the contrary herein contained, any Party or Owner shall have the right to prevent or prohibit the use of its Parcel, or any portion thereof, including Common Area and Buildings and improvements located thereon, by any Person, including Users, for any purpose that may impair the operation of an integrated first-class private shopping center for retail and commercial purposes as contemplated by this Declaration. The Parties, by appropriate rules and regulations adopted pursuant to this Declaration, shall have the right to prohibit and regulate any use of the Shopping Center by any Person, including Users, for any purpose that may impair such operation of an integrated first-class shopping center.

22.6 Excusable Delays. Whenever performance is required of any Party or Owner hereunder, that Party or Owner shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing, or other labor disputes, or damage to work in progress by reason of fire or other casualty or cause beyond the reasonable control of a Party or an Owner (financial inability, imprudent management or

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negligence excepted), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. Any Party or Owner who shall encounter any such delay shall notify in writing the other Parties and Owners specifying the nature of, the cause, and the expected duration of the said delay or delays, and keep the other Owners reasonably informed of its continuance and cessation.

22.7 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Declaration as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of the Declaration.

22.8 Notices.

(a) Procedure. Any notice to any Party or Owner shall be in writing and given by delivering the same to such Party or Owner in person or by sending the same by United States registered, certified or express mail, return receipt requested, with postage prepaid, or by "Federal Express" or similar overnight delivery, to the Party's mailing address shown hereinabove and to any other Owners who have notified the Parties and all other Owners of their mailing addresses. Any Party or Owner may change its mailing address at any time by giving written notice of such change to the other Parties and Owners in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

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(b) Form and Effect of Notice. Every notice (other than the giving or withholding of consent, approval or satisfaction under this Declaration, but including requests therefor) given to a Party, an Owner or other Person shall comply with the following requirements. Each such notice shall state: (i) the Article or Section of this Declaration pursuant to which the notice is given; (ii) the period of time within which the recipient of the notice must respond or if no response is required, a statement to that effect; and (iii) if applicable, that the failure to respond to the notice within the stated time period shall be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice. Each request for consent or approval shall contain reasonably sufficient data or documentation to enable the recipient to make an informed decision. In no event shall notice be deemed given nor shall a Party's or an Owner's approval of, consent to, or satisfaction with, the subject matter of a notice be deemed given by such Party's or Owner's failure to object or respond thereto if such notice did not fully comply with the requirements of this Section 22.8. No waiver of this subsection 22.8(b) shall be implied from any act (including conditional approvals, if any) of a Party or an Owner, unless such waiver shall be in writing, specifying the nature and extent of the waiver.

22.9 Entire Agreement. This Declaration and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and the Exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against either Party.

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22.10 Captions. The captions preceding the text of each Article, Section or subsection (other than in Article 1) and subsection and the Table of Contents hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Declaration.

22.11 References. All references herein to a given Article, Section or subsection refer to the Article, Section or subsection of this Declaration.

22.12 Minimization of Damages. In all situations arising out of this Declaration, all Parties and Owners shall attempt to avoid and minimize the damages resulting from the conduct of any other Party and Owner. Each Party hereto shall take all necessary measures to effectuate the provisions of this Declaration.

22.13 Litigation Expenses.

(a) Payment to Prevailing Party. If any Party or Owner shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other Party or Owner by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement of any provision hereof, or to interpret, or otherwise arising out of this Declaration, the prevailing Party or Owner in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing Party" within the meaning of this Section 22.13 shall include, without limitation, a Party or an Owner who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached or consideration substantially equal to the relief sought in the action, unless determined as part of the settlement.

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(b) Attorneys' Fees in Third Party Litigation. If any Party or Owner is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim or third party claim) because of any other Party's or Owner's breach of or failure to enforce this Declaration, or otherwise arising out of this Declaration, then the Party or Owner so initiating or defending shall be entitled to reasonable attorneys' fees from such other Owner.

(c) Scope of Fees. Attorneys' fees under this Section 22.13 shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

22.14 Signature Pages. For convenience, the signatures of each of the Parties to this Declaration may be executed and acknowledged on separate pages which when attached to this Declaration shall constitute this as one complete Declaration.

22.15 Time. Time is of the essence of this Declaration and each and every provision hereof.

22.16 Tract Declaration. This Declaration shall be deemed to be a "Tract Declaration" establishing the Shopping Center Parcel as a "Shopping Center Use" within the meaning of the Declaration with respect to "Val Vista Lakes" that was recorded April 4, 1985 at Recorder's No. 85-149821, records of Maricopa County, Arizona.

IN WITNESS WHEREOF, the Parties hereto have executed and acknowledged this Declaration as of the date first above written.

VAL VISTA LAKES DEVELOPMENT

By

Charles T. Staples Jr.

By

T. Dennis Barney

[Developer]

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DILLON REAL ESTATE CO., INC.

By *David B. Dillon*
 Its *Vice Pres.*

[Dillon]

State of Arizona

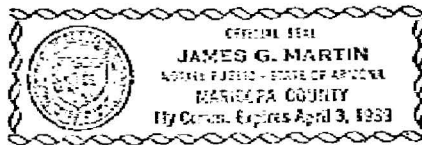
County of Maricopa

The foregoing instrument was acknowledged before me this
11th day of Nov, 1986, by *Donald T. Stapley Jr.* and
Donald B. Barker, on behalf of VAL VISTA LAKES DEVELOPMENT,
 an Arizona general partnership.

In witness whereof, I hereunto place my hand and official
 seal.

James G. Martin
 Notary Public

My commission expires:



State of Kansas

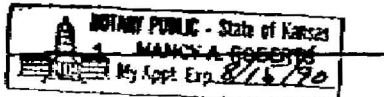
County of Reno

The foregoing instrument was acknowledged before me this
11th day of November, 1986, by *David B. Dillon*, the
Vice President of DILLON REAL ESTATE CO., INC., a Kansas
 corporation.

In witness whereof, I hereunto place my hand and official
 seal.

Nancy A. Roberts
 Notary Public

My commission expires:



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**CONSENT AND APPROVAL
OF LENDER**

The undersigned lender, which is the holder of a mortgage lien on the property described in Exhibit "A", for and on behalf of itself and its successors and assigns, hereby consents to and approves the foregoing Declaration of Easements, Covenants and Restrictions, and agrees that its lien is subject to the Declaration of Easements, Covenants and Restrictions.

Dated: October 14, 1986

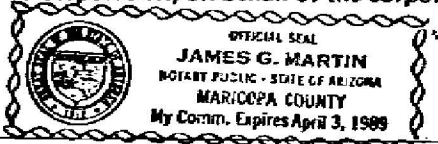
Western Savings & Loan

By [Signature]
Its Vice-President

STATE OF Arizona
County of Maricopa } ss.

Acknowledged before me on Oct. 14, 19 86, by Tim Wright
the Vice-President of Western Savings and Loan Association who acknowledged himself to be

a corporation, on behalf of the corporation.



James G. Martin
Notary Public
My commission expires:

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SHOPPING CENTER PARCEL

LEGAL DESCRIPTION

Tract A, VAL VISTA LAKES, I-B Amended as
recorded in Book 288, Page 35, M.C.R.

EXHIBIT, A

EXHIBIT A

(Part 2)

**LAKEVIEW VILLAGE DECLARATION OF EASEMENTS, COVENANTS
AND RESTRICTIONS RECORDED NOVEMBER 14, 1986**

Engineering and Surveying of Arizona, Inc.

110 S. Mesa Dr., Suite 1 • Mesa, Arizona 85202
Phone: (602) 969-3200

R. James Smets
President - Owner

Consulting Civil Engineers and Surveyors

5/15/86
Job # 860530

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LEGAL DESCRIPTION PROPOSED TRACTS D, E AND PARCEL 12 FOR FRYES

A portion of "Tract 'A' of Val Vista Lakes I-B Amended" as recorded in Book 288, Page 35, M.C.R., Arizona, being more particularly described as follows:

Commencing at the S.W. corner of Section 33, T.1N., R.6E., G. & S.R.B. & M., Maricopa County, Arizona;

Thence S. 89° 21' 33" E. along the South line of said Section 33, also being the North line of Section 4, T.1S., R.6E., G. & S.R.B. & M., Maricopa County, Arizona, and the centerline of Baseline Rd. a distance of 450.56 feet;

Thence S. 00° 38' 27" W. a distance of 65.00 feet to a point on the North property line of said Tract A and the TRUE POINT OF BEGINNING;

Thence S. 88° 21' 33" E. along said North property line a distance of 570.00 feet;

Thence S. 01° 38' 27" W. a distance of 124.00 feet;

Thence N. 88° 21' 33" W. a distance of 40.00 feet;

Thence S. 01° 38' 27" W. a distance of 381.88 feet to a point on a curve;

Thence along a curve to the left having a radius of 420.00 feet, a central angle of 010° 06' 31", an arc length of 74.10 feet, and a chord which bears S. 71° 03' 56" W., 74.01 feet to a point of compound curve;

Thence along a curve to the left having a radius of 167.00 feet, a central angle of 005° 37' 59", an arc length of 16.42 feet, and a chord which bears S. 63° 11' 42" W., 16.41 feet;

Thence N. 88° 21' 33" W. a distance of 768.13 feet to a point of curve;

Thence along a curve to the right having a radius of 499.41 feet, a central angle of 009° 09' 31", an arc length of 79.83 feet, and a chord which bears N. 83° 46' 48" W., 79.75 feet to a point on the East property line of said Tract A;

Thence along a curve to the left along said East property line having a radius of 1982.63 feet, a central angle of 000° 43' 21", an arc length of 25.00 feet, and a chord which bears N. 10° 26' 18" E., 25.00 feet;

Thence along a curve to the left having a radius of 474.41 feet, a central angle of 009° 10' 40", an arc length of 75.99 feet, and a chord which bears S. 83° 46' 14" E., 75.91 feet;

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EXHIBIT, A-1

Engineering and Surveying of Arizona, Inc.

110 S. Mesa Dr., Suite 1 • Mesa, Arizona 85202
Phone: (602) 969-3200

Consulting Civil Engineers and Surveyors

R. James Smets
President - Owner

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Thence S. 88 ° 21 ' 33 " E. a distance of 490.14 feet;
Thence N. 01 ° 38 ' 27 " E. a distance of 259.71 feet;
Thence S. 88 ° 21 ' 33 " E. a distance of 16.71 feet;
Thence N. 01 ° 38 ' 27 " E. a distance of 93.00 feet;
Thence N. 88 ° 21 ' 33 " W. a distance of 70.00 feet;
Thence S. 01 ° 38 ' 27 " W. a distance of 13.00 feet;
Thence N. 88 ° 21 ' 33 " W. a distance of 115.00 feet;
Thence N. 01 ° 38 ' 27 " E. a distance of 175.00 feet to the TRUE POINT OF
BEGINNING and containing 240,000.00 sq. ft. or 5.5096 acres of land, gross,
more or less.

SUBJECT TO: Any easements, restrictions, or right-of-ways,
recorded or otherwise.

DEVELOPER PARCELSLEGAL DESCRIPTION

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A portion of "Tract 'A' of VAL VISTA LAKES 1-B Amended" as recorded in Book 288, Page 35, M.C.R., Arizona, EXCEPT as follows:

Commencing at the S.W. corner of Section 33, T.1N., R.6E., 6. & S.R.B. & M., Maricopa County, Arizona;

Thence S. 88° 21' 33" E. along the South line of said Section 33, also being the North line of Section 4, T.1S., R.6E., 6. & S.R.B. & M., Maricopa County, Arizona, and the centerline of Baseline Rd. a distance of 450.56 feet;

Thence S. 88° 38' 27" W. a distance of 65.00 feet to a point on the North property line of said Tract A and the TRUE POINT OF BEGINNING;

Thence S. 88° 21' 33" E. along said North property line a distance of 570.00 feet;

Thence S. 01° 38' 27" W. a distance of 124.00 feet;

Thence N. 88° 21' 33" W. a distance of 40.00 feet;

Thence S. 01° 38' 27" W. a distance of 381.88 feet to a point on a curve;

Thence along a curve to the left having a radius of 420.00 feet, a central angle of 010° 06' 31", an arc length of 74.10 feet, and a chord which bears S. 71° 03' 56" W., 74.01 feet to a point of compound curve;

Thence along a curve to the left having a radius of 167.00 feet, a central angle of 005° 37' 59", an arc length of 16.42 feet, and a chord which bears S. 63° 11' 42" W., 16.41 feet;

Thence N. 88° 21' 33" W. a distance of 768.13 feet to a point of curve;

Thence along a curve to the right having a radius of 499.41 feet, a central angle of 009° 09' 31", an arc length of 79.83 feet, and a chord which bears N. 83° 46' 48" W., 79.75 feet to a point on the East property line of said Tract A;

Thence along a curve to the left along said East property line having a radius of 1982.63 feet, a central angle of 000° 43' 21", an arc length of 25.00 feet, and a chord which bears N. 10° 26' 18" E., 25.00 feet;

Thence along a curve to the left having a radius of 474.41 feet, a central angle of 009° 10' 40", an arc length of 75.93 feet, and a chord which bears S. 83° 46' 14" E., 75.91 feet;

EXHIBIT A-2

110 S. Mesa Dr., Suite 1 • Mesa, Arizona 85202
Phone: (602) 969-3200

R. James Smets
President - Owner

Engineering and Surveying of Arizona, Inc.

Consulting Civil Engineers and Surveyors

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Thence S. 88 ° 21 ' 33 " E. a distance of 490.14 feet;

Thence N. 01 ° 38 ' 27 " E. a distance of 259.71 feet;

Thence S. 88 ° 21 ' 33 " E. a distance of 16.71 feet;

Thence N. 01 ° 38 ' 27 " E. a distance of 93.00 feet;

Thence N. 88 ° 21 ' 33 " W. a distance of 70.00 feet;

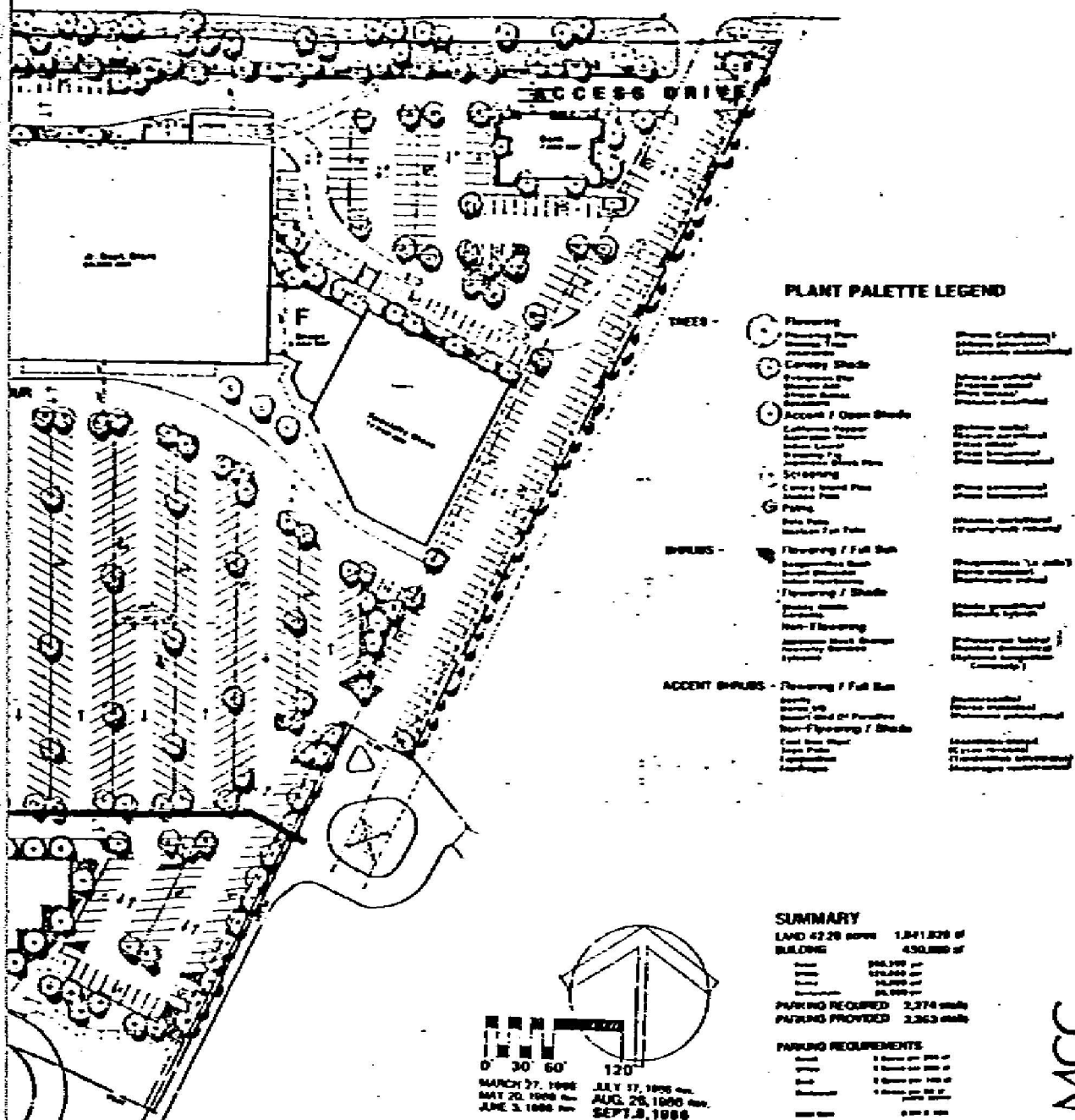
Thence S. 01 ° 38 ' 27 " W. a distance of 13.00 feet;

Thence N. 88 ° 21 ' 33 " W. a distance of 115.00 feet;

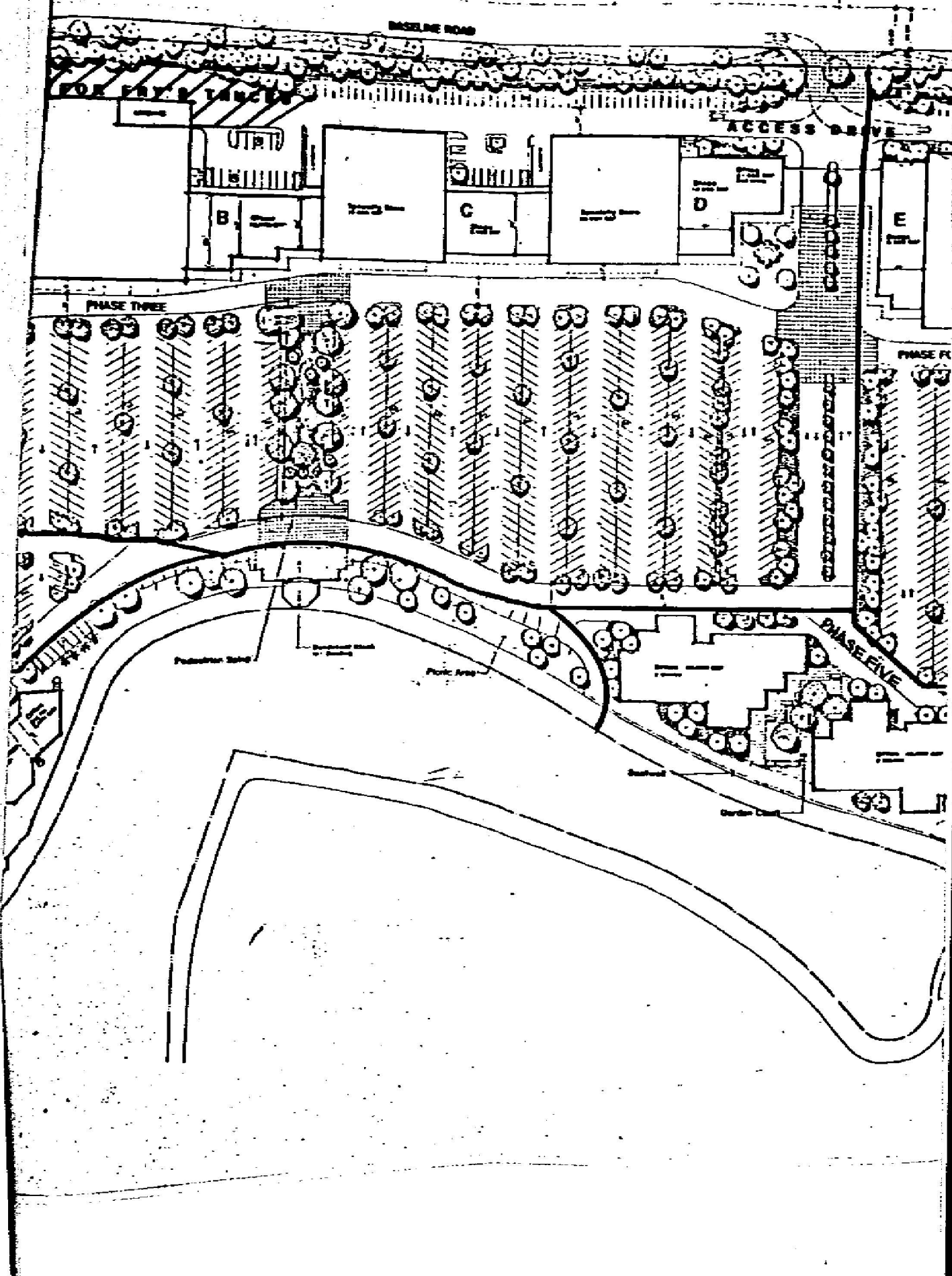
Thence N. 01 ° 38 ' 27 " E. a distance of 175.00 feet to the TRUE POINT OF BEGINNING and containing 740,000.00 sq. ft. or 5.5096 acres of land, gross, more or less.

SUBJECT TO: Any easements, restrictions, or right-of-ways,
recorded or otherwise.

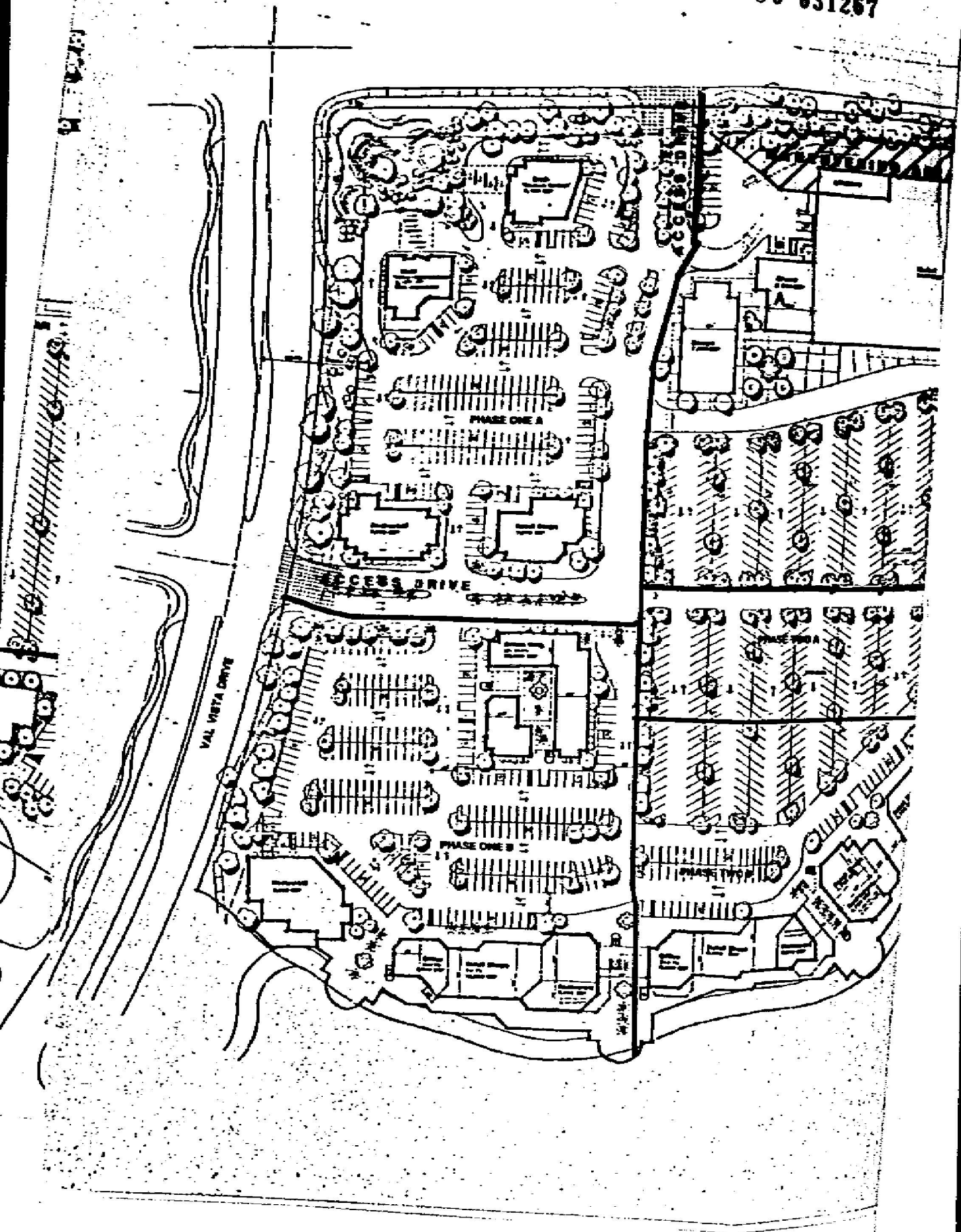
86 631267



86 631267



86 631267

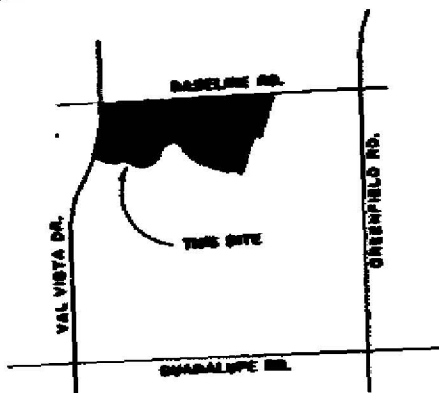


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PERMANENT PLAT

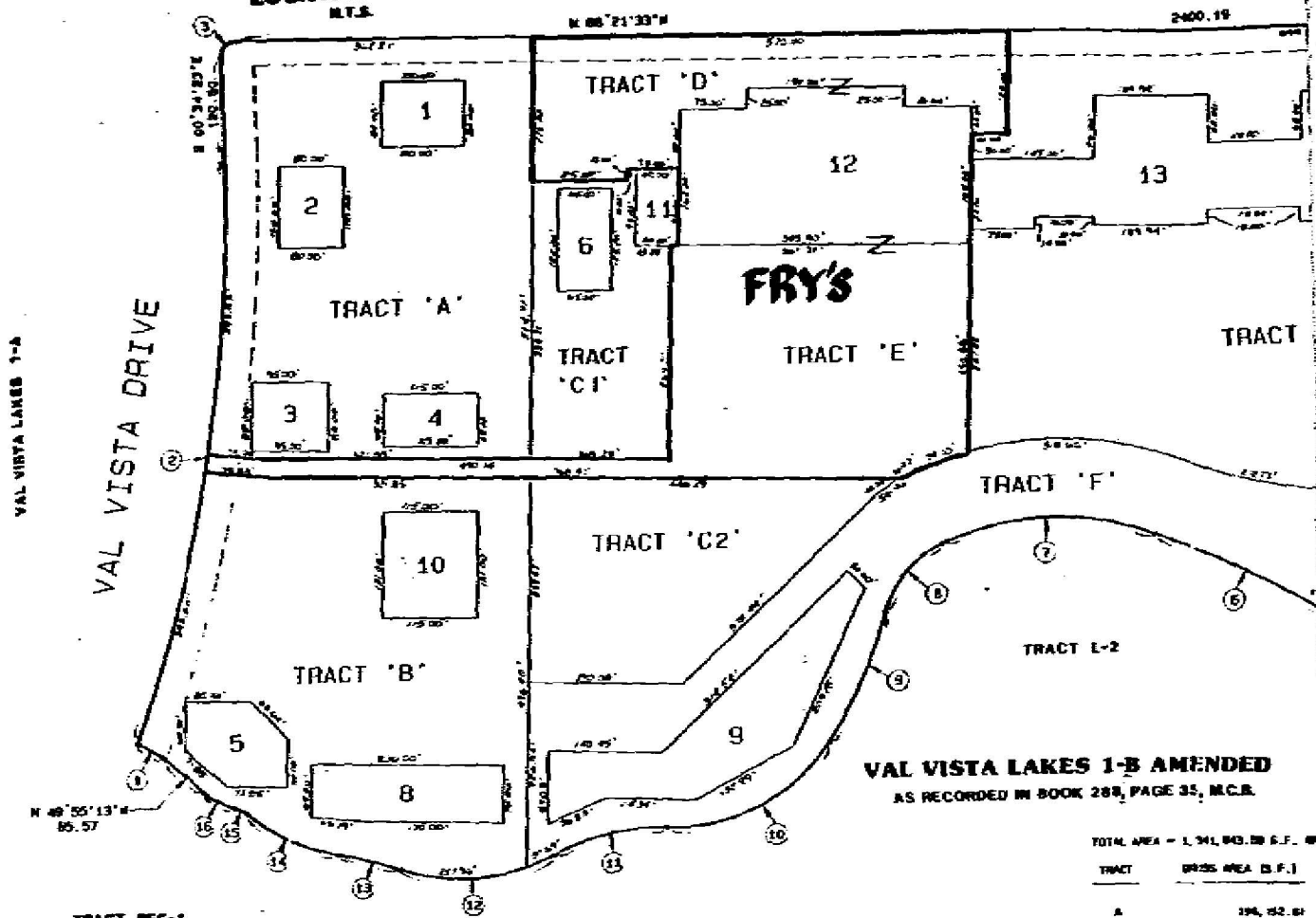
LAKEVIEW VILLAGE

TRACT A OF VAL VISTA LAKE
AS RECORDED IN BOOK 288,
A PORTION OF THE N.W. 1/4 & N.E.
E.6E., G. & S. R. E. & M., MARICOP



LOCATION MAP
R.T.S.

BASELINE R



VAL VISTA LAKES 1-B AMENDED
AS RECORDED IN BOOK 288, PAGE 35, M.C.R.

TOTAL AREA = 1,341,043.50 S.F. OR

TRACT AREA (S.F.)

TRACT	AREA (S.F.)
A	194,152.87
B	199,438.08
C1	76,413.48
C2	78,385.88
D	82,775.88
E	125,800.88
F	152,772.88
L-2	342,188.15
2	308,877.38
	132,888.87

PAGE AREA (S.F.)

PAGE	AREA (S.F.)
1	8,888.88
2	8,888.88
3	8,875.88
4	7,475.88
5	11,385.73
6	8,125.88
7	8,888.88
8	16,325.88
9	34,888.74
10	5,385.88
11	5,385.88
12	51,875.88
13	75,885.88
14	88,888.87

NOTE: PARCELS 13 & 14 ARE 70'

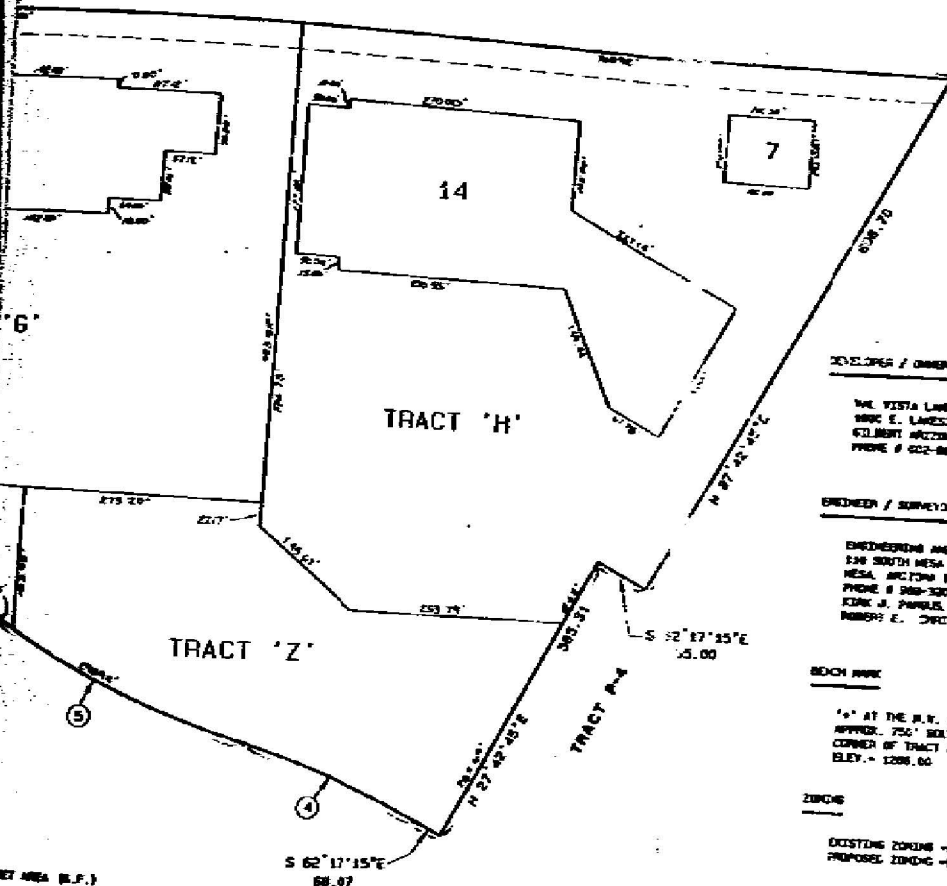
Curve No.	Radius	Delta	Length	Tangent	Chord
1	117.88	019 17 29	39.82	20.00	N 55 33 58 W 39.44
2	1982.83	021 21 41	739.18	373.93	N 10 06 27 E 734.90
3	20.00	082 12 50	32.19	20.79	S 45 32 02 W 28.83
4	1175.00	009 20 13	191.48	85.85	N 68 26 46 W 191.27
5	1225.00	015 05 15	322.59	192.23	S 65 34 15 E 321.44
6	1175.00	011 50 19	242.78	121.82	N 63 56 46 W 242.34
7	325.00	045 50 18	280.01	137.41	S 68 55 49 W 253.13
8	125.00	050 31 56	110.24	58.00	S 48 44 42 W 106.71
9	545.00	018 13 31	173.36	87.42	N 24 35 29 E 172.53
10	225.00	058 46 35	230.81	126.72	N 63 05 30 E 220.83
11	275.00	030 14 57	145.19	74.33	S 77 21 24 W 143.51
12	240.00	046 42 28	135.85	103.53	N 88 35 07 E 190.28
13	500.00	009 01 06	78.70	39.43	N 75 34 12 W 78.62
14	240.00	029 50 08	124.97	63.94	S 85 09 41 E 123.57
15	40.00	024 45 23	17.28	8.78	N 62 37 18 W 17.15
16	100.00	025 04 47	43.77	22.24	S 82 27 37 E 43.42

E CENTER

1-B AMENDED
PAGE 35, N.C.E.
1/4 OF SECTION 4, T.1S.,
A COUNTY, ARIZONA

86 631267

ROAD



DEVELOPER / OWNER

THE VISTA LINES DEVELOPMENT
1800 E. LAKESIDE DR.
GILBERT, ARIZONA 85234
PHONE # 602-862-0900

ENGINEER / SURVEYOR

ENGINEERING AND SURVEYING OF ARIZONA, INC.
130 SOUTH MESA DRIVE SUITE 1
MESA, ARIZONA 85202
PHONE # 360-3300
KIM A. PARSONS, P.E. # 52344
ROBERT E. CHRISTENSEN, P.E. # 15517

BEACH MARK

* AT THE N.W. CORNER OF TRANSDITION TOWER
APPROX. 750' SOUTH OF BASELINE RD. 1' THE S.E.
CORNER OF TRACT 1.
ELEV. = 1208.00 T.C.S. DATA

ZONING

EXISTING ZONING - PND PSC-2
PROPOSED ZONING - PND PSC-2

UTILITIES

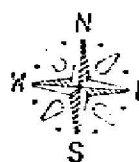
WATER - TOWN OF GILBERT
SEWER - TOWN OF GILBERT
ELECTRIC - GALT RIVER PROJECT
TELEPHONE - MOUNTAIN BELL
REFUSE - TOWN OF GILBERT
FIRE - RURAL METRO

SITE DATA

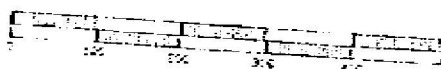
TOTAL SUBDIVISION - 1,841,843.35 S.F. UNDEVELOPED
TOTAL NO. PARCELS - 54
TOTAL NO. TRACTS - 10

NOTES

1. ALL CONSTRUCTION TO CONFORM WITH THE LATEST ZONING OF GILBERT, MARICOPA COUNTY AND U.S.A. SPECIFICATIONS.
2. ALL UTILITIES TO BE INSTALLED UNDERGROUND.
3. EASEMENTS FOR UTILITIES TO BE ON THE FINAL LOT.



SCALE: 1" = 100'



FOR TITLE
DATE
DRAWN BY
CHECKED BY
JOB NO.
REVISION TRACT 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L, 1-M, 1-N, 1-O, 1-P, 1-Q, 1-R, 1-S, 1-T, 1-U, 1-V, 1-W, 1-X, 1-Y, 1-Z

ENGINEERING AND SURVEYING OF ARIZONA, INC.
110 S. MESA DR., SUITE 1, MESA, AZ 85202
(602) 969-3300

EXHIBIT B-2

fry05

MERCHANTS' ASSOCIATION

86 631267

Developer reserves the right to establish a Merchants' Association (hereinafter "Association") and set all rules and regulations of the Association from time to time as it deems appropriate for the purpose of encouraging its members to deal fairly and courteously with their customers, to encourage ethical business practices and to assist the business of its members through sales promotions and centerwise advertising. Except for the Occupant of the Dillon Parcel, who shall not be obligated to become a member or pay any dues or other amounts with respect thereto, all Owners (or in applicable cases an Occupant) shall be members of the Association and shall comply with all obligations, rules and regulations of the Association.

EXHIBIT C

EXHIBIT B
DECLARATION OF PHILIP WATTS

STATE OF ARIZONA

COUNTY OF MARICOPA

I, Philip Watts, being first duly sworn, do hereby state under oath and penalty of perjury that the following statement is true and correct:

1. I am over the age of 18, of sound mind, and capable of making an affidavit.
2. I serve on the Board of Directors of JMB Ministries, an Arizona nonprofit corporation ("JMB Ministries").
3. I am also the Secretary-Treasurer of JMB Ministries.
4. In my role as the Secretary-Treasurer, I maintain records of regularly conducted business activity for JMB Ministries.
5. On September 29, 2021, JMB Ministries entered into a month-to-month lease with Gateway Triangle Development, LLC, a California limited liability company ("Gateway").
6. JMB Ministries leased 3761 East Baseline Road, Suite H-126, from Gateway, which is a suite in the Lakeview Village shopping center located on the southeast corner of Val Vista and Baseline in Gilbert, Arizona ("Suite H-126").
7. A true and accurate copy of JMB Ministries' lease with Gateway is attached as **Exhibit 1** (the "Lease").
8. The President of JMB Ministries is Pastor Jonathan Bagley.
9. Pastor Bagley signed the Lease.
10. The Lease states on the first page that the "Permitted Use of Premises" is "Solely for the operation of a religious bookstore and church and for no other use or purpose."
11. I negotiated the Lease on behalf of JMB Ministries.
12. I met in person with a representative from Gateway named Alan Kia to negotiate

the Lease.

13. I told Mr. Kia that JMB Ministries would be using Suite H-126 to operate a church.

14. The name of JMB Ministries' church was Journey Church.

15. I explained to Mr. Kia that JMB Ministries planned to operate Journey Church out of Suite H-126 for the first year, move into the next largest suite the following year, move into the next largest suite the year after that, and eventually, we planned to move into the Fry's building.

16. I did not tell Mr. Kia, or anyone else at Gateway, that JMB Ministries planned to operate a religious bookstore out of Suite H-126.

17. At a later date, Mr. Kia asked us to put some books in the window of Suite H-126 to show that Journey Church had a bookstore.

18. Journey Church did not have a bookstore, though it did have some books that people could check out and bring back if they wanted to.

19. Journey Church was a small church of approximately 50-75 attendees.

20. We gathered together for worship services on Sunday mornings.

21. Occasionally, we would host breakfasts at the church or have youth group meetings during the week.

22. A photograph of Journey Church's signage at Suite H-126 is attached as **Exhibit 2**.

23. We wrote scripture verses on the walls inside Suite H-126.

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24. Journey Church operated out of Suite H-126 from October 2021 through October 2025.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 27, 2026.

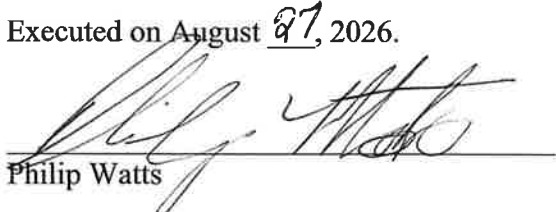

Philip Watts

EXHIBIT 1

DECLARATION AND CERTIFICATION OF CUSTODIAN OF RECORDS
Pursuant to Arizona Rules of Evidence 803(6) and 902(11)

I, Philip Watts, state and depose as follows:

1. I am a qualified records custodian or other qualified person for JMB Ministries, an Arizona nonprofit corporation, and I am authorized to make this certification on its behalf.
2. I have personal knowledge of the record-keeping practices of JMB Ministries, or I am familiar with how these records are created and maintained.
3. The attached Shopping Center Lease dated September 29, 2021 (59 pages) is a true and correct copy of records that:
 - A. Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - B. Were kept in the course of the regularly conducted activity of JMB Ministries; and
 - C. Were made by the regularly conducted activity as a regular practice of JMB Ministries.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27 day of August, 2026.



Philip Watts, Director and Secretary-Treasurer
JMB Ministries, an Arizona nonprofit corporation

SHOPPING CENTER LEASE

THIS LEASE ("Lease") is made as of the 29th day of September, 20 21, by and between Landlord and Tenant. In consideration of the agreements, covenants and promises contained in this Lease and other good and valuable consideration, the receipt, sufficiency and validity of which is hereby acknowledged, Landlord and Tenant agree as follows:

"Basic Lease Definitions": For the purposes of this Lease, the following terms shall have the following definitions and meanings:

"Landlord": GATEWAY TRIANGLE DEVELOPMENT, LLC, a California limited liability company

"Landlord's Address": 5225 Wilshire Boulevard
Suite 1000
Los Angeles, California 90036

"Tenant": JONATHAN MICHAEL BAGLEY

"Tenant's Address": 3761 East Baseline Road
Suite H-126
Gilbert, Arizona 85234

"Premises": 3761 East Baseline Road, Suite H-126, Gilbert, Arizona 85234 located within the Shopping Center, as defined and described in Article 1 hereof, and as crossed hatched on the plan (not to scale) attached hereto as Exhibit "A".

"Shopping Center": The real property, buildings, improvements and facilities now or to be located thereon as approximately depicted on the Site Plan attached as Exhibit "B" (the "Site Plan"), located at: the southeast corner of Baseline Road and Val Vista Drive, Town of Gilbert, Maricopa County, Arizona.

"Lease Term": One (1) month(s), commencing on approximately October 15th, 20 21 ("Commencement Date") and expiring on November 14th, 20 21 ("Expiration Date").

"Permitted Use of Premises": Solely for the operation of a religious bookstore and church and for no other use or purpose, subject to and condition upon that Tenant's use and/or operation of its business at the Premises (i) does not violate prohibited operations as set forth in the attached Exhibit "G" hereto, (ii) is not in violation of any of the terms and conditions of the Declarations (as defined in Section 64 below), and (iii) is compatible with a first class retail and commercial shopping center.

"Tenant's Trade Name": JMB Ministries

"Annual Basic Rent": Twenty Seven Thousand Six Hundred Dollars (\$27,600.00).

"Monthly Basic Rent": Two Thousand Three Hundred Dollars (\$2,300.00).

"Security Deposit": Four Thousand Six Hundred Dollars (\$4,600.00).

"Rentable Area of Premises": Approximately 1,750 rentable square feet.

"Tenant's Percentage Share" of Parking Area Operating Expenses: 0.0 %

"Tenant's Percentage Share" of Building Area Operating Expenses: 16.34 %

"Broker": No broker involved in this transaction.

"Rider": One (1) through none, inclusive, which Rider(s) are attached to this Lease and incorporated herein by this reference.

This Basic Lease Definitions represents a summary of the basic terms of this Lease. Each reference in this Lease to any of the Basic Lease Definitions shall be construed to incorporate all of the terms provided under each such Basic Lease Definitions. In the event of any conflict and/or inconsistency between the terms contained in this Basic Lease Definitions and the balance of the Lease, the balance of this Lease shall control.

