



BOARD LETTER APPROVAL

NANCY H. SUTLEY
Senior Assistant General Manager-
External and Regulatory Affairs and
Chief Sustainability Officer

RESOLUTION NO. 021 028

AUG 25 2020

☐ POWER SYSTEM	☐ WATER SYSTEM
☐ CAO	☐ CFO
☐ LEGAL <i>ERM</i>	☐ COO
☒ SUSTAINABILITY	

RELEASE DATE: SEP 09 2020

MARTIN L. ADAMS
General Manager and Chief Engineer

DATE: August 6, 2020

SUBJECT: Approval of Lease With 9136 Sepulveda LLC for a
Customer Service Center at 9154 Sepulveda Boulevard
Los Angeles, California 91343, LADWP File No. J-101730

SUMMARY

Los Angeles Department of Water and Power (LADWP) is requesting approval of a Lease Agreement (Lease) between 9136 Sepulveda LLC (Lessor), and LADWP (Lessee) for approximately 4,920 rentable square-feet of Customer Service Center (CSC) space for use by employees of LADWP and members of the public. The space is located at 9154 Sepulveda Boulevard, Los Angeles, California 91343 (North Hills CSC), and will provide ample square footage and parking for LADWP's Customer Service Division (CSD) operations. The North Hills CSC will be replacing the current Mission Hills CSC located at 11100 Sepulveda Boulevard, Suite 3-4, Los Angeles, California 91345. The North Hills CSC is located approximately 2.5 miles south of Mission Hills CSC.

The proposed Lease is for a term of five years commencing upon mutual execution of the Lease, and ending five years after the commencement date. The base rent is \$12,300 per month commencing three months after the commencement date. The base rent is subject to annual rental adjustments fixed at 3 percent per year, which will be applied beginning in the second year of the Lease term. The Lease cost is estimated to be approximately \$782,097.16 for the five year term. LADWP will also pay its pro rata share of common area operating expenses and related monthly charges. The North Hills CSC, when open, will meet LADWP's CSC space needs by providing more square footage and parking than the current Mission Hills CSC.

City Council Approval is not required.

RECOMMENDATION

It is recommended that the Board of Water and Power Commissioners (Board) adopt the attached Resolution authorizing execution of the Lease for approximately 4,920 square-feet of CSC space located at 9154 Sepulveda Boulevard, Los Angeles, California 91343, between 9136 Sepulveda LLC and LADWP, to be used as an LADWP CSC.

ALTERNATIVES CONSIDERED

- Renew the lease at the current Mission Hills CSC location; however, the current location does not provide adequate CSC space or parking.
- Purchase a property with adequate land and improvements to meet LADWP's needs. However, at this time, there is no inventory on the market that meets CSD's needs. Real Estate Services will continue to search for a property that can be purchased, and that meets CSD's needs.
- Lease CSC space at a different location. Alternate properties were considered for lease and this location was found to be the most suitable due to the location, square footage, parking, and availability of transit.

FINANCIAL INFORMATION

The Lease cost over the five-year term is estimated to be approximately \$782,097.16 plus common area operating expenses and related monthly charges. The base rent is \$12,300.00 per month commencing three months after the commencement date of the Lease. The base rent is subject to annual rental adjustments fixed at 3 percent per year, which will be applied on the anniversary of the rent commencement. Lessor will perform roof repairs to the building system at LADWP's cost estimated to be \$29,800. All other construction including tenant improvements will be performed by LADWP construction crews.

The breakdown of the rent is as follows:

Months	Monthly Base Rent	Annualized Base Rent
1 – 3	\$0	\$0
4 – 15	\$12,300.00	\$147,600.00
16 – 27	\$12,669.00	\$152,028.00
28 – 39	\$13,049.07	\$156,588.54
40 – 51	\$13,440.54	\$161,286.48
52 – 60	\$13,843.76	\$124,593.84
Total		\$742,097.16

The Lease has a one option to terminate the Lease at the end of 36 months. The Lease will be funded utilizing the Power Revenue Fund.

BACKGROUND

On April 2, 2019, CSD made a presentation to the Board on the LADWP CSC. CSD outlined the issues with leased and owned LADWP CSC, including the lack of parking, inadequate CSC space, and deferred maintenance. CSD proposed that leased CSC should be selectively upgraded or relocated to a new location.

The North Hills CSC would provide a new CSC with adequate CSC space and ample parking for employees and customers. The North Hills CSC will replace the Mission Hills CSC located at 11100 Sepulveda Boulevard, Los Angeles, California 91345. The Mission Hills CSC is located the farthest north of the 14 Customer Service Centers that LADWP operates in the City of Los Angeles. The staff provides service to approximately 13,000 customers each month. This is the sixth busiest CSC based on the number of customers served each month. The current Mission Hills CSC and the North Hills CSC are both in Council District 7. The Mission Hills CSC is housed in approximately 1,710 square-feet of space and has inadequate parking.

The Lease for the North Hills CSC will provide ample parking and approximately 4,920 square-feet of CSC space, including a reception area with seating and three private consult areas. The North Hills CSC is 2.5 miles south of the current Mission Hills CSC on the same street (Sepulveda Boulevard). Public transportation access to the North Hills CSC is available with two bus routes (lines 234 and 734) operating north and south on Sepulveda Boulevard, a major thoroughfare, and two bus routes (lines 166 and 364) operating east and west on Nordhoff Street. Access to the 405 Freeway is one block west of the North Hills CSC.

The North Hills CSC is designed to provide a positive customer experience to those who visit the CSC to conduct business. Construction plans for the North Hills CSC include: accommodations for the Qmatic queuing system; a display area which will serve to help educate customers of LADWP program offerings; and private consult areas where customers can engage in dialogue regarding how they can best manage their utility bills. The Lease allows LADWP to install a maximum of five electrical vehicle charging stations. Lessor will perform roof repairs to the building system at LADWP's cost estimated to be \$29,800. All other construction including tenant improvements at the North Hills CSC will be performed by LADWP construction crews.

ENVIRONMENTAL DETERMINATION

Determine item is exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(2). In accordance with this section, an activity is not subject to CEQA if it will not result in a direct or reasonably foreseeable indirect physical change in the environment. The lease of a building to serve as a CSC, to replace an

existing CSC in the same neighborhood, will not result in any physical change in the environment; therefore, this activity is not subject to CEQA.

CITY ATTORNEY

The Office of the City Attorney reviewed and approved the Resolution and Lease as to form and legality.

ATTACHMENTS

- Resolution
- Lease

WHEREAS, Los Angeles Department of Water and Power (LADWP) desires to lease approximately 4,920 square-feet of Customer Service Center (CSC) space located at 9154 Sepulveda Boulevard, Los Angeles, California 91343, from 9136 Sepulveda LLC; and

WHEREAS, LADWP has negotiated a Lease Agreement (Lease) to provide CSC adequate space and parking to support the Customer Service Division's operations; and

WHEREAS, the Lease between LADWP, as lessee, and 9136 Sepulveda LLC, as lessor, is for a five-year term commencing upon mutual execution of the Lease. The base rent is \$12,300 per month, subject to annual rent increases of 3 percent per year, which will be applied on the anniversary of the rent commencement. The total Lease cost over the five-year term is estimated to be approximately \$782,097.16 plus common area operating expenses and related monthly charges; and

WHEREAS, the Board of Water and Power Commissioners (Board) has the authority, pursuant to Los Angeles City Charter Section 675(d)(1), to acquire by lease, all real property convenient for LADWP purposes.

NOW, THEREFORE, BE IT RESOLVED that the Lease, approved as to form and legality by the City Attorney, on file with Secretary of the Board, whereby LADWP leases approximately 4,920 square-feet of CSC space from 9136 Sepulveda LLC for the purposes and upon the terms and conditions set forth in said Lease, is hereby approved.

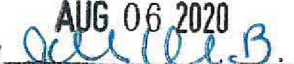
BE IT FURTHER RESOLVED that the President, or Vice President, or the General Manager, or such person as the General Manager shall designate in writing, and the Secretary, Assistant Secretary, or the Acting Secretary of the Board are hereby authorized and directed to execute said Lease and any ancillary documents required to be entered into in furtherance of the Lease on behalf of LADWP.

BE IT FURTHER RESOLVED that the Chief Accounting Employee of LADWP, upon proper certification, is authorized and directed to draw demands on the Power Revenue Fund for payment of the obligations arising under said Lease, which amount is currently estimated to be \$782,097.16 plus common area operating expenses and related monthly charges, in accordance with the terms of the Lease and this Resolution.

I HEREBY CERTIFY that the foregoing is a full, true, and correct copy of a Resolution adopted by the Board of Water and Power Commissioners of the City of Los Angeles at its meeting held AUG 25 2020


Secretary

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

AUG 06 2020
BY 
JOHN BEATUM
DEPUTY CITY ATTORNEY

DEPARTMENT OF WATER AND POWER
CITY OF LOS ANGELES

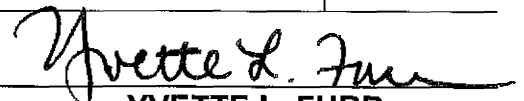
COMMISSION OFFICE

September 15, 2020
(Council release date 09/09/20)

BOARD FILE

Attached herewith is the following: CONFORMED COPY OF AGREEMENT

AGREEMENT NO(S).	BOARD DATE	TITLE	
J-101730	08-25-20	Lease with 9136 Sepulveda LLC for a Customer Service Center at 9154 Sepulveda Boulevard, Los Angeles, California 91343, LADWP File No. J-101730, for a term of five years. Authorized by Resolution No. 021 028, adopted August 25, 2020.	


YVETTE L. FURR
Assistant Board Secretary



STANDARD MULTI-TENANT SHOPPING CENTER LEASE - NET

1. Basic Provisions ("Basic Provisions").

1.1 Parties. This Lease ("Lease"), dated for reference purposes only April 22, 2020, is made by and between 9136 Sepulveda LLC ("Lessor") and Los Angeles Department of Water and Power ("Lessee") (collectively the "Parties", or individually a "Party").

1.2 Premises: That certain portion of the Shopping Center (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known as (street address, unit/suite, city, state): 9154 Sepulveda Blvd, North Hills, CA 91343 ("Premises"). The Premises are located in the County of Los Angeles and generally described as (describe briefly the nature of the Premises): a unit consisting of approximately ±4,920 sq. ft. part of a larger shopping center. In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to the Common Areas (as defined in Paragraph 2.7 below) as hereinafter specified, but shall not have any rights to the roof, the exterior walls, or the utility raceways of the building containing the Premises ("Building") or to any other buildings in the Shopping Center. The Premises and the Building are situated within the Shopping Center known as Vallarta Supermarket Center. The Premises, the Building, the Common Areas, and all other buildings and improvements within said Shopping Center, together with the land upon which they are located, are herein collectively referred to as the "Shopping Center." (See also Paragraph 2)

1.3 Term: Five (5) years and Zero (0) months ("Original Term") commencing upon mutual lease execution ("Commencement Date") and ending five (5) years thereafter ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing N/A ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$12,300.00 per month ("Base Rent"), payable on the first day of each month commencing three (3) months from mutual lease execution. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51.

1.6 Percentage Rent Rate: N/A percent (N/A %) of Gross Sales. Percentage Rent shall be due and payable in accordance with the provisions of the Percentage Rent Addendum, if any, attached hereto and made a part hereof, and Paragraph 4 hereof.

1.7 Lessee's Share of Common Area Operating Expenses: approximately eight and 00/100 percent (8.00 %) ("Lessee's Share"). In the event that that size of the Premises and/or the Shopping Center are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.8 Merchants' Association Annual Dues: None per year ("Merchants' Association Dues"). Lessee shall pay Merchants' Association Dues and/or become a member of the Merchants' Association in accordance with the provisions of the Merchants' Association Addendum, if any, attached hereto.

1.9 Base Rent and Other Monies Paid Upon Execution: None

- (a) Base Rent for the period: _____
(b) Common Area Operating Expenses for the period: _____
(c) Security Deposit ("Security Deposit"). (See also Paragraph 5)
(d) Merchants' Association Dues for the period: _____
(e) Other for: _____
(f) Total Due Upon Execution of this Lease: _____

1.10 Agreed Use: The premises shall be used for a LADWP payment center. (See also Paragraph 6)

1.11 Agreed Trade Name: LADWP. (See also Paragraph 6)

1.12 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

1.13 Real Estate Brokers. (See also Paragraph 15 and 25)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

☒ Colliers International Greater Los Angeles, Inc. represents Lessor exclusively ("Lessor's Broker");

☒ N/A represents Lessee exclusively ("Lessee's Broker"); or

☐ _____ represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of _____ or _____ % of the total Base Rent) for the brokerage services rendered by the Brokers.