Landlord's Initial: FSK

Tenant's Initial(s): JB

1. **Premises.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises contained within the space designated in the Basic Lease Definitions and as cross hatched on the plan (not to scale) attached hereto as Exhibit "A" ("Premises"). The parties hereto expressly agree that the leasing of the Premises is upon and subject to the terms, covenants and conditions as set forth in this Lease. Tenant agrees and covenants, as a material part of the consideration for this Lease, to fully and faithfully keep and perform each and all of said terms, covenants and conditions throughout the term hereof each of which shall be a condition to this Lease. Tenant acknowledges and confirms that this Lease is made subject to all liens, encumbrances, deeds of trust, Declarations, reservations, restrictions, and other matters of record, and to zoning, building and fire ordinances, and all other Governmental Regulations (as defined below) in connection with the use, operation and/or occupancy of the Premises and/or the Shopping Center.

The parties have stipulated to the Rentable Area of Premises and the Tenant's Percentage Share set forth in the Basic Lease Definitions of this Lease, and unless Landlord expands or reduces the Rentable Area of Premises after the Commencement Date, such stipulated Rentable Area of Premises and the Tenant's Percentage Share shall not be modified or changed during the Lease Term in any manner whatsoever. It is understood and agreed between Landlord and Tenant that the Rentable Area of Premises indicated in this Lease is not exact and only an estimated square footage of the Premises by Landlord and Tenant, and does not constitute any representation or warranty on the part of Landlord as to the accuracy, actual or exact size or square footage of the Premises and/or Tenant's Percentage Share. Furthermore, Tenant and Landlord hereby stipulate and agree that (a) the Annual Basic Rent, Additional Rent and Tenant's Percentage Share was extensively negotiated between the parties regardless of the exact or actual size or square footage of the Premises; and (b) even if prior to execution of this Lease, the parties were aware that the exact or actual size or square footage of the Premises was more or less than the Rentable Area of Premises as stated herein, the Annual Basic Rent, Additional Rent and Tenant's Percentage Share would have not been affected or changed and would have remained exactly the same as stated in this Lease. Tenant expressly acknowledges and agrees that in the event the actual or exact size or square footage of the Premises and/or Tenant's Percentage Share is determined to be other than the Rentable Area of Premises and/or Tenant's Percentage Share as stated in this Lease, the Tenant's obligations, covenants, responsibilities and duties under this Lease, including but expressly not limited to the obligation to pay Annual Basic Rent, Additional Rent or any amount thereof or other payment required to be made by Tenant (as herein defined), shall not be reduced, changed or affected thereby in any manner whatsoever and Tenant shall not be entitled to any abatement or reduction of Rent, and shall not have any effect on this Lease or shall not give to Tenant any offset or defense to the full and timely performance of its obligations, covenants and responsibilities hereunder, and shall not constitute any actual or constructive eviction of Tenant, and shall not give rise to any other claim of any nature against Landlord.

Tenant hereby acknowledges and agrees that the exterior walls of the building of which the Premises are a part of, as well as the area above the finished ceilings and the area below the finished floors, including the Common Areas (as defined in this Lease) and the real property underlying the building which the Premises are a part of, have not been demised or leased hereby and Landlord reserves the use thereof for any purpose as Landlord deems necessary at Landlord's sole and absolute discretion. Tenant agrees, acknowledges and confirms that Landlord reserves the right without notice, at any time and from time to time during the Term, at Landlord's sole and absolute discretion:

- (i) To install, maintain, use, repair and replace pipes, including but not limited to, fire sprinklers, fire life safety systems, ducts, conduits and wires leading through, under or above the Premises, within the walls and in the central core areas, and to relocate any pipes, ducts, conduits, wires and appurtenant meters and equipment included in the Premises which are located in the Premises or located elsewhere outside the Premises;
- (ii) To make structural and/or non-structural changes, repairs, expansion, remodeling, additions, erections, alterations and improvements to the Premises (interior and/or exterior), Shopping Center, Common Areas and/or any portion thereof;
- (iii) To limit or obstruct access to the Premises, the Shopping Center or the Common Areas, or to block walkways and access routes within the Shopping Center, and to do and perform such other acts as Landlord deems necessary;
- (iv) To enter and access upon the Premises for the purpose of inspecting, making repairs, curing defaults, replacements or alterations, and showing the Premises to prospective purchasers, lenders or tenants;
- (v) To enter and access upon the Premises while engaged in making additional improvements, renovations, repairs or alterations to the Shopping Center, Common Areas or any portion thereof;
- (vi) To make such other changes, alterations, replacements or repairs in, to or with respect to the Shopping Center, Common Areas and/or Premises as Landlord deems appropriate; and/or
- (vii) To enter and access upon the Premises as Landlord may deem necessary to perform inspection, remodeling, construction or other work incidental to any portion of the Shopping Center, including without limitation the premises of another tenant or occupant.

Tenant acknowledges and confirms that all of above (i) through (vii) are hereby excepted and reserved unto Landlord. Nothing contained in this Article shall imply any duty on the part of Landlord to do any such work which, under any provision of this Lease, Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. Tenant acknowledges and agrees that Landlord's actions in connection with any of the above activities may interfere with or adversely affect the conduct of Tenant's business on the Premises. No exercise by Landlord of any rights contained in this Article shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby, nor such interference or adverse effect can be construed or considered to constitute an eviction of Tenant or an interference with Tenant's possession or use of the Premises, and Landlord shall not, under any circumstances, be liable or obligated to Tenant with respect to any such interruption, interference or adverse effect, nor shall Rent (as herein defined) or other payments required to be made by Tenant be abated.

Tenant acknowledges and agrees that the Site Plan is for general informational purposes only and the buildings, improvements and facilities depicted thereon are subject to change, without notice at any time and from time to time as Landlord deems necessary. Tenant hereby acknowledges and agrees that any and all features, matters and other information depicted thereon are for illustrative purposes only and subject to the provisions of this Lease, subject to modification without notice, and are not intended to be relied upon by Tenant or Tenant's Representatives and are not intended to constitute representations, warranties or covenants as to the size and nature of the improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any occupants or tenants thereof. Landlord makes no representations or warranties as to the accuracy or completeness of Site Plan whatsoever. Furthermore, Tenant acknowledges and understands that (a) the Site Plan is tentative and is an integrated retail shopping center and office and medical buildings (which may be expanded or reduced from time to time) in existence or which Landlord and others may intend to cause to be constructed or developed on real property located in the City, County and State described in Exhibit "C" or on other adjoining real properties; and (b) as of the date of this Lease, some of the buildings, improvements, facilities and real property which are depicted on the Site Plan may be owned or are owned by other persons or entities other than Landlord.

The term "Governmental Regulations" as used in this Lease shall mean any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, directives, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

2. **Term.** The term of this Lease shall be for the period specified in the Basic Lease Definitions, commencing on the Commencement Date and expiring (unless sooner terminated as hereinafter provided) on the Expiration Date ("Term" or "Lease Term").

Landlord's Initial: FSK

Tenant's Initial(s): 

3. Rent

3.1 Annual Basic Rent. Tenant agrees to pay Landlord throughout the Lease Term the Annual Basic Rent set forth in the Basic Lease Definitions. The Annual Basic Rent shall be payable in twelve (12) equal monthly installments ("Monthly Basic Rent") without setoff or deduction, notice or prior demand therefor, in advance on the first day of each and every calendar month throughout the Lease Term, in lawful money of the United States of America, which shall be legal tender at the time of payment, at the address for Landlord designated in the Basic Lease Definitions or to such other address as Landlord may from time to time designate in writing. The Monthly Basic Rent shall be paid to Landlord without any offset or deduction whatsoever. If the Lease Term commences or ends on a day other than the first day of a calendar month, the Monthly Basic Rent for such month shall be one thirtieth (1/30) of the then applicable Monthly Basic Rent multiplied by the number of days this Lease is in effect during such month. As a material part of the consideration for this Lease, Tenant agrees to pay Landlord the first installment of the Monthly Basic Rent upon execution hereof. In addition to the foregoing, Tenant hereby agrees to pay rental adjustments (as described in Section 3.2 below) as such rental adjustments become effective throughout the Lease Term.

3.2 Adjustments to Annual Basic Rent. The Annual Basic Rent shall be increased (but never decreased) commencing with the first anniversary of this Lease and on each anniversary of this Lease thereafter (each such anniversary being hereinafter referred to as an "Adjustment Date"), the Monthly Basic Rent payable for the month immediately preceding such Adjustment Date shall be adjusted to reflect the increases, in the same percentage increase of the Applicable Index (as hereinafter defined) for the calendar month which is three (3) full months immediately preceding such Adjustment Date shall increase over the Applicable Index for the calendar month which is twenty (20) full months immediately preceding such Adjustment Date; provided, however, the percentage increase for any anniversary year shall in no event be less than five percent (5%). For purposes of this Lease, "Applicable Index" shall be the Consumer Price Index-Urban Wage Earners and Clerical Workers (U.S. City Average, Other Goods and Services; Base 1982-1984 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics ("Bureau"). Landlord shall use its best efforts to calculate and give Tenant written notice of the Percentage Increase in the Annual Basic Rent prior to, and Tenant shall pay the increased Annual Basic Rent effective Adjustment Date. Should the Bureau discontinue the publication of the Applicable Index, or publish the same less frequently, or alter the same in some manner, the Landlord, in its discretion, shall adopt a substitute index or procedure which reasonably reflects and monitors consumer prices. If any Applicable Index is calculated from a base different from the base period 1982-84=100, such index shall be converted to a base period of 1982-84=100 by use of a conversion factor supplied by Bureau. In the event the provisions of this Section 3.2 are partially or totally suspended as a result of governmental regulation, they shall be reinstituted upon termination or expiration of such regulation. Furthermore, upon termination or expiration of such regulation, the Annual Basic Rent shall be adjusted, commencing with the next regular monthly rent payment, to the amount that it would have been had the governmental regulation not been imposed. Any delay or failure of Landlord, beyond Adjustment Date in computing or billing for the rent adjustments herein above provided, shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such rent adjustments hereunder.

3.3 Additional Rent. In addition to the Annual Basic Rent and rental adjustment, Tenant shall pay to Landlord, as "Additional Rent", commencing on the Commencement Date and for the balance of the Lease Term, without setoff or deduction, notice or prior demand therefor on the first day of each calendar month, all sums of money, charges and/or reimbursements required to be paid by Tenant under this Lease, including but not limited to: (a) Tenant's Percentage Share of the amount of the Parking Area Operating Expenses and Building Area Operating Expenses (as defined in Article 4 below); (b) Tenant's Percentage Share of the amount of all Real Property Taxes (as defined in Section 5.1 below); (c) Tenant's Percentage Share of the amount of the Insurance maintained by Landlord pursuant to Section 12.7 below; (d) utility charges pursuant to Article 8; (e) late charges, interest, reimbursement for attorneys' fees and expenses and auditing costs; (f) sums expended by Landlord in performing Landlord's obligations under Section 11.2; (g) percentage rent (if applicable) (h) any and all other sum of money, charges or reimbursements to be paid by Tenant to Landlord under this Lease; and (i) any and all rental taxes, gross receipts taxes, transaction privilege taxes and sales taxes levied currently or in the future against the Annual Basic Rent, Parking Area Operating Expenses, Building Area Operating Expenses, any Additional Rent or other charges or proration's payable by Tenant pursuant to this Lease by any competent taxing jurisdiction, whether assessed against Landlord or assessed against Tenant and collected by Landlord, or both (hereinafter collectively referred to as "Additional Rent"). Landlord shall have the same rights and remedies for the nonpayment of Additional Rent as Landlord has with respect to the nonpayment of the Annual Basic Rent. The term "Rent" shall include the Annual Basic Rent, plus any Additional Rent which Tenant shall become obligated to pay under this Lease.

4. Operating Expenses

4.1 Definition of Operating Expenses

(A) For purposes of this Lease "Parking Area Operating Expenses" shall consist of all sums, costs, expenses and amounts incurred or accrued by Landlord and/or Landlord Affiliates in connection with the operation, maintenance, management, repair, ownership, use, restoration, replacement and insuring of every kind and nature of the Common Areas, calculated assuming the Shopping Center is fully occupied. Parking Area Operating Expenses shall include the sums, costs, expenses and amounts of the following by way of illustration, but not by limitation: Real Property Taxes for the Common Areas (as defined in Section 5.1); all insurance premiums for insurance coverage for the Common Area maintained by the Landlord and described in this Lease, and any other insurance coverage(s) which may be required or deemed necessary by Landlord and/or Landlord's lender(s) or mortgagee(s), including, without limitation: (a) commercial general liability, (b) property damage, (c) any perils generally included within the classification "Causes of Loss - Special Form", including but not limited to risks covered by fire and extended coverage, construction, flood, earthquake, vandalism and malicious mischief, in amounts at least equal to the full replacement cost thereof (without deduction for depreciation) as such replacement cost shall be determined from time to time, (d) fidelity, personal injury and bodily injury, (e) business interruption insurance and rental loss of income, (f) payment of deductible amounts, (g) loss administration and adjustment expense, loss control and brokers' and consultant's fees; Common Areas utilities and utility surcharges; Common Areas water and electricity charges; Common Areas janitorial & cleaning maintenance, materials, supplies and services; Common Areas steam wash; Common Areas security services, security guards, alarms and camera monitoring; Common Areas parking expenses; the cost of all charges for Common Areas cleaning, maintenance and service contracts and other services with independent contractors and administration fees; Common Areas porter services; Common Areas light poles, wiring, lines and systems; Common Areas costs and expenses of repairs, resurfacing, painting, lighting and cleaning; Common Areas repairing, paving, repaving, resurfacing, restriping, sealing and slurry coat of the parking lot, asphalt, concrete, driveway areas, parking bumpers, sidewalks and walkways; Common Areas cleaning, maintenance and repair of all trash facilities, loading and delivery areas, sidewalks, curbs, gutters including those situated on the perimeter of and outside the boundaries of the Shopping Center (but nothing herein contained shall be construed obligating Landlord to clean, maintain or repair any areas or improvements outside the Shopping Center boundaries); Common Areas maintenance, alteration, improvement and replacement costs of upkeep and upgrading of the Common Areas and parking areas; Common Areas gardening, plantings, landscaping, trees, grass, irrigation, furniture, planters, landscape lightings, music systems, water features, fountains, elements, drains, gutters, drainage and other similar items; Common Areas waste and trash disposal; Common Areas removing rubbish, waste and trash from the Common Areas including from adjacent sidewalks and street curbs and maintaining refuse receptacles and recycling facilities; Shopping Center signs; Common Areas pylon, monument, blade, identification and wall signs; Common Areas directory and directional signs; any Common Areas other signs and markers; on-site management and/or security offices attributable to Common Areas including imputed rent with respect to such offices; property management fees related to Common Areas (which fee may be imputed if Landlord has internalized management or otherwise acts as its own property manager); legal fees, accounting fees, real estate tax consulting fees and other consulting and professional fees and services related to the Common Areas; audit, verification and consulting fees related to the Common Areas; fees, costs, charges, levies, fines, penalties, expenses or dues payable pursuant to the terms of any covenants, conditions or restrictions or owners' association related to the Common Areas; assessments, fees and costs against the Shopping Center under the Declarations related to the Common Areas; homeowner's association fees, assessments and charges related to the Common Areas; costs levied, assessed or imposed by homeowner's association

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related to the Common Areas; costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations or interpretations thereof promulgated by, any federal state, regional, municipal or local government authority related to the Common Areas; license fees related to the Common Areas; permit and inspection fees related to the Common Areas; personal property taxes levied on or attributable to personal property related to the Common Areas; transport taxes, fees or assessments, including costs associated with a transportation management program related to the Common Areas; sales, use and business property taxes related to the Common Areas; fees assessed by air quality management districts or any governmental or quasi-governmental entity regulating air or water pollution related to the Common Areas; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the Common Areas; costs of valet parking and shuttle services related to the Common Areas; parking control and validation systems, devices and structures related to the Common Areas; depreciation on maintenance and operating machinery and equipment related to the Common Areas; rental paid for such machinery and equipment related to the Common Areas; rental charges for personal property used in connection with any and all maintenance, repairs and replacements related to the Common Areas; rental of space outside the boundaries of the Shopping Center, if needed, for use of storage and/or maintenance of equipment, supplies, props and other items used in connection with the Common Areas; rental payments for any parking structures or for leased portions of the parking lot and other expenses for off-site parking in the event that Landlord, in its reasonable business judgment determines that such off-site parking is necessary; the cost (amortized over such reasonable period as Landlord shall determine, together with interest at the maximum rate allowed by law on the unamortized balance) of: (a) any capital improvements made to the Common Areas by Landlord after the execution of this Lease that reduce Parking Area Operating Expenses, or are required under any Governmental Regulations related to the Common Areas; and (b) replacement of any equipment needed to operate the Common Areas at the same quality levels as those applicable prior to such replacement; appropriate reserves (including sinking fund reserves where Landlord deems appropriate); increases in rent under any ground lease now or hereafter affecting the real property on which the Common Areas is situated; any increases after the date hereof in interest paid on the indebtedness evidencing the permanent financing of the Common Areas as such increases may occur from time to time; and such other items as are now or may hereafter be customarily included in the costs of managing, operating, maintaining, "overhauling" (i.e., disassembly for complete maintenance and minor part replacement, and reassembly) and repairing related to the Common Areas; promotional materials, on and off site billboards and audio, visual and computer based promotional production services related to the Common Areas; operation, maintenance and repair of any public address systems and music systems related to the Common Areas; acquisition, installing and maintaining art work, art displays, art installations, seasonal and holiday decorations related to the Common Areas; all other items necessary to keep the Common Area in good order, sanitary and first class condition and repair and in compliance with all Governmental Regulations and insurance requirements related to the Common Areas; and a sum payable to Landlord for administrative fee in the amount of fifteen percent (15%) of the annual Parking Area Operating Expenses. Landlord may cause any or all of these services to be provided by an independent contractor or contractors or by Landlord Affiliates. Parking Area Operating Expenses shall not include: depreciation on the Shopping Center and real estate brokers' commissions related to the Common Areas. The term "Landlord Affiliates" as used in this Lease shall mean each and every of Landlord's principals, officers, members, employees, shareholders, directors, subsidiaries, divisions, affiliates, partners, assignees, spouses, children, heirs, trustees, insurers, lenders, transferees, successors, agents, independent contractors, attorneys, accountants and representatives, and all persons acting by, through, under or in concert with them, or any of them and all of their respective predecessors, successors and assigns.

(B) For purposes of this Lease "Building Area Operating Expenses" shall consist of all sums, costs, expenses and amounts incurred or accrued by Landlord and/or Landlord Affiliates in connection with the operation, maintenance, management, repair, ownership, use, restoration, replacement and insuring of every kind and nature of the building which Premises is a part of, calculated assuming the building which Premises is a part of is fully occupied. Building Area Operating Expenses shall include the sums, costs, expenses and amounts of the following by way of illustration, but not by limitation: Real Property Taxes (as defined in Section 5.1); all insurance premiums for insurance coverage maintained by the Landlord and described in this Lease, and any other insurance coverage(s) which may be required or deemed necessary by Landlord and/or Landlord's lender(s) or mortgagee(s), including, without limitation: (a) commercial general liability, (b) property damage, (c) any perils generally included within the classification "Causes of Loss - Special Form", including but not limited to risks covered by fire and extended coverage, construction, flood, earthquake, vandalism and malicious mischief, in amounts at least equal to the full replacement cost thereof (without deduction for depreciation) as such replacement cost shall be determined from time to time, (d) fidelity, personal injury and bodily injury, (e) business interruption insurance and rental loss of income, (f) payment of deductible amounts, (g) loss administration and adjustment expense, loss control and brokers' and consultant's fees; any and all costs and expenses incurred by Landlord in fulfilling all of Landlord's obligations hereunder including those set forth in Section 11.2 below; utilities and utility surcharges; water, electricity, gas, sewer charges, steam, other fuels and forms of power or energy; other utilities, including without limitation all domestic and fire water, fiber optic, internet, cable TV, steam, chilled water, sanitary systems, storm sewer and drainage lines and systems, back-flow preventers and lines, and any and all usage, service, hookup, connection, availability and/or standby fees, deposits or charges pertaining to the same, and maintenance or replacement of pipes, cables, lines and underlying easements; telecommunication; computer and other systems; the intra-building cabling, lines and wirings; janitorial & cleaning maintenance, materials, supplies and services; carpeting; tile; stone; wall and window coverings; ceiling systems; interior and exterior window washing; power wash; steam wash; security services, security guards, alarms and camera monitoring; labor; the cost of all charges for cleaning, maintenance and service contracts and other services with independent contractors and administration fees; plumbing, carpentry, hired services; porter services; sprinkler systems, grease traps, interceptors and lines, mechanical, heating, ventilating, air conditioning and electrical systems; elevator and escalator maintenance; elevator cab; operating engineer; supplies; parts; tools; machinery; materials; equipment; fire protection systems and lines; fire alarm panels and systems; fire & life safety lines and systems; light poles, wiring, lines and systems; lighting systems; lighting fixtures and other utility systems; tools; costs incurred in connection with the repair and maintenance of the exterior surfaces (including glass) of the building which Premises is a part of and the structural portions of the building which Premises is a part of; costs and expenses of repairs, resurfacing, painting, lighting and cleaning; stucco; maintenance, replacement, repair and painting of outside building walls, roofs and overhangs; repairing, paving, repaving, resurfacing, restriping, sealing and slurry coat, concrete, sidewalks and walkways; cleaning, maintenance and repair of all trash facilities, loading and delivery areas, sidewalks, curbs, gutters including those situated on the perimeter of and outside the boundaries of the building which Premises is a part of (but nothing herein contained shall be construed obligating Landlord to clean, maintain or repair any areas or improvements outside the Shopping Center boundaries); maintenance, alteration, improvement and replacement costs of upkeep and upgrading of the building which Premises is a part of; music systems, water features, fountains, elements, drains, gutters, drainage and other similar items; waste and trash disposal; removing rubbish, waste and trash from the building which Premises is a part of including from adjacent sidewalks and street curbs and maintaining refuse receptacles and recycling facilities; postal boxes; signs related to the building which Premises is a part of; pylon, monument, blade, identification and wall signs; directory and directional signs; any other signs and markers; salaries, wages, labor and fringe benefits of employees, staff and/or personnel (irrespective of whether they are employed by Landlord or by an independent contractor with whom Landlord has contracted for such services), including without limitation workmen's compensation insurance costs, payroll and unemployment taxes, unemployment insurance, and similar governmental charges with respect thereto, uniforms and dry cleaning thereof, overtime, fringe benefits (including pension, medical, dental and retirement plans) and employer's liability insurance premiums, offsite personnel (such as managers) who engage significant activity for the Shopping Center; professional services to implement such services; Shopping Center management office rental; on-site management and/or security offices including imputed rent with respect to such offices; office equipments, supplies, furniture, computer, telephone, internet, fax and stationery costs; property management fees (which fee may be imputed if Landlord has internalized management or otherwise acts as its own property manager); legal fees, accounting fees, real estate tax consulting fees and other consulting and professional fees and services; audit, verification and consulting fees; fees, costs, charges, levies, fines, penalties, expenses or dues payable pursuant to the terms of any covenants, conditions or restrictions or owners' association; assessments, fees and costs against the Shopping Center under the Declarations; homeowner's association fees, assessments and charges; costs levied, assessed or imposed by homeowner's association; costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations or interpretations thereof promulgated by, any federal state, regional, municipal or local government authority; license fees; permit and inspection fees; personal property taxes levied on or attributable to personal property; transport taxes, fees or assessments, including costs associated with a transportation management program; sales, use and business property taxes; fees assessed by air quality management districts or any governmental or quasi-governmental entity regulating air or water pollution; any governmental imposition or surcharge imposed upon Landlord or assessed against any portion of the

Landlord's Initial:

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Tenant's Initial(s):

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building which Premises is a part of; costs of valet parking and shuttle services related to the building which Premises is a part of; parking control and validation systems, devices and structures related to the building which Premises is a part of; depreciation on maintenance and operating machinery and equipment; rental paid for such machinery and equipment; rental charges for personal property used in connection with any and all maintenance, repairs and replacements; rental of space outside the boundaries of the Shopping Center, if needed, for use of storage and/or maintenance of equipment, supplies, props and other items used in connection with the building which Premises is a part of; rental payments for any parking structures or for leased portions of the parking lot and other expenses for off-site parking in the event that Landlord, in its reasonable business judgment determines that such off-site parking is necessary related to the building which Premises is a part of; the cost (amortized over such reasonable period as Landlord shall determine, together with interest at the maximum rate allowed by law on the unamortized balance) of: (a) any capital improvements made to the building which Premises is a part of by Landlord after the execution of this Lease that reduce the Building Area Operating Expenses, or are required under any Governmental Regulations; and (b) replacement of any equipment needed to operate the building which Premises is a part of at the same quality levels as those applicable prior to such replacement; appropriate reserves (including sinking fund reserves where Landlord deems appropriate); increases in rent under any ground lease now or hereafter affecting the real property on which the building which Premises is a part of is situated; and such other items as are now or may hereafter be customarily included in the costs of managing, operating, maintaining, "overhauling" (i.e., disassembly for complete maintenance and minor part replacement, and reassembly) and repairing; promotional materials, on and off site billboards and audio, visual and computer based promotional production services; operation, maintenance and repair of any public address systems and music systems; acquisition, installing and maintaining art work, art displays, art installations, seasonal and holiday decorations; all other items necessary to keep the building which Premises is a part of in good order, sanitary and first class condition and repair and in compliance with all Governmental Regulations and insurance requirements; and a sum payable to Landlord for administrative fee in the amount of fifteen percent (15%) of the annual Building Area Operating Expenses. Landlord may cause any or all of these services to be provided by an independent contractor or contractors or by Landlord Affiliates. Building Area Operating Expenses shall not include: depreciation on the building which Premises is a part of and real estate brokers' commissions.

(C) The term "Operating Expenses" as used in this Lease shall mean Parking Area Operating Expenses and Building Area Operating Expenses.

4.2 Payment & Reconciliation of Operating Expenses. Commencing on the Commencement Date and continuing for the balance of the Lease Term, Tenant shall pay to Landlord, on the first day of each calendar month, an amount estimated by Landlord to be the monthly amount of Tenant's Percentage Share of the Operating Expenses ("Estimated Monthly Operating Expense"). During the Lease Term, the amount of the Estimated Monthly Operating Expense may be adjusted or changed by Landlord, at any time and from time to time, on the basis of Landlord's experience and/or any variation in anticipated costs of the amount of the Operating Expenses as determined at Landlord's sole and absolute discretion. The failure of Landlord to timely adjust or change the Estimated Monthly Operating Expense for any calendar year shall not preclude Landlord from subsequently enforcing its rights to collect the Tenant's Percentage Share of the actual amount of Operating Expenses. On or before the first day of April of each calendar year during the Lease Term, or as soon thereafter possible, Landlord shall deliver to Tenant a statement ("Actual Statement") showing (i) the actual amount of the Operating Expenses for such preceding calendar year, (ii) the amount of Tenant's Percentage Share for the actual amount of Operating Expenses for such preceding calendar year (which shall be calculated by multiplying the actual amount of the Operating Expenses during such preceding calendar year by the Tenant's Percentage Share (as set forth in the Basic Lease Definitions), and (iii) the total amount Tenant paid to Landlord (if any) for Estimated Monthly Operating Expense during such preceding calendar year. Upon receipt of the Actual Statement for each calendar year during the Term, if the Actual Statement reveals that the amount of Tenant's Percentage Share for the actual amount of Operating Expenses exceeds the total amount of Estimated Monthly Operating Expense that Tenant paid to Landlord, then Tenant shall pay to Landlord the deficiency within ten (10) calendar days after receipt of the Actual Statement. If, in any calendar year during the Term, the Actual Statement reveals that the amount of Tenant's Percentage Share for the actual amount of Operating Expenses were less than the total amount of the Estimated Monthly Operating Expense that Tenant paid to Landlord, then any overpayment ("Overpayment") made by Tenant shall, at Landlord's sole and absolute discretion, either be (a) credited toward the future Actual Statements in subsequent calendar years as determined by Landlord; (b) withheld by Landlord in its reserve account towards any anticipated increase in the Operating Expenses in subsequent calendar years; or (c) if this Lease has been terminated, such Overpayment shall be credited against any amount which Tenant owes to Landlord pursuant to this Lease, and provided that all amounts owing by Tenant to Landlord pursuant to this Lease have been paid in full, then Landlord shall promptly pay to Tenant the remaining Overpayment, if any. Any delay or failure by Landlord in delivering any estimate or statement pursuant to this Section 4.2 shall not constitute or be deemed a waiver of Landlord's right to all such sums nor shall it relieve, diminish or affect Tenant's obligations and liabilities to pay such sums pursuant to this Article 4. Notwithstanding anything contained herein to the contrary, if the Lease Term has expired and Tenant has vacated the Premises as of the date Landlord makes the final determination of Tenant's Percentage Share for the actual amount of Operating Expenses for the year in which this Lease terminated, Tenant shall immediately pay any Underpayment to Landlord. Conversely, any Overpayment shall be rebated by Landlord to Tenant, less any sum of money Tenant owes to Landlord pursuant to this Lease. The parties hereto agree and understand that the provisions of this Article 4 shall survive the expiration or earlier termination of this Lease.

4.3 Adjustment of Operating Expenses. Notwithstanding anything contained herein to the contrary, if, at any time during the Lease Term, Landlord determines that the Shopping Center is less than one hundred percent (100%) occupied, the Operating Expenses for such year shall be calculated based upon an occupancy level in the Shopping Center of one hundred percent (100%). Furthermore, in any Estimated Statement or Actual Statement covering less than a full calendar year there shall be added to the Operating Expenses for the period covered by such statement those additional Operating Expenses which Landlord determines it would have so incurred if the Shopping Center were 100% occupied during the full calendar year.

4.4 Tenant's Review of Operating Expenses.

(a) Exercise of Right by Tenant. Within sixty (60) days after receipt of an Actual Statement by Tenant ("Review Period"), if Tenant's Percentage Share for the actual amount of Operating Expenses increased by more than fifteen percent (15%) of Tenant's Percentage Share for the actual amount of Operating Expenses for the prior year of the Lease Term and Tenant disputes the amount set forth in the Actual Statement described in Section 4.2, then Tenant shall have the right to cause Landlord's records with respect to the costs incurred for the Operating Expenses of the preceding calendar year to be reviewed by an independent certified public accountant (which accountant must be a member of a nationally or regionally recognized accounting firm and is hired on a non-contingency fee basis), designated by Tenant, may, after reasonable notice to Landlord and at reasonable times, inspect Landlord's records at Landlord's office, provided that Tenant is not then in default under any obligation under this Lease (including, but not limited to, the payment of the amount in dispute) and provided further that Tenant and such accountant shall execute a confidentiality agreement (prepared and acceptable by Landlord) to maintain any and such information contained in Landlord's records in strict confidence. In order for Tenant to exercise its right under this Section 4.4, Tenant shall not later than sixty (60) days following receipt of such Actual Statement deliver a written notice to Landlord specifying Tenant's intent to review Landlord's records, and Tenant shall simultaneously pay to Landlord all amounts due from Tenant to Landlord as specified in the Actual Statement. In no event shall Tenant be entitled to withhold, deduct, or offset any monetary obligation of Tenant to Landlord under this Lease (including, without limitation, Tenant's obligation to make all Rents payments and all payments for its share of estimated and actual Operating Expense) pending the completion of and regardless of any review of records under this Section. Notwithstanding the foregoing, Tenant shall only have the right to review Landlord's records one (1) time during any twelve (12) month period. Tenant's failure to dispute the amounts set forth in the Actual Statement within the Review Period shall be deemed to be Tenant's approval of such Actual Statement and Tenant, thereafter, waives the right or ability to dispute the amounts set forth in such Actual Statement. No subtenant shall conduct a review for any period during which such subtenant was not in possession of the Premises or for any period that Landlord was not the owner of the Shopping Center. Tenant agrees that this Section

Landlord's Initial: FSK

Tenant's Initial(s): [Signature]

4.4 shall be the sole method to be used by Tenant to dispute the amount of any Operating Expenses or accuracy of the Actual Statement payable by Tenant pursuant to the terms of this Lease, and Tenant hereby waives any other rights at law or in equity relating thereto.

(b) Procedures of Review. Tenant acknowledges that Landlord maintains its records for this Shopping Center at its offices, and Tenant therefore agrees that any review of records under this Section shall occur at such location, or at such other location that Landlord may specify during regular business hours at the office where Landlord keeps its books and records. Tenant's review by designated accountant shall be completed within three (3) business days after the commencement of the review. Any review to be conducted under this Section 4.4 shall be at the sole cost and expense of Tenant and shall be conducted by an independent firm of certified public accountants of national or regional standing, mutually agreeable to Landlord and Tenant, but employed by Tenant on an hourly or fixed fee basis, and not on a contingency fee basis. Tenant's review shall be limited strictly to those items in connection with the Operating Expenses that Tenant has specifically identified in writing as being allegedly incorrect. Tenant acknowledges and agrees that any records reviewed under this Section 4.4 constitute confidential information of Landlord, which shall not be disclosed to anyone other than the accountants performing the review and the principals of Tenant who receive the results of the review. Tenant shall deliver to Landlord a copy of the results of such review within fifteen (15) calendar days after receipt by Tenant. The disclosure of such information to any other person, whether or not caused by the conduct of Tenant, shall constitute an Event of Default.

(c) Finding of Error. Any errors disclosed by the review of records under this Section 4.4 shall be promptly corrected, provided that Landlord shall have the right to cause another review of the records to be made by an independent firm of certified public accountants of national or regional standing of its choice. In the event of a disagreement between two accounting firms, the review that discloses the least amount of deviation from the Actual Statement shall be deemed to be correct. Tenant acknowledges that Tenant's right to inspect Landlord's information with respect to Operating Expenses for the preceding calendar year is for the exclusive purpose of determining whether Tenant has paid the correct amount for Operating Expenses. In the event that the results of the review of records (taking into account, if applicable, the results of any additional review caused by Landlord pursuant to this subparagraph) reveal that Tenant has overpaid obligations for a preceding period, the amount of such overpayment shall be credited against Tenant's subsequent installment obligations to pay Tenant's Percentage Share of the Operating Expenses, and Landlord shall not be deemed to be in breach or default of this Lease. In the event that such results show that Tenant has underpaid its obligations for a preceding period, the amount of such underpayment shall be paid by Tenant to Landlord with the next succeeding installment obligation of estimated Operating Expenses.

(d) Effect of Tenant's Default. In the event that Tenant becomes in default of its obligations under this Lease at any time during the tenancy of a review of records under this Article, Tenant's right to review shall immediately cease and terminate and the matters originally set forth in the Actual Statement shall be deemed to be correct. If Tenant (i) fails to deliver a written notice to Landlord within the Review Period or (ii) the result of Tenant's review are not delivered to Landlord within the time frame specified in this Article, or (iii) Tenant fails to follow any of the procedures for the conduct of its review as set forth in this Article, then the Actual Statement shall be deemed to have been accepted by Tenant and shall be an "account stated" between Landlord and Tenant.

5. Taxes.

5.1 Real Property Taxes Defined. For purposes of this Lease "Real Property Taxes" shall consist of all sums, costs, expenses and amounts for any form of tax on property; personal property taxes assessed against the buildings and improvements within the Shopping Center; assessment (whether arising from any improvement or special taxing district, or otherwise); license fee; license tax; business license fee; gross receipt tax (whether assessed against Landlord or assessed against Tenant and collected by Landlord, or both); commercial rental tax; possessory interest taxes; government property lease excise taxes; license and permit fees; levies; excise; surcharge, penalty; bond; charge or similar imposition imposed by any authority having the direct power to tax, including the City and/or County of where the Shopping Center is located or the United States government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof where such tax, fee, levy, assessment or charge is imposed against any legal or equitable interest of Landlord in the Shopping Center, Common Areas and the Premises or any portion thereof; any reassessments due to the construction of any improvements on or within the Shopping Center or any portion thereof that may be levied, assessed or imposed against the Shopping Center and the improvements, fixtures, equipment and/or other property located in the Shopping Center, including, but not limited to, the following: (i) all other charges of whatsoever kind and nature and whether any of the foregoing be general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time during the Lease Term may be imposed upon the Premises, including those imposed or required by governmental authorities having jurisdiction to increase tax increments to such governmental authorities and for services such as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services formerly provided without charge to property owners or occupants; (ii) any assessment, tax, fee, levy, excise, surcharge, penalty, bond, or charge on Landlord's "right" (a) to collect Rent, (b) to collect other income from the Premises and/or Shopping Center, and/or (c) to conduct its business of leasing the Premises and/or Shopping Center; and (iii) any assessment, tax, fee, levy, excise, surcharge, penalty, bond, or charge in substitution (partially or totally) of any assessments, taxes on real property, fees, levies, charges or similar imposition previously included within the definition of "Real Property Taxes". It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies and charges be included within the definition of "Real Property Taxes" for purposes of this Lease; (iv) any assessment, tax, fee, excise, surcharge, penalty, bond, levy or charge allocable to or measured by the area of the Premises and/or Shopping Center or the rent payable hereunder, including, without limitation, any gross income tax or excise tax levied by the City and/or County of where the Shopping Center is located or the United States government, or any political subdivision thereof, relating to the possession, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises and/or Shopping Center (or any portion thereof); (v) any assessment, tax, fee, excise, surcharge, penalty, bond, levy or charge upon this transaction or any document to which Tenant is a party, that creates or transfers an interest or an estate in the Premises, or based upon a reassessment of the Shopping Center, or any portion thereof, due to a change in ownership or transfer of all or part of Landlord's interest in this Lease, the Shopping Center or any portion thereof; (vi) any assessment, tax, fee, excise, surcharge, penalty, bond, levy or charge by any governmental agency related to any transportation plan, fund, or system instituted within the geographic area of which the Shopping Center is a part; and/or (vii) any legal, consulting, appraisal, accountant, expert and other professional fees, costs and disbursements incurred in connection with proceedings to contest, determine and/or reduction of the "Real Property Taxes". If, because of any change in the method of taxation of real property, any taxable assessment is imposed upon Landlord (or upon the owner of the real property upon which the Shopping Center is situated) in substitution for or in lieu of any tax or assessment which would otherwise be a "Real Property Tax" (as herein defined), such other taxable assessment shall be included in Landlord's calculation of "Real Property Taxes". Notwithstanding any provision of this Section 5.1 expressed or implied to the contrary, "Real Property Taxes" shall not include Landlord's federal or state income, franchise, inheritance or estate taxes.

5.2 Taxes on Tenant's Property.

5.2.1 Tenant shall be liable for and shall pay at least ten (10) days before delinquency, taxes, assessments, license fees and public charges levied, assessed or imposed upon Tenant's business operation, as well as upon Tenant's leasehold improvements and against any personal property or trade fixtures placed by Tenant in or about the Premises. If any such taxes on Tenant's personal property or trade fixtures are levied against Landlord or if the assessed value of the Premises is increased by the inclusion therein of a value placed upon such personal property or trade fixtures of Tenant and if Landlord, after written notice to Tenant, pays the taxes based upon such increased assessments, which Landlord shall have the right to do regardless of the validity thereof, Tenant shall upon demand repay to Landlord the taxes levied against Landlord, or the proportion of such taxes resulting from such increase in the assessment.

Landlord's Initial: FSK

Tenant's Initial(s): JB

5.2.2 If the Tenant Improvements in the Premises, whether installed and/or paid for by Landlord or Tenant and whether or not affixed to the real property as to become a part thereof, are assessed for real property tax purposes at a valuation higher than the valuation at which Tenant Improvements conforming to Landlord's "Shopping Center Standard" in other space in the Shopping Center are assessed, then the real property taxes and assessment levied against Landlord or the property by reason of such excess assessed valuation shall be deemed to be taxes levied against personal property of Tenant and shall be governed by the provisions of Section 5.2.1, above. If the records of the County Assessor are available and sufficiently detailed to serve as a basis for determining whether said Tenant Improvements are assessed at a higher valuation than Landlord's "Shopping Center Standard," such records shall be binding on both Landlord and Tenant. If the records of the County Assessor are not available or sufficiently detailed to serve as a basis for making said determination, the actual cost of construction shall be used.

5.2.3 In addition to the amounts payable by Tenant under this Lease, Tenant shall pay to Landlord at least ninety (90) days before delinquency, any additional Real Property Taxes or additional personal property taxes of any type or nature which, as a result of Tenant's particular operation, results in the valuation for the Premises to be increased, thereby increasing the total Real Property Taxes for the Shopping Center. In addition, Tenant and any transferees of Tenant acknowledge and agree that Landlord shall not be liable for any Real Property Taxes, transfer taxes, leasing commissions or other amounts which may be due in connection with the transfer of the Premises and/or this Lease and Tenant and its transferees shall be solely responsible for any increase in any Real Property Taxes attributable to any transfer of the Premises and/or of this Lease by Tenant.

6. Use and Occupancy.

6.1 Generally. Tenant shall use and occupy the entire Premises solely for the purpose of Permitted Use of Premises (as specifically set forth in the Basic Lease Definitions above) and under the exact Tenant's Trade Name (as specifically set forth in the Basic Lease Definitions above) in strict accordance with the terms, covenants and conditions of this Lease, and for no other use, purpose or purposes, nor under any other trade name whatsoever. Tenant acknowledges that Tenant's agreement to use and occupy the Premises solely for the Permitted Use of Premises under the provisions of this Lease is a material inducement to Landlord to enter into this Lease, and that Tenant shall not be permitted to change the Permitted Use of Premises or Tenant's Trade Name without the prior written consent of Landlord, which consent by Landlord may grant or withhold in Landlord's sole and absolute discretion. Tenant acknowledges that Landlord may grant, or may have previously granted, exclusive rights to other tenants at the Shopping Center or under any terms of recorded covenants, conditions and restrictions affecting the Shopping Center (or real property on which the Shopping Center is situated), the matters of record and/or the Declarations, which is a material consideration to Landlord in entering into this Lease. Tenant hereby covenants to limit its use of the Premises to the Permitted Use of Premises, subject to the terms, covenants and conditions of this Lease, and subject to terms, conditions and covenants of all the recorded covenants, conditions and restrictions affecting the Shopping Center (or real property on which the Shopping Center is situated), the matters of record and/or the Declarations. Tenant agrees that the foregoing provision is reasonable in light of Landlord's legitimate interest in determining the mix of uses which will be present in the Shopping Center. The violation by Tenant of the exclusive rights granted to other tenant(s) of the Shopping Center or the violation or non-compliance by Tenant of any recorded covenants, conditions and restrictions affecting the Shopping Center (or real property on which the Shopping Center is situated), the matters of record and/or the Declarations will result in Landlord suffering irreparable harm and, therefore, in addition to the other rights and remedies available to Landlord under this Lease, Landlord may seek to enjoin Tenant's breach of this Article and Tenant shall be liable for any damages incurred or sustained by Landlord to such other tenant, property owners, occupants, persons or entities whose exclusive use right was breached or the covenants were breached by Tenant. For the purpose of limiting Tenant's use of the Premises and that of Tenant's assignees, subtenants and occupants, if any, Tenant shall not use or permit the Premises to be used for: (i) offices of any governmental agency or bureau of the United States or any state (or political subdivision thereof); (ii) offices or agencies of any foreign government (or political subdivision thereof); (iii) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (iv) a preschool or day care center; (v) communications firms such as radio and/or television stations; (vi) an auditorium or other similar place of general assembly; (vii) an indoor flea market; (viii) a secondhand store, thrift store, swap shop, liquidation outlet or used clothing store, including any business that regularly sells merchandise referred to as "odd lot", "cancellation", "second", "factory reject", "sample", "floor model", "floor demonstrator", "obsolescent", "distressed", "salvage" or "damaged"; (ix) a massage parlor; (x) a cemetery/crematorium; (xi) a so-called "head shop" or facility for the sale, rental, distribution or display of drug paraphernalia such as roach clips, bongs, water pipes, coke spoons, cigarette wrapping papers, pipes and/or syringes; (xii) a facility for the sale, rental, display or distribution of pornographic, lewd, sexually explicit or so-called adult material; (xiii) an off-track betting parlor, bowling alley, billiard parlor, pool room, game room, amusement arcade or gaming hall; (xiv) an automobile body shop, truck stop, junk yard or motor vehicle dismantling operation; (xv) a recycling facility; (xvi) a stock yard; (xvii) a traveling carnival, circus or fair; (xviii) a coin operated laundry or dry cleaner; (xix) the sale, rental or storage of motor vehicles; (xx) shows; (xxi) booths for the sale of fireworks; (xxii) churches, temples or other houses of religious worship; (xxiii) any establishment conducting games of chance; (xxiv) a bingo hall; (xxv) a pawn shop; (xxvi) a rehabilitation center for physical, mental or substance abuse rehabilitation or treatment; (xxvii) a funeral home or funeral parlor; (xxviii) a business which creates strong, unusual or offensive odors, vibrations, fumes, dusts or vapors, is a public nuisance, emits noise, vibrations or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, or creates a hazardous condition; (xxix) the dumping or disposing of garbage or refuse; (xxx) any residential, production, manufacturing, industrial or storage use of any kind or nature except for storage and/or assembly of products incidental to the Permitted Use of Premises; (xxxi) check cashing services; (xxxii) the conduct of any auction, loss of lease, fire, bankruptcy or going out of business sale; (xxxiii) a "tattoo parlor" or "piercing parlor," so called; (xxxiv) the outdoor housing of animals; (xxxv) a cocktail lounge, bar, tavern, or nightclub; (xxxvi) a restaurant or other food service operation; (xxxvii) a theatre; (xxxviii) any business which operates on a part-time basis for only a portion of the week or month; (xxxix) an automatic teller machine; (xxxx) any use that is in violation of any Governmental Regulations, including law regarding Hazardous Substances (as defined below), or the certificate of occupancy issued for the Premises and/or the Shopping Center; (xi) any kind of use, purpose or purposes that in Landlord's sole and absolute discretion is inappropriate and/or inconsistent with the operation of a first class, institutional grade Shopping Center; (xii) for those uses which violate an exclusive use provision granted in any then existing lease for space in the Shopping Center or in any letter of intent concerning the future lease of space in the Shopping Center; and/or (xiii) any use or occupancy in violation of or prohibited by the recorded covenants, conditions and restrictions affecting the Shopping Center (or real property on which the Shopping Center is situated), the matters of record and/or the Declarations. Tenant shall not do or permit to be done anything which will invalidate, cause to be canceled or threatened to be canceled, increase the cost, or reduce the coverage or threaten to reduce the coverage, of any fire, extended coverage or any other insurance policy covering the Shopping Center (and/or real property on which the Shopping Center is situated). Tenant shall not do or permit anything to be done in or about the Premises which will affect the life safety systems of the Shopping Center or violate the Rules and Regulations of the Shopping Center, a copy of which is attached hereto as Exhibit "D" and incorporated herein by this reference. Tenant covenants and agrees to abide by the Rules and Regulations governing the Shopping Center which Landlord may establish and/or amend, at any time and from time to time. Landlord shall not be responsible to Tenant for the violation or non-performance by any other tenant or occupant of the Shopping Center of any of said Rules and Regulations. In addition, Tenant shall not use or permit the Premises to be used for any improper, immoral or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall comply with all restrictive covenants and obligations created by private contracts which affect the use and operation of the Premises, the Shopping Center, or the Common Areas. Tenant shall, upon two (2) business days' notice from Landlord, its insurance carrier or any governmental agency, immediately discontinue any prohibited use of the Premises. Failure by Tenant to discontinue such use after the foregoing notice shall be considered a material breach and default under this Lease, and Landlord shall have the right to terminate this Lease immediately, and in addition shall have the right to exercise any and all of its rights and privileges and remedies pursuant to the provisions of Article 19 hereof.

6.2 Representations Regarding Use. Landlord and/or Landlord Affiliates has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, inducements, understanding, agreements or guaranties of any kind or character

Landlord's Initial: FSK

Tenant's Initial(s): JB

whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the suitability, nature, quality or condition of the Premises, Shopping Center, or Common Areas for Tenant's use, operation and occupancy thereof, the manner, quality, state of repair or lack of repair of the Premises, or the conformity of the Premises and/or the Shopping Center to past, current or future applicable zoning or building requirements in connection with Tenant's intended use, occupancy or operation of the Premises, nor is Landlord limiting its right to lease space to any entity or person selected by Landlord in its sole and absolute discretion even if such tenant's use is prohibited under Section 6.1 above. Landlord reserves the absolute right to effect other tenancies in the Shopping Center as landlord, in the exercise of landlord's sole business judgment, and shall determine to best promote the interests of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall during the Lease Term occupy any space in the Shopping Center. The vacation, abandonment or cessation of operations by any tenant or occupant, including a major tenant, shall not diminish or excuse Tenant's obligations under this Lease. Tenant acknowledges and confirms that neither Landlord nor Landlord Affiliates has made any representation, promise, guaranty or warranty to Tenant as to the condition or the state of repair of the Premises, the Shopping Center or with respect to the suitability of the Premises for Tenant's intended use, occupancy or operation or their compliance with any Governmental Regulations or their suitability for any use, occupancy or purpose or that any other tenants or occupants have or will lease space in the Shopping Center. Tenant further acknowledges and confirms that Landlord has made no representations, promises, guaranties or warranties as to the state of construction or repair of the Premises and/or Shopping Center, nor promises to alter, remodel, improve, renovate, repair, maintain, decorate or paint the Premises and/or Shopping Center. By Tenant's execution of this Lease, Tenant acknowledges, represents, warrants and confirms to Landlord that Tenant has entered into this Lease under and by virtue of Tenant's own independent investigation and Tenant will accept the Premises, Shopping Center and Common Areas in its "as is", "where is" condition and with all its faults and without warranty of any kind, express or implied, and that Landlord has no obligations whatsoever to make alterations, repairs, maintenance, remodel, renovation, replacements or improvements whatsoever at the Premises and/or the Shopping Center. If the Premises are not in all respects entirely suitable for the Tenant's occupancy, purpose, purposes, use or uses to which the Premises or any part thereof will be put, then it is the sole responsibility, liability and obligation of the Tenant, at Tenant's sole cost, risk and expense, to take such action as may be necessary or required to place the Premises in a condition entirely suitable for such occupancy, purpose, purposes, use or uses. Tenant is not relying on any express or implied, oral or written representations, or warranties made by Landlord or Landlord Affiliates. Tenant acknowledges and confirms that Landlord has strongly encouraged Tenant, that prior to execution of this Lease, Tenant to fully understand and conduct independent and detailed investigation and due diligence with (a) all governmental agencies whether the Tenant's proposed use, operation and occupancy of the Premises and its proposed manner of operation will comply with all Governmental Regulations; (b) availability of adequate utilities at the Premises for Tenant's proposed use; (c) any other matter or circumstance relevant to Tenant concerning the operation, occupancy and use of the Premises; and (d) the condition and the state of repair of the Premises. Tenant hereby acknowledges and represents to Landlord that Tenant has had ample opportunity to inspect and evaluate the Premises and the Shopping Center and the feasibility of the uses and activities Tenant is entitled to conduct thereon. Tenant hereby acknowledges and agrees that having been given the opportunity to investigate and inspect the Premises, Tenant is relying solely on Tenant's experience, expertise and Tenant's own independent investigation and inspection of the Premises, the Shopping Center and all other matters concerning Tenant's operation, use and occupancy of the Premises prior to the execution of this Lease, and that, to the extent that Tenant's own experience or expertise with respect to any of the foregoing is insufficient to enable Tenant to reach and form a conclusion, Tenant has engaged the services of professional and qualified persons to advise Tenant with respect to such matters. Further, Tenant hereby warrants, covenants and represents to the Landlord that prior to Tenant's execution of this Lease, Tenant has sought and independently investigated and inspected in detail with all governmental agencies that Tenant's proposed use, purpose and occupancy of the Premises and its proposed manner of operation will comply with all Governmental Regulations and Tenant assumes the risk that its proposed use and occupancy of the Premises and its proposed method of operation, occupancy and use are, and will continue to be, in compliance with all Governmental Regulations, including, without limitation, all zoning laws regulating the use and enjoyment of the Premises, and the condition and the state of repair of the Premises is suitable for Tenant's use and operation of the Premises, and there is adequate utilities available at the Premises for its proposed use and operation. Tenant agrees that under no circumstances will Tenant be released in whole or in part from any of its obligations under this Lease as a result of any governmental agency or other body disallowing or limiting Tenant's proposed use of the Premises or its method of operation, and Tenant hereby waives any defense to its obligations hereunder based on the legal doctrines of frustration, impossibility or other defenses based on its ability to use the Premises for the purposes for which they were leased hereunder, and Tenant does hereby waive any right it may have, if any, under any applicable law or otherwise or any related, successor or similar provision of law. Additionally, during the Lease Term, Tenant agrees and covenants, at Tenant's sole cost and expense, to comply, observe, install, maintain, keep, repair, replace, improve (subject to Landlord's approval and in accordance with the terms and conditions of this Lease) and pay for any improvements, alterations, repairs, changes, maintenance or alterations in the Premises, Common Areas and/or Shopping Center required by any governmental agency in connection with or as a result of Tenant's use or occupancy of the Premises or Tenant's method of operation thereunder, or the physical condition of the Premises, or any repairs, maintenance or alterations required or necessary to comply with any Governmental Regulations. If Landlord performs such improvements, repairs, alteration, maintenance, changes and/or alterations because of Tenant's failure to perform the same, Tenant shall promptly reimburse Landlord in full within ten (10) days for all such costs incurred by Landlord plus an administrative fee equal to twenty percent (20%) of the total cost for such improvements, changes and/or alterations. Tenant, at Tenant's sole cost and expense, shall obtain and maintain in effect during the Lease Term all licenses and permits required for the proper and lawful conduct of Tenant's business and the Premises, and shall at all times comply with these licenses and permits. Tenant further acknowledges that it may experience certain delays, annoyances and inconveniences in connection with construction or other work by Landlord and/or other tenants in the Shopping Center. In no event shall Tenant be entitled to a rental abatement nor shall Landlord be liable to Tenant for any reason whatsoever as a result of such delays, annoyances and/or inconveniences.

6.3 Information to Tenant. Tenant further acknowledges and agrees that any information made available to Tenant or provided or to be provided by or on behalf of Landlord with respect to the Premises or the Shopping Center was obtained from a variety of sources and that Landlord has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information whatsoever. Tenant agrees to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are Landlord or Landlord Affiliates from any and all Claims that they may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Landlord is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Premises or the Shopping Center, or the operation thereof, furnished by any of the foregoing entities, on behalf of Landlord or any other individual or entity.

6.4 Conduct of Business.

(a) Tenant shall not use or permit the use and occupancy of the Premises or any part thereof for any use or purpose which violates any Governmental Regulations of any governmental authority having jurisdiction, and Tenant agrees throughout the Term of this Lease, at Tenant's sole cost and expense, to fully and unconditionally comply with and conform to all of the requirements (present and future) of any such governmental authority relating in any way to the condition, use or occupancy of the Premises, and Tenant agrees to indemnify and save Landlord harmless from any and all liabilities, costs and expenses incurred because of noncompliance by Tenant, or in Landlord's causing compliance.

(b) Tenant shall include the address of the Premises in all advertisements made by Tenant in which the address and identity of any other local business activity or like character conducted by Tenant is mentioned, and Tenant shall not divert from the Premises any business which ordinarily would be conducted therein.

(c) For the benefit of the reputation of the Shopping Center and its total retail sales volume, Tenant agrees with Landlord, for Landlord's benefit as well as other tenants in the Shopping Center that Tenant will not use or permit the use of any portion of the Premises for the conduct therein of what is commonly known in the retail trade as an outlet store or second-hand store or government surplus store. Tenant shall not advertise any distress, fire, bankruptcy, liquidation, relocation or closing, or going out of business sales unless such representations are true and unless Landlord gives its prior

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Tenant's Initial(s): JB

written consent which shall not be unreasonably withheld, and Tenant agrees that it will during the entire term hereof, keep the Premises and every part thereof in a neat, clean, orderly and wholesome condition, free of any objectionable noises, odors, and nuisances. Tenant shall warehouse and stock within the Premises only such goods, wares and merchandise as Tenant intends to offer for sale in the Premises.

(d) Tenant shall not store, display or sell merchandise outside the defined boundaries or lease lines of the Premises, nor shall Tenant install any exterior lighting or plumbing fixtures, shades or awnings or any exterior decorations of paintings or make any changes to the store front without Landlord's prior written consent. Tenant shall not place or permit carts, portable signs or any other objects or devices to be stored or to remain outside the said boundaries or lease lines without Landlord's express written consent, nor shall Tenant solicit in any manner in the Shopping Center or in any other portion of the Common Areas.

(e) Tenant shall not permit any audible noise from any source or device of any nature to be heard outside of the Premises. Tenant shall not use any advertising media which may be heard outside of the Premises and Tenant shall not place or permit the placement of any radio or television antenna, loudspeaker, sound amplifier, phonograph, searchlight, flashing light or other device of any nature on the roof or outside of the boundaries or lease lines of the Premises (except for Tenant's approved identification sign or signs) or at any place where the same may be seen or heard outside the Premises.

(f) Tenant at Tenant's sole cost and expense shall maintain and keep the exterior and interior portion of windows, doors, and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition, and shall keep the Premises clean and free from trash, rubbish and dirt at all times, and shall store all trash, refuse and waste materials in such manner as not to constitute a health or fire hazard or nuisance in adequately covered containers which are located within the Premises so as not to be visible to the general public or which are located in areas designated by Landlord. Tenant shall not discard or deposit trash, refuse, packaging or wrapping paper or waste paper products, or material on the sidewalks, corridors, loading areas, service areas or any other part of the Common Areas, and shall use its most vigorous efforts to prevent its customers, suppliers and other visitors to the Premises from doing same and if Tenant's customers and other visitors to the Premises discard or drop trash refuse, packaging or wrapping paper or waste paper products, or materials which result from Tenant's business, Tenant shall continually (within reason) police, pick-up and remove such trash, refuse and waste material at Tenant's sole cost and expense. If Tenant fails to do so, Landlord may arrange for policing, pick-up removal at Tenant's expense. Provided Landlord does not exercise its option set forth above, Tenant shall, at Tenant's sole cost and expense contract with a third party for the removal of Tenant's trash and garbage. Tenant shall, at its sole cost and expense, comply with all present and future Governmental Regulations regarding the collection, sorting, separation, and recycling of waste products, garbage, refuse and trash. Tenant shall sort and separate such waste products, garbage, refuse and trash into such categories as provided by applicable Governmental Regulations. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by Landlord. Such separate receptacles may, at Landlord's option, be removed from the Premises in accordance with a collection schedule prescribed by applicable Governmental Regulations. Tenant shall pay all costs, expenses, fines, penalties or damages that may be imposed on Landlord or Tenant by reason of Tenant's failure to comply with the provisions of this Article, and, at Tenant's sole cost and expense, Tenant shall indemnify, defend and hold Landlord and Landlord Affiliates harmless from, from and against all Claims arising from such non-compliance, utilizing counsel reasonably satisfactory to Landlord. Tenant shall similarly keep the Premises free of vermin and pests, or Landlord may at its option provide for pest control and Tenant shall reimburse Landlord for such cost and expense. Tenant shall give immediate written notice to Landlord in case of fire or accident to or defect in the Premises or any of its fixtures, appurtenances or equipment or in the Shopping Center.

(g) Tenant shall not permit any fume or odor to migrate into adjoining tenant's spaces. Tenant, at Tenant's sole cost, upon taking possession of the Premises, shall seal the Premises so that no fumes or odor migrate into adjoining tenant's spaces and to provide additional ventilation to vent the fumes out of the Premises. In addition, if Landlord receives any complaints about fumes or odors from other tenants or occupants of the Shopping Center, Landlord shall provide notice thereof to Tenant and Tenant, at Tenant's sole cost and expense, shall immediately take such corrective actions as are necessary to remedy the odor/fume problem and resolve such complaints. Such corrective actions shall include, but not be limited to, adding additional ventilation and filter systems to prevent such odors and fumes from migrating into adjoining tenant's spaces. If Tenant fails to immediately take such actions or if such corrective actions do not resolve the complaints it shall constitute an Event of Default, and Landlord may cancel this Lease upon ten (10) days prior written notice to Tenant. In such event, Tenant shall cease its business operations and vacate the Premises upon the expiration of such ten (10) day notice period and Landlord shall be relieved of all further liability or obligation hereunder.

(h) Tenant shall not carry any stock or goods or do anything in or about the Premises which will in any way tend to increase the insurance rates upon the building of which the Premises are a part. Tenant shall pay to Landlord, upon demand, the amount of any increase in premiums for insurance against loss by fire, casualty, liability or workers' compensation that may be charged during the Lease Term on the amount of insurance to be carried by Landlord on the building of which the Premises are a part resulting from the foregoing or from Tenant doing any act in or about the Premises which does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of the Tenant. If Tenant installs upon the Premises any electrical equipment which constitutes an overload of the electrical lines of the Premises, Tenant shall, at Tenant's sole cost and expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and all applicable Governmental Restrictions, but this shall not be deemed to constitute Landlord's consent to such overloading. Tenant shall, at Tenant's sole cost and expense, comply with all requirements, including the installation of fire extinguishers or automatic dry chemical extinguishing system, of the insurance underwriters and all applicable Governmental Regulations necessary for the maintenance of reasonable rates for property insurance for the Premises.

(i) Tenant shall not place a load upon the Premises exceeding the average pounds of five load per square foot of floor area specified for the Shopping Center by Landlord, with the partitions to be considered a part of the five load. Landlord reserves the right to prescribe the weight and positions of all safes, files and heavy equipment which Tenant desires to place in the Premises so as to distribute properly the weight thereof. Further, Tenant's business machines and mechanical equipment which cause vibration or noise that may be transmitted to the Shopping Center structure or to any other space in the Shopping Center shall be so installed, maintained and used by Tenant as to eliminate such vibration or noise. Tenant shall be responsible for all structural engineering required to determine structural load, as well as the expense and cost thereof.

(j) Tenant shall keep its exterior light, including exterior signs and merchandise display windows lighted nightly until 11:00 p.m. each day including Sundays and holidays (or such earlier time as Landlord may designate for all tenants in the Shopping Center) and at all times during which the Premises are open for business.

6.5 Customer Disturbances. During all hours that Tenant is conducting business within the Premises throughout the Lease Term, Tenant shall establish and enforce rules and regulations against loitering, smoking, eating or drinking in the Premises and Tenant shall take measures to enforce such rules and regulations. In addition, Tenant shall take such reasonable actions as may be necessary to prevent its customers from loitering in the areas adjacent to the Premises. In the event that Tenant's patrons are loitering in the areas adjacent to the Premises (referred to in this Section as a "Customer Disturbance"), Landlord may notify Tenant by telephone to Tenant's store manager with written notice to follow (the "Disturbance Notice") of such Customer Disturbance and Tenant shall take immediate steps to cure all Customer Disturbances identified in the Disturbance Notice within one (1) calendar day after receipt of such telephonic notice. If Tenant fails to cure all identified Customer Disturbances in a manner reasonably satisfactory to Landlord within such one (1) calendar day period, such failure shall constitute an Event of Default. In addition, if Landlord delivers to Tenant more than two (2) Disturbance Notices in any calendar year, then concurrently with the third (3rd) Disturbance Notice, or at any time thereafter, Landlord shall have the right, but not the obligation, upon ten (10) days written notice to Tenant, to require Tenant, at Tenant's sole cost and expense, to hire a uniformed security guard to be present at the Premises at such times as is necessary to cure the Customer Disturbance. In the event that Landlord determines, in its reasonable business judgment, that the Customer Disturbance has been cured and the security guard is no longer necessary, Landlord shall so notify Tenant in writing and Tenant may thereafter dismiss the security guard; provided, however, if a subsequent Customer Disturbance shall arise, Landlord shall again have the right, but not

Landlord's Initial:

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Tenant's Initial(s):

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the obligation, on one (1) calendar day notice to Tenant, to require Tenant to again hire a uniformed security guard in accordance with the provisions of this Section.

6.6 Restrictions. Tenant covenants and agrees that Tenant shall not request or require from Landlord, and Landlord shall not be obligated or liable in any manner whatsoever, to (a) process, permit or make any commitments to any governmental entity or to any other person or entity concerning the Premises and/or Shopping Center that would purport to bind, encumber or obligate the Landlord, the Premises, or any portion thereof; and/or (b) grant, request, permit, bind, encumber or obligate the Landlord, the Premises or any portion thereof with any dedications, easements, rights-of-way, recordation, covenants, reservations, liens, bonds, improvement agreement, mitigation agreements, security payment or any other matter that may adversely affect the Premises, or the Shopping Center or the Landlord or any portion thereof (collectively or individually referred to as "Restrictions") with any governmental agencies, person or entity. Tenant agrees that Landlord shall not be required, obligated to consent or agree to be bound to any of the Restrictions as set forth in this Section and Landlord shall have no liability whatsoever to Tenant for its refusal or failure to give such consent or approval. Tenant hereby waives any claim for damages or liability against Landlord based on Landlord unreasonably withholding or unreasonably delaying any consent or approval requested by Tenant.

6.7 Operating Covenant. Tenant acknowledge that the Shopping Center is an interdependent enterprise and that the realization of the benefits of this Lease to Landlord and is dependent upon Tenant creating and maintaining a successful and profitable operation in the Premises based upon Permitted Use of Premises. Tenant further acknowledge that the character and quality of Tenant's operation and of the Shopping Center will be enhanced by Tenant's use of its best efforts to establish a successful character and image. Accordingly, Tenant covenants and agrees that during the entire Lease Term and any extension thereof (if any), Tenant shall operate and conduct continuously and uninterruptedly solely for the Permitted Use of Premises under the Tenant's Trade Name within the entire Premises the business which it is required to operate and conduct under the provisions of the Lease (fully fixtured, stocked and staffed) and shall be open for business to the public, at minimum seven (7) days per week between hours of 10:00 a.m. to 10:00 p.m. on Monday through Saturday, and between hours of 10:00 a.m. to 7:00 p.m. on Sunday (except national holidays or during such periods as the Premises may be untenable by reason of fire or other casualty), and that it will at all times operate said business with due diligence and efficiency and perform all other reasonably necessary acts. THE FAILURE BY TENANT TO COMPLY OR PERFORM WITH THE FOREGOING COVENANTS IN THIS ARTICLE SHALL CONSTITUTE AN EVENT OF DEFAULT. In the event Tenant fails to continuously operate and conduct Tenant's business in the Premises as required by the provisions of this Lease for a period of five (5) or more consecutive days, then in addition to all remedies available to Landlord, Landlord reserves the right and option to terminate and cancel this Lease upon thirty (30) calendar days written notice of Landlord's intent to Tenant, whereupon the Lease shall terminate, and Tenant shall vacate the Premises upon the date specified in Landlord's notice to Tenant.

6.8 Non-Competition. Tenant hereby agrees and covenants that during the Lease Term, neither Tenant nor any of Tenant's Representatives (as defined below) or any other entity owned by or controlled directly or indirectly by or under common control with Tenant, its partners, members, officers or shareholders, shall own, engage, operate or have any financial interest in any business which is the same as or similar to Permitted Use of Premises and/or any business having the same trade name as the Tenant's Trade Name, if its front door or store front opening is located within a radius of three (3) miles from the Shopping Center (measured on a straight-line basis on a map). Tenant acknowledges that the restrictions contained in this Section 6.8 are reasonable and necessary to protect the legitimate business interests of Landlord and that any violation of these restrictions would result in irreparable injury and entitle Landlord to equitable relief. If it is determined by a court of competent jurisdiction that these restrictions, in whole or in part, are illegal or unenforceable, then Landlord and Tenant authorize the court to reduce the scope of the restrictions so as to conform with the requirements of law. Tenant acknowledges that Tenant has not been granted an exclusive right to conduct the Permitted Use of Premises within the Shopping Center. The term "Tenant's Representatives" as used in this Lease shall mean Tenant's principals, officers, employees, shareholders, directors, subsidiaries, affiliates, partners, assignees, contractors, subcontractors, visitors, customers, invitees, licensees, spouses, children, heirs, trustees, transferees, successors, assigns, agents, attorneys, accountants and representatives, and all of their respective successors and assigns, or any other parties directly or indirectly employed by any one of the foregoing or reasonably under the control of any of the foregoing or for whose acts any of the foregoing may be liable.

7. Security Deposit. Tenant has deposited with Landlord the Security Deposit specified in the Basic Lease Definitions. The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions of this Lease to be kept and performed by Tenant during the entirety of the Lease Term. If Tenant defaults with respect to any provision of this Lease, including, but not limited to, the provisions relating to the payment of Rent, Landlord may (but shall not be required to), use, apply or retain all or any part of the Security Deposit (a) for the payment of any Rent and/or any other sum in default and/or any other sum required to be paid by Tenant under this Lease; (b) for the payment of any other amount which Landlord may spend or become obligated to spend by reason of Tenant's default or breach of any provision of this Lease; (c) to compensate Landlord for any loss or damage which Landlord may suffer by reason of Tenant's default or breach of this Lease; and/or (d) to compensate Landlord for all costs and expenses as estimated at Landlord's sole discretion pursuant to Article 23. If any portion of the Security Deposit is so used or applied, Tenant shall within ten (10) days after demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount. The failure on the part of Tenant to so restore the Security Deposit shall be a material default under the terms of this Lease. Tenant understands that Landlord shall not be required to keep the Security Deposit separate from its general funds, and Tenant shall not be entitled to interest on such Security Deposit. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by Tenant, the Security Deposit or any balance remaining thereof shall be returned to Tenant within thirty (30) days after the expiration of the Lease Term. Notwithstanding the foregoing, Landlord may retain the Security Deposit until such time as any amount due or obligation owing from Tenant in accordance with the terms of this Lease has been determined and paid in full or fulfilled, as applicable. Should Landlord sell its interest in the Premises and/or Shopping Center during the Lease Term, and if Landlord deposits with such purchaser the Security Deposit or any balance remaining thereof, Landlord shall thereupon be discharged from any further liability with respect to this Lease and the Security Deposit. Tenant hereby waives any and all rights it may have with respect to or under any applicable law or otherwise or any related, successor or similar provision of law, now or hereafter in effect, which provide that Landlord may claim from a security deposit only those sums reasonably necessary to remedy defaults in the payment of rent, to repair damage caused by Tenant or to clean and restore the Premises, it being agreed that Landlord may, in addition, claim (i) those sums specified in this Article 7 and 19 below; (ii) both past and future rent; and/or (iii) those sums necessary to compensate Landlord for any other loss or damage, foreseeable or unforeseeable, caused by the acts or omissions of Tenant or Tenant's Representatives.

8. Shopping Center Services.

8.1 Generally. Landlord may at Landlord's option and sole discretion, but not the obligation, to provide security services and/or security system for the Common Areas which may be at such intervals and with such manpower as Landlord may determine in its sole discretion. In such event Landlord will not be liable for the quality of such security service or other security system nor shall Landlord be liable for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such security service or other system. Tenant further acknowledges that such security services are intended to be deterrent in nature and Landlord does not undertake to insure that damage to Persons or property will thereby be prevented upon the Premises or Shopping Center. Tenant acknowledges that this Lease does not impose upon Landlord, any owner of a portion of the Shopping Center or any other tenant or occupant of the Shopping Center a duty to guard against the criminal acts of a third party. In no event shall security service and/or systems be provided by Landlord to Tenant with respect to the Premises. The terms, covenants and provisions of this Lease, including the provisions of this Section are not intended to benefit any other person or entity other than Landlord and Tenant.

Landlord's Initial: FSK

Tenant's Initial(s): [Signature]

8.2 Utilities for Premises. Tenant, at Tenant's sole cost and expense, shall pay for all utilities used by Tenant on the Premises from and after the Commencement Date, including water, sewer, gas, heat, air conditioning, light, steam, trash disposal, electricity, telephone and other utility services furnished to the Premises. If a separate meter is provided for Tenant for any such utilities, installation shall be at Tenant's sole cost and expense. The term "utilities" for the purpose of this Article 8 shall include, without limitation, sewer assessments, fixture unit charges, hook-up fees, connection fees, use fees, acreage fees, capital connection fees and any and all similar fees or charges. Tenant agrees at Landlord's option and upon demand by Landlord therefor, either to install separate meter(s) for the Premises, at Tenant's sole cost and expense, which in such event Tenant shall thereafter pay to Landlord all charges, costs and expenses for the utility(ies) so metered, or Tenant shall pay all initial utility deposits and fees, and all monthly service charges, costs and expenses for water, electricity, sewage, gas, heat, air conditioning, light, steam, trash disposal telephone and any other utility services furnished to the Premises and the improvements thereon during the entire term of this Lease.

8.3 Master Meter. In addition to the Annual Basic Rent, Additional Rent and other sums specified herein, Tenant shall pay monthly, as Additional Rent, upon receipt by Tenant of a bill from Landlord, a utility charge to pay for utilities which are master metered or for utilities which there is no separate meter. The utility charge shall be estimated from time to time by Landlord and shall be initially based on a typical store layout comparable to Tenant's Permitted Use of Premises, but shall be subject to adjustment to be determined by Landlord at anytime during the Lease Term. In the event Tenant fails to pay any utility charge to Landlord within ten (10) days after delivery by Landlord to Tenant of a bill or upon and during the continuance of an Event of Default, Landlord may cut off and discontinue, without further notice to Tenant, any utilities furnished to the Premises by Landlord.

8.4 Interruption. Landlord shall not be liable in damages or otherwise for any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) the heating, ventilating and air conditioning system, if any. No such failure or interruption, whether resulting from a casualty or otherwise, shall entitle Tenant to terminate this Lease or to abate the payments Tenant is required to make under this Lease. In the event of any failure or interruption of (i) any utility service being furnished to the Premises, or (ii) the heating, ventilating and air conditioning system as a result of any casualty, the rights and obligations of Landlord and Tenant shall be governed by the terms and conditions set forth in Article 14 below. In the event Landlord elects to discontinue furnishing any utilities or heating, ventilating and air conditioning system to the Premises for any reason other than the non-payment by Tenant of any utility charge or the occurrence of an Event of Default, Tenant shall obtain Tenant's own utilities or heating, ventilating and air conditioning service to the Premises and Tenant shall have the right to use all existing conduits and facilities situated in the Premises. Tenant shall have sole responsibility for turning on and starting up the heating, ventilating and air conditioning system, including contacting and coordinating with electricians, engineers and municipal officials.

8.5 Selection of Utility Service Providers.

(i) At all times during the Lease Term Landlord shall have the right to select the utility company or companies that shall provide electric, telecommunication and/or other utility services to the Premises (including a utility company that is an Affiliate of Landlord). Landlord shall have the right at any time and from time to time during the Lease Term to either (a) contract for services from electric, telecommunication and/or other utility service provider(s) other than the provider with which Landlord has a contract as of the Commencement Date of this Lease (the "Current Provider"), or (b) continue to contract for services from the Current Provider.

(ii) Tenant shall at all times cooperate with Landlord and any electric, telecommunication and/or other utility service provider with which Landlord has contracted and, as reasonably necessary, shall allow Landlord or such electric, telecommunication and/or other utility service provider reasonable access to any electric, telecommunication and/or other utility lines, feeders, risers, wiring and any other machinery within the Premises.

(iii) Landlord shall not be liable in damages or otherwise for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, interruption or defect in the electric, telecommunication and/or other utility services provided to the Premises. No such change, failure, interference, interruption or defect shall entitle Tenant to terminate this Lease or to abate the payments Tenant is required to make under this Lease.

(iv) Tenant acknowledges that the covenants and agreements contained in this Article are reasonable and necessary to protect the legitimate business interests of Landlord and that any violation of these covenants or provisions would result in irreparable injury and entitle Landlord to equitable relief.

8.6 Interruption/Disruption of Services.

(i) No damages, compensation, claims or losses and liabilities shall be payable by Landlord and this Lease and Landlord shall not be deemed in default hereunder or liable for and the obligations and liabilities of Tenant to perform all of its covenants and agreements set forth in this Lease shall in no way be affected, impaired, reduced or excused in the event that there shall be an interruption, curtailment, suspension, failure or stoppage of the Shopping Center Services, Shopping Center's HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel) or other Shopping Center services or systems serving the Premises or the Shopping Center any other services required by Landlord under this Lease (an "Interruption of Service"), by reason of or caused by: (a) any damage or destruction; (b) any condemnation; (c) an accident, breakage, repairs, leakage, replacements; (d) an emergency; (e) shortages of labor or materials; or (f) an event of Force Majeure Delay including, but not limited to: (1) a lack of access to the Shopping Center or the Premises (which shall include, but not be limited to, a lack of access to the Shopping Center or the Premises when it or they are structurally sound, but inaccessible due to evacuation of the surrounding area or damage to any nearby structures, facilities or public areas; (2) any cause or damage outside of the Shopping Center; (3) reduced air quality or other contaminants within the Shopping Center that would adversely affect the Shopping Center or its occupants (including, but not limited to, the presence of biological or other airborne agents within the Shopping Center or the Premises); (4) disruption of mail or deliveries to the Shopping Center or the Premises resulting from damage or destruction; (5) disruption of telephone and telecommunication services to the Shopping Center or the Premises resulting from damage or destruction; (6) blockages of any windows, doors or walkways to the Shopping Center or the Premises resulting from damage or destruction; (7) Governmental Regulations or mandates, strikes, lockouts or other labor disputes; or (8) for any other causes. In addition, Landlord shall not be liable to Tenant for any electrical power surge resulting from any cause whatsoever. The term "Force Majeure Delay" as used in this Lease shall mean any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inclement weather (including rain), inability to obtain labor, services, materials or reasonable substitutes therefor, inability to obtain insurance proceeds or financing, failure or disruption of utilities or critical electronic systems (including so called "rolling" blackouts), Governmental Regulations, governmental controls (including delays in issuing required permits and approvals), judicial orders, acts of the public enemy (including terrorist acts) or hostile governmental action, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, fire or other casualty, eminent domain and other cause or causes beyond Landlord's control.

(ii) Landlord reserves the right, without any liability to Tenant, except as otherwise expressly set forth in this Lease, and without being in breach of any covenant of this Lease, to effect an Interruption of Service, as may be required by this Lease or by applicable Governmental Regulations, or as Landlord in good faith deems advisable, whenever and for so long as may be necessary to make repairs, alterations, upgrades, changes or for any other reason, to the Shopping Center's HVAC, utility, sanitary, elevator, water, telecommunications, security or other Shopping Center systems serving the Premises or any other services required of Landlord under this Lease. In each instance, Landlord shall exercise reasonable diligence to eliminate the cause of the Interruption of Service if resulting from conditions within the Shopping Center and to conclude the Interruption of Service. Landlord shall give Tenant written notice, when practical, of the commencement and anticipated duration of any such Interruption of Service.

(iii) The occurrence of an Interruption of Service pursuant to this Article for any reason whatsoever shall not (a) constitute an actual or constructive eviction of Tenant in whole or in part; (b) entitle Tenant to any abatement, reduction or diminution of Annual Basic Rent, Additional Rent

Landlord's Initial:

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Tenant's Initial(s):

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or other charges payable under this Lease; (c) relieve or release Tenant from any of its obligations and duties under this Lease; or (d) entitle Tenant to terminate this Lease.

9. Quiet Possession. So long as there is not in existence an Event of Default and upon payment by Tenant of the Annual Basic Rent, Additional Rent and other sums payable as required hereunder and observance and performance of all of the terms, covenants and conditions set forth in this Lease to be observed, fulfilled and performed by Tenant, Tenant shall have quiet possession of the Premises throughout the Lease Term, subject, however, Tenant understands and agrees that its quiet possession of the Premises shall at all times be subject to the terms and conditions of this Lease and of any ground leases, mortgages and deeds of trust, agreements, encumbrances and all matter of records now or hereafter affecting the Shopping Center (or any portion thereof) or the real property upon which the Shopping Center is situated. The provisions of this Article 9 shall not extend to any disturbance, act or condition brought about by any other person and/or entity (other than Landlord), including a tenant of other premises in the Shopping Center.

10. Alterations.

10.1 Generally. Tenant shall make no alterations, decorations, changes, additions, repairs or improvements (collectively referred to as "Alterations") in or to the Premises without Landlord's prior written consent which may be granted or withheld by Landlord in Landlord's sole and absolute discretion, and which may be conditioned upon requirements as prescribed by Landlord. If Tenant proposes any Alterations to the Premises, Tenant, at its sole cost and expense, shall cause to be prepared plans, specifications and working drawings by qualified, licensed, bonded and insured engineers and architects covering Tenant's Alterations to the Premises and submit to Landlord two (2) complete sets of Tenant's architectural, structural, mechanical and interior design plans, drawings, engineering and calculations prepared, signed and stamped by all the engineers and architects as well as in AutoCAD format, together with the all specifications, material list, cost estimate, construction time schedule to complete such work and improvements, evidence of cash available to Tenant to complete such work and improvement, and any other plans, drawings, renderings, specifications, calculations, materials and/or information as required or requested by the Landlord. Tenant hereby agrees and stipulates that in the event the Landlord disapproves for any reason whatsoever the Tenant's Preliminary Plans, the Lease shall remain in full force and effect, and the Tenant's obligation to pay Rent or any amount thereof or other payment required to be made by Tenant pursuant to the Lease, shall not be affected thereby in any manner whatsoever and Tenant shall not be entitled to any abatement or reduction of Rent, and shall not have any effect on the Lease or shall not give to Tenant any offset or defense to the full and timely performance of its obligations, liabilities, covenants, performances, indemnifications, releases, duties and responsibilities under the terms and conditions of the Lease and shall not constitute any actual or constructive eviction of Tenant, and shall not give rise to any other claim of any nature against Landlord, and Tenant shall continue to operate and conduct continuously and uninterruptedly within the Premises the business which it is required to operate and conduct under the provisions of the Lease. Tenant hereby covenants and agrees that Tenant shall not conduct any work, alterations and/or improvements to the Premises that require closure of the Tenant's business for more than thirty (30) consecutive calendar days (except if such work, alterations and/or improvements to the Premises is required as a result of fire or casualty). Without limiting Landlord's ground for other reasonable grounds for withholding consent or disapproval of the Tenant's Alterations, Tenant and Landlord hereby agree that all of Tenant's contractors, subcontractors, consultants, architects and Tenant's Representatives shall execute and deliver an access agreement "Shopping Center Access Agreement" with Landlord in the form and content prepared and acceptable by Landlord. Tenant shall be responsible for making certain and ensuring that all of Tenant's contractors, subcontractors, consultants, architects and Tenant's Representatives maintain insurance coverage, policies and endorsements in strict accordance with the Article 12.8, 12.9 and 12.10, and cause the Landlord to be shown as an additional insured on said insurances. Furthermore, no improvements shall be made to any storefront, exterior walls or roof of the Premises, nor shall Tenant erect any mezzanine or increase the size of any mezzanine, if one was initially constructed. In no event may Tenant affix furniture, fixtures, equipment or other personal property to the structural members of the Premises or make alterations which would impact the structural integrity of the Premises.

10.2 Permitted Alterations. All Alterations shall be done, at Tenant's sole cost, risk and expense, using a licensed, insured, bonded and competent general contractor which is approved by Landlord, but under supervision of a competent licensed architect or competent licensed structural engineer and made in accordance with plans and specifications approved in writing by Landlord before the commencement of work pursuant to the provisions of this Article 10, and at such times and in such manner as Landlord may from time to time adopt or implement other rules, conditions and/or procedures. All Alterations shall be installed in full compliance with all Governmental Regulations of all governmental agencies having jurisdiction with respect thereto and shall in no manner cause labor problems in the Shopping Center. All applicable permits and authorizations shall be obtained from all governmental agencies before the commencement of any such work by a licensed architect and general contractor. Tenant agrees to pay to Landlord, as Additional Rent, the cost of review and analysis of all plans and drawings, any engineering and consultation expenses whatsoever which are incurred by Landlord in connection with its review and approval of said Alterations, plus an administrative fee equal to fifteen percent (15%) of the total cost of each Alteration. Tenant shall give Landlord at least sixty (60) days' prior written notice before the commencement of construction of any Alterations in order to give Landlord an opportunity to post and record such notices as Landlord deems appropriate to protect its interest in the Premises and Shopping Center. Tenant waives all rights to make repairs at Landlord's expense under the provisions of or under any applicable law or otherwise or any related, successor or similar provision of law. In the event Landlord requires, Tenant, at Tenant's sole cost and expense, shall provide Landlord with a commercially reasonable performance, payment and/or completion bond for all Alterations prior to commencement of any work by Tenant. In no event shall Tenant make or cause to be made any penetration through the ceiling or roof or roof membrane of the Premises without the prior written approval of Landlord. Tenant shall be directly responsible for any and all damages resulting from any violation of the provisions of this Article 10. All improvements to be made within the Premises which require the approval of Landlord shall be under supervision of a competent architect or competent licensed structural engineer and made in accordance with plans and specifications approved in writing by Landlord before the commencement of work. In addition, all materials used in connection with the improvements, including, without limitation, paint, carpeting, wall or window coverings, carpet glues and other chemicals, must be approved in writing by Landlord before use in or installation upon the Premises. All work with respect to any improvements must be done in a good and workmanlike manner, in conformance with applicable Governmental Regulations and diligently prosecuted to completion to the end so that the Premises shall at all times be a complete unit except during the period of work. Tenant shall provide Landlord, at least thirty (30) days prior to commencement of such work, a copy of the building permit authorizing the work. Landlord and Landlord Affiliates shall have the right to go upon and inspect the Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Premises. Tenant shall, before the commencement of any work which might result in mechanics' or materialmen's lien, give Landlord written notice of Tenant's intention to do so in sufficient time to enable the posting of such notices. Upon completion of the work, Tenant shall file of record in the office of the County recorder where the Shopping Center is located and post upon the Premises, as required or permitted by law, a legally valid and permissible Notice of Completion and Tenant shall deliver to Landlord, within ten (10) days after completion of the work, a copy of the Notice of Completion. Upon the termination or earlier expiration of this Lease, the Alterations shall not be removed by Tenant but shall become a part of the Premises at Landlord's option. In performing the work of any Alterations, Tenant shall have the work performed in such a manner as not to obstruct the access to the premises or space of any other tenant or occupant in the Shopping Center. At Landlord's request, Tenant, at Tenant's sole cost and expense, shall post a payment bond and/or a performance bond in the amount of the improvements assuring lien free completion in accordance with approved plans and specifications.

Landlord's Initial:

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Tenant's Initial(s):

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10.3 Permitting Process. Tenant shall be principally responsible for processing, managing and coordinating the Permits and submitting all applications to, meeting with and otherwise interfacing with all governmental authorities with respect to Alterations, subject to the terms of this Lease. Tenant agrees to appropriately involve the Landlord and its counsel and personnel in the Permits so as to benefit from their knowledge of local entitlement matters including, without limitation, (i) timely inviting the Landlord and its counsel to review all applications and other submissions the Tenant intends to make to the City or the County, (ii) timely inviting the Landlord and its counsel to participate in strategy sessions with the Tenant and its personnel prior to the Tenant's undertaken any specific Permits, (iii) timely inviting the Landlord and its counsel to attend meetings of the Tenant with City Planners, City Manager and elected officials to discuss the proposed Permits, and (iv) timely inviting the Landlord and its counsel to attend and, if deemed appropriate by both Parties, to participate in any public hearings before City officials concerning Permits. At least once every two weeks, Tenant shall provide to the Landlord a detailed written progress and status report. In addition, Tenant shall provide to Landlord, a copy of all plans, specifications, drawings, proposals, schedules, diagrams, surveys, reports, tests, studies, permits and applications documents, communication letters and emails, and any other documents that Tenant or Tenant's architects, contractors, sub-contractors and agents submits to or receive from any governmental agencies pertaining to the Permits within five (5) calendar days after such submittal date or receipt thereof.

10.4 Mechanic's Liens. Tenant shall not suffer or permit the filing of any mechanic's lien, materialmen's liens, professional service liens and other liens against the Premises and the Shopping Center, nor against Landlord's or Tenant's interest therein by reason of any work, labor, services or materials supplied or claimed to have been supplied at the instance of Tenant or at the instance of anyone holding any interest in the Premises or any part thereof through or under Tenant, and Tenant agrees to and shall indemnify and hold Landlord harmless from and against any and all Claims which may arise or be incurred by reason of the filing or release of any such lien(s). If any such lien should at any time be filed against the Premises, or against the interest of Tenant or Landlord, the Tenant shall cause the same to be immediately discharged by payment, posting of deposit or bond or otherwise, and if Tenant fails to do so, Landlord may do so at Tenant's expense and Tenant shall immediately reimburse Landlord. If Tenant fails to cause such lien to be discharged within ten (10) days after receiving notice thereof, then in addition to any other right or remedy, Landlord shall have the right, but shall not be obligated, to discharge same by paying the amount claimed to be due or by bonding or other proceedings, and in any such event, Landlord shall have the right to compel the prosecution of any action for the foreclosure of such lien by the lienor, and to pay the amount of any judgment in favor of such lienor, together with interest, costs and allowances, and the amount so paid shall be immediately due and payable by Tenant to Landlord, together with all costs and expenses, including without limitation, reasonable attorney's fees and costs, recording fees and administrative costs and expenses together with an administrative fee in an amount equal to fifteen percent (15%) of the costs so incurred. In addition, Tenant's leasehold interest and any improvements which are or may become the property of Landlord pursuant to this Lease free and clear of all liens of attachment or judgment liens.

10.5 Removal of Alterations. All Alterations which shall include without limitation, carpeting, floor coverings, drapes, wall coverings, ceilings, paneling, partitions, built-in cabinetry, equipments and fixtures of any kind which Tenant has attached in any manner to the Premises during the Term of this Lease, shall upon termination of the Lease by expiration of time or otherwise, become the property of Landlord and shall be surrendered and delivered up with the Premises upon said termination. Alternatively, Landlord, at Landlord's option, may require Tenant to remove the Alterations under the direction of Landlord, at Tenant's sole cost and expense upon surrendering the Premises. In addition, Tenant, at Tenant's sole cost, shall repair any damage to the Premises and/or Shopping Center caused by installation, maintenance, or removal of said Alterations and restore the Premises to the condition it was in prior to the installation, maintenance or removal of such items. If Tenant, during the Term of this Lease, removes any such Alterations which Tenant has attached or installed during the Term of this Lease, Tenant must replace the same with property of similar kind and quality. Any equipment or personal property, other than additions, alterations, changes or improvements as defined herein, not removed by Tenant from the Premises upon the end of the Term, shall be conclusively presumed to have been abandoned by Tenant and title thereto shall thereby pass to Landlord without payment or credit by Landlord to Tenant. Tenant shall, at the termination of this Lease or by the expiration of time or otherwise, surrender and deliver up the Premises and property to Landlord in as good condition as when received by Tenant from Landlord, reasonable wear and tear excepted, together with all the keys to the Premises to Landlord. The Tenant's obligation to perform the covenants in this Section 10.5, shall survive the expiration of the Term or earlier termination of this Lease. Tenant hereby waives any and all rights it may have under any applicable law or otherwise or any related, successor or similar provision of law.