1.14 Guarantor. The obligations of the Lessee under this Lease shall be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

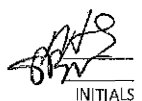
1.15 Attachments. Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 51 through 52;
☒ a site plan marked Exhibit A depicting the Premises;
☒ a site plan marked Exhibit A depicting the Shopping Center;
☒ a current set of the Rules and Regulations for the Shopping Center;
☒ a current set of the Sign Criteria for the Shopping Center;


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SCLN-20.10, Revised 11-01-2017

☐ a Work Letter;

☒ other (specify): Exhibit B - Pylon Signage.

2. Premises.

2.1 Letting. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. NOTE: Lessee is advised to verify the actual size prior to executing this Lease.

2.2 Condition. Lessor shall deliver the Premises to Lessee in its as-is condition, broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within 30 days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date and that the structural elements of the roof, bearing walls and foundation of the Premises shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Premises. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises. Notwithstanding any provision to the contrary contained in the Lease (including paragraph 2.2), Lessor shall deliver the Premises to Lessee in its as-is condition, broom clean and free of debris, with the plumbing, electrical, lighting, heating, and HVAC in good operating condition.

2.3 Compliance. Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 Acknowledgements. Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.


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2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date, Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 Vehicle Parking. Lessee shall not use and shall not permit its employees to use any parking spaces in the Shopping Center except for parking by vehicles that are no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessee shall permit its employees to only occupy those parking spaces, if any, as depicted as employee parking spaces on the Shopping Center site plan. Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. Lessee customer parking shall be provided in the general parking areas located throughout the Shopping Center. In addition:

- (a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.
- (b) Lessee shall not service or store any vehicles in the Common Areas.
- (c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Shopping Center and interior utility raceways and installations within the Premises that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Shopping Center and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Shopping Center. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas, nor the right to display merchandise or conduct sales in the Common Areas. Any such storage, display or sales shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, as exercised in Lessor's sole discretion, which consent may be revoked at any time. In the event that any unauthorized storage or displays shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Shopping Center and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Shopping Center.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

- (a) To make changes or additions to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, elevations, landscaped areas, signage, walkways and utility raceways;
- (b) To use and close temporarily any of the Common Areas for the purpose of maintaining, repairing and altering the Shopping Center, so long as reasonable access to the Premises remains available, and to close temporarily any of the Common Areas to whatever extent is required in the opinion of Lessor's counsel to prevent a dedication of or the accrual of any rights of any persons or of the public to any of the Common Areas;
- (c) To designate other land outside the boundaries of the Shopping Center to be a part of the Common Areas or to be entitled to use the Common Areas on a reciprocal basis;
- (d) To add additional buildings and improvements to the Common Areas; and
- (e) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Shopping Center as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

2.11 Common Areas - Promotional Events; Sidewalk Sales. Lessor reserves the right, from time to time, in Lessor's sole discretion, to utilize portions of the Common Areas for promotional events, which may include but shall not be limited to entertainment. Lessor further reserves the right, in Lessor's sole discretion, to permit any one or more tenants of the Shopping Center to conduct the display and/or sale of merchandise from the sidewalks immediately adjacent to such tenants' respective premises.

2.12 Common Areas - Remodeling. At any time during the Term, Lessor may remodel or expand, in any manner, the existing Shopping Center, which work may include, without limitation, the addition of shops and/or new buildings to the Shopping Center (collectively, "Remodeled Center"). If Lessor deems it necessary for construction personnel to enter the Premises in order to construct the Remodeled Center, Lessor shall give Lessee no less than 60 days prior notice and Lessee shall allow such entry. Lessor shall use reasonable efforts to complete any work affecting the Premises in an efficient manner so as not to interfere unreasonably with Lessee's business. Lessee shall not be entitled to any damages for any inconvenience or any disruption to Lessee's business caused by such work; provided, however, the Base Rent paid by Lessee for the period of the Inconvenience shall be abated in proportion to the degree that Lessee's use of the Premises is impaired. Lessor shall have the right to use portions of the Premises to accommodate any structures required for the Remodeled Center, provided that if as a result thereof there is a permanent decrease in the floor area of the Premises of 3% or more, there shall be a proportionate downward adjustment of Base Rent and Lessee's Share.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

~~3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If an Early Possession Date has been specified in Paragraph 1.4, the Parties intend that Lessee shall have access to the Premises as of the Early Possession Date for purposes of preparing and fixturing the Premises for the conduct of Lessee's business. If Lessee totally or partially occupies the Premises prior to the Commencement Date for any reason (and for purposes hereof, "occupancy" shall include, without limitation, Lessee's entry onto the Premises for purposes of preparing and fixturing the Premises for business), the obligation to pay Base Rent and Percentage Rent shall be abated for the period of such early possession. All other terms of this Lease (including, but not limited to, Lessee's obligations to carry insurance and to maintain the Premises) shall be in effect during such period, except that Lessee's obligation to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and Insurance premiums shall only be in effect prior to the Commencement Date if Lessee has opened for business in the Premises prior to the Commencement Date. Any such Early Possession shall not affect the Expiration Date.~~

~~Delay In Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement~~


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Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 Lessee Compliance. Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied. **The Lessor accepts and acknowledges Lessee's program of self-insurance as compliance with the insurance requirements in this agreement and Lessee shall furnish Lessor with a Letter of self-insurance evidencing its program of self-insurance.**

3.5 Lessee is given a one-time right to terminate the lease at the end of the 36th month of the lease. Lessee will give Lessor minimum 6 months advance written notice.

4. Rent.

4.1 Rent Defined. All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 Common Area Operating Expenses. Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent and, if applicable, Percentage Rent, Lessee's Share (as specified in Paragraph 1.7) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Shopping Center, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and replacement as reasonably necessary, of the following:
(aa) The Common Areas and Common Area Improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, parking lot striping, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire detection and/or sprinkler systems.

(dd) Common electrical, plumbing and other utilities servicing any building in the Shopping Center and/or the Common Areas.

(ee) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management (including, but not be limited to, a property management fee to Lessor equal to 5% of Base Rent and Percentage Rent), security services, and the costs of any environmental inspections.

(iv) Reserves set aside for equipment, maintenance, repair and replacement of Common Areas.

(v) Real Property Taxes (as defined in Paragraph 10).

(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation of the Shopping Center.

(ix) The cost of any capital improvement to the Building or the Shopping Center not covered under the provisions of Paragraph 2.3; provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month. Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) If Lessor determines that the method of proration of any item included within Common Area Operating Expenses is inequitable, Lessor may prorate such item on the basis of usage or other equitable considerations. Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Premises, the Building or to any other premises or building in the Shopping Center or to the operation, repair and maintenance thereof shall be allocated entirely to such premises or building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to any premises or building or to the operation, repair and maintenance thereof shall be equitably allocated by Lessor to all buildings in the Shopping Center.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Shopping Center already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10-30 days after delivery by Lessor to Lessee of the statement.

(e) If there are one or more Major Tenants (as hereinafter defined) within the Shopping Center, then at Lessor's sole option, the amount to be reimbursed by such Major Tenants to Lessor for all or a portion of the Common Area Operating Expenses may be determined by alternative equitable methods (e.g., a Major Tenant may pay directly for its own security), and the actual amount paid by such Major Tenants shall be credited against the Common Area Operating Expenses allocated to other tenants of the Shopping Center; provided, however, that in such event the rentable area of the buildings leased to such Major Tenants shall be excluded from the rentable area of the Shopping Center for purposes of determining Lessee's Share of Common Area Operating Expenses for those specific items.


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notwithstanding the percentage set forth in Paragraph 1.7. As used herein, the term "Major Tenant" shall mean a tenant leasing at least 15,000 square feet of rentable area within the Shopping Center.

(f) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs.

5. **Security Deposit. NONE.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the Initial Security Deposit bore to the Initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease. THE SECURITY DEPOSIT SHALL NOT BE USED BY LESSEE IN LIEU OF PAYMENT OF THE LAST MONTH'S RENT.

6. Use.

6.1 Use.

(a) **Agreed Use; Agreed Trade Name.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose, and Lessee shall operate at the Premises only under the Agreed Trade Name and under no other trade name. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvement on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises, and/or is not in conflict with or incompatible with the existing or proposed uses (whether or not exclusive) of other occupants of the Shopping Center. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Trade Name, so long as the same is not in conflict with or incompatible with the nature and character of the Shopping Center or other existing or proposed uses of other occupants of the Shopping Center. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use and/or Agreed Trade Name.

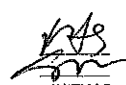
(b) **Continuous Operation.** Lessee shall continuously (i) operate and conduct the Agreed Use under the Agreed Trade Name within the entire Premises in a reputable manner and in conformity with industry standards of practice prevailing in the field of business among merchants engaged in the same or similar business in the city in which the Premises are located, (ii) staff the Premises with sufficient sales personnel, stock the Premises with adequate merchandise and exercise sound business practices so as to maximize Gross Sales for the benefit of Lessor. At a minimum, Lessee shall keep the Premises continuously open for business Monday through Friday from 9:00 a.m. to 6:00 p.m., Saturday from 9:00 a.m. to 6:00 p.m., and Sunday from 10:00 a.m. to 6:00 p.m. If Lessee fails to comply with the requirements of this Paragraph 6.1(b), then in addition to any and all other rights and remedies of Lessor, Lessee shall pay to Lessor an amount equal to 1/15th of the Base Rent for each day or portion thereof that Lessee fails to so comply. Such sum shall be in addition to, and not a part of, the Base Rent otherwise due under this Lease. Lessee shall continuously use, operate and actually occupy the Premises and keep the Premises open for business during each and every business day for Business Hours, except to the extent prevented by strikes, acts of God, fire, casualty, war, riot or public emergency. The term "Business Hours" shall mean the hours of, Monday through Friday (local, federal and state holidays accepted). Holidays include the following: New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and to the extent of utilities or services provided by union members engaged at the Building, such other holidays observed by such unions. The current business hours for this location open to the public will be 9:00 AM to 5:00 PM, but the hours are subject to change at the sole discretion of the Lessee. The Lessee has the right to occupy premises for business purposes 24 hours per day 365 days per year.

(c) **Violations of Exclusive Use Rights.** Lessee acknowledges that Lessor may grant, or may have previously granted, exclusive use rights to other tenants of the Shopping Center and agrees that a material consideration to Lessor in entering into this Lease is Lessee's covenant to limit its use of the Premises to the Agreed Use under the Agreed Trade Name as set forth above. Lessee's violation of exclusive use rights granted to other tenants of the Shopping Center will result in Lessor suffering irreparable harm and, therefore, in addition to all other rights and remedies available to Lessor, Lessor may seek to enjoin Lessee's breach of such covenant and Lessee shall be liable for any damages incurred or sustained by Lessor to such other tenants whose exclusive use rights are breached by Lessee. In no event shall Lessor be liable to Lessee for any failure of any other tenants of the Shopping Center to operate their businesses, or for any loss or damage that may be occasioned by or through the acts or omissions of other tenants or third parties.


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(d) **Other Tenancies.** Lessor, at its sole discretion, reserves the absolute right to establish procedures to control other tenancies in the Shopping Center. Regardless of whether any specific tenants are shown on any site plan attached hereto, Lessee does not rely on that fact, nor does Lessor represent that any specific tenant or number or type of tenants shall or shall not during the Term occupy any portion of the Shopping Center, nor does Lessee rely on any other tenant operating its business in the Shopping Center at any particular time or times. Further, no conduct by any tenant, subtenant or other occupant of, or any customer of, or any supplier to or use of any portion of the Shopping Center shall constitute an eviction, constructive or otherwise, of Lessee from the Premises, and Lessee hereby waives any and all claims that it might otherwise have against Lessor by reason thereof.

6.2 Hazardous Substances.

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Shopping Center not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the SOLE OR gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(a)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 1030 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 1014 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to


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Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants authorized by Lessor shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times, after reasonable notice, for the purpose of inspecting and/or testing the condition of the Premises and/or for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 4014 days of the receipt of written request therefor. Lessee acknowledges that any failure on its part to allow such inspections or testing will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to allow such inspections and/or testing in a timely fashion the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for the remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to allow such inspection and/or testing. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to such failure nor prevent the exercise of any of the other rights and remedies granted hereunder.