10.6 Security Interests. Tenant shall not cause or authorize to be filed or recorded any Uniform Commercial Code ("UCC") financing statements which encumber Tenant's Alterations, personal property fixtures or other property and which contain the legal description of the Shopping Center. Tenant represents and warrants that Tenant has not, prior to the date of this Lease, entered into, caused to be filed or recorded, or allowed to be filed or recorded, any such UCC financing statement. In the event any such UCC financing statement is filed or recorded against the Shopping Center or any portion thereof or against any of Landlord's property or any property in which Landlord may have an interest, Tenant shall, within five (5) days after a written or oral request from Landlord, immediately cause such UCC financing statement to be released from Landlord's property and from the Shopping Center.

10.7 Landlord's Review Reimbursement. Tenant shall be liable for and shall pay and reimburse in advance to Landlord within ten (10) calendar days following Landlord's presentation of a estimate and/or actual statement(s) to Tenant detailing the following costs: (i) any charges, expenses, costs and fees incurred by Landlord in connection with review, approval and/or disapproval of the Tenant's plans, drawings, calculations, specification and any materials, which include, without limitations, all engineering, architect, consulting and legal fees incurred by Landlord; (ii) all necessary printing and distribution costs required to implement the purposes of this Article; and (iii) any other charges, expenses, costs and fees which Landlord incurs in order to accommodate the Tenant or implement the purposes of this Article (Tenant agrees to pay and reimburse in advance Landlord the sum of two hundred and fifty dollars (\$250.00) per hour for the Landlord's time in connection with Landlord's review, approval and/or disapproval or any matter related to this Article); (iv) costs, including but not limited to time and materials for: temporary electricity hook-up and fees, temporary fire protection installation, construction water installation and site clean-up required by Landlord; and (v) temporary electricity and water consumed by Tenant.

11. Repairs.

11.1 Tenant's Repair Obligations. As an inducement to the Landlord for entering into this Lease and as a material part of the consideration for this Lease, Tenant agrees and covenants, at all times during the entire Term of this Lease and at Tenant's sole cost, risk and expense, to keep, maintain, replace and/or repair the entire Premises and every part thereof, all utility systems, lines and pipes (whether located inside or outside of the Premises), roof, roof membranes, and all Alterations therein in good order, first class and tenantable condition and repair and in compliance with all Governmental Regulations and insurance requirements, including, but not limited to, the maintenance, replacement and repair of any and all plumbing systems and pipes, roof, roof membranes, electrical systems, pipes and conduits, drains, sewer mains and lines, gas lines, water lines, toilets, basins, water heaters, the utility meters, pipes and conduits, circuit breaker, panel box, all fixtures, ducting, ventilating, air conditioning and heating equipment servicing the Premises (whether located inside or outside of the Premises) and other equipment and fixtures therein, all tenant's signs, locks, and closing devices, and all window sash, casements or frames, window and window frames, door and door frames, floor coverings, including carpeting, terrazzo or special flooring, ceilings, interior and exterior walls, structural parts of the Premises, the storefront(s) including glass, window and door, both exterior and interior, the storefront awnings, all other appliance, fixture and equipment of every kind and nature, and all such items of repair, maintenance, alteration and improvement or reconstruction as may at any time or from time to time be required by Governmental Regulations, whether or not presently in effect or anticipated, including, but not limited to, enforcement of the Americans with Disabilities Act and any amendment thereto. In addition, Tenant, at Tenant's sole cost, risk and expense, hereby agrees and covenants to enter into a regularly scheduled preventative maintenance service contract and keep in force during the entire Term of this Lease with a qualified and licensed maintenance contractor approved by Landlord, for (i) the service and maintenance of all ducting, ventilating, heating and air conditioning systems, equipments and fixtures within the Premises and/or servicing the Premises; and

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Tenant's Initial(s): JB

(ii) the monitoring, maintenance, repair and/or replacement of the roof and roof membranes. Tenant shall provide Landlord with a copy of such service contract upon Landlord's request from time to time during the Lease Term. Such service contract shall include all scheduled maintenance as recommended by the equipment or material manufacturer. All glass, both exterior and interior, shall be maintained at Tenant's sole cost and expense, and any glass broken shall be promptly replaced by Tenant with glass of the same kind, size and quality. Without limiting the foregoing, Tenant's failure to replace broken glass within seventy-two (72) hours following the occurrence of the breakage, or the failure by Tenant to replace same with glass of the same kind, size and quality, shall constitute an Event of Default hereof, which may, at Landlord's sole and arbitrary discretion, entitle Landlord to terminate this Lease upon written notice to Tenant. Any and all maintenance, replacement and/or repairs by the Tenant to the Premises which are required pursuant to this Lease and/or as a result of any misuse or neglect by Tenant or Tenant's Representatives or visitors shall be done by the Tenant's licensed contractor which are satisfactory to Landlord for the work to be performed, but at the sole cost and expense of Tenant and in compliance with Alteration provisions of Article 10. Any and all maintenance, replacement and/or repairs by the Tenant to areas outside of the Premises which are required pursuant to this Lease and/or as a result of any misuse or neglect by Tenant or Tenant's Representatives or visitors shall be done either by or under the direction of Landlord, by Landlord's contractor, or if such contractor is not available, by such contractor or contractors which are approved and satisfactory to Landlord for the work to be performed, but at the sole cost and expense of Tenant and in compliance with Alteration provisions of Article 10. Tenant further agrees to pay for all damages and losses to the Shopping Center or any part thereof as well as damages and losses to tenants or occupants thereof caused by Tenant's or any Tenant's Representatives act, use, error, omission, failure to act, operation, or conduct of the Premises, its apparatus or appurtenances. Tenant shall pay Landlord for overtime and for any other expenses incurred in the event repairs, maintenance, alterations, decorating or other work in the Premises is not done during ordinary business hours at Tenant's request. Without limiting the foregoing, if Tenant fails to keep, preserve or make repairs promptly and/or adequately or fails to maintain the Premises in good order, first class condition and repair (as required by the Tenant under this Section 11.1) or fails to fully and unconditionally comply with Tenant's obligations and duties under this Section 11.1 to Landlord's satisfaction, in addition to Landlord's other remedies for breach of Tenant's obligations hereunder, Landlord shall have the option and the right (but not the obligation) to take such action as Landlord deems appropriate to cure Tenant's failure and/or default to make repairs, replacement and/or maintenance to the Premises, and the total costs and expenses incurred by Landlord shall be paid by Tenant to Landlord as Additional Rent hereunder within five (5) calendar days after written demand by Landlord plus an administrative fee equal to twenty-five percent (25%) of the total cost incurred for such work or Three Thousand Dollars (\$3,000.00) per occurrence, whichever amount is greater, to cover Landlord's administrative cost in providing such service to Tenant. Nothing contained herein shall imply any duty on the part of the Landlord to do any such work which under any provisions of this Lease the Tenant may be required to do.

11.2 Landlord's Repair Options. Subject to Section 11.1 above and Article 12, provided that Tenant is not in default under any of the terms, covenants and conditions of this Lease, and subject to an event of Force Majeure Delay, Landlord at Landlord's sole and absolute discretion but at the sole cost and expense of Tenant, shall have the option (but not the obligation) to keep, maintain, and repair the exterior walls, structural parts of the Premises and structural floor, pipes and conduits outside the Premises for the furnishing to the Premises of various utilities (except to the extent that such repairs may be the obligation of the appropriate public utility company) as necessitated by ordinary wear and tear or from causes over which Tenant has no control. Tenant agrees and covenants to pay and reimburse Landlord, in advance and prior to commencement of any repair, work and/or maintenance by Landlord, as "Additional Rent", commencing on the Commencement Date and for the balance of the Lease Term, without setoff or deduction, notice or prior demand therefor on the first day of each calendar month, all sums of money, charges and/or expenses expended or incurred or anticipated to be incurred by Landlord in (a) performing its repair, maintenance and upkeep options under this Section 11.2; (b) Tenant's failure to keep, preserve or make repairs promptly and/or adequately to maintain the Premises in good order, first class condition and repair (as required by the Tenant under Section 11.1 above); and/or (c) Tenant's failure to fully and unconditionally comply with Tenant's obligations and duties under Section 11.1 above to Landlord's full satisfaction; plus an administrative fee equal to twenty-five percent (25%) of the total cost for such repair, maintenance, replacement and/or upkeep, whichever is greater, provided that to the extent any such expenditures by Landlord relate to matters that benefit other premises in the building of which the Premises are a part of, then Tenant's share of such sums shall be based upon a fraction, the numerator of which is the Rentable Area of the Premises, and the denominator of which is the GFA of all premises which were the subject of the repair in question and which are occupied and open for business in the building which Premises is a part of. The term "GFA" as used in this Lease shall mean with respect to the Premises and all other leasable areas in the building which Premises is a part of, the number of square feet of area on all floors available for the exclusive use by the tenants or other occupants thereof and their customers, clients or other invitees, but shall specifically exclude mezzanines, basements, outdoor sales, seating, garden or storage areas, truck docks or loading areas, trash enclosures, balconies, and any space situated outside exterior building walls used for building utilities or mechanical equipment; and not including other areas and space defined herein as part of Common Areas. GFA with respect to the Premises and all other leasable areas in the building which Premises is a part of shall be measured for purposes of this Lease from the exterior face of exterior walls and from the center of interior demising walls. From time to time during the Term of this Lease, Landlord may give Tenant notice of the GFA of the building in which Premises is a part of, at a given time or for a given period of time, as such GFA may be revised because of reductions, expansions or other alterations to the building which Premises is a part of. Tenant agrees, acknowledges and confirms that Landlord shall be under no obligation to make any repairs, alterations, renewals, maintenance, replacements or improvements to and upon the Premises or the mechanical equipment exclusively serving the Premises at any time, nor provide maintenance or janitorial service upon the interior of the Premises or upon any of Tenant's personal property, except as expressly provided in this Lease. In the event Tenant or Tenant's Representatives cause damage or loss to the Premises, Common Areas and/or Shopping Center arising from or by reason of any act, use, error, omission, failure to act, operation, or conduct by Tenant or any of or any Tenant's Representatives, Landlord may, but shall not be obligated to, repair any and all such damage, at the sole cost and expense of Tenant (to be included as Additional Rent payable concurrently with Monthly Basic Rent next falling due). Notwithstanding anything contained herein to the contrary, Landlord shall not be liable for any inconvenience, annoyance or injury to business or any other consequential damage to Tenant arising from the making of, or failure to make, any repairs or to perform any maintenance in or to any portion of the Premises, Shopping Center or Common Areas. Tenant hereby waives all rights under the provisions of or under any applicable law or otherwise or any related, successor or similar provision of law authorizing a tenant to make repairs at the expense of Landlord or to terminate a lease upon the complete or partial destruction of the leased premises.

11.3 No Abatement of Rent. Notwithstanding anything contained in this Lease to the contrary, in no event shall there be any abatement or reduction of Rent whatsoever by reason of Landlord's or Tenant's failure to make any repairs, maintenance, replacement or improvements required hereunder, nor shall give rise to any other claim of any nature against Landlord.

12. Insurance; Liability and Indemnification.

12.1 Liability. Tenant hereby covenants and agrees that Landlord and Landlord Affiliates shall not be liable for any losses, injury, claims, debts, dues, sums of money, liabilities, obligations, damages (including consequential damages), penalties, litigation, demands, manner of action or actions, cause or causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, demands, judgments, agreements, promises, controversies, disbursements, charges, assessments, costs and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) of every kind and nature, character and description whatsoever (collectively, the "Claims") to Tenant, Tenant's Representatives, Tenant's successors and assigns and/or any third party and/or persons and/or entity arising from, caused by or relating to (or alleged to have arisen from, been caused by or related to), with or without fault, to (a) any damage to property entrusted to Landlord or Landlord Affiliates nor for the loss of any property by theft or otherwise, including but not limited to, from any cause arising at any time, including the active or passive negligence of Landlord and Landlord Affiliates; (b) any injury to or death of persons or for damage or loss to or destruction of property resulting from falling plaster, fire, explosion, steam, gas, fire sprinkler leakage and breakage, electricity, water, or rain which may leak from any part of the Shopping Center or the Premises or from the pipes, appliances or plumbing works of the same or from the street or subsurface or from any other place or resulting from dampness or any other cause

Landlord's Initial:

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Tenant's Initial(s):

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of whatsoever nature; (c) any such damage caused by other tenants or parties in the Shopping Center or any of the areas used in connection with the management and operation of the Shopping Center, or for interference with the light or other incorporeal hereditaments, or caused by construction of any private, public or quasi-public work; (d) any latent defect in the Shopping Center, Premises and/or Common Areas; (e) any use, occupancy, construction and/or operation of the Premises by Tenant or Tenant's Representatives; (f) any lack of maintenance or repair, any defect in the design or construction of, or material in, any structure, any roof membrane or other improvement upon the Premises or any other portion of the Premises or the Shopping Center; (g) the condition of the Premises; (h) the presence or existence of any hazardous or toxic substances, materials or waste in or on the Premises or the Shopping Center, whether known or unknown and whether resulting from occurrences prior to or after the date hereof, including without limitation any liability under the Comprehensive Environmental Response, Compensation and Liability Act, or any other law; (i) any act, conduct or omission of Tenant or any of Tenant's Representatives; (j) any accident, casualty or other event on the Premises or in the course of accessing the Premises; (k) a representation, covenant or agreement by Tenant or any of Tenant's Representatives; (l) a violation, alleged violation or failure to comply by Tenant or any of Tenant's Representatives of any one or more provisions of this Lease; (m) the design, construction, engineering or other work provided or performed by or for Landlord or any other party, either before or after the date hereof, with respect to the Premises or any other portion of the Premises or the Shopping Center used by Tenant or Tenant's Representatives; (n) the application of the principles of strict liability with respect to any act or omission of Tenant, Tenant's Representatives, Landlord or the other Landlord Affiliates in connection with the Premises, including without limitation the existence of any contaminants, toxic or Hazardous Substances (as defined below) at the Premises and/or the Shopping Center; (o) any act or failure to act of Landlord or any other Landlord Affiliates in preparing, reviewing, approving, disapproving, consenting to or joining in any plans, specifications, studies, reports, applications, permits, maps or other documents or materials relating to the Premises or the Shopping Center or in observing, inspecting or testing any work or improvement on or affecting the Premises and/or the Shopping Center; (p) any use or misuse by Tenant or any of Tenant's Representatives of the Premises and/or the Shopping Center; (q) any other cause whatsoever in connection with the Premises, or Tenant's performance under this Lease; (r) any inability by Tenant and/or Tenant's Representatives not to use, occupy or operate the Premises for Tenant's intended or proposed use or occupancy; (s) any inability by Tenant and/or Tenant's Representatives not to obtain governmental approvals and consents to use, occupy or operate the Premises for Tenant's intended or proposed use or occupancy; (t) any violation of, non-compliance of or failure to comply with, or the alleged violation of or alleged failure to comply with any Governmental Requirements, including Hazardous Materials Laws (defined below); (u) any breach, violation, failure or nonperformance by Tenant of any of Tenant's obligations, agreements, liabilities, representations or covenants under this Lease; (v) any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; and/or (w) any violation of, non-compliance of or failure to comply with, or the alleged violation of or alleged failure to comply with any recorded covenants, conditions and restrictions affecting the Shopping Center (or real property on which the Shopping Center is situated), the matters of record and/or the Declarations. As a material part of the consideration of this Lease, Tenant hereby fully and irrevocably remise, relinquish, acquit, release and forever discharge Landlord and Landlord Affiliates, of and from any and all Claims, whether now known or unknown, anticipated or unanticipated, asserted or not asserted, suspected or unsuspected, fixed, conditional or contingent, from any and all suits, which Tenant and/or Tenant's Representatives may have or may hereafter have or claim to have against Landlord and/or Landlord Affiliates by reason of any matter or omission arising from any cause whatsoever, including, but not limited to, any of the matters which arise out of, directly or indirectly, or are in any way connected with, related to or mentioned in this Article 12.1(a) through 12.1(w) above, and for any such loss, damage, injury or claim as described in this Lease, and agrees to indemnify, defend (with counsel reasonably acceptable to Landlord) and hold harmless Landlord and all of the Landlord Affiliates and their property from any and all Claims arising from or related to any such loss, damage, injury or claim as described above, whether incurred or made by Tenant, Landlord, Landlord Affiliates or any third person(s) or entity(ies). Tenant warrants and represents to the Landlord that the effect the provisions of this Article 12 have been fully and completely explained to Tenant by Tenant's attorneys. The foregoing release, waiver, indemnity and obligation to defend and hold harmless shall apply to any claim or action brought by any person, business, entity, private party or governmental agency or entity under any statute or common law now or hereinafter in effect and is intended to apply with respect to full and complete loss, damage, injury or claim arising before or after the date hereof. The foregoing release, waiver, indemnity and obligation to defend and hold harmless, and all of Tenant's similar covenants herein, are intended to apply to losses, damages, injuries and claims incurred directly or indirectly by Landlord or any Landlord Affiliates, or their property. With respect to design, construction methods, materials, locations and other matters for which Landlord has given or will give its approval, recommendation or other direction, the foregoing release, waiver, indemnity and obligation to defend and hold harmless shall apply irrespective of Landlord's approval, recommendation or other direction whatsoever.

12.2 Indemnification. In addition to Section 12.1 above, Tenant, at Tenant's sole cost and expense, hereby agrees to indemnifies, defend (with counsel reasonably acceptable to Landlord), protect and hold Landlord and each of Landlord Affiliates harmless from and against, and shall reimburse Landlord and Landlord Affiliates with respect to any and all manner of action or actions, cause or causes of action, at law or in equity, from any and all claims, demand, suits, causes of action, proceedings, actions, losses, liabilities, obligations, accounts, contracts, agreements, promises, controversies, judgments, deficiencies, fines, penalties, debts, dues, sums of money, damages (including consequential damages), costs and expenses (including, but not limited to, attorneys', architects' and engineering fees and expenses, court costs, and expert witness fees) of any kind or nature whatsoever, character and description whatsoever, whether now known or unknown, anticipated or unanticipated, asserted or not asserted, suspected or unsuspected, fixed, conditional or contingent, to which Landlord or Landlord Affiliates may become subject, or which Landlord or Landlord Affiliates may in any manner pay, become obligated to pay, incur or suffer, on account of, in connection with, with respect to, or arising out of occurrence of any one or more of the following events: (a) any breach, default, violation, alleged violation, failure to comply or non-performance by Tenant and/or Tenant's Representatives of any covenant, obligation, duties, liability or agreement under this Lease, including, but not limited to, any breach or default by Tenant in the full and prompt payment of any amount due under this Lease and/or any failure by Tenant to maintain or renew any insurance policy required by the terms of this Lease, set forth and contained on the part of the Tenant to be fulfilled, kept, observed or performed, or any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; (b) a violation, alleged violation or failure to comply by Tenant or any of Tenant's Representatives of any one or more provisions of this Lease; (c) Tenant's use or occupancy, or manner of use or occupancy, or conduct or management of the Premises, the Shopping Center, any Common Areas and/or on any sidewalk, street, alley, curb, passageway or space adjacent thereto, or any part thereof or the conduct of Tenant's business; (d) any accident, injury or damage to person and/or property whatsoever occurring in or arising from any use or occupancy of the Premises, or occasioned by any use, occupancy of, or activity on the Premises, the Shopping Center, any Common Areas and/or on any sidewalk, street, alley, curb, passageway or space adjacent thereto, or any part thereof, by or for Tenant (or any subtenant, invitee, contractor, employee or agent of Tenant or any subtenant); (e) the use or occupancy, or manner of use or occupancy, or conduct or management of the Premises or the Shopping Center by Tenant or Tenant's Representatives, or any of the areas used in connection with the management and operation of the Shopping Center or any part thereof; (f) any active or passive negligence or any wrongful or intentional act or omission or any error or omission on the part of Tenant or any of Tenant's Representatives or Tenant's subtenants or any of their agents, contractors, servants, employees, licensees, sub-lessees or invitees, in, on or about the Premises, Shopping Center or any part thereof; (g) any activity, work, improvement or thing done by or for Tenant in, on or about the Premises, the Shopping Center, any Common Areas and/or on any sidewalk, street, alley, curb, passageway or space adjacent thereto, or any part thereof; (h) any services performed or to be performed by Landlord hereunder, or which any person and/or entity has or may hereafter have against Landlord or Landlord Affiliates arising out of or in any way connected with any transactions, matter, cause, occurrences, acts, omissions or thing whatsoever whether before or after the date hereof; (i) the conduct of Tenant's business; (j) by reason of damage to persons or property caused by moving property in or out of the Shopping Center or by the installation or removal of furniture or other property or improvements for Tenant and/or Tenant's Representatives; (k) any alterations, activities, work or things done, omitted, permitted or allowed by Tenant and/or Tenant's Representatives in, at or about the Premises or the Shopping Center, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any Governmental Regulations or requirements, including Environmental Laws (defined below); (l) all damages sustained by Landlord as a result of any holdover by Tenant or any Tenant's Representatives in the Premises including, but not limited to, any claims by another tenant resulting from a delay by Landlord in delivering possession of the Premises to such tenant; (m) the condition of the Premises; (n) any use or misuse by Tenant or any of Tenant's Representatives of the Premises and/or the Shopping Center; (o) any other cause whatsoever in connection with the Premises, or Tenant's

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performance under this Lease; (p) any violation of, non-compliance of or failure to comply with, or the alleged violation of or alleged failure to comply with any Governmental Requirements, including Hazardous Materials Laws (as defined below); (q) any breach, violation, failure or nonperformance by Tenant of any of Tenant's obligations, agreements, liabilities, representations or covenants under this Lease; (r) any misrepresentation made by Tenant or any guarantor of Tenant's obligations in connection with this Lease; and/or (s) any violation of, non-compliance of or failure to comply with, or the alleged violation of or alleged failure to comply with any recorded covenants, conditions and restrictions affecting the Shopping Center (or real property on which the Shopping Center is situated), the matters of record and/or the Declarations.

In addition, Tenant hereby agrees, covenant and stipulates to pay to Landlord and/or Landlord's Affiliates, within ten (10) days after demand therefor, any and all costs and expenses of any type or nature whatsoever, including without limitation, all actual attorney's fees, appraisers', accountants', expert witness fees, disbursements and other out-of-pocket costs incurred by Landlord and/or Landlord Affiliates in enforcing the indemnity agreement under in this Lease, including but not limited to, this Article 12.

12.3 Waiver. To the fullest extent permitted by law, Tenant on behalf of itself and all of Tenant's Representatives, as a material part of the consideration to Landlord, hereby waives all Claims it may have against the Landlord and Landlord Affiliates for (a) any damage to or loss of property (including, without limitation, loss of profits and intangible property) or bodily injury or loss of life or other damages of any kind resulting from or occurring in or at the Shopping Center, the Common Areas or the Premises or any part thereof; (b) any loss of or damage to property of Tenant and Tenant's Representatives located in the Premises or other part of the Shopping Center by theft or otherwise or by reason of any repair or alteration thereof or resulting from any accident within the Shopping Center, the Common Areas, or the Premises or on or about any space adjoining the same, or resulting directly or indirectly from any act or omission of any person, or due to any condition, design or defect of the Shopping Center, the Common Areas or the Premises, or any space adjoining the same, or the mechanical systems of the Shopping Center or the Premises, which may exist or occur, whether such damage, loss or injury results from conditions arising upon the Premises, the Shopping Center, or the Common Areas, or from other sources or places, and regardless of whether the cause of such damage, loss or injury or the means of repairing the same is accessible to Tenant; (c) any damage to or loss of property (including, without limitation, loss of profits and intangible property) or bodily injury or loss of life or other damages of any kind to any Tenant's Representatives caused by other tenants or occupants of the Shopping Center, parties not occupying space in the Shopping Center, occupants of property adjacent to the Shopping Center, the public or by the construction of any private, public, or quasi-public work occurring either in the Premises or elsewhere in the Shopping Center; (d) any interruption or stoppage of any utility service or for any damage to Tenant, Tenant's Representatives and/or property resulting from such stoppage; (e) business interruption or loss of use of the Premises suffered by Tenant; (f) any latent defect in construction of the Premises and/or the Shopping Center; (g) damages or injuries or interference with Tenant's business, loss of occupancy or quiet enjoyment and any other loss resulting from the exercise by Landlord of any right or the performance by Landlord of Landlord's maintenance or other obligations under this Lease; and/or (h) any bodily injury, personal injury or death to any of Tenant's Representatives arising out of or occurring anywhere at the Premises or in the Shopping Center. Tenant agrees that Landlord will not have any responsibility or liability for any damage to Tenant's equipment or interruption of Tenant's operations which is caused by any other tenant or occupant of the Shopping Center or the employees, agents, contractors, technicians, representatives, customers, or invitees of any such tenant or occupant.

12.4 Survival of Covenants. All of Tenant's release, waiver, indemnification, defense and hold harmless covenants contained in this Lease, including without limitation the covenants in this Article 12 hereof, and Tenant's obligation to maintain completed operations coverage insurance pursuant to and for the periods specified in this Lease shall survive the expiration and the early termination of this Lease, and shall be binding on Tenant until the last to occur of (a) such date as action against Landlord, Landlord Affiliates and the other Landlord Affiliates is absolutely barred by an applicable statute of limitations or (b) such date as any claim or action for which indemnification may be claimed under said Section is fully and finally resolved and, if applicable, any compromise thereof or judgment or award thereon is paid in full by Tenant; and Landlord, Landlord Affiliates and the other Landlord Affiliates are reimbursed by Tenant for any amounts paid by Landlord, Landlord Affiliates or such other Landlord Affiliates in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including attorneys' fees, court cost and expert witness fees. Neither payment nor a finding of liability or of an obligation to defend or indemnify shall be a condition precedent to the enforcement of any indemnity or duty to defend the provisions herein, and if any action or proceeding shall be brought against Landlord, Landlord Affiliates or any Landlord Affiliates alleging any fact or circumstance for which Tenant is to provide indemnification, Landlord shall also be entitled to appear, defend, or otherwise take part in the matter involved, at Landlord's election, by counsel of its own choosing, and Tenant shall bear the cost of Landlord's defense, including but not limited to, attorneys', architects' and engineering fees and expenses, court costs, and expert witness fees. Tenant waives as defenses to its obligations hereunder the pleading or defense of any statute of limitations. In addition, all of Tenant's indemnification in this Lease includes, but is not limited to, indemnification against any and all such damages, liabilities, losses, costs, expenses or deficiencies resulting from claims of third parties for breach of contract to which Landlord is not a party, claims in tort or claims for breach of warranty or misrepresentation, and also includes indemnification against costs and legal and other expenses incurred in connection with any of the matters indemnified against, whether or not litigation is commenced.

12.5 Maximum Lawful Indemnification. As a material and bargained for aspect of this Lease, the indemnification provided for in this Article 12 is intended by the Tenant to provide, for the most comprehensive indemnification for which the parties may lawfully contract, of Landlord and Landlord Affiliates against the damages, liabilities, losses, costs, expenses and deficiencies referred to in this Article 12, and to include, but not limited to, indemnification against damages, liabilities, losses, costs, expenses or deficiencies resulting in whole or in part from the negligence (whether active or passive and sole or concurrent with others). Such indemnification shall not, however, be construed to require the indemnification of Landlord or Landlord Affiliates to the extent, but only to the extent, that such indemnification is prohibited by law or public policy which cannot be waived, if that section is deemed applicable and not subject to waiver. Tenant waives the protection of any and all provisions of law or public policy which prohibit or limit such indemnification to the fullest extent that such waiver is permitted by law. This Article 12 shall not be construed in favor of or against any of the parties hereto, but shall be construed in accordance with its purpose. It is the intent of Landlord and Tenant that the indemnities and waivers contained in this Article 12 shall apply regardless of the active or passive negligence or sole, joint, concurrent, or comparative negligence of any of the Landlord and/or Landlord Affiliates, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on Landlord or any of the Landlord Affiliates.

12.4 Duty to Defend. Tenant's duty to defend Landlord and Landlord Affiliates is separate and independent of Tenant's duty to Indemnify Landlord and Landlord Affiliates. Tenant's duty to defend includes Claims for which Landlord and/or Landlord Affiliates may be liable without fault or may be strictly liable. Tenant's duty to defend applies regardless of whether issues of negligence, liability, fault, default or other obligation on the part of Tenant and/or Tenant's Representatives have been determined. Tenant's duty to defend applies immediately, regardless of whether Landlord and/or Landlord Affiliates have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any Claims. It is the express intention of Landlord and Tenant that Landlord and/or Landlord Affiliates will be entitled to obtain summary adjudication regarding Tenant's duty to defend Landlord and Landlord Affiliates at any stage of any Claim within the scope of this Article 12.

12.7 Landlord's Insurance. During the Lease Term, Landlord shall insure the Shopping Center but excluding any personal property which Tenant is obligated to insure under Section 12.8 below, with All Risk and public liability insurance coverage, all in such amounts and with such deductibles as Landlord considers appropriate at Landlord's sole and absolute discretion. Landlord may, but shall not be obligated to, obtain and carry any other

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form or forms of insurance as it or Landlord's mortgagees or ground lessors, if any, may determine advisable. Notwithstanding any contribution by Tenant to the cost of insurance premiums, Tenant acknowledges that it has no right to receive any proceeds from any insurance policies carried by Landlord.

12.8 Tenant's Insurance. During the Lease Term, Tenant, at its sole expense, shall procure, insure, maintain and pay for and keep in full force and effect its insurable interests in the Shopping Center and the Premises and the insurance coverages as listed below. Tenant shall at a minimum maintain coverages and limits no less than those shown below. In no event shall the coverage or limits of the insurance policies be considered as limiting liability of Tenant under the Lease.

12.8.1 All Risk Insurance, including without limitation, protection against any peril included within the classification of (a) "Fire and Extended Coverage", vandalism, sprinkler damage and leakage, water or rain leakage, malicious mischief and such other additional perils upon personal property of every description and kind owned by Tenant and located in the Premises, the Common Area and the Shopping Center or for which Tenant is legally liable or installed by or on behalf of Tenant; and (b) "Leasehold Interest Coverage" including without limitation, leasehold improvements, building standard improvements, furniture, fittings, installations, fixtures, merchandise and any other personal property, which in no event in an amount less than one hundred percent (100%) of their full replacement cost without depreciation thereof, containing an ordinance coverage endorsement. All such insurance policies shall designate and entitle (a) Tenant as named; and (b) Landlord as "additional named insured" and "loss payee" thereunder and, at Landlord's request shall name Landlord's mortgagees (and, if applicable, ground or primary lessors) as thereunder, all as their respective interests may appear. Landlord will not be required to carry insurance of any kind on any of such personal property of Tenant and Landlord shall not be obligated to repair any damage thereto or replace the same. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed;

12.8.2 Comprehensive General Liability insurance coverage, including personal injury, bodily injury (including wrongful death), broad form property damage, operations hazard, owner's protective coverage and contractual liability, premises operations and products and completed operations coverage and liability with a combined single limit of not less than Five Million Dollars (\$5,000,000.00) per occurrence, and Five Million Dollars (\$5,000,000.00) annual aggregate insuring against any and all liability of the insured with respect to the Premises, or arising out of the maintenance, use or occupancy thereof, at least as broad as ISO policy form CG 0001. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Four Million Dollars (\$4,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this Section 12.8.2 shall not have a deductible in excess of Five Thousand Dollars (\$5,000.00). All such insurance policies shall name Tenant as named insured thereunder and shall designate and entitle Landlord, Landlord Affiliates and Landlord's mortgagees (and, if applicable, ground or primary lessors) as "additional named insured" thereunder, all as their respective interests may appear, and an aggregate limit per location endorsement. Further, all comprehensive general liability insurance shall include, but not limited to, personal injury, blanket contractual, cross liability and severability of interest clauses, products/completed operations, broad form property damage, independent contractors, owned, non-owned and hired vehicles;

12.8.3 Employer's Liability insurance in the minimum limits of Two Million Dollars (\$2,000,000.00) for each accident for bodily injury by accident and a minimum limits of Two Million Dollars (\$2,000,000.00) for each employee for bodily injury by disease; and Worker's Compensation in form and amount not less than that required by law;

12.8.4 Business Income Insurance, loss of income, business interruption and Extra Expense Coverage in such amounts as will fully reimburse Tenant for direct or indirect loss of earnings, income, charges and extra expenses incurred arising out of all named perils insured against by Tenant's policies of property insurance, including prevention of, or denial of use of or access to, all or part of the Premises or the Shopping Center as a result of those named perils, for no less than twelve (12) months of the loss of income, charges, continuing expenses and costs contemplated under this Lease.

12.8.5 Rental Value Coverage and Excess Rental Value Coverage;

12.8.6 Tenant agrees that Landlord shall, at any time and from time to time, require Tenant to increase the amounts and/or limits of insurance required to be carried by Tenant under this Lease to amounts and/or limits to be determined at Landlord's sole and absolute discretion. Within thirty (30) calendar days of notice by Landlord, Tenant covenants and agrees to increase the amounts and/or limits as required by Landlord and provide Landlord with the policies and original certificates as required to be carried by Tenant pursuant to this Lease indicating the increased amounts and/or limits;

12.8.7 Insurance covering all plate glass on the Premises;

12.8.9 Boiler and machinery insurance on all boilers, pressure vessels, gas-fired equipment, air conditioning equipment and systems serving the Premises in an amount not less than one hundred percent (100%) of full replacement cost; and

12.8.10 Any other form or forms of insurance, policy and/or coverage as Landlord, or Landlord's mortgagees or ground or primary lessors may reasonably require from time to time.

12.9 Policy Requirements. All policies of insurance required to be provided by Tenant shall be issued by insurance companies with a general policy holder's rating of not less than A and a financial rating of not less than Class VII as rated in the most current available Best's Insurance Reports and qualified to do business in the State of Arizona. Tenant shall deliver to Landlord within three (3) days after delivery of possession of the Premises to Tenant and thereafter at least sixty (60) days prior to expiration of the term of each such policy, with executed original copies of all insurance policies, certificates and endorsements acceptable to the Landlord as often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant pursuant to the terms of this Article 12. All policies of insurance required to be provided by Tenant shall contain: (A) a provision in all policies to designate and entitle Landlord and Landlord Affiliates as the "certificate holder", "additional named insured" and "loss payee", and if requested by Landlord, Landlord's mortgagee or beneficiary, which policies shall be for the mutual and joint benefit and protection of Landlord, Tenant and/or Landlord's mortgagee or beneficiary; (B) a provision in all Certificate of Insurance policies stating: "this is evidence that insurance as identified herein has been issued, is in full force and effect, and conveys all the rights and privileges afforded under the policy upon the certificate holder"; (C) the coverage in all such policies shall contain no special limitations on the scope of protection afforded to Landlord; (D) a provision in all policies stating that the company writing such policy will give to Landlord at least thirty (30) days' notice in writing (by certified mail, return receipt requested), in advance of any cancellation or lapse or the effective date of any of any reduction in the amount of or other material change of insurance; (E) a provision in all policies stating: "It is further agreed that such insurance as is afforded by this policy for the benefit of the additional named insured shown herein shall be primary insurance, and any insurance maintained by the additional named insured shall be excess and non-contributing to such claims; (F) a provision in all public liability and property damage policies stating "Landlord, although named as an additional named insured, shall nevertheless be entitled to recovery under such policies for any loss occasioned to it, its servants, agents, or employees by reason of any act or omission of Tenant or its servants, agents, employees or contractors"; (G) a provision in all policies stating "It is understood and agreed that, the insurer hereby waives all rights to subrogation, including without limitation, equitable and contractual subrogation against Landlord and its shareholders, members, officers, employees, insurance companies and agencies under the insurance policies"; (H) a provision in all policies stating "the insurance carrier will not apply the Recovering Damages from a Third Party rule when a contract specifies

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that the carrier waive their subrogation rights"; (I) a language in all policies stating that "any failure to comply with the reporting provisions of the policies shall not effect the coverage provided to the additional named insured"; (J) there shall be no cross suits exclusions; (K) a provision in all policies stating that "the insurer issuing the policies shall have no recourse against Landlord for the payment of premiums or for any assessments under any form or policy"; and (L) Tenant shall notify all of its insurers of the terms of the mutual waiver of subrogation clause contained at Article 13 below. Tenant shall require that its insurance policies be properly endorsed to prevent the invalidation of said insurance by reason of the waiver. The certificates and endorsements for each insurance policy shall, by typed name and wet signature, identify the person authorized by that insurer to bind the coverage on its behalf. If the form or policies, endorsements, certificates, or evidence of insurance required by this Article are superseded or discontinued, Landlord, at Landlord's discretion, will have the right to require other equivalent or better forms. Landlord shall not be obligated to review any of the policies, endorsements, certificates, or evidence of insurance or to advise Tenant of any deficiencies in such policies and endorsements, and such receipt shall not relieve Tenant from, or be deemed waiver of, Landlord's right to insist on strict fulfillment of Tenant's obligations under this Lease. Landlord, at any time, reserves the right to request from Tenant the certified copies of insurance policies.

12.10 Insurance Prohibitions. Tenant shall not keep, carry, use, sell or maintain any stock, article or goods or do anything in or upon the Premises which will in any way tend to increase the insurance rates upon the building of which the Premises are a part or may be prohibited by any insurance policy in force covering the Premises or the Shopping Center. Tenant shall pay to Landlord, upon demand, the amount of any increase in premiums for insurance against loss by fire, casualty, liability or workers' compensation that may be charged during the Lease Term on the amount of insurance to be carried by Landlord on the building of which the Premises are a part resulting from the foregoing or from Tenant doing any act in or about the Premises which does so increase the insurance rates, whether or not Landlord shall have consented to such act on the part of the Tenant. Tenant shall promptly comply with all rules, regulations and requirements of the Insurance Services Office or any similar authority. If Tenant installs upon the Premises any electrical equipment which constitutes an overload of the electrical lines of the Premises, Tenant shall, at Tenant's sole cost and expense, make whatever changes are necessary to comply with the requirements of the insurance underwriters and all applicable Governmental Regulations, but this shall not be deemed to constitute Landlord's consent to such overloading. Tenant shall, at Tenant's sole cost and expense, comply with all requirements, including the installation of fire extinguishers or automatic dry chemical extinguishing system, of the insurance underwriters and all applicable Governmental Regulations required for the maintenance of reasonable rates for property insurance for the Premises.

12.11 Maintenance of Insurance. Failure of Tenant to comply in strict accordance with this Article 12 shall constitute an Event of Default. In such event Landlord may exercise Landlord's remedies under Article 19 below, including without limitation, at Landlord's option to terminate this Lease with no obligation and/or liability to Tenant.

12.12 Obligations Independent of Insurance. The indemnification provided in this Article 12 shall not be construed or interpreted as in any way restricting, limiting or modifying Tenant's insurance or other obligations under this Lease, and the provisions of this Article 12 are independent of Tenant's insurance and other obligations. Tenant's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Tenant's indemnification obligations under this Lease.

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

12.14 Survival. The provisions of this Article 12 will survive the expiration or earlier termination of this Lease until all Claims against Landlord and/or Landlord Affiliates involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations.

13. Waiver of Subrogation. Tenant waives any and all rights of recovery against Landlord for or arising out of damage, loss or or destruction of any property of Tenant or loss of income, from causes then included under standard fire and extended coverage insurance policies or endorsements, whether or not carried by Landlord and whether or not caused by the negligence of Landlord and/or Landlord Affiliates. By this waiver it is the intent of the Tenant, that Landlord shall not be liable to Tenant or to any of Tenant's Representatives or to any insurance company (by way of subrogation or otherwise) insuring the Tenant for any direct or consequential loss or damage to any building, structure or other tangible property or any resulting loss of income, or losses, even though such loss of income or loss might have been occasioned by the negligence of Landlord or Landlord Affiliates. In addition, Tenant for itself and, to the extent it is legally possible for it to do so and without affecting the coverage provided by insurance required to be maintained by Tenant hereunder, and on behalf of its insurer, hereby releases and waives any right to recover against the Landlord and Landlord Affiliates for (i) any loss or damage to Tenant's property; (ii) any loss or damage to the contents of the Premises; (iii) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is covered by the insurance required to be carried by Tenant hereunder or is otherwise insured; or (iv) claims arising by reason of any of the foregoing damages and/or claims under (i) through (iii), in all cases irrespective of any negligence on the part of Landlord or Landlord Affiliates which may have contributed to such loss or damage. Tenant hereby indemnifies, protect and hold Landlord and Landlord Affiliates harmless from and against, and shall reimburse Landlord and Landlord Affiliates with respect to any and all Claims to which Landlord or Landlord Affiliates may become subject, or which Landlord or Landlord Affiliates may in any manner pay, become obligated to pay, incur or suffer, in connection with, with respect to, or arising out of (a) Tenant's failure to obtain such waiver of subrogation from Tenant's insurance company; and (b) any claims for damage or loss to any person, property, the Shopping Center or the Premises that are caused by or result from risks insured against under such insurance policies. It is the intent of the Tenant and Landlord that Tenant shall look solely to Tenant's insurance company for recovery.

14. Damage or Destruction.

14.1 Partial Damage. If the building's structural elements of the Premises shall be partially damaged (other than as a result of the fault, neglect, intentional or un-intentional act of Tenant and/or Tenant's Representatives) by fire or other perils fully covered by Landlord's insurance and provided that Landlord has received insurance proceeds sufficient to fully pay for the entire cost of repair, restoration and construction, then the structural elements of the Premises shall be repaired by Landlord, subject to an event of Force Majeure Delay, at the expense of Landlord pursuant to the provisions of this Article 14.1. In such event any and all other damage or casualty to the Premises shall be repaired, restored and reconstructed by Tenant at Tenant's sole cost and expense, including without limitation, Tenant's improvements to the Premises, Tenant's personal property, merchandise, equipments, fixtures and any other items which are stored, kept, or maintained by Tenant on the Premises. In such event, the Monthly Basic Rent payable with respect to the portion of the Premises which is rendered untenantable, in Landlord's judgment, during the period of repair of the Shopping Center's structural elements shall be abated (to the extent the Premises cannot be used and are not used by Tenant), unless such damage or casualty results from the fault, neglect, intentional or un-intentional act of Tenant or Tenant's Representative. Notwithstanding anything contained herein, in the event that the Premises is destroyed or damaged by fire or other casualty and there are no material or substantial damage to the building's structural elements in which the Premises is a part of, then Tenant shall promptly proceed, at Tenant's sole risk, cost and expense to repair, reconstruct and restore the Premises (regardless of whether such damage or casualty is covered by insurance or Tenant has received insurance proceeds) to the same condition as existed immediately prior to damage or casualty and Tenant shall diligently pursue such repair and

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restoration to completion, which in such event the Rent shall not be abated in any manner whatsoever and Tenant shall be obligated to promptly pay the Rent to Landlord. Tenant shall continue the operation of its business on the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises or the Shopping Center of which the Premises are a part, Tenant's improvements to the Premises, Tenant's personal property, merchandise, equipment, fixtures or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration. Notwithstanding anything to the contrary, in the event that Landlord's lender and/or mortgagee shall require that insurance proceeds be applied against the principal balance due on Landlord's loan, then Landlord may, at Landlord's option and upon sixty (60) days written notice to Tenant, shall have the right to elect to terminate this Lease with no liability or obligation to Tenant.

14.2 Total Damage or Destruction. If the Premises and/or building in which Premises is a part of shall be totally damaged (which, for purposes hereof, shall mean that the Premises and/or building in which Premises is a part of may not be fully repaired and restored within one hundred and twenty (120) days of the casualty causing such damage, or if the building in which Premises is a part of is destroyed to an extent of at least ten percent 10% of the full replacement cost thereof) and Landlord elects, at Landlord's sole and absolute discretion, not to restore, reconstruct or rebuild the Premises or building in which Premises is a part of, then Landlord shall have the right, at Landlord's sole and absolute discretion, to terminate this Lease with no obligation or liability to Tenant at any time, effective upon five (5) days' written notice to Tenant. If, however, Landlord elects, at Landlord's sole and absolute discretion, to rebuild or restore the Premises or the building in which Premises is a part of, then this Lease shall not terminate and Landlord shall use its best effort to repair the Premises or the building in which Premises is a part of. The parties hereto agree and understand that Monthly Basic Rent shall be abated only during the period of repair of the Premises' structural elements (to the extent the Premises cannot be used and are not used by Tenant), unless such damage shall be caused by the fault, neglect, intentional or un-intentional act of Tenant or any Tenant's Representatives. In such event, any and all other damage or casualty to the Premises shall be repaired, restored and reconstructed by Tenant at Tenant's sole cost and expense, including without limitation, Tenant's improvements to the Premises, Tenant's personal property, merchandise, equipments, fixtures and any other items which are stored, kept, or maintained by Tenant on the Premises. In addition, should Landlord be delayed or prevented from repairing the Premises and/or Shopping Center as a result of a event of Force Majeure Delay or Tenant's delay or fault, Tenant shall excuse such delay; and in the case of a Tenant's delay or fault, Tenant shall pay to Landlord Monthly Basic Rent (on a per diem basis) for each day that Landlord is actually delayed in completing the Premises and/or the building in which Premises is a part of. Tenant shall not be entitled to any compensation or damages from Landlord for loss of use of the whole or any part of the Premises or the Shopping Center of which the Premises are a part, Tenant's improvements to the Premises, Tenant's personal property, merchandise, equipment, fixtures or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

14.3 Repair Damage. In the event Landlord is obligated to or elects to repair or restore the Premises or the building in which Premises is a part of as herein provided, Landlord shall be required to repair or restore, subject to an event of Force Majeure Delay, only those portions of the Premises for which there are adequate insurance proceeds to pay for the entire cost and expense of such repair, reconstruction and restoration. In no event shall Landlord be obligated to repair, restore, or reconstruct Tenant's improvement to the Premises, Tenant's personal property, merchandise, equipment, fixtures or any other items which are stored, kept, or maintained by Tenant on the Premises; Tenant hereby agrees and understands that the cost of replacement or repair of all such items shall be the sole obligation of Tenant, at Tenant's cost and expense.

14.4 Damage Not Covered By Extended Coverage Insurance. Notwithstanding anything contained herein, in the event of any damage or casualty to the Premises or to the building which Premises is a part of is due to any cause that is not covered by Landlord's insurance, then Landlord, at Landlord's sole and absolute discretion, shall have the option (a) within such one hundred eighty (180) day period elect not to so repair, reconstruct or restore the Premises or the building in which Premises is a part of, which in such event Landlord shall terminate this Lease at any time, at no obligation or liability to Tenant, effective upon five (5) days' written notice to Tenant; or (b) subject to Force Majeure Delay, within one hundred eighty (180) days following the date of the casualty, commence repair, reconstruction or restoration of the Premises, in which event this Lease shall continue in full force and effect.

14.5 Damage Near End of Term. Notwithstanding anything to the contrary contained in this Lease (unless required by law), Landlord shall not have any obligation to repair, reconstruct, or restore the Premises or Shopping Center if the Premises or Shopping Center shall be partially or totally damaged within the last twelve (12) months of the Lease Term.

14.6 Tenant shall not be released from any of its obligations under this Lease except to the extent and upon the conditions expressly stated in this Article 14. Notwithstanding anything to the contrary contained in this Article 14, if Landlord is delayed or prevented from repairing or restoring the damaged Premises within one (1) year after the occurrence of such damage or destruction by reason of acts of God, war, Governmental Regulations, inability to procure the necessary labor or materials, inability to obtain governmental permits, financial matters, or other cause beyond the control of Landlord, Landlord, at its option, may terminate this Lease, at no obligation and/or liability to Tenant, whereupon Landlord shall be relieved of its obligation to make such repairs or restoration.

14.7 Waiver. Tenant hereby waives any statutory and common law rights of termination which may arise by reason of any partial or total destruction of the Premises which Landlord is obligated to restore or may restore under any of the provisions of this Lease. In addition, Landlord and Tenant hereby waive the provisions of any statutes or court decisions which relate to the abatement or termination of lease when leased property is damaged or destroyed and agree that such event shall be exclusively governed by the terms of this Lease.

14.8 Termination. Upon any termination of this Lease under any of the provisions of this Article 14, Landlord shall be released without further obligations to Tenant. In the event of termination, all proceeds from Tenant's casualty insurance coverage and covering the items of Tenant's leasehold improvements (but excluding proceeds for merchandise) shall be assigned, disbursed and paid to Landlord.

15. Eminent Domain.

(A) Definitions. For purpose of this Article 15, the following terms shall have the following respective meanings:

(i) "Condemnation" shall mean the exercise of any governmental power or quasi-governmental power, whether by legal proceedings or otherwise, by a Condemnor (as defined below) and/or any voluntary sale, conveyance or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending, and it shall include without limitation: (a) any judicially determined (i.e., finally adjudicated and non-appealable) "inverse condemnation"; and/or (b) damaging or taking of property by, through or under any governmental, and any purchase or acquisition in lieu thereof, whether or not the damaging or taking is by the government or any other person.

(ii) "Condemnor" shall mean any public or quasi-public authority or any private corporation or individual having the power of condemnation or exercise of the right of appropriation.

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(iii) "Date of Taking" shall mean the earlier of (a) the date that title to all or any portion of the Premises and/or the Shopping Center is taken by any Condemnor, or (b) the date that any Condemnor is authorized by an order for possession to take possession of all or any portion of the Premises and/or the Shopping Center.

(iv) "Award" shall mean any and all compensation, damages or sums (including interest) and/or anything of value awarded, paid or received (irrespective of who is awarded or paid the same) for any total or partial Condemnation.

(v) "Net Award" shall mean the net amount of the Award to the extent actually received by the Landlord through Condemnation for the valuation of the Premises and/or the Shopping Center, less any and all costs and expenses incurred by the Landlord in connection with the Condemnation, including without limitation, attorney's fees, expert and witness fees, court costs and other litigation expenses.

(vi) "Temporary Taking" shall mean a taking by Condemnation for a period of two hundred seventy (270) consecutive days or less.

This Article Controls. If, during the term of this Lease or during any extended term of this Lease (if any), there is any taking of all or any portion of the Premises and/or the Shopping Center or of any interest in this Lease by Condemnation, then the rights and obligations of the parties shall be allocated between Landlord and Tenant as set forth in this Article.

(B) Permanent Taking. If, during the term of this Lease or during any extended term of this Lease (if any), there is any taking of all or any portion of the Premises and/or the Shopping Center or of any interest in this Lease by Condemnation, and that in Landlord's sole and absolute discretion, such taking substantially interfere with Tenant's use and occupancy thereof, then this Lease shall terminate automatically on the Date of Taking, which in such event neither party hereto shall have any further rights, duties and/or liabilities hereunder, and Landlord shall be released from its obligations and duties to lease the Property to Tenant, and Tenant shall have no further right or remedy against the Landlord by reason hereof. Tenant shall not have the right to assert any claim against Landlord, the Premises and/or the Shopping Center for any compensation whatsoever because of such taking. In no event shall Tenant be entitled to receive any payment or assignment of the Award proceeds whatsoever.

(C) Temporary Taking. If, during the term of this Lease or during any extended term of this Lease (if any), there is any Temporary Taking of all or any portion of the Premises and/or the Shopping Center or of any interest in this Lease by Condemnation, (a) this Lease shall be and remain unaffected thereby and Monthly Basic Rent shall not abate, and (b) Tenant shall be entitled to receive for itself such portion or portions of any award made for such use by the Condemnor with respect to the period of the taking which is within the Lease Term; provided that if such taking shall remain in force at the expiration or earlier termination of this Lease, then this Lease shall terminate (except Tenant shall remain liable and obligated to perform with any and all of Tenant's obligations, duties and liabilities under this Lease). Upon termination of this Lease, Landlord shall be released from its obligations or duties to lease the Property to Tenant, and Tenant shall have no further right or remedy against the Landlord by reason hereof. Tenant shall not have the right to assert any claim against Landlord, the Premises and/or the Shopping Center for any compensation whatsoever because of such Temporary Taking. In no event shall Tenant be entitled to receive any payment or assignment of the Award proceeds whatsoever.

(D) Damages. Landlord reserves all rights to the entire Award and payment for any taking (whether under Sections 15(B), 15(C) above or otherwise) by Condemnation, or settlement in lieu thereof, irrespective of whether such award or settlement shall be obtained as a compensation for the fee of the Premises, the Shopping Center and/or to diminution in value to the leasehold or the leasehold improvements of the Premises. Tenant hereby represents, covenants and agrees to and with Landlord that Tenant will not make any claim whatsoever against Landlord for damages or loss for termination of this Lease. Tenant shall, however, have the right to claim from the Condemnor or the condemning authority all compensation that may be recoverable by Tenant on account of any loss incurred by Tenant for actual and direct reasonable costs and expenses incurred during the term of this Lease; provided, however, that Tenant may claim such damages only if they are awarded separately in the eminent domain proceeding and not as part of Landlord's damages, and further provided that such separate award does not diminish Landlord's award.

16. Entry by Landlord. Tenant hereby confirms and agrees that Landlord and Landlord Affiliates shall have the right to enter the Premises at any time and from time to time (without Tenant's consent or any notice) to perform and/or exercise any of its rights or remedy under this Lease, including but not limited to, the right by Landlord: (a) to inspect the Premises or to provide maintenance, repairs or any other service to be provided by Landlord hereunder; (b) to decorate, renovate or alter the Premises or any other premises or Common Areas in the Shopping Center; (c) to show the Premises and/or Shopping Center to prospective tenants, mortgagees or purchasers of the Shopping Center; (d) to post such notices, including notices of non-responsibility, as Landlord deems appropriate to protect its interest in the Premises and Shopping Center; (e) to use and maintain pipes, ducts and conduits in and through the Premises; (f) to perform remodeling, renovation, construction or other work incidental to any portion of the Shopping Center, including without limitation, the premises of another tenant; and (g) to erect scaffolds and/or other structures necessary for the proper operation and maintenance of the Shopping Center and/or Common Areas. In addition, Landlord shall have the right to bring any equipment and materials into the Premises as may be required for purposes of exercising any of Landlord's rights reserved hereunder. In no event shall Landlord's entry into the Premises constitute an eviction of Tenant (in whole or in part) nor shall such entry entitle Tenant to any abatement of Rent. Nothing contained herein shall imply any duty on the part of the Landlord to do any such work which under any provision of this Lease, Tenant may be required to do, nor shall it constitute a waiver of Tenant's default in failing to do the same. No exercise by Landlord of any rights contained in this Article 16 shall entitle Tenant to any damage for any injury, annoyance or inconvenience occasioned thereby nor to any abatement of Annual Basic Rent or Additional Rent. The parties hereto expressly agree and understand that no provision of this Article 16 shall be construed to create any obligation on the part of Landlord to perform any maintenance, repairs, alterations or decorations.

17. Assignment and Subletting.

17.1 Generally. Neither Tenant, nor Tenant's legal representatives, successors or assigns, shall without the prior written consent of Landlord (which consent may, subject to the express conditions of this Article 17, be granted or withheld in Landlord's reasonable discretion, with respect to an assignment, sublet, transfer or sublease, or in Landlord's sole and absolute discretion, with respect to a mortgage, pledge, license or concession agreements, change ownership or voting control or encumbrance), voluntarily assign, sublet, sublease, enter into franchise, license or concession agreements, change ownership or voting control, mortgage, encumber, pledge, hypothecate or otherwise transfer, directly or indirectly, whether by operation of law or otherwise (hereinafter collectively a "Transfer") all or any portion of Tenant's interest in this Lease or in the Premises, or allow any other person or entity to occupy or use all or any part of the Premises. For purposes hereof, if Tenant is a partnership or joint venture, a withdrawal or change of partners or joint venturers, or change of ownership of partners or joint venturers or if Tenant is a corporation, unincorporated association or limited liability company a transfer of effective control thereof shall constitute a voluntary assignment subject to the provisions of this Article 17. Any Transfer which is made or allowed without Landlord's prior written consent shall be voidable, at Landlord's election, and shall constitute an Event of Default. The failure by Tenant to first obtain in writing the consent of Landlord or the failure by Tenant to comply with the provisions of this Article 17 shall constitute a default and material breach under this Lease by Tenant and shall render any such Transfer null and void. If Tenant Transfer all or any portion of its interest in this Lease or in the Premises in violation of this Article 17, Landlord may, but shall not be obligated to, collect Rent from the assignee or subtenant and apply the net amount collected to the Rent required hereunder. In no event, however, shall such act of collection be deemed a waiver of Landlord's rights under this Article 17 nor shall it be deemed an acceptance of the proposed assignee or subtenant.

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17.2 Notice of Intent to Assign. Tenant shall notify Landlord, in writing, of Tenant's intent to Transfer all or any portion of this Lease or the Premises at least ninety (90) days prior to the proposed effective date of any Transfer. Tenant shall deliver to Landlord with such notice the following: (a) the name of the proposed assignee, subtenant, transferee or sublessee (hereinafter referred to as the "Transferee"), (b) the proposed effective date of the proposed Transfer, (c) a description of the portion of the Premises to be transferred, (d) current information concerning the financial responsibility (including net worth) of the Transferee, including but not limited to, the last three (3) years federal and state tax return and certified financial statements prepared, signed and certified by a certified public accountant, as well as certified by an officer, partner or owner of the Transferee, (e) current information concerning the financial responsibility (including net worth) of the Tenant, including without limitation, last three (3) years federal and state tax return and certified financial statements prepared, signed and certified by a certified public accountant, as well as certified by Tenant, (f) all of the terms of the proposed Transfer and the consideration therefore, (g) any other information required by Landlord, which will enable Landlord to determine the financial responsibility, character, and reputation of the Transferee and nature of its business and proposed use of the Premises, (h) an executed Estoppel Certificate by Tenant pursuant to terms of this Lease, (i) a certified and signed statement by Tenant of annual Gross Sales of Tenant at the Premise for last three (3) years prior to the then current calendar year, (j) the sum of money to reimburse Landlord for the cost and expense of Landlord's review, analysis, documentation and processing fees, as well as any actual legal and accounting fees and other costs incurred by Landlord, which shall be a minimum of One Thousand Dollars (\$1,000.00), whether or not Landlord shall grant consent to such request, and (k) any other information as Landlord may require or deem necessary. Landlord shall, at Landlord's sole option, within thirty (30) working days after complete receipt of such written notice together with all of the information and documents as set forth in this Section 17.2 (a) through (k), elect one of the following: (i) consent to such Transfer, (ii) refuse its consent to such Transfer; or (iii) elect to recapture the Premises and cancel and terminate this Lease exercisable by written notice to Tenant (or, in the case of a partial sublease, recapture the Premises and terminate this Lease as to the portion of the Premises proposed to be sublet, which in such case, the Annual Basic Rent and Additional Rent shall remain unchanged). Without limiting Landlord's ground for other reasonable grounds for withholding consent or disapproval, Tenant and Landlord hereby agree that Landlord's disapproval or withholding consent shall be deemed reasonable under this Lease, where one or more of the following apply:

17.2.1 The use to be made of the Premises by Transferee violates the provisions of Article 6 above or is inconsistent with the character and nature of other tenancies in the Shopping Center, or violates an exclusive use provision granted in any then existing lease for space in the Shopping Center or in any letter of intent concerning the future lease of space in the Shopping Center; or

17.2.2 The Transferee is of a character or reputation or engaged in business which is not consistent with the quality of the Shopping Center, or would be a less prestigious occupant of the Shopping Center than Tenant; or

17.2.3 The credit rating, financial worth, character and business or professional standing of Transferee is not equal to or better than that of Tenant, in Landlord's judgment; or

17.2.4 The Transferee is not a party of financial stability in light of the responsibilities, obligations and covenants involved under this Lease on the date consent is requested; or

17.2.5 The Transferee intends to use the Premises in violation of any provision of this Lease, including without limitation, the Rules and Regulations; or

17.2.6 The Transferee is either a governmental agency or instrumentality thereof; or

17.2.7 The terms of the proposed Transfer will allow the Transferee to exercise a right of renewal, right of expansion, right of first offer, or other similar right held by Tenant (or will allow the Transferee to occupy space leased by Tenant pursuant to any such right); or

17.2.8 Either the Transferee, or any person or entity which directly or indirectly, controls, is controlled by, or is under common control with, the Transferee, (i) occupies space in the Shopping Center at the time of the request for consent, (ii) is negotiating with Landlord to lease space in the Shopping Center at such time, or (iii) has negotiated with Landlord during the last Twelve (12) month period immediately preceding the time of the request for consent; or

17.2.9 The Transferee does not intend to occupy the entire Premises and conduct its business therefrom for a substantial portion of the term of the Transfer; or

17.2.10 The rent charged by Tenant to Transferee during the term of such Transfer, calculated using a present value analysis, is less than ninety percent (90%) of the rent being quoted by Landlord at the time of such Transfer for comparable space in the Shopping Center for a comparable term, calculated using a present value analysis; or

17.2.11 In the case of a proposed encumbrance or mortgage, the terms of the instrument granting such encumbrance or mortgage are not satisfactory to Landlord; or

17.2.12 Tenant has been in default under the terms of this Lease; or Tenant is in default under this Lease as of the date of Tenant's request (as such date described above); or Tenant has not paid any portion of the Rent as and when due; or Tenant has not punctually observed or failed to perform the terms, covenants and conditions to be observed and performed by Tenant in accordance with the terms of this Lease; or

17.2.13 Percentage rent following the Transfer that could be reasonably anticipated from Transferee's gross or net sales, could reasonably expected to be less than that of Tenant hereunder, if any; or

17.2.14 The use to be made of the Premises by the Transferee violates or inconsistent with any terms or provisions of any of the Declarations, reservations, restrictions, and/or other matters of record; or

17.2.15 The use to be made of the Premises by the Transferee violates or inconsistent with liens, encumbrances, deeds of trust, zoning, building or fire ordinances, or all other Governmental Regulations; or

17.2.16 The proposed Transfer would, in Landlord's sole and exclusive discretion, require an amendment to any term or condition of this Lease; or

17.2.17 Transferee which would breach any covenant of or affecting Landlord concerning radius, location, use or exclusivity in any other lease, financing agreement, or other agreement relating to the Shopping Center.

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17.3 Permitted Assignments. In the event Landlord consents to any Transfer, Landlord may require that the Rent payable by Transferee be the then-current rates published rental rates for the Premises, which in no event shall be less than the then-current Annual Basic Rent required under this Lease. In addition, Landlord may require that Transferee remit directly to Landlord (on a monthly basis) all monies due to Tenant by such Transferee. In the event Tenant receives Rent or other consideration from an Transferee, either initially or over the term of the Transfer, in excess of the Rent required hereunder (or in the case of a sublease or assignment of a portion of the Premises, in excess of such Rent fairly allocable to such portion), Tenant shall immediately pay to Landlord as Additional Rent all of such excess promptly after its receipt thereof. Tenant hereby acknowledges that Landlord's waiver or consent to any Transfer shall in no event relieve Tenant from its obligations and liabilities under this Lease and is not a consent to further assignment, subletting, encumbrance, pledge, hypothecation or otherwise transfer. In addition, Tenant hereby acknowledges that no Transfer hereunder shall be deemed to comply with this Article 17, unless such Transferee and Tenant execute a written agreement, in the form and content prepared by Landlord at Landlord's sole and absolute discretion, under which the Transferee and Tenant shall agree in writing for the benefit of Landlord to fully, unconditionally and faithfully perform, observe and abide by all of the terms, covenants, indemnities, agreements and conditions of this Lease. Such executed agreement for Transfer prepared by Landlord, if any, shall be delivered to Landlord within five (5) days after execution thereof and said Transfer shall not be effective until Landlord's acknowledged in writing receipt thereof. Landlord hereby reserves the right to require such Transferee to pay additional security deposit which shall be held by Landlord as security for the faithful performance by such Transferee of all of the terms, covenants and conditions of this Lease. Such deposit shall be held and administered by Landlord in accordance with Article 7 above.

17.4 Termination by Landlord. In the event Landlord elects to terminate this Lease with respect to all or a portion of the Premises as set forth in Section 17.2 above, this Lease shall terminate (with respect to all or such portion of the Premises, as the case may be), effective as of one of the following three (3) dates at Landlord's election: (i) the date on which Tenant projected the occupancy of the Premises by such Transferee, or as of the date on which Tenant projected the lien of the encumbrance to be effective, (ii) two (2) months after Landlord's written notice terminating the Lease, or (iii) as soon as all or such portion of the Premises, as the case may be, is vacated. All Rent shall be paid to Landlord up to and including the effective date of such termination and the Premises (or a portion thereof) shall be surrendered to Landlord in accordance with the provisions of Article 23 below.

17.5 Waiver. If Tenant requests Landlord's consent to Transfer, and Landlord's consent is impermissibly withheld, Tenant waives any right to seek damages or terminate this Lease under any applicable law or otherwise or any related, successor or similar provision of law, now or hereafter in effect.

17.6 No Request. Notwithstanding the other provisions of this Lease to the contrary, Tenant shall not have the right or power to request Landlord's consent to, or to enter into, any Transfer, if Tenant is in or shall be in default under any one or more provisions of this Lease.

17.7 No Release. No Transfer (whether or not a Permitted Transfer under Section 17.3 above) will release Tenant from Tenant's obligations, duties, covenants and obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligations to be performed by Tenant hereunder. In the event of breach by any Transferee, or any person or entity or any successor of Tenant in the performance of any of the terms, covenants, obligations and liabilities under this Lease, Landlord, at Landlord's sole option, may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee.

18. Bankruptcy. If there shall be filed by or against Tenant a petition in bankruptcy, or insolvency or for reorganization or for appointment of a receiver or trustee or conservator for all or a portion of Tenant's property, under any chapter of federal bankruptcy law as then in effect, or if Tenant shall be adjudicated a bankrupt in involuntary bankruptcy proceedings and such adjudication shall not have been vacated within thirty (30) days from the date thereof, or if a receiver or trustee shall be appointed of Tenant's property and the order appointing such receiver or trustee shall not be set aside or vacated within thirty (30) days after the entry thereof, or if Tenant shall assign Tenant's estate or effects for the benefit of creditors, or if this Lease shall otherwise, by operation of law, pass to any person or persons other than Tenant, then, and in any such event, Landlord may, if Landlord so elects, with or without notice of such election and with or without entry or action by Landlord, forthwith terminate this Lease, and notwithstanding any other provisions of this Lease, Landlord, in addition to any and all rights and remedies allowed by law or equity, shall upon such termination be entitled to recover damages in the amount provided in Article 19 below and neither Tenant nor any person claiming through or under Tenant or by virtue of any statute or order of any court shall be entitled to possession of the Premises but shall forthwith quit and surrender the Premises to Landlord. Nothing herein contained shall limit or prejudice the right of Landlord to prove and obtain as damages by reason of any such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount of damages recoverable under the provisions of this Article 18.

19. Defaults and Remedies.

19.1 Events of Default. The occurrence of any one or more of the following events shall constitute a material and incurable default and breach of this Lease by Tenant (each, an "Event of Default"):

19.1.1 The vacation or abandonment of the Premises by Tenant or the removal of all or substantially all of Tenant's furniture from the Premises. Abandonment is herein defined to include, but is not limited to, any absence by Tenant from the Premises for five (5) days or longer while in default of any provisions of this Lease;

19.1.2 The failure by Tenant to make any payment of Annual Basic Rent or additional Rent or any other charges or payments required to be made by Tenant hereunder, including payments required under the Exhibits and any Rider to this Lease, as and when due;

19.1.3 The failure by Tenant to observe or perform any of the express or implied covenants or provisions of this Lease to be observed or performed by Tenant, other than as specified in Sections 19.1.1 or 19.1.2 above, where such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant; provided, however, that any such notice shall be in lieu of, and not in addition to, any notice required under any applicable law or otherwise or any related, successor or similar provision of law, now or hereinafter in effect;

19.1.4 The failure by Tenant to move into and take possession of the Premises within fifteen (15) days after the Commencement Date;

19.1.5 The default by Tenant under any other lease between (a) Landlord and Tenant, or (b) any parent, subsidiary or affiliate of Landlord and Tenant;

19.1.6 (a) The making by Tenant of any general assignment for the benefit of creditors; (b) the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within thirty (30) days); (c) the appointment of a trustee or receiver to take possession of substantially all of

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Tenant's assets located in the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; (d) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located in the Premises or of Tenant's interest in this Lease where such seizure is not discharged within thirty (30) days; (e) Tenant assigns or otherwise transfers substantially all of the assets used in connection with the business conducted in the Premises; or (f) the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant;

19.1.7 If Tenant is a corporation or limited liability company, Tenant ceasing to exist as a corporation or an limited liability company (as the case maybe) in good standing in it's state of incorporation or formation;

19.1.8 If Tenant is a partnership, the dissolution or liquidation of Tenant;

19.1.9 The Failure of Tenant, on more than two occasions in any twelve month period, to observe or perform any of the covenants or obligations described in Sections, 19.1.2 or 19.1.3 above, even if all such failures are cured within the period(s) specified in said Section;

19.1.10 The occurrence of an Event of Default as defined in any other provision of this Lease; or

19.1.11 The occurrence of any Event of Default under the terms of any existing or future lease by and between Landlord and Tenant and/or by and between Tenant and/or any Tenant's Representatives.

19.2 Remedies.

(i) Re-Entry and Termination. Upon and during the continuance of an Event of Default, Landlord, in addition to any and all other rights and remedies available to Landlord at law or in equity, at Landlord's option, may without further notice or demand of any kind to Tenant or any other person or entity:

(a) Declare the Lease Term ended and reenter the Premises and take possession thereof and remove any and all occupants, persons or entities therefrom, and Tenant shall have no further claim to the Premises; or

(b) Without declaring this Lease ended, reenter the Premises and occupy the whole or any part thereof for and on account of Tenant and collect any unpaid Annual Basic Rent, Additional Rent, and other charges and sums, which have become payable, or which may thereafter become payable; or

(c) Even though Landlord may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(ii) Express Termination Required. Should Landlord have reentered the Premises under the provisions of subparagraph 19.2(i)(b) above, Landlord shall not be deemed to have terminated this Lease, or the liability of Tenant to pay any Annual Basic Rent, Additional Rent or other charges thereafter accruing, or to have terminated Tenant's liability for damages under any of the provisions of this Lease, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Premises, unless Landlord shall have notified Tenant in writing that Landlord had elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State where the Shopping Center is situated and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of or at any time subsequent to the serving of such notices and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease.

(iii) Damages. Should Landlord elect to terminate this Lease pursuant to the provisions of subparagraphs 19.2(i)(a) or 19.2(i)(c) above, Landlord may recover from Tenant as damages, the following:

(a) the worth at the time of award of any unpaid Annual Basic Rent, Additional Rent or other charges which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided, plus

(c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided, plus

(d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, (v) the then unamortized allowance and unamortized commissions paid to the Broker(s), and (vi) any other costs necessary or appropriate to relet the Premises; plus

(e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is situated.

As used in Sections 19.2(ii)(a) and 19.2(ii)(b) above, the "worth at the time of award" is computed by allowing interest at the maximum rate permitted by law per annum. As used in Section 19.2(ii)(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

(iv) Alternative Damages. Should Landlord elect to bring an action against Tenant in unlawful detainer or for damages or both or otherwise (and Landlord may bring as many actions as Landlord may elect to bring throughout the Lease Term), without terminating this Lease, Landlord may recover from Tenant as damages the following:

(a) The worth at the time of award of any unpaid Annual Basic Rent, Additional Rent or other charges which had been earned at the time Landlord recovered possession of the Premises; plus

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(b) The worth at the time of award of the amount by which the unpaid Annual Basic Rent, Additional Rent or other charges which would have been earned after the date Landlord recovered possession until the time of award exceeds the amount of such loss Tenant proves could have been reasonably avoided; plus

(c) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform Tenant's obligations, covenants and duties under this Lease, including but not limited to, any costs or expenses incurred by Landlord in (i) retaking possession of the Premises, including reasonable attorneys' fees, (ii) maintaining or preserving the Premises after the occurrence of an Event of Default, (iii) preparing the Premises for reletting to a new tenant, including repairs or alterations to the Premises for such reletting, (iv) leasing commissions, (v) the then unamortized allowance and unamortized commissions paid to the Broker(s), and (vi) any other costs necessary or appropriate to relet the Premises; plus

(d) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Shopping Center is situated.

As used in Sections 19.2(iii)(a) and 19.2(iii)(b) above, the "worth at the time of award" is computed by allowing interest at the maximum rate permitted by law per annum. As used in Section 19.2(iii)(c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

(v) Definitions. As used in subparagraphs 19.2 (iii)(a) and 19.2 (iii)(b) and 19.2 (iv)(a) above, the "worth at the time of award" is computed by allowing interest at the at the maximum rate permitted by law per annum. As used in subparagraphs 19.2(iii)(c) and 19.2(iv)(b) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

(vi) Computation of Certain Sums. For all purposes of this Article 19.2, the Additional Rent and other charges shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twenty four (24) month period, except that if it becomes necessary to compute such amounts before such a twenty four (24) month period has occurred then such amounts shall be computed on the basis of the average monthly amounts accruing during such shorter period. Notwithstanding the provisions of this Lease to the contrary, if this Lease is rejected in any bankruptcy action or proceeding filed by or against Tenant and the effective date of such rejection is on or after the date on which that month's Annual Basic Rent, Additional Rent and other charges are due and owing, then the Annual Basic Rent, Additional Rent and other charges owing under this Lease for the month during which the effective date of such rejection occurs shall be due and payable in full and shall not be prorated.

(vii) Use/Storage of Fixtures. Upon the occurrence of and during the continuation of any Event of Default, Landlord may, at Landlord's option, permit all of Tenant's fixtures, furniture, equipment, improvements, additions, alterations, and other personal property to remain on the Premises and Landlord shall have the right to take the exclusive possession of same and to use same, rent or charge free or, at Landlord's option, at any time during the Lease Term, require Tenant to forthwith remove same. In the event of any entry or taking possession of the Premises, Landlord shall have the right, but not the obligation to remove all or any part of the fixtures, furniture, equipment and other personal property located in the Premises and may place the same in storage at a public warehouse at the expense and risk of the Tenant, Tenant's Representatives and/or owner or owners thereof.

(viii) Cumulative Remedies. The remedies given to Landlord in this Article 19.2 shall be in addition and supplemental to all other rights or remedies which Landlord may have at law, in equity or by statute and the exercise of any one remedy shall not preclude the subsequent or concurrent exercise of further or additional remedies. In the event that any court finds any of the remedies contained in this Article 19 to be unlawful or unenforceable (for instance, a finding that such constitute unenforceable penalties instead of liquidated damages to Landlord), then Tenant agrees and consents to be liable to the maximum extent allowable under law (rather than accepting the total invalidity of the provision in question) and Tenant consents to (and hereby waives its opposition to) a motion or separate action or demand by Landlord to have such extent clearly and finally determined and assessed against Tenant. Upon the occurrence of an Event of Default, all privileges and contingencies which may be exercised by Tenant under this Lease including, without limitation, options to renew, extend and expand, as well as relocation rights, contraction rights, exclusive rights or other rights which may be exercised by Tenant during the Lease Term shall be void and of no further force and effect.

(ix) No Waiver. The waiver by Landlord of any breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition of this Lease. The subsequent acceptance of Annual Basic Rent, Additional Rent or other charges due under this Lease shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular amount so accepted regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such amount. The acceptance by Landlord of less than the full amount of Annual Basic Rent, Additional Rent or other charges due under this Lease shall not constitute a waiver by Landlord of its right to require that the full amount of Annual Basic Rent, Additional Rent or other charges then due under this Lease be paid in full. No covenant, term, or condition of this Lease (including the provisions of this subparagraph (ix)) shall be deemed to have been waived by Landlord unless such waiver shall be in writing and signed by Landlord.

(x) Security Interest. In order to secure performance by Tenant of the agreements, covenants and promises to be performed by Tenant as set forth in this Lease, Tenant hereby grants to Landlord a security interest in all of Tenant's fixtures, furniture, equipment, improvements, additions, alterations, inventory and other personal property now or hereafter located within or upon the Premises and any and all products and proceeds thereof now owned or hereafter acquired (collectively, the "Collateral"). Upon and after the occurrence of an Event of Default, Landlord shall have all of the rights and remedies of a secured party under the UCC of the State in which the Shopping Center is situated, including without limitation the right and power to sell or otherwise dispose of the Collateral or any part thereof and for that purpose Landlord may take immediate and exclusive possession of the Collateral or any part thereof and, with or without judicial process, Landlord may enter upon the Premises and remove the Collateral, or, at Landlord's option, Tenant shall assemble the Collateral and make it available to Landlord at the place and time designated by Landlord. To the extent permitted by law, Tenant expressly waives any notice of the sale or disposition of the Collateral and any other right or remedy of Tenant existing after the occurrence of an Event of Default, and to the extent any notice is required and cannot be waived, Tenant agrees that for the purposes of this subparagraph (x) only, if the notice is marked, postage prepaid to Tenant at the address set forth in the Basic Lease Definitions at least five (5) days before the time of sale or other disposition, the notice shall be deemed commercially reasonable and shall fully satisfy any requirement for the giving of notice. Tenant hereby authorizes Landlord to record and/or file, in the appropriate recording and filing offices, one or more Uniform Commercial Code Financing Statements in the form satisfactory and acceptable to Landlord (together with amendments and modifications thereto) so as to enable Landlord to perfect the security interest granted in this subparagraph (x).

(xi) Landlord's Right to Cure. All covenants, obligations, liabilities, indemnities, duties and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense. If Tenant shall default in the performance of any obligation required hereunder or fail to cure any default hereunder, Landlord shall have the option, without being under any obligation or duty to do so, without thereby waiving such default and in addition to and without prejudice to any other right or remedy of Landlord, to immediately at any time thereafter, without notice to Tenant, may remedy such default and/or perform the same for the account of Tenant. If Landlord at any time is compelled to pay or elects to pay any sum of money or do any

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act which will require the payment of any sum of money (including but not limited to employment of attorneys or incurring of costs), by reason of the failure of Tenant to comply with any term, covenant, obligation, liability, condition, duty, provision, or agreement hereof, or, if Landlord is compelled to incur or elects to incur any expense (including but not limited to reasonable attorneys fees in instituting, prosecuting, or defending any action or proceeding, whether or not such action or proceeding proceeds to judgment) by reason of any default of Tenant hereunder, then the sum or sums to be paid or incurred by Landlord plus an administrative fee of twenty percent (20%) of such amount (with interest at the Interest Rate) shall be due from Tenant to Landlord promptly upon demand by Landlord.

20. Subordination.

20.1 Generally. This Lease and Tenant's tenancy hereunder shall be subject and subordinate at all times to (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Shopping Center or the real property upon which the Shopping Center is situated or both; (b) the lien of any mortgage or deed of trust (including any renewals, modifications, extensions, or future advances thereof), or other method of financing or refinancing, which may now exist or hereafter be executed, in any amount for which the Shopping Center, land, ground leases or Landlord's interest in any of the foregoing items may be specified as security; (c) all past and future advances made under any such mortgages, deeds or deeds of trust; and (d) all renewals, modifications, replacements and extensions of any such ground leases, master leases, mortgages, deed and deeds of trust (collectively, "Security Documents") which may now exist or hereafter be executed which constitute a lien upon or affect the Property, the Premises or any portion thereof, or Landlord's interest and estate in any of said items. Notwithstanding the foregoing, Landlord reserves the right to subordinate or cause to be subordinated any such ground leases or liens to this Lease. Such subordination shall be effective, at the election of Landlord, without the necessity of any additional document being executed by Tenant. Tenant hereby waives any right under any applicable law or otherwise to terminate or otherwise adversely affect this Lease and the obligations of Tenant hereunder in the event of any termination or transfer of Landlord's estate or interest in, the Shopping Center, or the Premises by reason of any termination or foreclosure of any such Security Documents. Notwithstanding the foregoing, Tenant covenants and agrees to unconditionally and without delay execute and deliver, upon demand by Landlord, any additional documents evidencing the subordination or priority of this Lease with respect to any such mortgages, deeds of trust or ground leases in the form required by Landlord at Landlord's sole and absolute discretion. Landlord is hereby irrevocably appointed and authorized as agent and attorney-in-fact of Tenant to execute and deliver all such subordination instruments in the event Tenant fails to execute and deliver said instruments within five (5) days after written request therefor. The appointment is one coupled with an interest.

20.2 Attornment. Notwithstanding anything to the contrary set forth in this Article 20, Tenant hereby attorns and shall attorn to any Person purchasing or otherwise acquiring the Shopping Center, the Premises or the real property thereunder or any portion thereof at any sale or other proceeding or pursuant to the exercise of any rights, powers or remedies under a mortgage or deed of trust as if such Person had been named as Landlord herein, it being intended that if this Lease is terminated, cut off or otherwise defeated by reason of any act or actions by the owner or holder of any such mortgage or deed of trust then, at the option of any such Person so purchasing or otherwise acquiring the Shopping Center, the Premises or the real property thereunder or any portion thereof, this Lease shall continue in full force and effect and Tenant shall continue to fully observe and perform all of the provisions, covenants, agreements and obligations of this Lease. Landlord and Tenant acknowledge and agree that Landlord's lender and mortgagee shall have no obligation or liability whatsoever to Tenant with respect to this Lease or otherwise unless and until Landlord's lender or mortgagee acquires title to the Shopping Center. In addition, Tenant agrees that it shall enter into a new lease with such successor-in-interest to Landlord, if requested, for the balance of the Term then remaining hereunder upon the same terms and conditions as set forth in this Lease. For the purposes of this Section, the term "Person" shall mean an individual, corporation, partnership, joint venture, association, firm, joint stock company, trust, limited liability company, unincorporated association or other entity.

21. Estoppel Certificate.

21.1 Generally. Within ten (10) days following any written request by Landlord from time to time, Tenant shall execute, confirm and deliver to Landlord an Estoppel Certificate statement, in a form substantially similar to the form of Exhibit "E" attached hereto or such other form and with such other information requested by Landlord, certifying and representing: (a) the Commencement Date and Expiration Date of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the Monthly Basic Rent, Additional Rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) any and all other matters requested by Landlord at Landlord's sole and absolute discretion. Landlord and Tenant intend that any statement delivered pursuant to this Article 21 may be relied upon by Landlord, and by any mortgagee, beneficiary, purchaser or prospective purchaser of the Shopping Center or any interest therein.

21.2 Presumption of No Default. Tenant's failure to deliver such statement within the time period specified in Section 21.1 above shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults in Landlord's performance hereunder, and (c) not more than one (1) month's Rent has been paid in advance. Tenant's failure to deliver said statement to Landlord within ten (10) days of Tenant's receipt of Landlord's request therefor shall constitute an Event of Default, and Landlord shall have the right, at Landlord's sole option, terminate this Lease, provided written notice of such termination is received by Tenant prior to Landlord's receipt of said statement.

22. Performance by Tenant. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole risk, cost and expense and without any abatement of Rent or offset. If Landlord so requests, payments of Annual Basic Rent, Additional Rent or other charges under this Lease shall be paid by wire transfer of immediately available funds pursuant to such wiring instructions as Landlord may, from time to time, furnish to Tenant. Tenant acknowledges and confirms that the late payment by Tenant to Landlord of any sums due under this Lease will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any mortgage and note secured by any encumbrance covering the Premises or the Shopping Center. Therefore, if any installment of Monthly Basic Rent, Additional Rent and/or other charges under this Lease is not received by Landlord by the date when due, or if Tenant fails to pay any other sum of money due hereunder, Tenant shall pay to Landlord, as Additional Rent, the sum of ten percent (10%) of the overdue amount as a late charge. Such overdue amount shall also bear interest at an annual rate equal to eighteen percent (18%) ("Interest Rate"). The Interest Rate shall be from the date either the Monthly Basic Rent is due or, as to any obligation other than Monthly Basic Rent, from the date of Tenant's receipt of notice from Landlord, until the date of payment by Tenant. Landlord's acceptance of any late charge or interest shall not constitute a waiver of Tenant's default with respect to the overdue amount or prevent Landlord from exercising any of the other rights and remedies available to Landlord under this Lease or any law now or hereafter in effect. Further, in the event such late charge is imposed by Landlord for two (2) consecutive months for whatever reason, Landlord shall have the option to require that, beginning with the first payment of Rent due following the imposition of the second consecutive late charge, Rent shall no longer be paid in monthly installments but shall be payable three (3) months in advance and be paid by cashier's check or by certified funds. Further, following each consecutive late payment of any installment of Monthly Basic Rent or any other sums due under this Lease, Landlord shall have the right and the option to require that Tenant increase the amount of the Security Deposit required under Article 7 of this Lease by two hundred percent (200%), which additional Security Deposit shall be retained by Landlord and may be applied by Landlord in the manner provided in Article 7. If Tenant pays any installment of Annual Basic Rent, Additional Rent or other charges under this Lease by check and such check is returned for insufficient funds or other reasons whatsoever, then (i) Landlord may require, by delivering written notice to Tenant, that all future payments on account of Annual Basic Rent, Additional Rent or other charges under this Lease be paid by cashier's check or by certified funds, and (ii) Tenant shall pay to Landlord, pursuant to applicable laws and statutes, a service charge in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00), or an amount equal to five percent (5%) of the face amount of such check, whichever is greater, as

Landlord's Initial: FSK

Tenant's Initial(s): JB

well as all bank fees incurred by Landlord. Such payment shall be made within five (5) days after written notice by Landlord to Tenant that such check has not been honored.

23. Surrender.

23.1 Surrender of Premises. Upon the expiration or earlier termination of this Lease, Tenant shall peaceably surrender the Premises (including all Alterations which Landlord has not required Tenant to remove) to Landlord, broom clean and in as good order and condition as of the date hereof, ordinary wear and tear excepted, all in strict accordance with the terms and conditions of this Lease. Upon such surrender, the Premises shall be free and clear of all of Tenant's wirings, cables, equipment, furniture, fixtures and any other personal property located in the Premises. Any property left on the Premises at the expiration or other termination of this Lease, or after the happening of any of the defaults specified in Article 19 above, may, at the option of Landlord, either be deemed abandoned or be placed in storage, in the name of, and for the account of, and at the sole risk, cost, and expense of, Tenant, or otherwise disposed of by Landlord in the manner provided by law. Tenant expressly releases Landlord from any and all claims and liability for damage to or destruction or loss of property left by Tenant upon the Premises upon the expiration or other termination of this Lease and Tenant hereby indemnifies Landlord against any and all claims and liability with respect thereto. Tenant shall surrender all keys to the Premises to Landlord by no later than expiration or earlier termination of this Lease. At the expiration or earlier termination of the Lease, Tenant shall reimburse to Landlord the cost and expense of changing the locks to the Premises, re-painting the Premises, repair or replacement of any damage to the Premises, including without limitations, refinishing the floor, cleaning, repairing and/or changing the carpet, glass and windows and window coverings in the Premises, which the amount and scope of work shall be determined at Landlord's sole and absolute discretion. In addition, prior to surrendering the Premises, Tenant shall pay to Landlord any and all unpaid Rent which shall have accrued and any other sums which Tenant shall owe to Landlord under this Lease. Failure on the part of Tenant to strictly comply with the provisions of this Section 23.1 shall not be deemed a valid surrender of the Premises, and at the Landlord's option, be considered a holdover of the Premises by Tenant governed by the provisions of Section 23.2 below. If, during the last month of the Lease Term, Tenant shall have removed all or substantially all of Tenant's personal property from the Premises, Landlord shall have the right to enter the Premises to alter, renovate and decorate the same without Tenant being entitled to any abatement of Rent.

23.2 Holdover. Tenant shall not remain in possession of the Premises after the expiration or earlier termination of this Lease without the express written consent of Landlord. No acceptance by Landlord of Annual Basic Rent, Additional Rent or other sum and no act or statement by Landlord or any of Landlord's Affiliates shall be deemed or constitute the consent of Landlord to Tenant's holding over or result in a renewal of this Lease or an extension of the Lease Term, or any waiver of any of Landlord's rights or remedies with respect to such holdover. If Tenant should remain in possession of all or any portion of the Premises after the Expiration Date or any earlier termination of this Lease or the termination of Tenant's right to possess the Premises, without the express written consent of the Landlord, such tenancy shall be at the sufferance of Landlord and not a renewal of the Lease Term. During any such holdover period, Tenant shall pay to Landlord a Monthly Basic Rent in an amount equal to two hundred percent (200%) of the then current Monthly Basic Rent and Additional Rent payable by Tenant to Landlord during the last month of the prior to the Expiration Date or the earlier termination of this Lease and such tenancy at sufferance shall be subject to every other term, covenant and provision of this Lease except as to term and Rent and any other provision as determined by Landlord (at Landlord's sole and absolute discretion) to be inapplicable. The Monthly Basic Rent payable for such holdover period shall in no event be construed as a penalty or as liquidated damages for such retention of possession. Notwithstanding any provision to the contrary contained herein, (a) Landlord expressly reserves the right to require Tenant to surrender possession of the Tenant Space upon the expiration of the Lease Term or upon the earlier termination hereof or at any time during any holdover and the right to assert any remedy at law or in equity to evict Tenant and collect damages in connection with any such holdover, and (b) Tenant shall indemnify, defend and hold the Landlord harmless from and against any and all loss or liability, including without limitation, any claim made by any succeeding tenant founded on or resulting from Tenant's failure to so surrender the Premises including attorney's fees and costs, consultants' fees and court costs incurred or suffered by or asserted against Landlord arising out of or in any manner related to Tenant's failure to surrender the Premises upon the Expiration Date or earlier termination of this Lease or upon termination of Tenant's right to possess the Premises in accordance with the provisions of this Lease. Tenant agrees and acknowledges that the provisions of this Article 23 shall survive the expiration or earlier termination of this Lease.