7. **Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon in a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof. At the Lessee's sole discretion, Lessee can either maintain the HVAC system with its own personnel, or request the Lessor contract for services. If the Lessor contracts for the HVAC servicing, Lessee will reimburse the Lessor for the service contract. The Lessee must notify the Lessor of any change to servicing at least 30 days in advance of the change. The Premises does not have a boiler, pressure vessel or clarifiers.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. The Lessor is responsible for maintaining all building exterior surfaces, exterior paint structural component and common areas. The Lessee shall be responsible for plate glass, windows, doors, all interior surfaces and improvements, which would include remodeling, reconstructing and similar tenant improvements. The Lessee shall receive approval in advance of any major interior reconstruction. The Lessee has the sole right to perform any minor work on the interior, such as painting, carpeting, replacing ceiling, in its sole discretion.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the Improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or fire safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate.

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or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. ~~If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same.~~ If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** ~~Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.~~

Subject to Lessor's right to require removal as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. If Lessor does not require Lessee to remove any Alterations and Utility Installations and Lessee elects not to remove said Alterations and Utility Installations, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if the Lessee occupies the Premises for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee Owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) Carried by Lessee. Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only. Notwithstanding any provision to the contrary contained in the Lease (including paragraph 8.2(a)), Lessee maintains a program of self-insurance for its exposures of General, Auto, Workers Compensation and Personal Property. Lessee is allowed to retain (self-insure) in whole or in part any insurance obligation under this Lease. Lessee agrees that it shall provide Lessor with the same coverage that would have been provided to it by the required commercial insurance forms had Lessee obtained commercial insurance. Lessor accepts and acknowledges Lessee's program of self-insurance as compliance with the insurance requirements in this agreement and Lessee, upon request, shall furnish Lessor with a Letter of self-insurance evidencing its program of self-insurance.

(b) Carried by Lessor. Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available


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insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Shopping Center if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the Item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils. Lessee has the sole right to purchase or not purchase business interruption insurance.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may increase his liability insurance coverage and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's **SOLE** or gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, a Breach of the Lease by Lessee and/or the use and/or occupancy of the Premises and/or Project by Lessee and/or by Lessee's employees, contractors or invitees. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and its Agents from Liability. ~~Notwithstanding the Except for gross negligence or breach of this Lease by willful misconduct of~~ Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Shopping Center, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease. Notwithstanding any provision to the contrary contained in the Lease (including paragraph 8.9), the Lessee is self-insured and will not carry commercial insurance. The Lessor accepts the Lessee self-insurance program, as a replacement for commercial insurance.

9. Damage or Destruction.

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SCLN-20.10, Revised 11-01-2017

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) "Premises Total Destruction" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the Improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises or Common Areas which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total Replacement Cost of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the Improvements, full Replacement Cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether insured or uninsured (and whether or not there is also damage or destruction to the Premises), which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction, Lessor may terminate this Lease by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by: (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 30 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

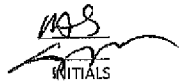
9.6 Damage to Shopping Center. In the event of any damage or destruction to other portions of the Building or to any other buildings in the Shopping Center, whether insured or uninsured (and whether or not there is also damage or destruction to the Premises), which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction, Lessor may either (i) repair such damage or destruction as soon as reasonably possible without expense to Lessee, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage or destruction. Such termination shall be effective 60 days following the date of such notice.

9.7 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Base Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said


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notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

9.8 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

9.9 The date of damage is the date of the occurrence or date of discovery, which ever is later.

9.10 **Force Majeure.** Except as otherwise expressly set forth herein, in the event either Landlord or Tenant shall be delayed or hindered in, or prevented from, the performance of any act or rendering of any service required under this Lease, by reason of strikes, inability to obtain materials, failure of power, restrictive governmental laws or regulations, local, state or national emergencies, acts of God, incidences of terrorism, wars or riots, civil disturbances, floods, earthquakes, fire, explosions, bacteriological or virologic rooted epidemics or pandemics, hurricanes, tornadoes, or other reasons of a similar or dissimilar nature which are beyond the reasonable control of the Landlord or Tenant (collectively known as "Event"), then the performance of any such act or rendering of any such service shall be excused for the period of the resulting delay and the period of the performance or the rendering of the service shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, this paragraph shall not be applied so as to excuse or delay payment of any monies by one party to the other, including rent.

Except as specifically contained herein or unless otherwise expressly provided in this Lease, nothing contained in this Article shall be applied so as to: (a) excuse any nonpayment or delay in the payment of rent; or (b) limit either the Landlord's or the Tenant's rights under this Lease to cure the other party's default.

It shall be a condition to either party's claim of the benefit of this Article, that such party seeking the benefit of this Article notify the other party by telephone, e-mail transmission, or U.S. Mail, within 72 hours after Landlord or Tenant is delayed or hindered in, or prevented from, the performance of such act or rendering of any such service required under this Lease, by reason of the occurrence of any Event, and within 72 hours after request shall advise the other party in writing of its good faith estimate of the time required until the period of the resulting delay is ended. The party seeking the benefit of this Article shall have no liability to the other party in the event the good faith estimates of the period of such delay are not accurate, however, the party seeking the benefit of this Article shall advise the other party in writing whenever such party learns that the additional time may be required until the delay is ended. Upon the request of the other party, the party seeking the benefit of this Article shall advise the other party as to the latest estimate of time required until the delay is ended, and the reasons for any additional delay. In case of interruption of all methods of giving notice set forth in this Article, notice shall be deemed given on the second day of reasonably prominent news coverage of the Event reasonably able to be recognized as affecting the Lease.

10. Real Property Taxes.

10.1 **Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Shopping Center, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Shopping Center address. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Shopping Center, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Shopping Center, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Shopping Center by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request, or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. To the extent any such utilities and/or services are not separately metered, Lessee shall pay Lessee's Share thereof in accordance


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with Paragraph 4.2. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions. All utilities that the Lessee is responsible for making direct payment to the utility providers shall be separately metered by Landlord. They have the following start points:

Power Start Point – switchgear

Water Start Point – meter

Gas Start Point - Meter

Sewer - Lessee responsible to maintain the sewer line from where it is exclusively serving the Premises, whether inside or outside of the Premises.

12. Assignment and Subletting.

12.1 Lessor's Consent Required.

- (a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.
- (b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.
- (c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buyout or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.
- (d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent and Percentage Rent Rate to 110% of the Base Rent and Percentage Rent Rate then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.
- (e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.
- (f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.
- (g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 Terms and Conditions Applicable to Assignment and Subletting.