24. Performance by Landlord. Tenant's obligation to pay Rent and to observe and perform all of the terms and conditions of this Lease shall in no event be affected or excused as a result of Landlord's inability to fulfill any of its obligations under this Lease, if Landlord is so prevented by reason of any cause beyond Landlord's reasonable control including, but not limited to, acts of God, strike or labor disputes, fuel or energy shortages, governmental preemption, explosions, fire, flood, earthquakes, shortage of labor or materials, weather condition, national emergency, war or other emergency. Any such inability shall be excused by Tenant without any liability or obligation on the part of Landlord.

25. Failure to Give Possession. The parties hereto agree that in the event of the inability of Landlord to deliver possession of the Premises to Tenant on the Commencement Date, this Lease shall not be void or voidable and such delay shall be excused by Tenant without any liability or obligation on the part of Landlord. In no event, however, shall such delay extend the Term of this Lease. If Landlord is unable to deliver possession of the Premises by one year from the Commencement Date, this Lease shall automatically terminate and Landlord shall not be subject to any liability or obligation with respect thereto. If, however, Landlord's failure to deliver possession results from Tenant's acts or omissions, Tenant's liability for the Monthly Basic Rent and Additional Rent payable by Tenant shall commence on the date Landlord would have delivered possession but for Tenant's acts or omissions.

26. Broker(s). As a material part of the consideration for the granting of this Lease, Tenant represents and warrants to Landlord that, except as set forth on the Basic Lease Definitions, no broker, agent or finder negotiated or was instrumental in negotiating or consummating this Lease on behalf of the Tenant and that Tenant knows of no other real estate broker, agent or finder who is, or might be, entitled to a commission or compensation for representing Tenant in connection with this Lease. Any such other broker, agent or finder of Tenant whom Tenant has failed to disclose, in writing, to Landlord shall be paid solely by Tenant. Tenant shall indemnify and hold Landlord harmless from all damages, liabilities or claims paid or incurred by Landlord resulting from any claims that may be asserted against Landlord by any broker, agent or finder undisclosed by Tenant as required hereunder, including attorneys fees and costs.

27. Notices. Any notice, request, consent or communication required or permitted hereunder must be in writing and shall be given by personal delivery or by mail and, if given by mail, shall be deemed sufficiently given if and when sent by registered or certified mail return receipt requested, to the address of the party receiving such notice or consent at the address set forth for such party on the Basic Lease Definitions. Either party, by notice to the other given in the aforesaid manner, may specify a different address or agent for notice purposes, except that Landlord may in any event use the Premises as Tenant's address for notice purposes. If more than one person or entity constitutes Tenant under this Lease, service of notice or consent upon any one of said persons or entities shall be deemed to constitute service upon all of said persons or entities.

28. Shopping Center Planning. Landlord, at Landlord's sole and absolute discretion, shall have the right, at any time and from time to time, during the term hereof, upon giving Tenant not less than sixty (60) days prior written notice, to remove Tenant from the Premises and relocate Tenant with another space elsewhere in the Shopping Center of approximately the same size as the Premises. Landlord shall reimburse Tenant the reasonable cost for physical relocation incurred as a result of such removal and relocation of Tenant, which in no event shall Landlord be liable to Tenant for any sum that exceeds one (1) monthly installment of Monthly Basic Rent due on the first day of the month in which Landlord gives Tenant such notice. Should Tenant refuse or fails to move or relocate to such new space at the end of said sixty (60) day period, Landlord, at Landlord's sole and absolute discretion, shall have the right to cancel and terminate this Lease with no liability or obligation to Tenant, effective sixty five (65) days from the date of original notification by Landlord to Tenant. If Tenant

Landlord's Initial: FSK

Tenant's Initial(s): 

relocates or moves to such new space, this Lease and each and all of its terms, covenants and conditions shall remain in full force and effect and be deemed applicable to such new space, and such shall thereafter be deemed to be the "Premises" as though Landlord and Tenant had entered into an express written amendment of this Lease with respect thereto. In addition, Landlord reserves the right at Landlord's sole and absolute discretion to determine the additions, expansions, reductions, remodeling, and/or improvements to the Shopping Center and/or Common Areas, the nature of the business and uses of all or any part of the Shopping Center and/or Common Areas and to make improvements and additions to the Shopping Center. Furthermore, Landlord may, in its sole discretion, change the location of other tenants and the nature of any occupancy and/or use of any premises in the Shopping Center at any time.

29. **Binding Effect; Applicable Law.** This Lease and all of the terms, covenants, and provisions contained herein shall be deemed to be covenants. All such covenants shall apply to, be binding upon and inure to the benefit of Landlord and Tenant, and their respective legal representatives, successors, heirs, and assigns, except as otherwise provided hereunder. Landlord and Tenant hereby voluntarily, knowingly, irrevocably and unconditionally submit to the jurisdiction of the Superior Court of Maricopa County, Arizona (or if the requisites of jurisdiction obtain, the United States District Court for the District of Arizona sitting in Maricopa County, Arizona) in connection with any dispute (whether based upon contract, tort or otherwise) between or among Landlord and Tenant arising out of or in any way related to the Premises, this Lease or any other agreements, documents or instruments executed and delivered in connection with or otherwise relating to the Premises. In this regard, the exclusive venue of any such dispute shall be in Maricopa County, Arizona. Landlord and Tenant hereby voluntarily, knowingly, irrevocably and unconditionally waive any defense of forum non conveniens or any other objection to venue in Maricopa County, Arizona.

30. **Rules and Regulations.** Tenant shall, and shall cause Tenant's Representatives to faithfully observe and completely and unconditionally comply with the Rules and Regulations and such other reasonable rules and regulations as Landlord may from time to time adopt or establish including those set forth in Exhibit "D" attached hereto (collectively referred to as "Rules and Regulations"). Landlord reserves the right, at any time and from time to time, to change, alter and amend, and to enforce against Tenant, Tenant's Representatives and/or the other users of the Common Areas such reasonable rules and regulations. Notice of all additional rules and regulations shall be given in such manner as Landlord may elect. Rules and Regulations may be added, changed and/or rescinded from time to time by Landlord at Landlord's sole and absolute discretion without Tenant's consent. In no event shall Landlord be liable to Tenant for failure on its part to enforce any of the Rules and Regulations or for any violation of such Rules and Regulations by other tenants or occupant of the Shopping Center. The violations of any such Rules and Regulations shall be deemed a material breach of this Lease by Tenant. Tenant hereby agrees that any breach of the Rules and Regulations by Tenant or Tenant's representatives shall cause Landlord irreparable damage for which recovery of damages would be inadequate, and that Landlord shall therefore be entitled to obtain timely injunctive relief, as well as such further relief or award as may be granted by a court of competent jurisdiction, including monetary damages. Tenant hereby waives any right to oppose any action by Landlord for injunctive relief to prevent a violation of the Rules and Regulations. In the event Tenant or any Tenant's Representatives fails to observe and/or comply in any respect with Tenant's obligations under this Lease and/or the Rules and Regulations, Tenant shall be liable for and shall indemnify, hold harmless and defend Landlord, and Landlord Affiliates, from and against any and all Claims directly or indirectly resulting from or arising out of Tenant's or any of Tenant's Representatives breach of this Lease and/or the Rules and Regulations. Landlord reserves the right, at any time and from time to time, to change, alter and amend, and to enforce against Tenant, Tenant's Representatives and/or the other users of the Common Areas such reasonable rules and regulations (including designating certain parking areas as customer and/or patron parking only, and excluding Tenant and/or Tenant's employees from parking in such restricted areas) as may be deemed necessary or advisable for the proper and efficient operation and maintenance of the Common Areas. These rules and regulations may include, without limitation, the hours during which the Common Areas shall be open for use. Landlord may, in its opinion the same is advisable, establish a system or systems of parking validation or other type operation, including a system of charges against non-validated parking checks of users. Tenant shall conform to and abide by all such rules and regulations in Tenant's use and the use by Tenant's customers and patrons of the automobile parking areas of the Common Areas.

31. **Definition of Landlord.** For purposes of this Lease, the term "Landlord" with respect to obligations of Landlord contained in this Lease means (a) the owner, mortgagee-in-possession or grantee-in-possession under a deed of trust, or (b) the owner or lessee of the entire Shopping Center, as applicable.

32. **Definition of Tenant.** If more than one person executes this Lease as Tenant, (a) each of them is jointly and severally liable for the keeping, observing and performing of all the terms, covenants, conditions, provisions and agreements of this Lease to be kept, observed and performed by Tenant, and (b) the term "Tenant", as used in this Lease, shall mean and include each of them jointly and severally and the act of or notice from, or notice or refund to, or the signature of, any one or more of them, with respect to the tenancy of this Lease, including, but not limited to, any renewal, extension, expiration, termination or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant and if Tenant is a partnership, then on all future partners, with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

33. **Examination of Lease.** Neither the preparation nor delivery of this Lease to Tenant for examination shall be deemed or construed to be an offer by Landlord to lease, or a reservation of, or option for, the Premises to Tenant, but shall be merely a part of the negotiations between Landlord and Tenant and the execution of this Lease by Tenant shall be deemed to constitute an offer by Tenant to lease the Premises from Landlord upon the terms and conditions contained in this Lease which offer may be accepted or rejected by Landlord in its sole and absolute discretion and if accepted, such acceptance shall only be by the execution of this Lease by Landlord. Landlord shall have no obligation or liability to Tenant whatsoever until such time as Landlord shall have executed this Lease and delivered a copy of such executed Lease to Tenant and all conditions precedent to Landlord's obligations have been satisfied or waived. No act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof.

34. **Waiver.** The failure of Landlord to seek redress for violation of, or to insist upon strict performance of, any term, covenant or condition of this Lease or the Rules and Regulations, shall not be deemed a waiver of such violation or prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation, nor shall the failure of Landlord to enforce any of said Rules and Regulations against any other tenant of the Shopping Center be deemed a waiver of any such Rule or Regulation, nor shall any custom or practice which may become established between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of Landlord to insist upon the performance by Tenant in strict accordance with said terms. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, other than the failure of Tenant to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No provision of this Lease shall be deemed to be waived by Landlord, unless such waiver is made in writing signed by Landlord.

35. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Tenant agrees that each of the foregoing covenants and agreements shall be applicable to any covenant or agreement either expressly contained in this Lease or imposed by any statute or at common law.

36. **Terms and Headings.** The Article or Section headings of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part hereof.

Landlord's Initial: FSK

Tenant's Initial(s): JB

37. Time. Time is of the essence with respect to the performance of every provision of this Lease in which time or performance is a factor.

38. Entire Agreement; Amendments. This Lease contains the final and complete agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior warranty, representation, agreement, or understanding, oral or written, express or implied, pertaining to any such matter whether by either party, their respective representatives or brokers, shall be effective for any purpose. There are no promises, conditions, representations, warranties or guarantees, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereby or in effect between the parties other than as therein set forth. The parties hereto acknowledge that all prior and contemporaneous agreements, representations, offers, proposals, commitments, promises, acts, conduct, course of dealing, representations, negotiations, statements, assurances and understandings, whether oral or written are deemed superseded by the execution of this Lease to the extent they are not incorporated herein. No provision of this Lease may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors-in-interest, and may not be varied or contradicted by evidence of any such prior to contemporaneous matter or by evidence of any subsequent oral agreement of the parties hereto.

39. Severability. If any provision of this Lease which shall prove to be invalid, void or illegal, shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

40. Recording. Tenant shall not record this Lease or a short form memorandum thereof without the prior written consent of Landlord, and if such recording is permitted, it shall be at the sole cost and expense of Tenant, including any documentary transfer taxes or other expenses related to such recordation. A violation by Tenant of this Article 40 shall constitute an Event of Default.

41. Limitation on Liability.

41.1 Default by Landlord. In the event that Landlord shall neglect or fail to perform or observe any obligation or covenant of Landlord to be performed under this Lease, Tenant's sole and exclusive remedies for any such failure shall be an action for money damages (Tenant hereby waiving the benefit of any laws granting Tenant a lien upon the property of Landlord and/or upon rental due Landlord or granting Tenant a right to terminate this Lease upon a default by Landlord); provided, however, that Landlord shall not be in default hereunder (and Tenant shall have no right to pursue any such claim for damages in connection with any such failure) unless and until Tenant shall have delivered to Landlord a written notice specifying such default in details with particularity, and Landlord shall thereafter have failed to cure such default within one hundred and twenty (120) days (or, if the nature of Landlord's obligation is such that more than one hundred and twenty (120) days are required for its performance, then not unless Landlord shall have failed to commence such performance of such cure within sixty (60) days after its receipt of written notice thereof from Tenant and thereafter diligently pursue the same to completion). Unless and until Landlord shall have so failed to so cure any such failure after such notice, Tenant shall not have any remedy or cause of action by reason thereof. In no event shall Tenant have the right to terminate this Lease nor shall Tenant's obligations, covenants, responsibilities and duties under this Lease, including but expressly not limited to the obligation to pay Annual Basic Rent, Additional Rent or any amount thereof or other payment required to be made by Tenant shall not be reduced or affected thereby in any manner whatsoever and Tenant shall not be entitled to any abatement or reduction of Rent, and shall not have any effect on this Lease or shall not give to Tenant any offset or defense to the full and timely performance of its obligations, covenants and responsibilities hereunder, and shall not constitute any actual or constructive eviction of Tenant, and shall not give rise to any other claim of any nature against Landlord.

41.2 Commencement of Action. Notwithstanding any other provision of this Lease, any claim, demand, right or, defense which Tenant may have against Landlord (whether in contract, tort or for breach of any express or implied covenant contained in this Lease) or the negotiations that preceded this Lease shall be barred unless Tenant commences an action thereon, or interposes a defense by reason thereof, within one hundred and eighty (180) calendar days after the date of the inaction, omission, event, or action that gave rise to such claim, demand, right, or defense. Tenant acknowledges and understands, after having consulted with its legal counsel that the purpose of this paragraph is to shorten the period within which Tenant would otherwise have to raise such claims, demands, rights, or defenses under applicable laws.

41.3 Landlord's Liability. In consideration of the benefits accruing under this Lease to Tenant and notwithstanding anything to the contrary in this Lease or in any exhibits, riders, amendments, or addenda to this Lease ("collectively, the "Lease Documents"), it is expressly understood and agreed by and between Tenant and Landlord that: (i) the recourse of Tenant or its successors and assigns against Landlord (and the liability of Landlord to Tenant, its successors and assigns) with respect to (a) any actual or alleged failure, default, breach or breaches by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in any of the Lease Documents, or (b) any matter relating to Tenant's occupancy of the Premises (collectively, the "Landlord's Lease Undertakings"), shall be limited solely to an aggregate amount equal to One Hundred Thousand Dollars \$100,000.00; (ii) Tenant shall have no recourse against any other assets of the Landlord or Landlord Affiliate; (iii) no personal liability or personal responsibility of any sort with respect to any of Landlord's Lease Undertakings or any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable against the Landlord Affiliates, and (iv) at no time shall Landlord be responsible or liable to Tenant for any lost profits, lost economic opportunities or any form of special, consequential or punitive damages as the result of any actual or alleged breach of Landlord of Landlord's Lease Undertakings. Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed that any money judgment against Landlord resulting from any default or other claim arising under this Lease (whether in contract, tort or for breach of any express or implied covenant contained in this Lease) shall be satisfied only out of the net rents and profits (collectively "income") actually received from the operation of the Shopping Center, and no other real, personal or mixed property of Landlord or Landlord Affiliates, wherever situated, shall be subject to levy on any judgment obtained against Landlord and if such income is insufficient for the payment of such judgment, Tenant shall not institute any further action, suit, claim or demand, in law or in equity, against Landlord for or on the account of such deficiency. Tenant hereby waives, to the fullest extent permitted by law, any right to satisfy a money judgment against Landlord, except from income received by Landlord from the operation of the Shopping Center.

41.4 No Personal Obligation. The obligations of Landlord under this Lease do not constitute personal obligations of the individual members, managers, partners, directors, officers, shareholders, agents, representatives or employees of Landlord, any ground lessor or mortgagee, and Tenant shall not seek recourse or have any claim against the Landlord Affiliates and/or individual members, managers, partners, directors, officers, shareholders, trustees, agents or employees of Landlord, any lender, mortgagee or ground lessor, or any of their personal assets, or Landlord's interest in the Shopping Center for satisfaction of any liability or judgment with respect to this Lease. These covenants and agreements are enforceable both by Landlord and Landlord Affiliates.

42. Signs. Tenant shall not erect, maintain, place, paint or permit any sign upon or within the Premises or the Shopping Center, including on any plate glass windows or doors, any sign or any object of any kind whatsoever, without Landlord's prior written consent, which consent Landlord may withhold in Landlord's sole and absolute discretion. Accordingly, Tenant acknowledges that the Premises are a part of the integrated Shopping Center, and agrees that control of all signs by Landlord is essential to the maintenance of uniformity, propriety and the aesthetic values of the Shopping Center. Tenant further acknowledge that the character and quality of Tenant's operation and of the Shopping Center will be enhanced by Tenant's use of its best efforts to establish a successful character and image. In the event that Landlord permits Tenant in writing to place any signs upon or within the Premises, Tenant shall, at Tenant's sole cost and expense, acquire all permits for and, shall design, fabricate and install Tenant's signs in strict accordance to Landlord's sign criteria which is prescribed and established from time to time by Landlord at Landlord's sole and absolute discretion ("Sign Criteria"). Tenant further covenants and agrees that the installation by Tenant of the signage in accordance with the Sign Criteria is a material component of Tenant creating and maintaining a successful and profitable retail operation

Landlord's Initial:

FSK

Tenant's Initial(s):

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in the Premises. Landlord reserves the right, at any time and from time to time, to modify the Sign Criteria in order to enhance the sign program for the Shopping Center, including the right to adopt design guidelines, standards and requirements that are more stringent than those set forth in the current Sign Criteria. Tenant acknowledges and agrees that the provisions of this Article 42 pertaining to signage are reasonable and necessary to protect the legitimate business interests of Landlord and that any violation of the provisions of this Article 42 would result in irreparable injury to Landlord and therefore the failure by Tenant to comply or perform with the foregoing covenants in this Article shall constitute an Event of Default. All signs installed by Tenant shall conform to applicable Governmental Regulations. Tenant shall pay all costs to maintain and keep in good repair and aesthetic condition all installations, signs and advertising devices which it is permitted in writing by Landlord to maintain. Upon termination or expiration of this Lease, Tenant shall promptly remove all such installations, signs and devices at Tenant's sole cost and expense and reimburse Landlord for the cost to repair and repaint any damage and discoloration caused by Tenant's sign, such removal and/or original installation. In the event that Tenant shall place any sign upon or within the Premises or the Shopping Center without Landlord's prior written consent, Landlord shall have the right to remove such at Tenant's sole cost and expense without any notice to Tenant.

43. **Modification for Lender.** If, in connection with obtaining construction, interim or permanent financing for the Shopping Center, Landlord's lender or prospective lender committing to become a record lender, shall request modifications in this Lease as a condition to such financing, Tenant will not unreasonably withhold, delay or defer its consent thereto and will join in such modifications; provided that such modifications do not increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's rights hereunder.

44. **Financial Statement/Reporting.** At any time and from time to time during the Lease Term, Tenant shall provide to Landlord, at Tenant's sole cost and expense and upon ten (10) days' prior notice from Landlord, with (a) true, correct, current and signed financial statements of the three (3) years prior to the then current calendar year which will include a balance sheet, income statement, statement of changes in equity, statement of consolidated cash flows and such other financial information as Landlord may reasonably request (the "Certified Statements"); (b) fully executed copy of federal and state tax returns for the three (3) years prior to the then current calendar year (the "Tax Returns"); and (c) a certified and signed statement of annual Gross Sales of Tenant at the Shopping Center for the three (3) years prior to the then current calendar year. All such statements shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall be audited, signed and certified by an independent certified public accountant. In addition, Tenant covenants and agrees to furnish or cause to be furnished to Landlord, a quarterly statement, including a monthly breakdown of Gross Sales, within twenty (20) days after the close of each calendar quarter. Each statement shall also show the amounts, if any, excluded from Gross Sales. Each such statement shall be accompanied by a certification by Tenant that such statement is true, correct and complete under penalty of perjury. Failure by Tenant to provide Landlord with the report of Gross Sales, Certified Statements and/or Tax Returns shall constitute an Event of Default. The term "Gross Sales" as used in this Lease shall mean the aggregate amount of the prices of all merchandise, goods, wares sold, leased and rented, and services rendered in or from the Premises by Tenant, its subtenants, licensees and concessionaires, whether for cash or on credit and whether made by store personnel or by vending, gaming, or electronic kiosks or by machines, including email, mail, telephone, internet or computer based orders placed or filled in or from the Premises, as well as slotting or placement fees, revenues, rebates or expense reductions realized by Tenant with respect to goods or products displayed or sold from the Premises, whether for cash or on credit (each sale upon installments or credit shall be treated as a sale for the full cash price at the time of sale), excluding or deducting, as the case may be, only the following: (i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon, but only to the extent previously reported as a part of Gross Sales; and (ii) Goods returned to sources, or transferred to another store or warehouse owned by Tenant for the convenience of Tenant and not for the purpose of reducing Gross Sales.

45. **Signing Authority.** If Tenant is a corporation, partnership or limited liability company, each individual executing this Lease on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with: (i) if Tenant is a corporation, a duly adopted resolution of the Board of Directors of said corporation or in accordance with the By-laws of said corporation, (ii) if Tenant is a partnership, the terms of the partnership agreement, and (iii) if Tenant is a limited liability company, the terms of its operating agreement, and that this Lease is binding upon said entity in accordance with its terms. Concurrently with Tenant's execution of this Lease, Tenant shall provide to Landlord a copy of: (a) if Tenant is a corporation, such resolution of the Board of Directors authorizing the execution of this Lease on behalf of such corporation, which copy of resolution shall be duly certified by the secretary or an assistant secretary of the corporation to be a true copy of a resolution duly adopted by the Board of Directors of said corporation and shall be in a form reasonably acceptable to Landlord, (b) if Tenant is a partnership, a copy of the provisions of the partnership agreement granting the requisite authority to each individual executing this Lease on behalf of said partnership, and (c) if Tenant is a limited liability company, a copy of the provisions of its operating agreement granting the requisite authority to each individual executing this Lease on behalf of said limited liability company. In the event Tenant fails to comply with the requirements set forth in this Article, then each individual executing this Lease, jointly and severally along with Tenant, shall be personally liable, obligated and responsible for any and all of Tenant's obligations, covenants and agreements in this Lease. In addition, each individual executing this Lease on behalf of said entity represents and warrants to Landlord that (a) Tenant is a duly qualified corporation, partnership or limited liability company and all steps have been taken prior to the date of this Lease to qualify Tenant to do business in the State where the Shopping Center is situated, (b) all franchise and corporate and other business taxes have been paid to date, and (c) all forms, reports, fees and other documents necessary to comply with applicable laws have been and will be filed when due.

46. **Tenant Covenants Regarding Hazardous Substances.**

(a) For the purposes of this Lease, the terms "Hazardous Substances" means any element, chemical, compound, mixture, solution, substance, pollutants, contaminants, material or other matter which (i) has been determined by any regulation, order or rule, or any proposed regulation, order or rule, promulgated by each and every federal, state, and local law and statute, to constitute a pollutant, contaminant, waste, hazardous waste, or hazardous substance under any Environmental Laws, including but not limited to: (A) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6902 et seq.; (B) the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. Section 9601 et seq.; (C) the Clean Water Act, 33 U.S.C. Section 466 et seq.; (D) the Safe Drinking Water Act, 42 U.S.C. Sections 1401-1450; (E) the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2629; (F) the Hazardous Material Transportation Act, 49 U.S.C. Sections 1801 et seq.; (G) the California Hazardous Waste Control laws and the Hazardous Substance Account Act, California Health & Safety Code chapters 6.5 through 6.95; (H) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; or (I) the Porter-Cologne Water Quality Control Act, California Water Section 13000 et seq.; or (ii) has been found to be a waste, pollutant, contaminant, hazardous waste, or hazardous substance in any reported decision of a state or federal court; or (iii) is a petroleum hydrocarbon, including crude oil or any fraction thereof; or (iv) is hazardous, toxic, corrosive, flammable, health hazard, explosive, infectious, radioactive, carcinogenic, or reproductive toxicant; or (v) is regulated, identified under or listed pursuant to any Environmental Laws; or (vi) is pesticide regulated under state or federal law; or (vii) may give rise to liability under any common law theory based on nuisance or strict liability; or (viii) is a flammable explosive, asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; or (ix) is controlled, designated in or governed by any Environmental Laws; or (x) gives rise to any reporting, notice or publication requirements under any Environmental Laws; or (xi) gives rise to any liability, responsibility or duty on the part of Tenant or Landlord with respect to any third person or entity under any Environmental Laws. The terms "Environmental Laws" means each and every federal, state, or local laws, statutes, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "common-law") relating to hazardous substances rules, judicial or administrative order or rules, decree, orders, permits, license, approvals, authorizations, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Premises, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response,

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Compensation and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601, et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq., any amendments to the foregoing, and/or similar requirement of each and every federal, state or local governmental agency or other governmental authority, pertaining to the protection of human health and safety or the environment.

(b) Tenant hereby agrees and covenants (i) not to prepare, produce, use, permit or suffer the use, generate, maintain, transport, store, treat, handle, or dispose of, release or discharge any Hazardous Substances in, on or about the Premises, the Shopping Center, the Common Areas and/or any portion thereof; and (ii) not to violate any Environmental Laws. The failure by Tenant to comply or perform with the foregoing covenants in this Article 46 shall constitute an Event of Default.

(c) At any time, if Landlord deems, that the presence, release, threat of release, placement on or in the Premises, or the generation, transportation, storage, treatment, or disposal at the Premises of any Hazardous Substances gives rise or may give rise to any liability of Tenant or Landlord, Tenant, at Tenant's sole cost and expense, shall (i) immediately take or cause to take any and all remedial and removal action which Landlord may deem necessary or appropriate to correct such violation, remove such Hazardous Substances from the Premises and/or Shopping Center, transport or dispose of such Hazardous Substances, and to mitigate exposure to liability arising from the Hazardous Substances, whether or not such remedial action or removal action is required pursuant to the terms of any existing order or decree of any court or governmental agency or is otherwise required by law; and (ii) within sixty (60) calendar days provide Landlord with a phase 1 and phase 2 environmental assessment of the Premises, together with such additional reports and testing, using the consultant to be selected and acceptable by Landlord. If Tenant fails to take such actions as may be requested by Landlord with respect to Hazardous Substances within a reasonable time after notice by Landlord, Landlord reserves the right, but not the obligation or duty, to take such actions on Tenant's behalf and at Tenant's sole cost and expense. The taking of such actions by Landlord shall in no event be deemed as a cure of Tenant's default as a result of failure to take such actions. The cost of any such remedial or removal actions shall be included in Tenant's indemnity obligations pursuant to this Lease, which shall survive expiration or earlier termination of this Lease.

(d) Tenant, at Tenant's sole cost and expense, shall strictly comply with, and shall maintain the Premises in compliance with, all Environmental Laws. Tenant, at Tenant's sole cost and expense, shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Tenant's operations on the Premises under any Environmental Laws and shall comply with all terms and conditions thereof. At Landlord's request, Tenant shall deliver copies of, or allow Landlord to inspect, all such permits, licenses and approvals. Tenant, at Tenant's sole cost and expense, shall perform any monitoring, investigation, clean-up, removal and other remedial work (collectively, "Remedial Work") required as a result of any release or discharge of Hazardous Substances affecting the Premises or the Shopping Center or any violation of Hazardous Substances Laws by Tenant or any Transferee of Tenant or Tenant's Representatives. Landlord shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect Landlord's interests.

(e) Tenant, at Tenant's sole cost and expense, shall comply with the requirements of Landlord's and Tenant's respective insurers regarding Hazardous Substances and with such insurers' recommendations based upon prudent industry practices regarding management of Hazardous Substances.

(f) Tenant shall notify Landlord, in writing, within two (2) days after any of the following: (a) a release or discharge of any Hazardous Substances, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency; (b) Tenant's receipt of any order of a governmental agency requiring any Remedial Work pursuant to any Environmental Laws; (c) Tenant's receipt of any warning, notice of inspection, notice of violation or alleged violation, or Tenant's receipt of notice or knowledge of any proceeding, investigation or enforcement action, pursuant to any Environmental Laws; or (d) Tenant's receipt of notice or knowledge of any claims made or threatened by any third party against Tenant or the Premises relating to any loss or injury resulting from Hazardous Substances. Tenant, at Tenant's sole cost and expense, shall deliver to Landlord copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Environmental Laws.

(g) Upon the termination or expiration of this Lease, Tenant, at Tenant's sole cost and expense, shall remove any equipment, improvements or storage facilities utilized in connection with any Hazardous Substances and shall, clean up, detoxify, repair and otherwise restore Premises to a condition free of Hazardous Substances resulting from the acts or omissions of Tenant and Tenant's Representatives.

(h) If Landlord's consent is required for a Transfer of this Lease or the Premises, Landlord shall have the right to refuse such consent if the possibility of a release of Hazardous Substances is materially increased as a result of the Transfer or if Landlord does not receive reasonable assurances that the new tenant has the experience and the financial ability to remedy a violation of the Environmental Laws and fulfill its obligations under this Article 46.

(i) Landlord and Landlord Affiliates shall have the right, but not the obligation, to enter the Premises at all reasonable times to inspect Premises and Tenant's compliance with the terms and conditions of this 46, or to conduct investigations and tests at Tenant's sole cost and expense. No prior notice to Tenant shall be required in the event of an emergency, or if Landlord has reasonable cause to believe that violations of this Article 46 have occurred, or if Tenant consents at the time of entry. In all other cases, Landlord shall give at least twenty-four (24) hours prior notice to Tenant. Landlord shall have the right, but not the obligation or duty, to remedy, at Tenant's sole cost and expense, any violation or failure by Tenant of the provisions of this Article 46 or to perform any Remedial Work which is necessary or appropriate as a result of any governmental order, investigation or proceeding. Tenant shall pay, upon demand, as Additional Rent, all costs and expenses incurred by Landlord in remedying such violations or performing all Remedial Work, plus an administrative fee of twenty percent (20%) of such amount, and plus interest at the Interest Rate from the date of demand until the date received by Landlord.

(j) The release or discharge of any Hazardous Substances or the violation of any Environmental Laws shall constitute an Event of Default by Tenant under this Lease. In addition to, and not in lieu of, the remedies available under this Lease as a result of such Event of Default, Landlord shall have the right, without terminating this Lease, to require Tenant to suspend its operations and activities on the Premises until Landlord is satisfied that appropriate Remedial Work has been or is being adequately performed and Landlord's election of this remedy shall not constitute a waiver of Landlord's right thereafter to pursue the other remedies set forth in this Lease.

46.1 Indemnity. (a) Tenant hereby agrees to protect, indemnify, save, defend (at Tenant's sole cost and expense) and hold harmless Landlord and Landlord Affiliates and the successors and assigns of any and all of the foregoing persons (all of the foregoing person being individually or collectively referred to herein as the "Indemnified Persons" and each such reference shall refer jointly and severally to each such person from and against the full amount of any and all "Liability", investigations and proceedings arising out of or in connection with any breach of any provisions of this Article 46 or directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Substances by Tenant or Tenant's Representatives under or about the Premises during the Lease Term or Tenant's occupancy of the Premises, including, but not limited to, all foreseeable and unforeseeable consequential damages and the cost of any Remedial Work. As used herein, the term "Liability" means any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements incurred, suffered, threatened or asserted against any of the Indemnified Persons (including but not limited to attorneys' fees, and all other professional, expert and consultants expenses of such Indemnified Persons incurred or paid in investigating, preparing for, serving as

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a witness in or defending against any action or proceeding, commenced (whether or not actually served) or threatened against any of (i) the Indemnified Persons; or (ii) the Premises, the Shopping Center, the Common Areas or any part thereof, any property of Landlord adjacent to or in the vicinity of the Premises may become involved, which arise from, in respect of, as a result of or in connection with any of; or (iii) the presence of the Hazardous Substances on the Premises or the Shopping Center; or (iv) any release or discharge of Hazardous Substances on or from the Premises and/or the Shopping Center; or (v) any removal or disposal of Hazardous Substances from the Premises and/or the Shopping Center, whether such removal is done by Landlord or any other person or entity.

(b) Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Substances nor the strict compliance with all Hazardous Material Laws shall excuse Tenant from Tenant's indemnification obligations pursuant to this Article 46.1. The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Article 12 of this Lease. Tenant's obligations under this Section 46.1 shall survive termination of this Lease and shall be binding on any and all successors and assigns of Tenant. BY ITS INITIALING OF THIS PROVISION, TENANT ON BEHALF OF ITSELF AND TENANT'S REPRESENTATIVES AND ITS SUCCESSORS AND ASSIGNS HEREBY WAIVES ANY AND ALL STATUTE OF LIMITATION THAT MAY BE APPLICABLE TO THE OBLIGATIONS OF TENANT ARISING UNDER THIS SECTION 46.1.

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47. Professional Fees.

47.1 Generally. In the event that Landlord should bring suit for possession of the Premises, for the recovery of Rent or any other sum due under this Lease, or because of Tenant's breach or default of any provision, term, condition or covenant under this Lease, or for any other relief against Tenant hereunder, or should either party bring suit against the other with respect to matters arising from or growing out of this Lease, then all costs and expenses, including without limitation, actual professional fees (including appraisers', accountants', experts' and attorneys' fees) incurred by the prevailing party therein shall be paid by the other party, which obligation on the part of the other party shall be deemed to have accrued on the date of the commencement of such action and shall be enforceable whether or not the action is prosecuted to judgment. To the fullest extent permitted by law, such professional fees, costs and disbursements will be based upon the actual and reasonable fees, costs and disbursements incurred and not by reference to the amount in controversy. In addition, in the event either party shall hire an attorney as a result of a breach by the other party of any term, covenant or provision of this Lease, in addition to paying any amounts outstanding and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, the party in breach or default shall reimburse the other party for the reasonable attorneys' fees, taxable and non-taxable costs and disbursements including the fees and disbursements of consultants, professionals and paralegals incurred by the non-breaching party in enforcing the other party's obligations, whether or not a legal action is commenced, including the costs of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

47.2 Landlord as a Defendant. Should Landlord be named as a defendant in any suit brought against Tenant in connection with or arising out of Tenant's use or occupancy of the Premises, Tenant shall pay to Landlord its costs and expenses incurred in such suit, including without limitation, its actual professional fees, including appraisers', accountants', attorneys' fees and expert witnesses.

48. Common Areas.

48.1 Definition of Common Areas. As used herein, the term "Common Areas" shall mean all areas (a) within the exterior boundaries and ingress and egress roadways of the Shopping Center, which are now or in future available for the general or common use of Landlord, Tenant, other occupants and tenants, their visitors, customers and invitees and/or other owners, persons or entities entitled to use those areas subject to covenants, reservations, restrictions agreements, or other matters of record, including, but not be limited to, the common entrances, parking areas and structures, adjacent parking areas and structure, lobbies, common restrooms (which are not located within any tenant's premises), janitorial rooms, elevators, escalators, stairways and access ways, loading docks, ramps, lanes, drives and platforms, passageways and service ways, loading docks, unloading areas, delivery passages, ramps, trash areas, roadways, sidewalks, hallways, walkways, interior and exterior corridors, parkways, driveways, exits, entrances, access roads, adjacent streets and sidewalks, retaining walls, landscaped areas, water features, fountains, pedestrian malls or courts, electrical, telephone and communication rooms, exterior surfaces of the exterior walls, all other service facilities and equipment, and any other areas within the Shopping Center other than: (i) the Premises; and (ii) that area which has been leased to tenants or is available for exclusive lease to tenants within the Shopping Center. For all purposes of this Lease, the Common Areas shall include the real property and improvements adjacent to the Shopping Center that are subject to covenants, reservations, restrictions agreements, or other matters of record.

48.2 Control of Common Areas. The manner, nature and method in which the Common Areas shall be maintained, managed, operated, leased, owned and controlled shall be solely determined by Landlord at Landlord's sole and absolute discretion. In addition, Landlord shall at all times during the Lease Term shall have sole and exclusive control of the Common Areas and Landlord hereby shall have the right, at Landlord's sole and absolute discretion, to make any changes, repairs, additions, expansions, construction, erections, improvements, relocations, eliminations, reductions, removals, demolitions, modifications, renovations and/or alterations to the Common Areas or any portion thereof as Landlord deems appropriate, including, but not limited to (a) exclude and restrain any person and/or entity from use or occupancy of the Common Areas at any time and from time to time; (b) utilize, use or occupy at any time and from time to time any portion of the Common Areas for promotional, entertainment, festival, fair and any other matter; (c) close temporarily or permanently any portion of the Common Areas for maintenance, repairs, alterations, construction, additions, expansions, remodeling and/or renovation purposes; (d) place permanent or temporary kiosks, displays, carts and stands in the Common Areas and to lease or license the same to any person and/or entity; (e) make structural and/or non-structural changes, repairs, expansion, remodeling, additions, erections, alterations and improvements to the Shopping Center, Common Areas and/or any portion thereof; (f) use or utilize the Common Areas while engaged in making additional improvements, renovations, repairs or alterations to the Shopping Center, Common Areas or any portion thereof; (g) make changes, add to, expand, build, construct, erect, improve, relocate, rearrange, eliminate, reduce, remove, demolish, modify, renovate and/or alter any existing or new improvement at the Shopping Center and/or Common Areas, including, without limitation, the right to change in the location, size, shape, dimension, appearance, number, design, elevation, nature, use, number of driveways, entrances, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, hallways and walkways, light poles, parking spaces and parking areas, temporary or permanent kiosks, displays, stands and/or curb cuts at the Shopping Center, Common Areas or any portion thereof; (h) make changes, add, expand, build, construct, erect, improve, relocate, rearrange, eliminate, reduce, remove, demolish, modify, renovate and/or alter any existing or new buildings, improvements and/or facilities to any portion of the Shopping Center and/or Common Areas; (i) relocate, change, add or eliminate any driveways, roadways, entrances, exits, curb cuts, corridors and/or automobile parking spaces, the direction and flow of traffic, installation of prohibited areas, landscaped areas, and all other facilities thereof; (j) limit, block or obstruct access to the Shopping Center or Common Areas; (k) limit, block or obstruct walkways and access routes within the Common Areas; (l) add, withdraw or eliminate any portion of the Common Areas for any reason whatsoever; (m) add additional land to and/or withdraw land from the Shopping Center and/or Common Areas; (n) add, expand, erect, construct additional new buildings, improvements and/or facilities to the Shopping Center, Common Areas and/or any portion thereof; (o) sell, license or lease any or all of the portion of the Shopping Center and/or Common Areas; (p) change the occupancy, tenancy and/or use of the Shopping Center; (q) grant, modify and terminate easements and other agreements pertaining to the use or operation of the Shopping Center or any portion thereof; and/or (r) do and perform such other acts and make such other changes in, to or with respect to the Shopping Center and/or the Common Areas as Landlord deems appropriate. Tenant acknowledges and confirms that all of foregoing items (a) through (r) are hereby excepted and reserved unto Landlord. Tenant acknowledges that Landlord's actions in connection with any of the above activities may interfere with or adversely affect the conduct of Tenant's business on the Premises. No such interference

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or adverse effect can be construed or considered to constitute an eviction of Tenant or an interference with Tenant's possession or use of the Premises, and Landlord shall not, under any circumstances, be liable or obligated to Tenant with respect to any such interruption, interference or adverse effect, nor shall Rent or other payments required to be made by Tenant be abated. Tenant shall not commence any action or proceeding seeking injunctive or declaratory relief in connection with any of the rights reserved to Landlord under this Article.

48.3 Activities on the Common Areas. Tenant acknowledges that any of Landlord's actions or activities in this Article 48 and/or the remainder of the Lease, if and when it occurs, will involve barricading, materials storage, noise, dust, vibration, scaffolding, demolition, structural alterations, the presence of workmen vehicular and pedestrian traffic, and other inconveniences typically associated with construction. If Landlord deems it necessary for construction personnel to enter the Premises for any reason whatsoever at any time, Landlord and Landlord Affiliates shall have the right to enter the Premises for the purpose of inspecting, surveying and working therein and shall have the right to use a portion of the Premises to accommodate any structures, columns, mains, conduits, shafts, footings, piers, pipes and other facilities as required at Landlord's sole and absolute discretion. In any such event the Tenant's obligation to pay Rent or any amount thereof or other payment required to be made by Tenant (as herein defined), shall not be affected thereby in any manner whatsoever and Tenant shall not be entitled to any abatement or reduction of Rent, and shall not have any effect on this Lease or shall not give to Tenant any offset or defense to the full and timely performance of its obligations hereunder, and shall not constitute any actual or constructive eviction of Tenant, and shall not give rise to any other claim of any nature against Landlord. Nothing contained herein shall be deemed to create any liability upon Landlord for any injury to or death of persons or for damage to or destruction of property, including without limitation, for any damage to motor vehicles of Tenant, its customers or employees, or for loss of property from within such motor vehicles unless caused by the sole active negligence of Landlord or Landlord Affiliates; it being understood that any person's use of the parking facilities or Common Areas shall be at their sole risk. Tenant shall keep the Common Areas free and clear from any obstructions created or permitted by Tenant or resulting from Tenant's use of the Premises. If, in the opinion of Landlord, unauthorized persons are using the Common Areas by reason of the presence of Tenant in the Premises, Tenant shall at Tenant's sole cost, risk and expense, promptly upon demand by Landlord, correct such situation by action or proceeding against all such unauthorized persons. If additional land and/or real property is made available for parking and/or other common area purposes, then such additional land and all common area improvements and facilities situated thereon shall be deemed Common Areas and the aforementioned costs incurred in connection therewith shall be deemed part of Operating Expenses and Tenant shall pay its Tenant's Percentage Share thereof as herein set forth. Landlord shall at all time have the right and privilege of determining the nature and extent of the Common Areas, and of making such changes therein from time to time in Landlord's sole and absolute discretion.

48.4 Management of Common Areas. The manner in which the Common Areas shall be operated and maintained and the expenditures therefor shall be in Landlord's sole and absolute discretion. Landlord reserves the right to appoint a substitute operator, who may be affiliated to Landlord, to carry out any or all of Landlord's rights and duties with respect to the Common Areas as provided in the Lease.

49. Renovation.

49.1 Tenant hereby acknowledges, agrees and confirms that at any time during the Lease Term and any extension thereof, Landlord reserves the exclusive right to renovate, remodel and/or change the use, occupancy and/or tenancy of the Shopping Center, the Premises and/or any portion thereof at Landlord's sole and absolute discretion and judgment. Therefore, Tenant hereby agrees, confirms and stipulates that Landlord reserves the exclusive right to terminate and cancel this Lease pursuant to the terms of this Article.

49.2 Landlord and Tenant acknowledge and agree that, at any time during the Lease Term and any extension thereof (if any), Landlord shall have the exclusive option and the right to terminate and cancel this Lease effective as of the Early Termination Date (as defined below), without any cause, penalty, obligation or liability to Tenant (subject to Departure Fee as defined below), by giving one hundred and twenty (120) calendar days written notice to Tenant ("Termination Notice"). The Termination Notice shall be given by Landlord to Tenant on or at any time after the Commencement Date at Landlord's sole and absolute discretion. If such Termination Notice is given by Landlord to Tenant pursuant to this Article, then this Lease shall terminate one hundred and twenty (120) calendar days from the date of Termination Notice ("Early Termination Date"). Effective as of the Early Termination Date, Tenant's interest in and to the Premises shall be wholly extinguished and terminated; and this Lease shall expire in the same manner and with the same effect as if the Early Termination Date were the Expiration Date. Landlord's exercise of its termination option hereunder shall not constitute a release or discharge of Tenant from full and faithful performance of any and all covenants and obligations of this Lease, including without limitation, with respect to any outstanding, and unsatisfied, or continuing obligations or liabilities, whether unbilled or calculated, accrued or incurred, applicable to the Premises, such as, but not limited to, Rent and other charges payable by Tenant up to and including the Early Termination Date, and Tenant's obligations and covenants to indemnify Landlord under this Lease, including but not limited to, Article 12 and 46 hereof.

49.3 Surrender of Premises. If the Actual Surrender Date (as defined below) fails to occur on or before the Early Termination Date, such occupancy shall be deemed without the consent of the Landlord. In such event, Tenant shall pay to Landlord the Holdover Rent as required pursuant to Article 23.2 hereof, for each day between the Early Termination Date and the Actual Surrender Date. For purposes of this Article, the term "Actual Surrender Date" shall mean the first day on which all of the following four conditions are fully and completely complied and satisfied, as determined by Landlord in its sole and absolute discretion:

- (i) Tenant has cured all outstanding defaults, if any, under this Lease;
- (ii) Tenant has fully and faithfully performed any and all covenants and obligations of this Lease;
- (iii) Tenant has quit, surrendered, and delivered to Landlord actual and exclusive possession of the Premises pursuant to the terms of this Lease; and
- (iv) The Premises are empty, vacant, broom clean, in good order and condition, and free of all occupants, liens, and property required to be removed under this Lease as of the Early Termination Date.

Tenant understands that on the Early Termination Date, all or a part of the Premises may be subject to certain rights of agreements and/or occupancy held by other parties and that any retention of possession by Tenant after the Early Termination Date may cause significant hardship and/or damage to Landlord and/or on such other occupants. In connection with the foregoing, Tenant shall defend, indemnify, and hold Landlord harmless against all liabilities, damages, costs, claims, and expenses sustained by reason of any such retention of possession. Nothing contained in this Article shall be construed as consent by Landlord to the occupancy or possession by Tenant of the Premises beyond the Early Termination Date. Upon the Early Termination Date, Landlord shall be entitled to consequential damages and to the benefit of any and all legal remedies that now may be in force or may be hereafter enacted that enable Landlord to regain possession of the Premises.

49.4 Compensation from Landlord. Provided that (a) Landlord has elected to exercise its option to terminate and cancel this Lease pursuant to this Article 49; and (b) the Actual Surrender Date by Tenant occurs on or before the Early Termination Date, then, Landlord hereby agrees, in further consideration of the mutual covenants of the parties hereunder, to pay to Tenant within ninety (90) calendar days after the Actual Surrender Date, a check equal to one (1) monthly installment of Minimum Basic Rent due on the first day of the month in which Landlord gives Tenant the Termination Notice ("Departure Fee"). Notwithstanding the foregoing, Landlord's obligation to pay the Departure Fee to Tenant is specifically and expressly conditioned upon complete fulfillment and satisfaction of this Section 49.4 (a) and (b) above, as well as 49.3 (i) through (iv) above. In the event that Tenant fails or unable

Landlord's Initial: FSK

Tenant's Initial(s): 

to quit, surrender and deliver to Landlord the actual and exclusive possession of the Premises for any reason as of the Early Termination Date pursuant to the terms of this Article, then Tenant hereby agrees that Landlord will have no further obligation or liability to pay to Tenant the Departure Fee whatsoever, however, in such event Tenant's covenant, obligation and duty to quit, surrender and deliver to Landlord the actual and exclusive possession of the Premises shall remain in full force and effect; and Landlord's rights to terminate this Lease pursuant to this Article 49 shall remain in full force and effect; and Landlord shall be entitled to the benefit of all legal rights and remedies under this Lease, as well as at law or in equity to regain possession of the Premises.

49.5 Tenant acknowledges that Tenant's agreement to this Article in this Lease is a material inducement to Landlord to enter into this Lease. Further, Tenant acknowledges, agrees and stipulates that in the absence of this Article in this Lease, Landlord would have not agreed to enter into this Lease with Tenant.

50. **No Partnership or Joint Venture.** Nothing in this Lease shall be deemed to create a partnership or joint venture between Landlord and Tenant. It is the express intent of the parties hereto that their relationship with regard to this Lease shall be and remain that of landlord and tenant.

51. **Providers of Special Services.** Landlord has advised Tenant that certain Shopping Center services, including, without limitation, valet services, and other tenant-serving retail services may be offered to tenants of the Shopping Center by a concessionaire under contract with Landlord or by a tenant under lease with Landlord (collectively, "Provider"). Tenant shall be permitted to contract with Provider for the provision of any or all of such services on such terms and conditions as Tenant and Provider may agree. Tenant acknowledges and agrees that: (i) Landlord has made no warranty, guarantee or representation to Tenant with respect to the availability of any such services provided or to be provided by Provider, or the quality, reliability or suitability thereof; (ii) Provider is not acting as the agent or representative of Landlord in the provision of such services, operator, and Landlord shall have no liability, obligation or responsibility for any failure, non-performance or inadequacy of such services, or any equipment or facilities used in the furnishing thereof, or any act or omission of Provider or its agents, employees, representatives, officers or contractors; (iii) Landlord shall have no responsibility, obligation or liability to the Tenant for the repair, maintenance, furnishing, operation or removal of any such services, equipment or facilities; and (iv) any contract or other agreement between Tenant and Provider shall be independent of this Lease, the obligations and duties of Tenant hereunder, and the rights of Landlord hereunder, and, without limiting the foregoing, no default or failure of Provider with respect to any such services or facilities, or under any contract or agreement relating thereto, shall have any effect on this Lease or give to Tenant any offset or defense to the full and timely performance of its obligations and liabilities hereunder, or entitle Tenant to any abatement of Rent or Additional Rent or any other payment required to be made by Tenant hereunder, or constitute any actual or constructive eviction of Tenant, or otherwise give rise to any other claim of any nature against Landlord whatsoever.

52. **Shopping Center Name.** Landlord shall have the right at any time, and from time to time, to change the name or the address of the Shopping Center without any notice to Tenant and in any manner being liable to Tenant therefore. Tenant shall not use the Shopping Center's name, picture, logo type or insignia for any purpose. Any use of such name, picture, logo type or insignia in the designation of tenant's business shall constitute an Event of Default.

53. **Legal Effect of Lease.** The Tenants' respective legal rights, obligations, liabilities, covenants, duties and responsibilities and the practical and legal effects of this Lease have been fully explained to the Tenant by his, her or its respective attorney, and the Tenant acknowledge that this Lease is a fair agreement and is not the result of any fraud, duress, coercion, pressure or undue influence exercised by Landlord. Further, Tenant represents and warrants that Tenant has sought and obtained independent legal advice from counsel of his or her own choice and have carefully read and fully understands all of the provisions of this Lease and have had it fully explained to him/her by his/her counsel; and that Tenant fully understands and has been fully informed as to his, her or its rights, obligations, liabilities, covenants, duties and responsibilities hereunder, and that having had such advice and with such knowledge, the Tenant clearly understand and assent to all the provisions hereof and the Tenant is signing this Lease freely and voluntarily. Tenant is relying on his/her/its own judgment, belief and knowledge with regard to the subject of this Lease, and acknowledge he/she/it have not been influenced to any extent whatsoever in entering into this Lease by any representations or statements made by the Landlord or any of Landlord Affiliates.

54. **Preparation of Lease.** This Lease is an agreement between financially sophisticated and knowledgeable parties and is entered into by the parties. It is acknowledged that each party hereto either had separate and independent advice of counsel or the opportunity to avail itself of same. This Lease was prepared jointly by the parties hereto in conjunction with counseling from their respective attorneys, or the opportunity to obtain such counseling. In light of these facts it is acknowledged that no party hereto shall be construed to be solely responsible for the drafting hereof, and therefore any ambiguity and uncertainty shall not be construed or interpreted against any party hereto as the alleged draftsman of this Lease. Landlord and Tenant believe that this Lease is a fair and adequate and have arrived at this agreement in arms-length negotiations, taking into account all relevant factors, present and potential. This agreement to this Lease was reached after extensive negotiations.

55. **Transfer of Landlord's Interest.** Landlord shall have the right, at anytime, and from time to time, without Tenant's consent, to transfer and/or assign all or any part of its interest (a) in the Shopping Center, (b) the real property upon which the Shopping Center is situated, and/or (c) to this Lease. In the event Landlord transfers and/or assigns its reversionary interest in the Premises, this Lease and/or the Shopping Center (other than a transfer for security purposes), Landlord shall be automatically relieved (without the necessity of any further consent by Tenant) and is hereby entirely freed of any and all liability and/or obligation hereunder (including without limitation, under any and all of its covenants and obligations contained in or derived from the Lease arising out of any act, occurrence or omission relating to the Premises or this Lease) accruing after the date of such transfer and/or assignment. Tenant agrees to look solely to the successor in interest of Landlord in and to this Lease for all obligations, covenants, agreement and liabilities accruing on or after the date of such transfer and/or assignment.

56. **Net Lease.** Landlord and Tenant acknowledge that this Lease is a "net lease" with respect to taxes, insurance and repairs on the Premises as specifically set forth herein and Landlord shall receive all rents and all payments hereunder that Tenant is required to make to Landlord free from any charges, assessments, impositions, expenses, deductions or offsets.

57. **Waiver of Trial By Jury.** In order to limit the cost of resolving any disputes between the parties, and as a material inducement to each party to enter into this Lease, Landlord and Tenant desire and intend that any disputes arising between them with respect to or in connection with this Lease be subject to expeditious resolution in a court trial without a jury. Therefore, to the fullest extent permitted by law, Landlord and Tenant each hereby expressly waive the right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or other hearing brought by either Landlord against Tenant or Tenant against Landlord on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

58. **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent (and not dependent) and Tenant hereby expressly waives the benefit of any statute to the contrary and agrees that if Landlord fails to perform its obligations set forth herein, Tenant shall not be entitled to make any repairs or perform any acts hereunder at Landlord's expense or to set off of any of the Rent or other amounts owing hereunder against Landlord.

Landlord's Initial: FSK

Tenant's Initial(s): JB

59. Exhibits and Riders. The Exhibits and Riders attached to this Lease are incorporated herein by this reference.

60. Shopping Center Website. Landlord reserves the right to establish a webpage or website for the Shopping Center. Should Landlord establish a webpage or a website for the Shopping Center, Tenant shall, at its sole cost and expense, provide to Landlord such information and materials as Landlord may reasonably request in order to establish a link from the Shopping Center webpage or website to Tenant. Any sales generated by Tenant as a result of orders received by Tenant originating or linked from the Shopping Center webpage or Shopping Center website shall be considered Gross Sales for the purposes of this Lease and Tenant's statements of Gross Sales shall include all information reasonably necessary to track and account for such Gross Sales. Landlord and Tenant acknowledge and agree that any website or webpage developed for the Shopping Center shall be the sole property of Landlord and Landlord reserves the right, in its sole discretion, to add or delete links, to accept, edit or reject content and to accept, edit or reject any advertising copy. Tenant grants to Landlord a non-exclusive and royalty free license and limited right to use Tenant's Trade Name(s), trademark(s) and logo(s) and design(s) (the "Licensed Marks") in the printing, publication and distribution of promotional newsletters, advertisements, parking brochures and other materials relating to the Shopping Center (including the Shopping Center website and/or webpage) prepared, operated and/or distributed by Landlord and Landlord Affiliates). Landlord shall not use the Licensed Marks for any purpose other than as permitted pursuant to the provisions of this Article.

61. Covenants. All of the provisions of this Lease are to be construed as covenants and agreements as though words importing such covenants and agreements were used in each provision of this Lease.

62. DISCLAIMER. LANDLORD AND TENANT EACH HEREBY WAIVE AND DISCLAIM ANY COVENANT OR OBLIGATION OF GOOD FAITH AND FAIR DEALING THAT MAY BE IMPLIED IN THIS LEASE AND EACH OF LANDLORD AND TENANT ACKNOWLEDGE AND AGREE THAT NEITHER HAS ANY OBLIGATION TO BARGAIN IN GOOD FAITH OR IN ANY WAY OTHER THAN AT ARMS LENGTH. NEITHER LANDLORD NOR TENANT MAY REASONABLY RELY ON ANY PROMISE INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. THIS ARTICLE SUPERSEDES ANY OTHER CONFLICTING LANGUAGE CONTAINED IN THIS LEASE WHICH MAY IMPLY THE EXISTENCE OF A COVENANT OF GOOD FAITH AND FAIR DEALING.

63. Parking. Provided that Tenant is not in default hereunder throughout the Term hereof, Tenant and Tenant's Representatives shall have the right to use non-dedicated and non-exclusive parking, from the then owner or operator or manager of the parking area or garage serving the Shopping Center at the prevailing monthly rates which may be changed, at any time and from time to time without notice, as space is available, and on such other terms and conditions as may be established by Landlord or said parking operator from time to time. In this connection, Landlord, the manager and/or the parking operator shall at all times have the right to designate where Tenant's and Tenant's Representatives parking spaces shall be located, and such locations and monthly rates may be changed at any time and from time to time, without notice. At the Landlord's and/or parking operator's discretion, no specific spaces need be designated for Tenant's use. Otherwise, parking shall be available on a non-dedicated, non-exclusive first-come, first-served basis with other occupants and tenants of the Shopping Center. In the event that any governmental agency requires dedicated and/or additional parking for Tenant's existing or proposed use, occupancy or operation of the Premises, Tenant, at Tenant's sole obligation, cost and expense, covenants and agrees to obtain and secure additional parking from outside of the Shopping Center in order to comply with any and all of the Governmental Regulations. Parking for Tenant's invitees and customers when available in said garage or parking area shall be on a non-dedicated and non-exclusive first-come, first served basis with invitees of other occupants of the Shopping Center at validation rates and upon other conditions determined by the Landlord and/or parking operator from time to time during the Term hereof. Tenant acknowledges that Tenant is responsible to pay for parking validations at the prevailing rates. Landlord shall not have any responsibility or liability to Tenant, Tenant's Representatives or any party parking in said garage or parking area for any loss or damage that may be occasioned by or arising out of such parking, including but not limited to loss of property or damage to person from any cause whatsoever, and Tenant, in consideration of the parking privileges hereby conferred on Tenant, hereby waives any and all claims of any kind or nature as against Landlord by reason of occurrences in said parking garage, parking area, the driveway exits, driveway entrances and/or walkways thereto.

64. Declaration of Covenants, Conditions and Restrictions. For the purposes of this Lease, the term "Declarations" shall mean together (i) all those matters as set forth in Exhibit "F" attached hereto; and (ii) all amendments, modifications, extensions, renewals and/or replacements thereof (whether past, present or future); all of which shall be superior to this Lease, binding upon the Shopping Center and run with the real property. Tenant and all of Tenant's Representatives in possession or holding under Tenant covenant and agree to fully and unconditionally comply and conform to and shall not violate the terms or conditions of the Declarations and any matters of record whatsoever. This Lease is and shall remain subordinate to the Declarations; provided, however, if the Declarations are not of record as of the date of this Lease, then this Lease shall automatically and without any further consent from Tenant shall become subordinate to the Declarations upon recordation thereof. Although the provisions of this Article are intended to be self operative, within ten (10) days following any written request by Landlord at any time and from time to time, if requested by Landlord, Tenant agrees to execute and deliver to Landlord an agreement in recordable form (prepared at Landlord's sole and absolute discretion) subordinating this Lease to the Declarations. Tenant acknowledges and confirms that Landlord has strongly encouraged Tenant, that prior to Tenant's execution of this Lease, to completely read, understand, conduct independent and detailed investigation and consult with Tenant's attorney in connection with the, provisions, terms and conditions of the Declarations. Accordingly, Tenant warrants and represents to the Landlord that the effect of the provisions, terms and conditions of the Declarations have been fully and completely explained to Tenant by Tenant's attorneys prior to the execution of this Lease.

65. Promotion and Advertising.

(a) Promotion. At any time during the Term of this Lease, at Landlord's option, Landlord, shall have the right (but not the obligation or duty) to establish a promotion and advertising service for the Shopping Center. Should Landlord establish a promotion and advertising service, Tenant shall pay to Landlord each year during the Term of this Lease, as Additional Rent, an amount equal to One Dollar & 20/100 cents (\$1.20) per square foot of the Rentable Area of Premises. One-twelfth (1/12) of such amount shall be payable in advance on the first day of each month, without notice, demand set off, deduction or abatement. The foregoing promotional charge shall be increased commencing with the first anniversary of this Lease and on each anniversary of this Lease thereafter by a percentage equal to the percentage increase of the Annual Basic Rent in such anniversary year. Tenant acknowledges that in conjunction with providing promotion and advertising service, Landlord may incur expenses and overhead for salary and to pay for office rental, utilities, supplies, telephone and other equipment and expenses necessary for the operation of an advertising and sales promotion service as deemed necessary by Landlord. Funds received by Landlord pursuant to this Article may be utilized for the purposes of offsetting such expenses and overhead. In addition, in connection with such promotion and advertising service, Tenant grants to Landlord the right to use Tenant's trade name(s) and logo(s) in conjunction with advertising and promotional activities sponsored by the promotion and advertising service.

(b) Merchants' Association. At any time during the Term of this Lease, at Landlord's option, Landlord, shall have the right (but not the obligation or duty) to establish a Merchants' Association for the Shopping Center. In the event that a Merchants' Association is formed, Tenant agrees to pay to Landlord, on the first day of each month during the Term of this Lease, as Tenant's share of the Merchant's Association, a monthly charge, as determined by Landlord at Landlord's sole and absolute discretion.

Landlord's Initial:

FSK

Tenant's Initial(s):

JB

(c) Advertising. For the purpose of creating and maintaining a profitable and successful image of the Shopping Center, if Landlord establishes a promotion and advertising service for the Shopping Center at Landlord's sole and absolute discretion, then Tenant shall participate in coordinated advertising and promotional campaigns sponsored by Landlord for advertising by merchants in the Shopping Center. Tenant shall participate in a minimum of four (4) intervals during each calendar year. If Tenant shall refuse or neglect to submit Tenant's copy of its advertising in a timely manner, Landlord, at Landlord's election, shall have the right (but not the obligation) to submit copy consisting of Tenant's Trade Name, logo and address to the Landlord or Landlord Affiliates for inclusion in such advertising media on behalf of and for the account of Tenant. If Tenant shall refuse or neglect to pay for such advertising, Landlord may pay such sums, and in such event, Tenant shall reimburse Landlord upon demand, together with interest thereon at the highest lawful rate and all such sums so extended shall be deemed Additional Rent.

66. Foreign Assets Control Certification. Tenant hereby covenants and represents to the Landlord that (a) Tenant is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order 13224 or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; (b) Tenant is not identified on the list of Specially Designated Nationals and Blocked Persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the Office of Foreign Assets Control pursuant to any authorizing United States law, regulation or Executive Order of the President of the United States ("OFAC List") nor is Tenant subject to trade embargo or economic sanctions pursuant to any authorizing United States law, regulation or Executive Order of the President of the United States; and (c) Tenant has not executed this Lease, directly or indirectly on behalf of, or instigating or facilitating this Lease, directly or indirectly on behalf of, any such person, group, entity, or nation.

67. Waiver of Redemption. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant shall be evicted or dispossessed for any cause, or in the event of Landlord obtaining possession of the Premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise. The rights given to Landlord in this Article are in addition to any rights that may be given to Landlord by any statute or otherwise.

IN WITNESS WHEREOF, THE PARTIES HAVE EACH EXECUTED THIS LEASE AS OF THE DATE FIRST SET FORTH ABOVE, ACKNOWLEDGED THAT THEY HAVE CAREFULLY READ EACH AND EVERY PROVISION OF THIS LEASE, KNOW THE CONTENTS THEREOF, ACKNOWLEDGE THAT ITS TERMS ARE CONTRACTUAL AND NOT MERE RECITALS, THAT THE RESULTING LEASE HEREIN IS THE RESULT OF MEASURED, INFORMED, "ARM'S LENGTH" NEGOTIATIONS BETWEEN THE PARTIES, THAT THEY EACH HAVE FREELY SIGNED AND ENTERED INTO THIS LEASE OF THEIR OWN FREE WILL, ACT AND VOLITION AND RESPECTIVE CAPACITIES, THIS LEASE IS ENTERED INTO BY THE PARTIES IN RELIANCE UPON THE ECONOMIC AND LEGAL BARGAINS CONTAINED HEREIN, AND THAT THE TERMS, CONDITIONS AND PROVISIONS OF THIS LEASE ARE COMMERCIALY REASONABLE AS OF THE DAY AND YEAR ABOVE WRITTEN.

LANDLORD:

TENANT:

GATEWAY TRIANGLE DEVELOPMENT, LLC
a California limited liability company

By: _____

Farid S. Kia
Its: Managing Member

Jonathan Michael Bagley

Landlord's Initial: FSK
GTD/1.0-10-21-R

Tenant's Initial(s): JB

EXHIBIT "A"
DEPICTION OF PREMISES

This Site Plan is for general informational purposes only and the buildings, improvements and facilities depicted thereon are subject to change, without notice at any time and from time to time as Landlord deems necessary. Tenant hereby acknowledges and agrees that any and all features, matters and other information depicted thereon are for illustrative purposes only and subject to the provisions of this Lease, subject to modification without notice, and are not intended to be relied upon by Tenant or Tenant's Representatives and are not intended to constitute representations, warranties or covenants as to the size and nature of the improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any occupants or tenants thereof. Landlord makes no representations or warranties as to the accuracy or completeness of Site Plan whatsoever.

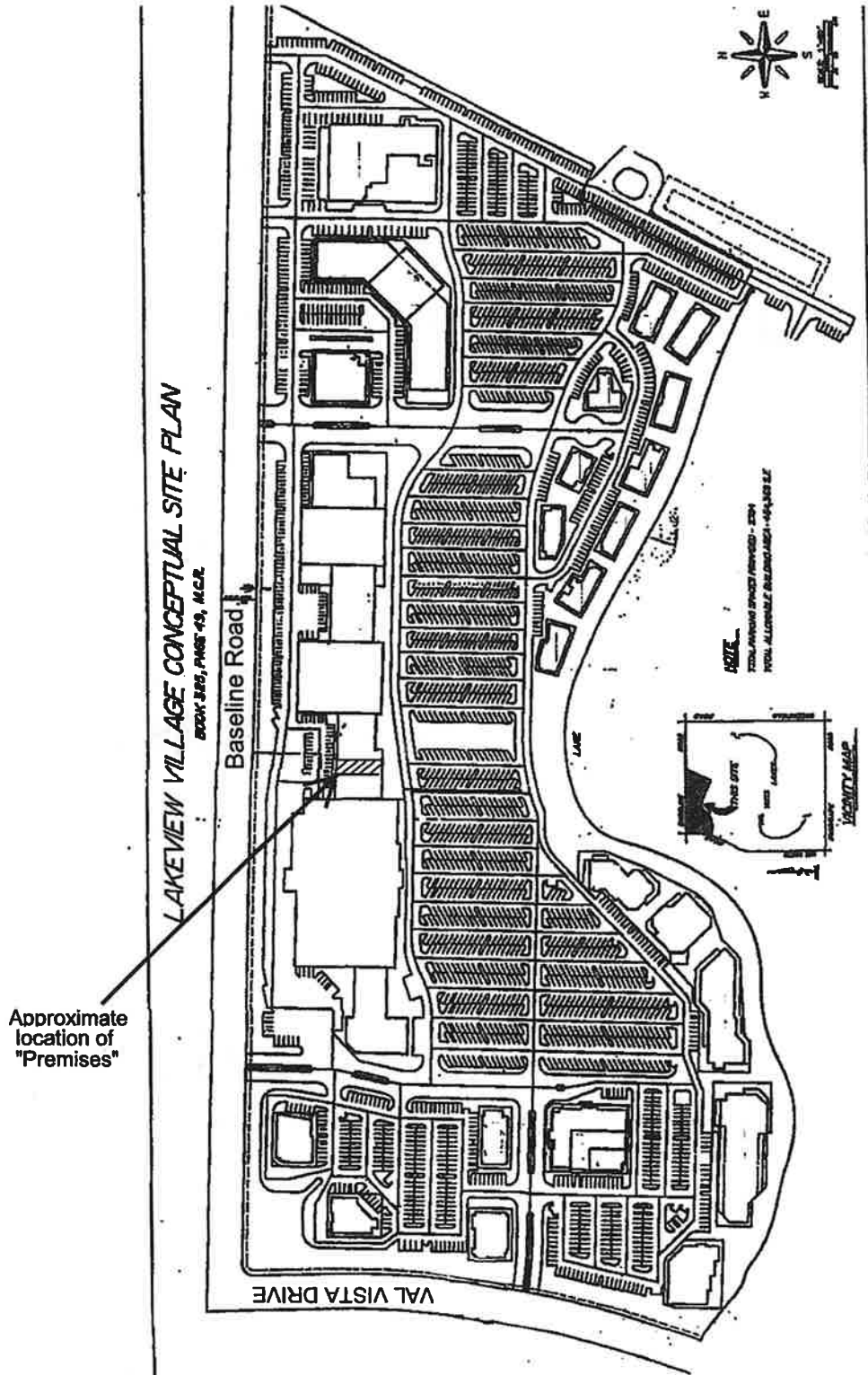
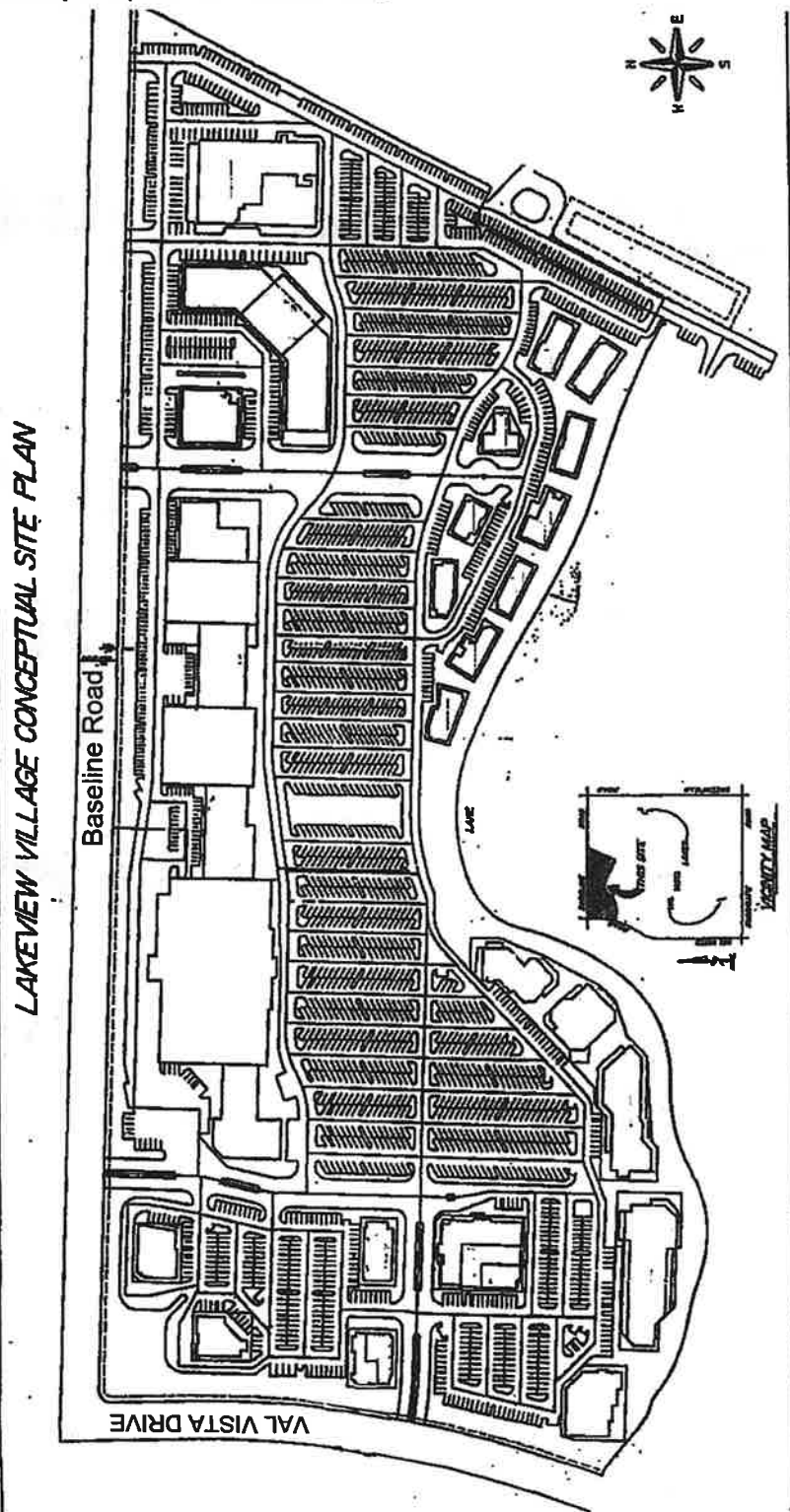


EXHIBIT "B"

SITE PLAN

This Site Plan is for general informational purposes only and the buildings, improvements and facilities depicted thereon are subject to change, without notice at any time and from time to time as Landlord deems necessary. Tenant hereby acknowledges and agrees that any and all features, matters and other information depicted thereon are for illustrative purposes only and subject to the provisions of this Lease, subject to modification without notice, and are not intended to be relied upon by Tenant or Tenant's Representatives and are not intended to constitute representations, warranties or covenants as to the size and nature of the improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any occupants or tenants thereof. Landlord makes no representations or warranties as to the accuracy or completeness of Site Plan whatsoever.



Landlord's initial: FSK

Tenant's initial(s): JS

EXHIBIT "C"

PARCEL NO.1:

LOTS 6 AND 11, AMENDED REPLAT OF LAKEVIEW VILLAGE, ACCORDING TO BOOK 325 OF MAPS, PAGE 49 AND DECLARATION OF CHANGE RECORDED IN RECORDING NO. 90-329220, RECORDS OF MARICOPA COUNTY, ARIZONA

PARCEL NO.2:

TRACT C-1, AMENDED REPLAT OF LAKEVIEW VILLAGE, ACCORDING TO BOOK 325 OF MAPS, PAGE 49, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE NORTHEAST CORNER OF LOT 6 OF SAID AMENDED REPLAT OF LAKEVIEW VILLAGE;

THENCE NORTH 88 DEGREES, 21 MINUTES 33 SECONDS WEST, 65.00 FEET ALONG THE NORTH LINE OF SAID LOT 6, TO THE NORTHWEST CORNER THEREOF;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 10.00 FEET ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE OF SAID LOT 6 TO A POINT ON THE NORTH LINE OF SAID TRACT C-1;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 65.00 FEET ALONG SAID NORTH LINE OF TRACT C-1 TO A POINT ON THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID LOT 6;

THENCE SOUTH 01 DEGREE 38 MINUTES 27 SECONDS WEST, 10.00 FEET ALONG SAID PROLONGATION LINE TO THE POINT OF BEGINNING; AND EXCEPT THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 6;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 10.00 FEET ALONG THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID LOT 6; TO A POINT ON THE NORTH LINE OF SAID TRACT C-1;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 19.15 FEET ALONG SAID NORTH LINE TO AN ANGLE POINT;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 13.00 FEET ALONG THE WEST LINE OF SAID TRACT C-1, TO AN ANGLE POINT;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 10.00 FEET ALONG THE NORTH LINE OF SAID TRACT C-1, TO THE NORTHWEST CORNER OF LOT 11 OF SAID AMENDED REPLAT OF LAKEVIEW VILLAGE;

THENCE SOUTH 01 DEGREE 38 MINUTES 27 SECONDS WEST, 93.00 FEET ALONG THE WEST LINE OF SAID LOT 11, TO THE SOUTHWEST CORNER THEREOF;

THENCE NORTH 88 DEGREES 21 MINUTES 33 SECONDS WEST, 29.15 FEET ALONG THE WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID LOT 11, TO A POINT ON THE EAST LINE OF SAID LOT 6;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 70.00 FEET ALONG SAID EAST LINE, TO THE POINT OF BEGINNING

Landlord's Initial: FSK

Tenant's Initial(s): 

PARCEL NO. 3;

LOTS 3, 4, 7, 13, 14, AND TRACTS A, B, C-1, C-2, F, G AND H, REPLAT OF LAKEVIEW VILLAGE, ACCORDING TO BOOK 318 OF MAPS, PAGE 11, RECORDS OF MARICOPA COUNTY, ARIZONA AND AFFIDAVIT OF CHANGE RECORDED JANUARY 1, 1995 IN RECORDING NO. 95-0051195

EXCEPT A PORTION OF TRACT G, REPLAT OF LAKEVIEW VILLAGE, ACCORDING TO BOOK 318 OF MAPS, PAGE 11, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF SAID TRACT G, SAID POINT ALSO BEING THE NORTHEAST CORNER OF TRACT D OF SAID REPLAT;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 25.10 FEET ALONG NORTH LINE OF SAID TRACT G;

THENCE SOUTH 01 DEGREE 38 MINUTES 27 SECONDS WEST, 124.00 FEET ON A LINE PARALLEL TO THE WEST LINE OF SAID TRACT G;

THENCE NORTH 88 DEGREES 21 MINUTES 33 SECONDS WEST, 26.10 FEET TO A POINT ON THE WEST LINE OF SAID TRACT G, SAID POINT ALSO BEING ON THE EAST LINE OF SAID TRACT D;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 124.00 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING; AND

EXCEPT THEREFROM LOT 7 AS SET FORTH IN AMENDED REPLAT OF LAKEVIEW VILLAGE, ACCORDING TO BOOK 325 OF MAPS, PAGE 49, RECORDS OF MARICOPA COUNTY; AND

EXCEPT ANY PORTION THEREOF LYING WITHIN PARCELS A AND B DESCRIBED AS FOLLOWS:

PARCEL A:

TRACT C-1, AMENDED REPLAT OF LAKEVIEW VILLAGE, ACCORDING TO BOOK 325 OF MAPS, PAGE 49, RECORDS OF MARICOPA COUNTY, ARIZONA;

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

BEGINNING AT THE NORTHEAST CORNER OF LOT 6 OF SAID AMENDED REPLAT OF LAKEVIEW VILLAGE;

THENCE NORTH 88 DEGREES 21 MINUTES 33 SECONDS WEST, 65.00 FEET ALONG THE NORTH LINE OF SAID LOT 6, TO THE NORTHWEST CORNER THEREOF;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 10.00 FEET ALONG THE NORTHERLY PROLONGATION OF THE WEST LINE OF SAID LOT 6, TO A POINT ON THE NORTH LINE OF SAID TRACT C-1;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 65.00 FEET ALONG SAID NORTH LINE OF TRACT C-1, TO A POINT ON THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID LOT 6;

THENCE SOUTH 01 DEGREE 38 MINUTES 27 SECONDS WEST, 10.00 FEET ALONG SAID PROLONGATION LINE TO THE POINT OF BEGINNING; AND

EXCEPT THE FOLLOWING DESCRIBED PARCEL: BEGINNING

AT THE NORTHEAST CORNER OF SAID LOT 6;

Landlord's Initial: FSK

Tenant's Initial(s): 

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 10.00 FEET ALONG THE
NORTHERLY PROLONGATION OF THE EAST LINE OF SAID LOT 6, TO A POINT ON THE
NORTH LINE OF SAID TRACT C-1;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 10.15 FEET ALONG
THE NORTH LINE, TO AN ANGLE POINT;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 13.00 FEET ALONG
THE WEST LINE OF SAID TRACT C-1, TO AN ANGLE POINT;

THENCE SOUTH 88 DEGREES 21 MINUTES 33 SECONDS EAST, 10.00 FEET ALONG THE
NORTH LINE OF SAID TRACT C-1, TO THE NORTHWEST CORNER OF LOT 11 OF SAID
AMENDED REPLAT OF LAKEVIEW VILLAGE;

THENCE SOUTH 01 DEGREE 38 MINUTES 27 SECONDS WEST, 93.00 FEET ALONG
WEST LINE OF SAID LOT 11, TO THE SOUTHWEST CORNER THEREOF;

THENCE NORTH 88 DEGREES 21 MINUTES 33 SECONDS WEST, 29.15 FEET ALONG THE
WESTERLY PROLONGATION OF THE SOUTH LINE OF SAID LOT 11, TO A POINT ON
THE EAST LINE OF SAID LOT 6;

THENCE NORTH 01 DEGREE 38 MINUTES 27 SECONDS EAST, 70.00 FEET ALONG
SAID EAST LINE TO THE POINT OF BEGINNING.

Landlord's Initial: FSK

Tenant's Initial(s): JB

EXHIBIT "D"

RULES AND REGULATIONS OF SHOPPING CENTER

- (a) Tenant shall not inscribe, paint, install, display or affix any awning, shade, sign, portable signs, placard, lettering, picture, advertisement or notice whatsoever, in, about or on the exterior of the Premises or any part of the outside or inside of the Shopping Center and/or Common Areas whatsoever. Landlord shall have the right to remove and discard, at Tenant's sole cost and expense and without notice, any awning, shade, sign, portable signs, placard, lettering, picture, advertisement or notice installed or displayed in violation of this rule.
- (b) Tenant shall not display or sell merchandise or allow carts, devices or any other objects to be stored or to remain outside the defined exterior walls or roof and permanent doorways of the Premises or in hallways.
- (c) Tenant shall not solicit, place or distribute any material, fliers, written materials, hand bills, bumper stickers or other advertising devices in any manner to any pedestrian or on any vehicle parked in the parking areas of the Shopping Center.
- (d) Tenant shall not place anything or allow anything to be placed near the glass of any window, door, partition or wall which may appear unsightly from outside the Premises, in Landlord's sole and absolute discretion.
- (e) Tenant and Tenant's Representatives shall not obstruct any sidewalks, driveway, curbs, lanes, passages, halls, entrances, exits, loading docks or stairways of the Shopping Center.
- (f) Neither tenant nor any of Tenant's Representatives shall enter, access or go upon or be entitled to use any portion of the roof of the building where the Premises is located.
- (g) Tenant shall have no right or entitlement to the display of Tenant's name or logo on any Shopping Center sign, monument sign or pylon sign.
- (h) Tenant and Tenant's Representatives shall not loiter in any part of the Shopping Center and/or Common Areas, or in any way obstruct the sidewalks, driveway, lanes, entry passages, halls or stairways.
- (i) The sash doors, sashes, windows, glass doors, lights and skylights that reflect or admit light into the halls or other places of the Shopping Center shall not be covered or obstructed by Tenant and doors leading into the corridors shall not be left open by Tenant.
- (j) Tenant and Tenant's Representatives shall not use the toilet rooms, toilets, water closets, wash bowls, urinals and other apparatus for any purposes other than those for which they were constructed, and no rubbish, newspapers or other substance of any kind shall be thrown into them. The expenses of any breakage, stoppage or damage, resulting from the violation of this rule shall be solely borne by Tenant.
- (k) Tenant shall not mark, drive nails, screw or drill into, paint, or in any way deface the exterior walls, roof, foundations, bearing walls or pillars, ceilings, partitions, floors, wood, stone or iron work. The expense of any breakage, stoppage or damage resulting from a violation of this rule shall be borne by Tenant at its sole cost.
- (l) All maps or pictures placed upon the walls of any of the rooms must be so attached as to create minimum damage to plaster.
- (m) Tenant shall not perform any electrical wiring, boring or cutting to any part of the Premises or Shopping Center, except with the written consent of Landlord.
- (n) Landlord shall direct electricians as to where and how telephone and telegraph wire are to be introduced. No boring or cutting for wire shall be allowed without the written consent of Landlord. The location of telephones, call boxes and other office equipment affixed to Premises shall be subject to the written approval of Landlord.
- (o) Tenant shall not place, maintain or install any machinery, stove, equipment or engine of any kind within the Premises without the written consent of Landlord. In any case, any allowed machinery shall not be used in any manner by the Tenant which may cause any noise or jar, or tremor to the floors or walls. No machinery, apparatus, safes, books, or papers or other personal property which by its weight might injure the floors of building where the Premises is located (hereinafter called "extra-heavy objects") shall be allowed.
- (p) Tenant shall not bring or permit to be brought or use or keep in or on the Premises or the Shopping Center any kerosene, gasoline, inflammable, combustible fluid or materials, corrosive, caustic, poisonous, explosive substance or firearms whatsoever.
- (q) Tenant shall not use or permit to be used in the Premises any foul or noxious gas or substance, or permit or allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Shopping Center by reason, noise, odors or vibrations.
- (r) Tenant agrees to place all potted plants requiring water within a container capable of collecting any water overflow, such containers to be approved by Landlord in writing. Any damage caused to the Premises shall be repaired at Tenant's sole cost and expense.
- (s) Tenant shall not burn any papers or refuse of any kind at the Premises and/or the Shopping Center.
- (t) Landlord may limit the weight, size and position of all extra-heavy objects allowed in the Premises and such in all cases stand on wood or metal of such size as shall be designated by Landlord. All damage done to the Premises by putting in or taking out or maintaining such items, shall be repaired at the expense of Tenant.
- (u) Tenant and Tenant's Representatives shall not bring into nor keep within the Premises and/or Shopping Center any animal, bird or bicycle, except guide dogs accompanying visually handicapped persons.
- (v) Tenant shall not install any communication equipment, antenna, satellite dish or any other similar equipment on the roof or on the exterior of the building where the Premises is located or within the Common Areas.
- (w) Tenant and Tenant's Representatives shall neither whistle, sing, nor play any musical instruments, television, radio, loudspeaker,

Landlord's Initial: FSK

Tenant's Initial(s): JP

- amplification equipment, flashing lights or similar device whatsoever within the Premises or in the Shopping Center, nor make or permit any improper noise in the Premises or Shopping Center.
- (x) Tenant shall not use, operate, generate or allow any other person to use or operate any type of loudspeaker, musical instrument, amplification equipment or similar device whatsoever within the Premises; and the sound, musical instrument, human voice and music shall not be audible from the outside of Premises, adjoining spaces or sidewalks or in any building or space adjacent thereto in any manner whatsoever; and the sound, musical instrument, human voice and music shall not be played in such manner as to disturb the peace, quiet, and comfort of other tenants or occupants of the Shopping Center in any manner whatsoever; and the sound, musical instrument, human voice and music shall not interfere in anyway with other tenants or occupants operation, businesses and uses in any manner whatsoever; and the sound, musical instrument, human voice and music shall not audible outside of the Premises in any manner whatsoever.
- (y) In no event shall the sound, musical instrument, human voice and music be loud and raucous or jarring, disturbing, annoying or a nuisance to persons of normal sensitiveness within the area of audibility.
- (z) Tenant shall not use or suffer or permit to be used the Premises or any part thereof in any manner that will constitute a nuisance or unreasonable annoyance to the public, to other occupants of the Shopping Center or to Landlord, or that will injure the reputation of the Shopping Center, or for any hazardous purpose or in any manner that will impair the structural strength of the building where the Premises is located.
- (aa) Tenant shall open for business to the public, at minimum seven (7) days per week between hours of 10:00 a.m. to 10:00 p.m. on Monday through Saturday, and between hours of 10:00 a.m. to 7:00 p.m. on Sunday (except national holidays or during such periods as the Premises may be untenable by reason of fire or other casualty).
- (bb) Tenant shall adequately staff the Premises with sufficient employees to handle the maximum business and carry sufficient stock of merchandise of such amount, character and quality to accomplish this purpose.
- (cc) Tenant shall keep the display windows and signs, if any, well lighted during the hours of sundown to 11:00 p.m.
- (dd) All cleaning and janitorial services for the Premises shall be provided, at Tenant's sole cost and expense, exclusively by and through Tenant and/or Tenant's Representatives in accordance with the provisions of Lease.
- (ee) Tenant shall use its best vigorous effort to require all deliveries, moving, loading, unloading and services to the Premises to be completed between the hours of 7:00 a.m. and 10:00 a.m. each day. Any damage to the Premises from such deliveries and moving will be paid for by the Tenant, and Landlord shall not be responsible for the loss or damage to such furniture, freight or equipment whatsoever.
- (ff) Tenant shall attempt to cause no delivery trucks or other vehicles servicing the Premises to park or stand in front of, or at the rear of the Premises from 10:00 A.M. to 9:00 P.M. each day. Landlord reserves the right to further regulate the activities of Tenant in regard to deliveries and servicing of the Premises and Tenant shall abide by such further regulations of Landlord.
- (gg) Tenant shall return all keys and pass codes to the Premises to Landlord upon the termination of this Lease. Tenant shall not change the locks, bolts or install other locks on the doors without prior written approval of Landlord.
- (hh) Landlord reserves the right to exclude or expel from the Premises, the Shopping Center and/or the Common Areas any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs or who shall in any manner do any act in violation of the rules and regulations of the Shopping Center.
- (ii) Landlord reserves the right to close and keep locked all entrances and exit doors, hallways, lobbies, bathrooms of the Shopping Center and gates or doors closing the stairways thereof during such after-business hours as Landlord may deem to be advisable, at Landlord's sole and absolute discretion.
- (jj) Tenant accepts and assumes any and all responsibility and risks for protecting its Premises and personal property from theft, robbery and pilferage.
- (kk) Tenant shall give immediate notice to Landlord in case of known theft, vandalism, unauthorized solicitation or accident in the Premises or in the Shopping Center, or known defects therein or in any fixtures or equipments, or of any known emergency or hazardous condition in the Shopping Center.
- (ll) Tenant shall not use the Premises or permit the Premises to be used for filming, photographic or production activities.
- (mm) Tenant shall cause that all interior and exterior doors of the Premises are closed and securely locked before leaving the Premises and must observe strict care and caution that all water faucets or water apparatus are entirely shut off before Tenant or Tenant's Representatives leave the Premises, and that all electricity and HVAC shall likewise be carefully shut off, so as to prevent waste or damage, and for any default or carelessness Tenant shall make good all injuries sustained by other tenants or occupants of the Shopping Center.
- (nn) Tenant shall not maintain, operate, install, display or affix any vending machines, amusement or gaming machines of any description or pay telephones upon the Premises, without the written consent of Landlord.
- (oo) Landlord reserves the right to exclude or expel from the Shopping Center any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of the Rules and Regulations of the Shopping Center.
- (pp) Landlord reserves the right (but not the obligation or duty) to close and keep locked any and all entrances and exit doors of the Shopping Center and gates or doors closing the parking areas after normal business hours or during emergency conditions.
- (qq) Tenant agrees that it shall comply with all security, fire and life safety regulations that may be issued from time to time by Landlord, and Tenant also shall provide Landlord with the name of a designated responsible individual or employee to represent Tenant in all matters pertaining to such security, fire and life safety regulations. Tenant shall cooperate fully with Landlord in all matters concerning security, fire and life safety and other emergency procedures.
- (rr) Tenant shall maintain at all times at Tenant's cost all floor areas of the Premises, including, without limitation, vestibules,

Landlord's Initial: FSK

Tenant's Initial(s): JB

- entrances, and air returns, doors, fixtures, windows and plate glass in a neat, clean, safe and good conditions.
- (ss) Tenant shall store all trash, refuse and waste materials in adequate closed containers in the area designated by Landlord and shall regularly remove same from the Premises, at Tenant's sole risk, cost and expense. No such containers shall be visible to the general public nor shall Tenant place any such containers in a location or otherwise use or maintain same in a manner which constitutes a health or fire hazard or nuisance whatsoever. Tenant shall not place in any trash box or receptacle any material or substance which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued at any time and from time to time by Landlord.
- (tt) No fence, rope, wall, structure, division, rail or any other obstruction shall be placed, kept, permitted or maintained upon the Common Areas or any part thereof by Tenant, provided, however, Landlord may do any of the foregoing and permit other tenants to do so as Landlord deems necessary at Landlord's discretion.
- (uu) These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of premises in the Shopping Center.
- (vv) Tenant shall be responsible for the observance of all the Rules and Regulations by Tenant's Representatives.
- (ww) It is understood and agreed between Landlord and Tenant that Landlord may waive any one or more of these Rules and Regulations for the benefit of any other tenant and/or occupant of the Shopping Center, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of Tenant or any other such tenant or occupants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any and all tenants and occupants in the Shopping Center.
- (xx) Landlord shall have the right (but not the obligation or duty), at any time and from time to time, without Tenant's consent or approval, upon three (3) days' written notice to Tenant to change, modify, alter or rescind any one or more of these Rules and Regulations or to make such other and further reasonable rules and regulations at Landlord's sole and absolute discretion. Tenant covenants and agrees to abide by any and all such Rules and Regulations herein stated and any additional rules and regulations which are adopted by Landlord.
- (yy) Tenant shall not display, sell, advertise for sale or distribute of any pornographic books, magazines, literature or other printed matter, or drug paraphernalia or sexual paraphernalia or the showing, displaying, viewing, renting or selling or advertising for sale movie films which would be classified or rated as "X Rated" under present standards or criteria for such classification and rating.
- (zz) Tenant shall not use the Premises for any gambling or Bingo (or similar activities), nor shall there be any bawdy-houses or funeral parlors.
- (aaa) Tenant shall not conduct any act or condition within the Premises which shall be lewd, obscene or licentious.
- (bbb) Tenant at all times agrees to abide by any additional rules or regulations which are ordered or requested by any government or military authority.
- (ccc) The failure by Tenant to fully and faithfully comply or perform with any one or more of the foregoing rules and regulations in this Exhibit shall (i) constitute a default and material breach by Tenant under the Lease; and (ii) in addition to Landlord's all other remedies for breach of Tenant's obligations hereunder, Tenant shall be liable and obligated to pay to Landlord the amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's violation of or failure to perform its obligations under this Exhibit, including, but not limited to any costs or expenses incurred by Landlord within five (5) calendar days after written demand by Landlord, plus an administrative fee equal to either twenty percent (20%) of the cost incurred by Landlord, or the sum of One Thousand Five Hundred dollars (\$1,500.00) per occurrence, whichever is greater, to cover Landlord's administrative costs.