- (a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.
- (b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.
- (c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.
- (d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.
- (e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)
- (f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.
- (g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

- (a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.


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- (b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atton to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.
- (c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.
- (d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.
- (e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

Any co-tenancy by Lessee with another City of Los Angeles entity shall not be considered a sublease or assignment requiring Lessor's approval, provided the other City of Los Angeles entity does not conflict with the primary business of any other tenant in the Shopping Center at the time of the sublease or assignment.

13. Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

- (a) The vacating or abandonment of the Premises. Lessee shall be deemed to have vacated the Premises if Lessee ceases to continuously operate its business in the Premises for a period of 60 consecutive days. Lessor shall have the right to recapture after said 60 days.
- (b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.
- (c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.
- (d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.
- (e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.
- (f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.
- (g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.
- (h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 15 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

- (a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor; in such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) 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 the Lessee proves could have been reasonably avoided; (iii) 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 the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee'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 the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful

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detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions," shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, Inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

The Lessee's exercise of its early termination option (see section 3.4) shall trigger the Lessor's right to inducement recapture as contemplated in this section. Such recapture shall include any abated rent, tenant improvements and cash inducements, which will become immediately due. Lessee shall also be responsible for prorated reimbursement of Lessor paid brokerage commissions.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 10 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 40 7% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided, however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Premises, or more than 25% of the parking spaces situated within the parking area, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees.

15.1 Additional Commission. In addition to the payments owed pursuant to Paragraph 1.13 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Shopping Center, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.13, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's


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Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within ~~10~~ 15 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by AIR CRE, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party. **The Estoppel Certificate will not change the terms of this Lease.**

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ~~10~~ 15 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.

(c) **If there is a conflict with the Estoppel Certificate and the Lease, the Lease will be the controlling document. If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.**

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Project, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction. **This limitation on liability will be reciprocal for both Lessor and Lessee.**

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different notice address for notice, **except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice.** A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. Waivers.

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be


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construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) Lessor's Agent. A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent shall have the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) Lessee's Agent. An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations: To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) Agent Representing Both Lessor and Lessee. A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. No Right To Holdover. Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent and Percentage Rent Rate shall be increased to 150-130% of the Base Rent and Percentage Rent Rate applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. Binding Effect; Choice of Law. This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. Subordination; Attornment; Non-Disturbance.

30.1 Subordination. This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 Attornment. In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior Lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior

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lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 Non-Disturbance. With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 Self-Executing. The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. Attorneys' Fees. If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation). **To the extent that Lessee utilizes the Office of the City Attorney or other staff professions, the hourly rate for the professional fees for such personnel shall be deemed to be no less than that for comparable "private sector" services.**

32. Lessor's Access; Showing Premises; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee. **Lessor shall provide Lessee a minimum 3 day notice written notice to enter the Premises. Lessor's access to Premises may be restricted until the Lessee can properly relocate proprietary operations/functions.**

33. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion.

34. Signs. Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. All signs must comply with all Applicable Requirements. Lessee shall not place, construct, or maintain on the glass panes or supports of the show windows of the Premises, the doors, exterior walls or the roof of the Building, or anywhere else within the Shopping Center outside of the Premises, or on any interior portions of the Premises that are visible from the exterior of the Premises, any signs, advertisements, names, insignia, trademarks, descriptive material or any other items without Lessor's prior written consent, which consent shall be granted or denied at Lessor's sole discretion. Lessor shall designate the size, shape, color, design, and location of all exterior sign(s) to be installed by Lessee, and Lessee shall, at Lessee's sole cost and expense, fabricate, construct and install all such sign(s) in full compliance with Lessor's designation and in accordance with the Sign Criteria for the Shopping Center attached hereto, if any. Lessee agrees to submit plans and specifications for Lessee's sign(s) for Lessor's written approval within 30 days after the full execution hereof and to install such sign(s) prior to opening for business at the Premises. Lessor, at Lessee's cost, may remove any item placed, constructed or maintained in, upon or about the Premises or Shopping Center which does not comply with this paragraph. In the event there is a pole, pylon or monument sign for the Shopping Center, Lessor shall have the right, but not the obligation, to install lettering designating Lessee's business on such sign, at Lessee's expense, with Lessor's approval of location, size, style and color. All signs that are permanently attached to the Premises or Building shall become the property of Lessor at the expiration or earlier termination hereof; provided, however, that Lessee shall promptly remove all such signs if Lessor so elects, and Lessee shall promptly repair all damage caused by such removal. Lessee shall not place, construct or maintain in, upon or about the Premises any search lights, flashing lights, loudspeakers, phonographs or other visual or audio media.

35. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. Consents. All requests for consent shall be in writing. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. In those express instances where consent is within the sole discretion of a party, the party shall have no obligation to adhere to a standard of reasonableness. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. Guarantor.

37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by AIR CRE.

37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide, (a) evidence of the execution of the guaranty.

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including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. Options. If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 Definition. "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 Options Personal To Original Lessee. Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 Multiple Options. In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 Effect of Default on Options.

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties. While Lessor does not assume any responsibility to provide any security measures or any liability for failure to provide security measures or for any inadequacy thereof, Lessor shall have the authority to institute or continue such security measures as Lessor in its sole discretion deems necessary or appropriate from time to time, the cost and expenses of which shall be considered Common Area Operating Expenses. To the degree directed by Lessor, Lessee shall coordinate its security measures at the Premises with the security measures instituted by Lessor, if any.

41. Reservations. Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. Building Planning. Lessor shall have the right at any time or times, upon giving Lessee not less than 60 days prior written notice, to provide and furnish Lessee with space of comparable visibility located elsewhere within any of the buildings within the Shopping Center and to move Lessee into such new space, provided that the usable area of such new space is not less than the usable area of the Premises and provided that all of Lessee's reasonable out-of-pocket moving expenses (including but not limited to the cost of moving Lessee's personal property, the cost of reprinting Lessee's stationery or other business materials with the new address, and the cost to relocate and reinstall tenant improvements and Lessee's telecommunications and computer equipment) shall be paid by Lessor, and provided further that Lessor shall construct at Lessor's expense such improvements to such new space as shall be necessary to place it in a condition that is substantially comparable to the Premises. Except as provided in the immediately preceding sentence, Lessor shall have no obligation to improve such space or pay any other expenses incurred by Lessee as a result of such relocation. On such relocation, the terms and conditions of this Lease shall remain in full force and effect, including but not limited to the Base Rent payable hereunder and Lessee's Share (even if the usable area of such relocated Premises is in excess of the usable area of the Premises), except that the Premises shall be in such new location. Upon Lessor's request, the Parties shall execute an amendment to this Lease in form required by Lessor confirming the relocation of the Premises to such new location. If the new space does not meet with Lessee's approval, which approval Lessee shall give or withhold in accordance with Paragraph 36, Lessee shall have the right to cancel this Lease by giving Lessor written notice thereof within 15 days of receipt of Lessor's notification of its intent to relocate Lessee. Lessee's failure to give such notice within such 15 day period shall be deemed Lessee's approval of the new space. If timely notice is given by Lessee, then this Lease shall terminate unless Lessor rescinds Lessor's prior notice of its intent to relocate Lessee within 10 days after Lessor's receipt of Lessee's notice of cancellation.

43. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 1/2 months shall be deemed to have waived its right to protest such payment.

44. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.


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45. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **Offer.** Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

47. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

48. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

49. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

50. **Accessibility; Americans with Disabilities Act.**
 (a) The Premises:
☐ have not undergone an inspection by a Certified Access Specialist (CASp). Note: A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.
☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential.
☒ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. Lessee acknowledges that it received a copy of the inspection report at least 48 hours prior to executing this Lease and agrees to keep such report confidential except as necessary to complete repairs and corrections of violations of construction related accessibility standards.

In the event that the Premises have been issued an inspection report by a CASp the Lessor shall provide a copy of the disability access inspection certificate to Lessee within 7 days of the execution of this Lease.

(b) Since compliance with the Americans with Disabilities Act (ADA) and other state and local accessibility statutes are dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in compliance with ADA or other accessibility statutes, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY AIR CRE OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

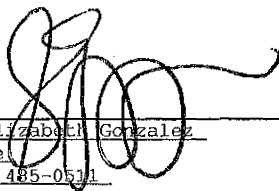
The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Pacifica, Ca
 On: May 27, 2020
 By LESSOR:
9136 Sepulveda LLC
 By: [Signature]
 Name Printed: Cesar Gonzalez
 Title: Trustee
 Phone: (818) 485-0596, 1039
 Fax: _____
 Email: _____

Executed at: _____
 On: _____
 By LESSEE:
Los Angeles Department of Water and Power
 By: See LADWP signature page
 Name Printed: _____
 Title: _____
 Phone: _____
 Fax: _____
 Email: _____

[Signature]
 INITIALS

[Signature]
 INITIALS

By: 
Name Printed: Elizabeth Gonzalez
Title: Trustee
Phone: (818) 485-0511
Fax: _____
Email: lisa@vallarta-supermarkets.com
Address: 10147 N. San Fernando Rd.,
Pacoima, CA 91331
Federal ID No.: _____

BROKER

Colliers International Greater Los
Angeles, Inc. ID# 01908231
Attn: James Rodriguez & Michael Bohorquez
Title: _____
Address: 865 S. Figueroa Ave, Suite 3500
Los Angeles, CA 90017
Phone: (213) 532-3220
Fax: _____
Email: james.rodriguez@colliers.com
Federal ID No.: _____
Broker/Agent BRE License #: _____

By: _____
Name Printed: _____
Title: _____
Phone: _____
Fax: _____
Email: _____
Address: _____
Federal ID No.: _____

BROKER

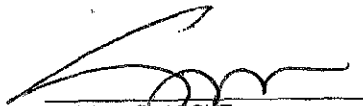
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Title: _____
Address: _____
Phone: _____
Fax: _____
Email: _____
Federal ID No.: _____
Broker/Agent BRE License #: _____

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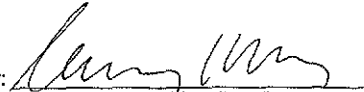

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Date 9/14/2020


SHARON B. GROVE
Assistant General Manager
Joint System

DEPARTMENT OF WATER AND POWER OF
THE CITY OF LOS ANGELES BY
BOARD OF WATER AND POWER COMMISSIONERS

By: 
MARTIN L. ADAMS
General Manager and Chief Engineer

Date: 9/10/20

And: 
SUSAN A. RODRIGUEZ
Secretary

AUTHORIZED BY RES.

021 028
AUG 25 2020

APPROVED AS TO FORM AND LEGALITY
MICHAEL N. FEUER, CITY ATTORNEY

JUN 18 2020
BY 
JOHN BEALUM
DEPUTY CITY ATTORNEY

AIRCRE

RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated: April 22, 2020

By and Between

Lessor: 9136 Sepulveda LLC

Lessee: Los Angeles Department of Water and Power

Property Address: 9154 Sepulveda Blvd, North Hills, CA 91343
(street address, city, state, zip)

Paragraph: 51

A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below.
(Check Method(s) to be Used and Fill In Appropriately)

☐ I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Date(s)): _____, the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI-W (Urban Wage-Earners and Clerical Workers) or ☐ CPI-U (All Urban Consumers), for (Fill in Urban Area): _____, All Items (1982-1984 = 100), herein referred to as "CPI".

b. The monthly Base Rent payable in accordance with paragraph A.1.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month (c) specified in paragraph A.1.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the ☐ first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month").

The sum so calculated shall constitute the new monthly Base Rent hereunder, but in no event, shall any such new monthly Base Rent be less than the Base Rent payable for the month immediately preceding the Base Rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☐ II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)): _____, the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an independent third party ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. (Note: the parties may not select either of the Brokers that was involved in negotiating the Lease). The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) When determining MRV, the Lessor, Lessee and Consultants shall consider the terms of comparable market transactions which shall include, but not limited to, rent, rental adjustments, phased rent, lease term and financial condition of tenants.

3) Notwithstanding the foregoing, the new Base Rent shall not be less than the rent payable for the month immediately preceding the rent adjustment.


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b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☒ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):

Months 1-3

Months 4-15

Months 16-27

Months 28-39

Months 40-51

Months 52-60

The New Base Rent shall be:

\$0 + NNN

\$12,300.00 + NNN

\$12,669.00 + NNN

\$13,049.07 + NNN

\$13,440.54 + NNN

\$13,843.76 + NNN

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RA-7.01, Revised 07-28-2017

AIRCRE

ADDENDUM TO LEASE

Date: July 29, 2020

By and Between

Lessor: 9136 Sepulveda LLC

Lessee: Los Angeles Department of Water and Power

Property Address: 9154 Sepulveda Blvd, North Hills, CA 91343
(street address, city, state, zip)

Paragraph: 52

In the event of any conflict between the provisions of this Addendum and the printed provisions of the Lease, this Addendum shall control.