PARKING RULES AND REGULATIONS

In addition to the foregoing Rules and Regulations and the parking provisions contained in the Lease to which this Exhibit is attached, the following rules and regulations shall apply with respect to the use of the Shopping Center's parking areas.

1. Tenant and Tenant's Representatives are required to park at their own risk and lock his/her own vehicle at all times. All responsibility for damage to or loss of vehicles and its contents are assumed and accepted by Tenant and Tenant's Representatives and Landlord shall not be responsible for any such damage or loss by theft, vandalism, destruction, water, fire, defective brakes, the act or omissions of others, or for any other cause whatsoever.
2. Tenant and Tenant's Representatives shall only park in parking areas designated by Landlord. Tenant shall not leave or store vehicles in the parking areas of the Shopping Center overnight nor park any vehicles in the parking areas other than automobiles, motorcycles, motor driven or non-motor driven bicycles.
3. Tenant and Tenant's Representatives shall park their vehicles entirely within painted stall lines of a single parking stall.
4. Tenant and Tenant's Representatives shall observe all directions signs and arrows.
5. Tenant and Tenant's Representatives shall not drive at a speed of more than five (5) miles per hour at the Shopping Center.
6. Tenant and Tenant's Representatives shall not park their vehicles (a) in areas not striped for parking; (b) in aisles; (c) where "no parking" signs are posted; (d) on ramps; (e) in cross-hatched areas; and (f) in reserved spaces and in such other areas as may be designated by Landlord.
7. If any offsite employee parking program and/or any program related to parking, parking facilities or transportation facilities including, but not limited, any program of parking validation, employee shuttle transportation or other program is implemented by Landlord, Tenant agrees to participate in the program and shall pay to Landlord Tenant's Percentage Share of the cost to Landlord of the program under rules and regulations from time to time established by Landlord.

Landlord's Initial: PSK

Tenant's Initial(s): JB

8. Tenant and Tenant's Representatives shall not wash, wax, clean or service any vehicles within the Shopping Center.
9. Tenant acknowledges and agrees that Landlord may refuse to permit Tenant, Tenant's Representatives and/or any other person who violates these rules to park in the parking areas, and any violation of the rules shall be subject the vehicle to removal, at such vehicles owner's expense without further or additional notice.
10. Landlord shall have the right (but not the obligation or duty) to establish, and from time to time change, to designate certain parking areas as customer and/or patron parking only, and excluding Tenant and/or Tenant's Representatives from parking in such restricted areas) as may be deemed necessary or advisable for the proper and efficient operation and maintenance of the Common Areas. These rules and regulations may include, without limitation, the hours during which the Common Areas shall be open for use.
11. Landlord may, at Landlord's sole and absolute discretion, establish a system or systems of parking validation or other type operation, including a system of charges against non-validated parking checks of users. Tenant shall conform to and abide by all such rules and regulations in Tenant's use and the use by Tenant's Representatives, customers and patrons of the automobile parking areas of the Common Areas.
12. Tenant agrees that the employees of Tenant within the Shopping Center shall not be permitted to park their automobiles in the automobile parking areas of the Common Areas which may from time to time be designated for patrons and/or customers of the Shopping Center. Landlord shall furnish and/or cause to be furnished either within the automobile parking areas in the Shopping Center or reasonably close thereto, space for employee parking. Landlord at all times shall have the right to designate the particular parking areas to be used by any or all of such employees and any such designation may be changed from time to time. Tenant and Tenant's employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by Landlord. Tenant shall furnish Landlord with Tenant's and Tenant's employees' automobile license numbers within fifteen (15) days after the Commencement Date and Tenant shall notify Landlord of any changes or additions within five (5) days after such change occurs. If Tenant or Tenant's employees park their cars in restricted parking areas or areas designated for Shopping Center patrons and/or customers only, then Landlord may charge Tenant Twenty Dollars (\$20.00) per day for each day or partial day per car parked in any areas other than those designated and Landlord may tow any such cars at the cost of Tenant. All amounts due under the provisions of this rule shall be payable by Tenant, as Additional Rent, within ten (10) days after demand therefor. Tenant hereby authorizes Landlord to tow any vehicle belonging to Tenant and/or Tenant's Representatives parked in violation of these Rules and Regulations.

Landlord's Initial:

FSK

Tenant's Initial(s):



EXHIBIT "E"

**TENANT'S ESTOPPEL CERTIFICATE
(SAMPLE FORM)**

TO: _____

RE: _____, East Baseline Road, Suite _____, Gilbert, Arizona 85234 (the "Premises").

To whom it may concern:

THIS ESTOPPEL CERTIFICATE ("Certificate") is made and executed by the undersigned _____ ("Tenant") in favor of _____ and its successors and assigns (collectively the "Landlord"). Tenant hereby certifies, covenants, warrants and represents as follows:

1. Tenant is the lessee under that certain lease agreement dated _____ (the "Original Lease") with _____ ("Landlord"), as lessor, covering the Premises. A true, correct and complete copy of the Original Lease is hereby attached as Exhibit "A".
2. The Original Lease has not been amended or modified except only as follows: _____ (collectively the "Lease Amendments"). A true, correct and complete copy of the Lease Amendments are hereby attached as Exhibit "B". There are no other lease provisions, options, amendments, agreements, modifications, rights, extensions or supplements to the Original Lease in any manner whatsoever which is not expressly set forth in this Section 2.
3. For the purposes of this Certificate, the term "Lease" shall mean collectively the Original Lease and the Lease Amendments (if any).
4. Tenant hereby agrees and covenants to attorn to Landlord as its landlord under the Lease, and to be bound by all of the terms, covenants, obligations and conditions of the Lease, and recognizes the Landlord as the successor in interest to the previous Landlord (if that is the case). Furthermore, Tenant hereby agrees and affirms Tenant's obligations, covenants and agreements under the Lease, including but not limited to, make payments of any and all sums due under the Lease to the Landlord.
5. The Lease is presently valid and in full force and effect, and has not been amended, altered, modified or supplemented in any manner or respect whatsoever, except as expressly set forth in Section 2 above.
6. Tenant has accepted and taken possession of the Premises demised by the Lease, and all conditions and covenants under the Lease to be performed by the Landlord have been satisfied, and all tenant construction allowances have been received in full by the Tenant. All space and improvements covered by the Lease and/or Landlord have been completed and furnished in accordance with the provisions of the Lease.
7. The Landlord have satisfied all commitments, obligations, arrangements, or understandings made to induce Tenant to enter into the Lease, and Landlord is not in any respect in default in the performance of any of the terms, covenants, provisions and conditions of the Lease, nor is there now any fact or condition which, with notice or lapse of time or both, will become such a default.
8. The Lease is for a total term of _____ () years, and _____ () months commencing on _____ and expiring on _____.
9. Tenant (i) does not have any right or option to renew or extend the term of the Lease, except _____, and (ii) does not have any option or preferential right to lease or occupy additional space within the property of which the Premises are a part; and (iii) does not have any option or preferential right to purchase all or any part of the Premises demised by the Lease or all or any part of the building and/or the Premises of which such demised Premises are a part; and (iv) does not have any other right, title or interest with respect to the Premises demised by the Lease other than as a tenant under the Lease.
10. The Premises contains approximately _____ square feet of area as set forth in the Lease.
11. As of the date hereof, the Annual Basic Rent under the Lease is \$ _____, payable in monthly installments of \$ _____ per month, subject to escalations and adjustments and other payments in accordance with the terms and provisions of the Lease. No such rent has been paid more than ten (10) days in advance of the due date.
12. In addition, the Lease provides for the payment by Tenant of Operating Expenses, Additional Rent and



reimbursement based on maintenance, management and operation costs, expenses and property tax costs. Tenant's Percentage Share of the Operating Expenses is ____%. Tenant currently pays an estimated charge toward the same in the amount of \$_____ per month, as Additional Rent.

13. In addition, Tenant is also responsible for paying to the Landlord the Transaction Privilege Tax as promulgated or required by any federal, state, regional, municipal or local government authority in connection with the use or occupancy of the Premises.

14. The minimum monthly rent, plus any Additional Rent (including Tenant's Percentage Share of the Operating Expenses) payable under the terms of the Lease has been paid through _____. Tenant agrees and confirms that as of _____, Tenant owes the sum of \$_____ to the Landlord.

15. Tenant has no claims against Landlord for any security deposit or other deposits except the sum of \$_____.

16. All free rent periods, if any, under the terms of the Lease have expired. There are no offsets, credits, defenses or counterclaims against Landlord under the Lease, rentals or other sums payable under the Lease, and neither Tenant nor any predecessor of Tenant has made any payment to Landlord as a security deposit or advance or prepaid rental except (i) payments expressly provided for in the Lease which is attached hereto and (ii) payments made not earlier than ten (10) days prior to the date upon which such payments are due.

17. Tenant is not in any respect in default under the terms and provisions of the Lease, (nor is there now any fact or condition which, with notice or lapse of time or both, will become such a default).

18. Tenant has not assigned, sublet, transferred, licensed or hypothecated any of its interest under the Lease or any portion of the Premises, except _____.

19. Tenant represents that as of the date hereof there are no claim, controversy, dispute, quarrel or disagreement that exists between Tenant and Landlord. Further, Tenant as of date hereof, has no knowledge of any facts which would give rise to any claim by breach, counterclaim, lien or right or set-off presently existing under the Lease against rents, additional rents or other charges due to or become due thereafter.

20. Tenant has no defenses, setoffs, or counterclaims against Landlord arising out of the Lease or in any way relating thereto or arising out of any other transaction between the Tenant and Landlord.

21. Tenant has made no outstanding unresolved claims against Landlord, nor now makes any such claim, that any structural or non-structural portion or component of the Premises or the property is not in good working order or repair.

22. There are no actions, whether voluntary or otherwise, pending against Tenant under any insolvency, bankruptcy, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States or any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

23. The Lease contains the final, complete and entire agreement between the Landlord and Tenant with respect to any matter covered or mentioned in the Lease, and no prior warranty, representation, agreement, or understanding, oral or written, express or implied, pertaining to any such matter whether by either party, their respective representatives, employees, managers, agents or brokers shall be effective or valid for any purpose against the Landlord. Tenant agrees, acknowledges and confirms that any prior agreements, promises, understandings, negotiations or representations not expressly set forth in the Lease are of no legal force or effect.

24. There are no promises, conditions, representations, warranties or guarantees, understandings, interpretations or terms of any kind as conditions or inducements to the execution of the Lease or in effect between the Landlord and Tenant, other than as expressly stated in the Lease. Tenant acknowledges and confirms that all prior and contemporaneous agreements, representations, offers, proposals, commitments, promises, acts, conduct, course of dealing, representations, negotiations, statements, assurances and understandings, whether oral or written are deemed superseded by the execution of the Lease to the extent they are not incorporated therein.

25. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease.

26. The acknowledgements, representations and covenants in this Certificate shall be binding upon the Tenant and Tenant's successors and assigns.

27. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect and abandonment of this Certificate in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

28. *[OPTIONAL AT LANDLORD'S DISCRETION]* Tenant acknowledges that Landlord is seeking this Certificate with the knowledge that _____ is about to (fund a loan to Landlord or purchase) the property where the Premises is located. Tenant's execution of this Certificate is a material inducement to Landlord and (new purchaser or Landlord's lender).

29. Tenant acknowledges that the statements, representations and covenants in this Certificate will be

Tenant's Initial(s):

relied upon by (a) Landlord and any of Landlord's successors, assigns and transferees; (b) any purchaser of the property where the Premises is located; and/or (c) any lender or mortgagee whom provides financing for the property where the Premises is located, and this Certificate shall be deemed conclusively to establish the validity of the matters as set forth herein. Tenant shall not assert any claim, defense or offset against Landlord and/or (new purchaser or Landlord's lender) with regard to any of the matters covered by this Certificate.

30. If Tenant executes this Certificate as a corporation or a limited liability company, then Tenant and the person(s) executing this Certificate on behalf of Tenant represent and warrant to Landlord that the individual(s) executing this Certificate on Tenant's behalf are duly authorized to execute and deliver this Certificate.

The undersigned have each executed this Certificate as of the date set forth below, and acknowledge that they have carefully read each and every provision of this Certificate and the Lease prior to execution of this Certificate and understand the contents thereof.

TENANT:

By: _____

By: _____

Print Name: _____

Print Name: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

(SAMPLE FORM)



EXHIBIT "F"

DECLARATIONS

1. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Val Vista Lakes 1-B, as recorded in Plat Book 281 of Maps, Page(s) 21, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

And thereafter Val Vista Lakes 1-B Amended recorded in Book 288 of Maps, Page 35.

2. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Lakeview Village, as recorded in Plat Book 310 of Maps, Page(s) 13, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
3. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of A Replat of Lakeview Village, as recorded in Plat Book 318 of Maps, Page(s) 11, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
4. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Amended Replat of Lakeview Village, as recorded in Plat Book 325 of Maps, Page(s) 49 and Affidavit of change recorded January 30, 1995 as 95-0051195, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

A document entitled "Declaration of Change to the Amended Replat of Lakeview Village" recorded July 23, 1990 as 90-329220 of Official Records.

5. Declaration of Covenants, Conditions, Restrictions and Easements, recorded in 85-149821 of Official Records , but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

A document entitled "First Amendment to the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Val Vista Lakes Development" recorded January 09, 1987 as 87-014248 of Official Records.

A document entitled "Assignment of Declarant's Rights" recorded January 23, 1992 as 92-0037850 of Official Records.

A document entitled "Notice of Change of Address of Declarant" recorded March 03, 1992 as 92-0109979 of Official Records.

6. Declaration of Covenants, Conditions, Restrictions and Easements, recorded in 86-631267 of Official Records , but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

A document entitled "First Amendment to the Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded September 11, 1987 as 87-571260 of Official Records.

A document entitled "Second Amendment to the Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded July 13, 1988 as 88-341950 of Official Records.

Landlord's Initial:

FSK

Tenant's Initial(s):



A document entitled "Third Amendment to Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded August 4, 1989 as 89-362041 of Official Records.

A document entitled "Cancellation of First Amendment to the Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements for Val Vista Lakes Development" recorded July 12, 1990 as 90-311864 of Official Records.

A document entitled "Fourth Amendment to Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded July 27, 1990 as 90-336368 of Official Records.

A document entitled "Fifth Amendment to Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded October 07, 1992 as 92-0565081 of Official Records.

A document entitled "Second Declaration of Change to the Amended Replat of Lakeview Village and Sixth Amendment to Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded September 25, 1997 as 97-0665433 of Official Records.

A document entitled "Seventh Amendment to Lakeview Village Declaration of Easements, Covenants and Restrictions" recorded November 18, 2011 as 2011-0955713 of Official Records.

7. The terms and provisions contained in the document entitled "Memorandum of Development Agreement" recorded November 14, 1986 as 86-631269 of Official Records.
8. The terms and provisions contained in the document entitled "Monument Sign Easement and Maintenance Agreement" recorded November 14, 2011 as 2011-0937847 of Official Records.
9. All matters as set forth in Resolution No. 1351, recorded October 22, 1993 as 93-0720744 of Official Records.
10. An easement for exclusive waterline and incidental purposes in the document recorded February 24, 1989 as 89-084597 of Official Records.
11. An easement for underground power and incidental purposes in the document recorded July 31, 1991 as 91-355707 of Official Records.
12. The rights of parties in possession by reason of any unrecorded lease or leases or month to month tenancies affecting any portion of the within described property.
13. Water rights, claims or title to water, whether or not shown by the public records.
14. Any and all other matters of record whatsoever.
15. And all amendments, modifications, extensions, renewals and/or replacements to any of the documents as listed in this Exhibit, including without limitations, items 1 through 14 above, (whether past, present or future) whatsoever.

Landlord's Initial:

FSK

Tenant's Initial(s):

JB

EXHIBIT "G"

86 631267

2. USES AND RESTRICTIVE COVENANTS

2.1 Commercial Purposes. The Shopping Center shall be used for commercial purposes only. Such purposes shall be limited to the development, construction, leasing, operation and maintenance of mercantile, business, medical facilities, service and professional establishments, and related facilities such as the Common Area, all in accordance with the requirements of this Declaration. The Occupant of the Dillon Parcel shall at times have the right to stock, sell and lease such merchandise, and offer such services, as are from time to time offered by grocery supermarkets generally, including without limitation, the items referred to in Section 2.2, household products, soft and hard good of all kinds, electronic equipment, clothing, makeup, furniture, accessories, financial, banking, insurance and real estate services. There is no requirement that the Occupant of the Dillon Parcel remain open for business or operate continuously in the Fry's Building.

2.2 Fry's Exclusive. At all times during the term of this Declaration, Fry's and its successors and assigns shall have the exclusive right to operate a grocery supermarket, drugstore and pharmacy in the Shopping Center, and neither Developer nor any Owner shall at any time permit or suffer the use or operation, whether by an Occupant or otherwise, of any Building (other than the Fry's Building), or any space therein, for the sale of groceries, meats, baked goods, drugs (whether or not by prescription), pharmacy items or supplies, or for convenience store, meat market, supermarket or similar purposes; or for a delicatessen, gourmet food and beverage shop, specialty food store, or similar operation having a Gross Floor Area larger than two thousand (2,000) square feet. In addition, neither Developer nor any Owner shall at any time permit or suffer the use or operation, whether by an Occupant or otherwise, of any Building (other than the Fry's Building) or any space therein, for the

Tenant's Initial(s):



sale of package liquor, beer or wine for off-premises consumption; provided, however, that a delicatessen, gourmet food and beverage shop, specialty food store or similar operation having a Gross Floor Area of less than two thousand (2,000) square feet, may sell such items as an incidental or minor part of its business. The restrictions contained in this Section 2.2 are a material inducement to Dillon's purchase of the Dillon Parcel and they may be modified from time to time but only with the prior written consent of Dillon which shall be given or withheld in its sole discretion.

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Tenant's Initial(s):



(f) Army, Navy or Government Surplus Store -- No Army, Navy or government surplus store shall be permitted within such 350-foot area.

(g) No bar, tavern, night club, cocktail lounge or similar business shall be permitted in any part of the Shopping Center except as an incidental part of a restaurant that is permissible under subsection 2.7(a) and then only with the approval of Developer which approval may be withheld with or without cause or reason.

(h) There shall not be any displaying, selling, advertising for sale or distributing of any pornographic books, magazines, literature or other printed matter; or drug paraphernalia or sexual paraphernalia; or the showing, displaying, viewing, renting or selling or advertising for sale movie films which would be classified or rated as "X Rated" under present standards or criteria for such classification and rating; and provided that insofar as movie films, whether present or future, are shown, displayed, viewed, rented or sold in the Shopping Center preference shall be given to those films which shall meet the standards and criteria presently existing for classification and rating as "G Rated" or "PG Rated".

(i) There shall not be any gambling or Bingo (or similar activities) in the Shopping Center, nor shall there be any bawdy-houses or funeral parlors.

(j) There shall be no act or condition which shall be lewd, obscene or licentious.

Tenant's Initial(s):

2.7 Prohibited Operations. The following activities, uses or purposes, any part of which is located closer than three hundred fifty (350) feet from any part of the Fry's Building, shall be prohibited in the Shopping Center:

(a) Restaurants -- No restaurant of any kind (including, without limitation, take-out, fast-food or sit-down restaurants) shall be permitted within such 350-foot area.

(b) Theaters -- No theater of any kind (including, without limitation, motion picture theaters and facilities for the presentation of "live" performances or concerts) shall be permitted within such 350-foot area.

(c) Offices -- No office of any kind (other than offices that are incidental to the conduct of permitted activities, uses or purposes) shall be permitted within such 350-foot area. Outside such area, office uses that are customary and compatible with a first-class shopping center, such as real estate brokers, finance companies, title insurance companies, banks, savings and loan associations, health care service facilities, dentists and other service-oriented businesses, shall be permitted.

(d) Health Spas, Gymnasiums and Exercise Studios -- No health spa, gymnasium or exercise studio of any kind shall be permitted within such 350-foot area.

(e) Place of Public Amusement, Training or Education Facility -- No billiard room, pool hall, athletic facility, game arcade, bowling alley, skating rink, dance hall, discotheque, or other place of public amusement, and no training or education facility (including, without limitation, a beauty school, barber college, reading room or other operation or activity designed primarily for students or trainees rather than customers) shall be permitted within such 350-foot area.

Tenant's Initial(s):



(f) Army, Navy or Government Surplus Store -- No Army, Navy or government surplus store shall be permitted within such 350-foot area.

(g) No bar, tavern, night club, cocktail lounge or similar business shall be permitted in any part of the Shopping Center except as an incidental part of a restaurant that is permissible under subsection 2.7(a) and then only with the approval of Developer which approval may be withheld with or without cause or reason.

(h) There shall not be any displaying, selling, advertising for sale or distributing of any pornographic books, magazines, literature or other printed matter; or drug paraphernalia or sexual paraphernalia; or the showing, displaying, viewing, renting or selling or advertising for sale movie films which would be classified or rated as "X Rated" under present standards or criteria for such classification and rating; and provided that insofar as movie films, whether present or future, are shown, displayed, viewed, rented or sold in the Shopping Center preference shall be given to those films which shall meet the standards and criteria presently existing for classification and rating as "G Rated" or "PG Rated".

(i) There shall not be any gambling or Bingo (or similar activities) in the Shopping Center, nor shall there be any bawdy-houses or funeral parlors.

(j) There shall be no act or condition which shall be lewd, obscene or licentious.

Tenant's Initial(s):



RIDER #1

This Rider #1 ("Rider") is made and entered into as of September 29th, 20 21 by and between Gateway Triangle Development, LLC, a California limited liability company ("Landlord"), and Jonathan Michael Bagley ("Tenant"), and is executed concurrently with the Lease to which this Rider is attached, and the provisions below shall be supplemental to the remainder of the Lease. The agreements set forth in this Rider shall have the same force and effect as if set forth in the Lease. To the extent the terms of this Rider are inconsistent with the terms of the Lease, the terms of this Rider shall control.

The term "Tenant's Representatives" as used in this Rider shall mean each of Tenant's principals, officers, employees, shareholders, directors, subsidiaries, divisions, affiliates, partners, members, assignees, contractors, subcontractors, independent contractors, spouses, children, heirs, trustees, insurers, transferees, successors, agents, attorneys and representatives, and all of their respective successors and assigns, or any other parties directly or indirectly employed or engaged by any one of the foregoing or reasonably under the control of any of the foregoing.

The term "Landlord's Affiliates" as used in this Rider shall mean each of Landlord's principals, officers, employees, shareholders, directors, subsidiaries, divisions, affiliates, partners, members, assignees, contractors, subcontractors, independent contractors, spouses, children, heirs, trustees, insurers, lenders, transferees, successors, agents, attorneys and representatives, and all persons acting by, through, under or in concert with them, or any of them and all of their respective successors and assigns.

1. **Nature of Risk.** Tenant hereby confirms, agrees and acknowledges that the World Health Organization has classified the Coronavirus COVID-19 outbreak as a pandemic. Further, Tenant acknowledges, agrees and confirms that Coronavirus COVID-19 is a contagious disease with nature of disease-causing organisms and objects ("COVID-19") that the contact with the virus or personal contact with others (including but not limited to other occupants, tenants and visitors of the Building) may involve a certain degree of risk that could result in potentially life threatening illness, medical treatment and expenses, personal injury, bodily injury, permanent disability or death. The state of medical knowledge is evolving, but the COVID-19 virus is believed to spread from person-to-person contact and/or by contact with contaminated surfaces and objects, and even possibly in the air. People reportedly can be infected and show no symptoms and therefore spread the disease to others which may result in significant personal injury or death.

Tenant hereby further confirms, agrees and acknowledges that Landlord cannot guarantee or prevent that Tenant or any of Tenant's Representatives will not become exposed to or infected with COVID-19 while entering, using, utilizing or occupying the Premises, the Common Areas and/or the Building. Tenant hereby confirms, agrees and acknowledges that it is not possible to prevent against the presence of the COVID-19 and that the risk of becoming exposed to and/or infected by the COVID-19 may result from the actions, omissions, or negligence of any individual whatsoever, including, but not limited to, Tenant or any of Tenant's Representatives or any other person at the Building, or other tenants, visitors, users, invitees or occupants of the Building. Tenant hereby also acknowledges, agrees and confirms that it is impossible or impractical to screen and/or monitor all such individuals entering, using, utilizing or occupying the Building.

2. **Assumption of Risks.** Tenant hereby confirms, agrees and acknowledges that Tenant have read and understood the above warning concerning COVID-19. Tenant hereby elects and choose to voluntarily agree to fully and unconditionally assume and accept all of the risks, obligations, liabilities, duties and responsibilities (a) of exposure, infection and/or spread of COVID-19 to Tenant and/or to any of Tenant's Representatives or to any other person entering, using, operating, utilizing or occupying the Premises, the Common Areas and/or the Building; (b) for any injury (including, but not limited to, life threatening illness, medical treatment and expenses, personal injury, bodily injury, permanent disability or death) to Tenant and/or to any of Tenant's Representatives or to any other person entering or utilizing the Premises, the Common Areas and/or the Building; and/or (c) for any and all claims, demands, damages, losses, debts, dues, sums of money, liabilities, obligations, accounts, contracts, agreements, promises, controversies, attorneys' fees, costs and expenses, which Tenant and/or Tenant's Representatives may have or may hereafter have or claim to have against Landlord and/or Landlord's Affiliates by reason of or in connection with or related to exposure, infection, illness and/or spread of COVID-19 (collectively referred to as the "Covid Claims").

3. **No Landlord's Liability.** Tenant hereby covenants and agrees that Landlord and each and every of Landlord's Affiliates shall not be liable for any losses, injury, claims, debts, dues, sums of money, liabilities, obligations, damages (including consequential damages), penalties, litigation, demands, manner of action or actions, cause or causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, demands, judgments, agreements, promises, controversies, disbursements, charges,



assessments, costs and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding) of every kind and nature, character and description whatsoever to Tenant, Tenant's Representatives, Tenant's successors and assigns and/or any third party and/or persons and/or entity(ies) arising from, caused by or relating to (or alleged to have arisen from, been caused by or related to), with or without fault, to Covid Claims.

4. **Release by Tenant.** As a material part of the consideration of the Lease and after fully and carefully considering by Tenant all the potential risks involved, Tenant on behalf of itself/himself/herself, as well as Tenant's Representatives hereby unconditionally, fully and irrevocably remise, relinquish, acquit, release and forever discharge Landlord and Landlord's Affiliates of and from any and all manner of action or actions, cause or causes of action, at law or in equity, from any and all claims, demands, damages, losses, debts, dues, sums of money, liabilities, obligations, accounts, contracts, agreements, promises, controversies, attorneys' fees, costs and expenses, of every kind and nature, character and description whatsoever, whether now known or unknown, anticipated or unanticipated, asserted or not asserted, suspected or unsuspected, fixed, conditional or contingent, from any and all from any and all claims, demand, suits, causes of action, proceedings, actions, losses, liabilities, obligations, accounts, contracts, agreements, promises, controversies, judgments, deficiencies, fines, penalties, debts, dues, sums of money, damages (including consequential damages), costs and expenses (including, but not limited to, attorneys' fees and expenses, court costs, and expert witness fees) of any kind or nature whatsoever, which Tenant and/or Tenant's Representatives may have or may hereafter have or claim to have against Landlord and/or Landlord's Affiliates by reason of any matter or omission arising from any cause whatsoever at any time (whether, past, present or future), including, but not limited to, any of the matters which arise out of, directly or indirectly, or are in any way connected with, mentioned in or related to (i) the Covid Claims; or (ii) the Lease; or (iii) in connection with exposure, infection, illness and/or spread of COVID-19 as a result of occupancy, use and/or operation at the Premises, the Common Areas and/or the Building; or (iv) any matter referred to in this Rider.

Tenant covenants, warrants and represents to Landlord that the effect the provisions of this Section have been fully and completely explained to Tenant by Tenant's attorneys. The foregoing release, waiver, indemnity and obligation to defend and hold harmless shall apply to any claim or action brought by Tenant's Representatives, and/or any person, business, entity, private party or governmental agency or entity under any statute or common law now or hereinafter in effect and is intended to apply with respect to full and complete loss, damage, injury or claim arising before or after the date hereof. The foregoing release, waiver, indemnity and obligation to defend and hold harmless, and all of Tenant's similar covenants herein, are intended to apply to losses, damages, injuries, deaths and claims incurred directly or indirectly by Landlord and/or Landlord's Affiliates, or their property or asset. With respect to any matter for which Landlord has given or will give its approval, recommendation or other direction, the foregoing release, waiver, indemnity and obligation to defend and hold harmless shall apply irrespective of Landlord's approval, recommendation or other direction whatsoever.

5. **No Payment.** Tenant hereby agrees and covenants that Landlord shall not owe or pay any sum of money whatsoever to Tenant for any Covid Claims.

6. **Indemnification by Tenant.** In addition to Tenant's indemnitees, obligations, covenants and agreements as set forth in the Lease and this Rider, Tenant, at Tenant's sole cost, risk and expense, hereby agrees to indemnifies, defend (with counsel reasonably acceptable to Landlord), protect and hold Landlord and each of Landlord's Affiliates harmless from and against, and shall reimburse Landlord and Landlord's Affiliates with respect to any and all manner of action or actions, cause or causes of action, at law or in equity, from any and all claims, demand, suits, causes of action, proceedings, actions, losses, liabilities, obligations, accounts, contracts, agreements, promises, controversies, judgments, deficiencies, fines, penalties, debts, dues, sums of money, damages (including consequential damages), costs and expenses (including, but not limited to, attorneys', architects' and engineering fees and expenses, court costs, and expert witness fees) of any kind or nature whatsoever, character and description whatsoever, whether now known or unknown, anticipated or unanticipated, asserted or not asserted, suspected or unsuspected, fixed, conditional or contingent, to which Landlord or Landlord's Affiliates may become subject, or which Landlord or Landlord's Affiliates may in any manner pay, become obligated to pay, incur or suffer, on account of, in connection with, with respect to, or arising out of occurrence of any one or more of the following events: (a) of exposure, infection and/or spread of COVID-19 to Tenant and/or to any of Tenant's Representatives or to any other person entering, using, operating, utilizing or occupying the Premises, the Common Areas and/or the Building; (b) for any injury (including, but not limited to, life threatening illness, illness, medical treatment and expenses, personal injury, permanent disability or death) to Tenant and/or to any of Tenant's Representatives or to any other person entering or utilizing the Premises, the Common Areas and/or the Building; and/or (c) for any and all claims, demands, damages, losses, debts, dues, sums of money, liabilities, obligations, accounts, contracts, agreements, promises, controversies, attorneys' fees, costs and expenses,



which Tenant and/or Tenant's Representatives may have or may hereafter have or claim to have against Landlord and/or Landlord's Affiliates by reason of or in connection with or related to exposure, infection and/or spread of COVID-19. With respect to any matter for which Landlord has given or will give its approval, recommendation or other direction, the foregoing release, waiver, indemnity and obligation to defend and hold harmless shall apply irrespective of Landlord's approval, recommendation or other direction whatsoever.

7. **Not to Sue.** Tenant fully intend to terminate, irrevocably, all of his/her/its rights to further pursue or prosecute any claim or demand against the Covid Claims and never to commence, aid, prosecute or cause or permit to be commenced or prosecuted against Landlord and/or Landlord's Affiliates any action or any other proceeding based in whole or in part upon any rights, liens, claims, demands, causes or causes of action of any nature whatsoever waived, released or discharged by this Rider. It being the intention of the Landlord and Tenant that with execution of this Rider, Landlord will be absolutely, unconditionally and forever discharged and released of and from any and all obligations, duties or liabilities to Tenant and Tenant's Representatives related in any way to the matters discharged herein.

8. **Intention of Tenant.** To the fullest extent permitted by law, after fully and carefully considering by Tenant all the potential risks involved and as a material part of the consideration to Landlord, Tenant on behalf of itself and each of Tenant's Representatives, hereby waives any and all Covid Claims it may have against the Landlord and Landlord Affiliates for (a) any illness, life threatening illness, medical treatment and expenses, personal injury, bodily injury, permanent disability, death or other damages to Tenant and/or Tenant's Representatives; (b) any illness, life threatening illness, medical treatment and expenses, personal injury, bodily injury, permanent disability, death or other damages of any kind resulting from or occurring in or at the Building, the Common Areas or the Premises or any part thereof, resulting directly or indirectly from any act or omission of any person, or due to any condition, design or defect of the Building, the Common Areas or the Premises, or any space adjoining the same, or the mechanical systems of the Building or the Premises, which may exist or occur, whether such damage, loss or injury results from conditions arising upon the Premises, the Building, or the Common Areas, or from other sources or places; and/or (c) any damage to or loss of property (including, without limitation, loss of profits, loss of revenue and intangible property).

In respect to releases and/or waivers herein, Tenant hereby acknowledges and confirms that he/she/they may have claims against Landlord and/or Landlord's Affiliates, the nature of which claims Tenant have not yet discovered. The possibility that such undiscovered claims exist was explicitly taken into account by Tenant in entering into this Rider, and a portion of the consideration bargained for between Landlord and Tenant, with the knowledge of the possibility of such potential claims, was given in exchange for a satisfaction and discharge of such claims. It is the intention of Landlord and Tenant that this Rider shall be effective as a full and final accord and satisfactory release of each and every matter specifically or generally referred to herein. In furtherance of this intention, and by releasing and forever discharging all claims both known and unknown, as above provided, Tenant hereby expressly fully waive and relinquish all rights and benefits under any statutes and/or common law principles or similar effect arising in any jurisdiction.

Tenant hereby confirm that Tenant fully understand that Tenant cannot hereafter make any further claim or seek any further recovery from Landlord and Landlord's Affiliates, and Tenant expressly fully waive all future known and unknown claims caused by, or alleged to be caused by, the aforesaid transaction. Further, Tenant hereby acknowledges and confirms that Tenant may hereafter discovers any facts different from or in addition to any of them which it now knows or believes to be true with respect to any of the Covid Claims or other matters so released, then the foregoing releases nonetheless shall be in full legal force and remain effective in all respects.

Tenant acknowledge that Tenant may hereafter discover facts in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of this Rider, but it is the intention of Tenant to fully, finally and forever settle and release any and all matters, disputes and differences known or unknown, suspected or unsuspected, which do now exist, may exist or heretofore have existed between Tenant and Landlord. In furtherance of this intention, the releases herein shall be and remain in effect as full and complete general releases notwithstanding the discovery or existence of any such additional or different facts. Tenant hereby warrants and represents to Landlord that the effect and import of the provisions of Section 1542 have been fully explained to Tenant by its/his/her attorneys.

9. **Survival of Covenants.** All of Tenant's release, waiver, indemnification, defense and hold harmless covenants contained in this Rider shall survive the expiration and the early termination of this Lease, and shall be binding on Tenant until the last to occur of (a) such date as action against Landlord and Landlord's Affiliates is absolutely barred by an applicable statute of limitations; or (b) such date as any claim or action for which indemnification may be claimed under said section is fully and finally resolved and, if

applicable, any compromise thereof or judgment or award thereon is paid in full by Tenant; and Landlord and Landlord's Affiliates are reimbursed by Tenant for any amounts paid by Landlord and/or Landlord's Affiliates in compromise thereof or upon a judgment or award thereon and in defense of such action or claim, including attorneys' fees, court cost and expert witness fees. Neither payment nor a finding of liability or of an obligation to defend or indemnify shall be a condition precedent to the enforcement of any indemnity or duty to defend the provisions herein, and if any action or proceeding shall be brought against Landlord, Landlord's Affiliates or any Indemnitees alleging any fact or circumstance for which Tenant is to provide indemnification, Landlord shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and Tenant shall bear the sole cost and expense of Landlord's defense, including but not limited to, attorneys' fees and expenses, court costs, and expert witness fees. Tenant hereby waives as defenses to his/her/its obligations hereunder the pleading or defense of any statute of limitations. In addition, all of Tenant's indemnification in this Rider includes, but is not limited to, indemnification against any and all such damages, liabilities, losses, costs, expenses or deficiencies resulting from claims of third parties for breach of contract to which Landlord is not a party, claims in tort or claims for breach of warranty or misrepresentation, and also includes indemnification against costs and legal and other expenses incurred in connection with any of the matters indemnified against, whether or not litigation is commenced. With respect to any matter for which Landlord has given or will give its approval, recommendation or other direction, any and all releases, waivers, indemnities and obligations to defend and hold harmless by Tenant shall apply irrespective of Landlord's approval, recommendation or other direction whatsoever.

10. **Maximum Lawful Indemnification.** As a material and bargained for aspect of this Lease, the indemnification provided for in this Rider is intended by Tenant to provide, for the most comprehensive indemnification for which the parties may lawfully contract, of Landlord and Landlord's Affiliates against the damages, liabilities, losses, costs, expenses and deficiencies referred to in this Rider and to include, but not limited to, indemnification against life threatening illness, medical treatment and expenses, personal injury, bodily injury, permanent disability or death, damages, liabilities, losses, costs, expenses or deficiencies resulting in whole or in part from the negligence (whether active or passive and sole or concurrent with others). Such indemnification shall not, however, be construed to require the indemnification of Landlord or Landlord's Affiliates to the extent, but only to the extent, that such indemnification is prohibited by law or public policy which cannot be waived. Tenant hereby waives the protection of any and all provisions of law or public policy which prohibit or limit such indemnification to the fullest extent that such waiver is permitted by law. This Rider shall not be construed in favor of or against any of the parties hereto, but shall be construed in accordance with its purpose. It is the intent of Landlord and Tenant that the indemnities, releases and waivers contained in this Rider shall apply regardless of the active or passive negligence or sole, joint, concurrent, or comparative negligence of any of the Landlord and/or Landlord Affiliates, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on Landlord or any of the Landlord Affiliates.

11. **Duty to Defend.** Tenant's duty to defend Landlord and Landlord Affiliates is separate and independent of Tenant's duty to indemnify Landlord and Landlord Affiliates. Tenant's duty to defend includes Covid Claims for which Landlord and/or Landlord Affiliates may be liable without fault or may be strictly liable. Tenant's duty to defend applies regardless of whether issues of negligence, liability, fault, default or other obligation on the part of Tenant and/or Tenant's Representatives have been determined. Tenant's duty to defend applies immediately, regardless of whether Landlord and/or Landlord Affiliates have paid any sums or incurred any detriment arising out of or relating, directly or indirectly, to any Covid Claims. It is the express intention of Landlord and Tenant that Landlord and/or Landlord Affiliates will be entitled to obtain summary adjudication regarding Tenant's duty to defend Landlord and Landlord Affiliates at any stage of any Covid Claim within the scope of this Rider.

12. **No Admission of Liability or Wrongdoing.** This Rider reflects the compromise and settlement of disputed claims between Tenant and Landlord which are contested and denied by Landlord and/or Landlord's Affiliates. Nothing herein shall be construed or used as an admission of liability or responsibility by Landlord and/or Landlord's Affiliates. Its constituent provisions, and any and all drafts, communications and discussions relating thereto, shall not be construed as or deemed to be evidence of an admission or concession of any point of fact or law by Landlord and/or Landlord's Affiliates, and shall not be offered or received in evidence or requested in discovery in any action or proceeding as evidence of an admission or concession by Landlord and/or Landlord's Affiliates. It is expressly understood and agreed that this Rider is entered into as a full and final release of all claims of the matters herein and it is not to be treated as evidence of liability or as an admission of liability or responsibility on the part of Landlord and/or Landlord's Affiliates at any time or in any manner whatsoever. This Rider may be pled as a full and complete defense to any subsequent action or other proceeding involving Landlord, Tenant, Landlord's Affiliates



and/or Tenant's Representatives which arises out of, relates to, or has anything to do with, the rights, liens, claims, demands or causes of action waived, indemnified, released and discharged by this Rider.

13. **Fair, Adequate and Reasonable Waiver/Release.** Tenant hereby confirms and acknowledges that this Rider is a fair, adequate and reasonable settlement of this matter and have arrived at this Rider in arms-length negotiations, taking into account all relevant factors, present and potential. This Rider was reached after extensive negotiations between Tenant and Landlord.

14. **No third-party beneficiaries.** Nothing in this Rider shall be construed as creating an obligation by Landlord and/or Landlord's Affiliates to any non-party to this Rider.

15. **No Representations – Independent Advice from Counsel.** In executing this Rider, Tenant hereby represents and warrants that Tenant do so with full knowledge of all rights which Tenant may have and that Tenant have received independent legal advice from Tenant's attorneys of its/his/her own choice in the negotiations leading up to the execution of this Rider and that Tenant have carefully read and fully understands all of the provisions of this Rider and have had it fully explained to Tenant by its/his/her legal counsel. Tenant is relying on its/his/her own judgment, belief and knowledge with regard to the subject of this Rider, and acknowledge that Tenant have not been influenced to any extent whatsoever in making this Rider by any representations or statements made by Landlord, Landlord's Affiliates and/or any other party. This Rider is freely and voluntarily entered into by Tenant.

16. **Voluntary Agreement.** This Rider is executed voluntarily and without duress or undue influence on the part of or on behalf of Tenant, or of any other person, firm or entity.

17. All terms in this Rider, unless otherwise defined in this Rider, shall have the same meaning as the terms defined in the Lease.

TENANT HAVE READ THE FOREGOING RIDER, KNOW THE CONTENTS THEREOF, ACKNOWLEDGE THAT ITS TERMS ARE CONTRACTUAL AND NOT MERE RECITALS, ACKNOWLEDGE THAT TENANT HAS SIGNED THIS RIDER BASED ON TENANT'S OWN FREE ACT IN ITS/HIS/HER INDIVIDUAL AND REPRESENTATIVE CAPACITIES, AND ACKNOWLEDGE THAT TENANT FULLY UNDERSTAND THIS RIDER.

IN WITNESS WHEREOF, the parties have each executed this Rider as of the date first set forth above, acknowledged that they have carefully read each and every provision of this Rider, that they have freely entered into this Rider of their own free will and volition, and that the terms, conditions and provisions of this Rider are commercially reasonable as of the day and year above written.

LANDLORD:

GATEWAY TRIANGLE DEVELOPMENT, LLC
a California limited liability company

By: _____

Farid S. Kia

Its: Managing Member

TENANT:

Jonathan M Bagley
Jonathan Michael Bagley



EXHIBIT 2