A. Sublease: Any co-tenancy by Lessee with another City of Los Angeles entity shall not be considered a sublease or assignment requiring Lessor's approval.

B. Parking: Lessee customer parking shall be provided in the general parking areas located throughout the Shopping Center. Employees shall be required to park in the parking areas along the northern end of the Shopping Center behind the Premises, or in parking areas on the western end of the Shopping Center along Sepulveda Boulevard as showing in the attached Exhibit A.

C. Signage: Lessee shall have the right to install business signage on the building exterior and on the Shopping Center pylon sign formerly occupied by Chase Bank, as shown on Exhibit B attached hereto in accordance with Lessor's sign criteria, if any, and with local government approval, if any.

D. Electric Charging Stations: Lessee shall be allowed to install no more than five (5) electric vehicle (EV) charging stations on the Shopping Center. A walk-through of the Shopping Center will be required with Lessee and Lessor to determine the location of the EV charging stations and spaces. Lessee shall be responsible for the installation costs, all necessary or ongoing maintenance, and electrical usage associated with the EV charging stations. Lessee assumes the risk of liability arising from or pertaining to the possession, installation, operation, or use, by any person, of any such EV charging stations. Lessee shall further indemnify and hold Lessor harmless from and against any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including attorney's fees, arising from or pertaining to the possession, installation, operation, or use, by any person, of any such EV charging stations. EV Charging Stations and related equipment shall be the personal property of and under the control of Lessee. At the termination of the leasehold, Lessee shall have the sole right to remove or leave the EV Charging Stations and related equipment.

E. City of Los Angeles Standard Provisions for City Contracts:

1. Ordinance Mandated Provisions

1.1. Child Support Assignment Orders. This Lease is subject to Section 10.10, Article 1, Chapter 1, Division 10 of Los Angeles Administrative Code related to Child Support Assignment Orders.


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ADD-1.03, Revised 06-10-2019


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Pursuant to this Section, Lessor (and any its subcontractors providing services to City hereunder) shall: (a) fully comply with all State and Federal employment reporting requirements for Lessor's or its subcontractor's employees applicable to Child Support Assignment Orders; (b) certify that the principal owner(s) of Lessor and applicable subcontractors are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (c) fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code Section 5230, et seq.; and (d) maintain such compliance throughout the Term. Pursuant to Section 10.10.b of Los Angeles Administrative Code, failure of Lessor or an applicable subcontractor to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of Lessor or applicable subcontractors to comply with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally, shall constitute a default of this Lease subjecting it to termination where such failure continues for more than ninety (90) days after notice of such failure to Lessor by City (in lieu of any time for cure provided for in this Lease).

1.2. Non-Discrimination in Employment.

1.2.1. General Provision. Lessor agrees and obligates itself in performing this Lease not to discriminate against any employee or applicant for employment because of his/her race, religion, national origin, ancestry, sex, sexual orientation, age, physical handicap, marital status, domestic partner status, or medical condition.

1.2.2. Equal Employment Practices. This Lease is a contract with or on behalf of City for which the consideration is \$1000.00 or more. Accordingly, during the performance of this Lease, Lessor further agrees to comply with Section 10.8.3 of Los Angeles Administrative Code ("Equal Employment Practices"). By way of specification but not limitation, pursuant to Sections 10.8.3.E and 10.8.3.F of said Code, Lessor's failure to comply with the Equal Employment Practices provisions of this Lease may be deemed a material breach of the Lease. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Lessor. Upon a finding duly made that Lessor has failed to comply with the Equal Employment Practices provisions of this Lease, this Lease may be forthwith terminated.

1.2.3. Affirmative Action Program. This Lease is a non-construction contract with or on behalf of the City for which the consideration is \$100,000.00 or more. Accordingly, during the performance of this Lease, Lessor further agrees to comply with Section 10.8.4 of Los Angeles Administrative Code ("Affirmative Action Program"). By way of specification but not limitation, pursuant to Sections 10.8.4.E and 10.8.4.F of said Code, the failure of Lessor to comply with the Affirmative Action Program provisions of this Lease may be deemed a material breach of this Lease. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to Lessor. Upon a finding duly made that Lessor has breached the Affirmative Action Program provisions of this Lease, the Lease may be forthwith terminated.

1.2.4. Equal Benefits Provisions. This Lease is also subject to Section 10.8.2.1, Article 1, Chapter 1, Division 10 of Los Angeles Administrative Code ("Equal Benefits Provisions") related to equal benefits to employees. Lessor agrees to comply with the provisions of Section 10.8.2.1. By way of specification but not limitation, pursuant to Section 10.8.2.1.c of said Code, Lessor's failure to comply with the Equal Benefits Provisions of this Lease may be deemed to be a material breach of the Lease. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an


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opportunity to be heard has been given to Lessor. Upon a finding duly made that Lessor has failed to comply with the Equal Benefits Provisions of this Lease, this Lease may be forthwith terminated.

1.3. Slavery Disclosure Ordinance. This Lease is subject to applicable provisions of the Slavery Disclosure Ordinance ("SDO") (Section 10.41, et seq., of Los Angeles Administrative Code). Unless otherwise exempt in accordance with this Ordinance, Lessor certifies that it has complied with the applicable provisions of the Ordinance. Under the provisions of Section 10.41.2(b) of Los Angeles Administrative Code, City has the authority, under appropriate circumstances, to terminate this Lease and otherwise pursue legal remedies available to City if it determines that Lessor failed to fully and accurately complete the SDO affidavit or otherwise violated any provision of the SDO.

1.4. Prevailing Wages. Lessor understands that the improvements to the Premises may be considered a "public work" within the meaning of Section 1720.2 of California Labor Code, and therefore agrees, to the extent such improvements to the Premises are determined to be a "public work," that all workers employed on the improvements shall be paid not less than the general prevailing rate of wages for work of a similar nature in the Los Angeles area.

1.5 Restrictions on Campaign Contributions in City Elections. Lessor, subcontractors, and their principals (if any) are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the lease is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Lessor is required to provide and update certain information to the City as specified by law. Any lease subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor expected to receive at least \$100,000 as a result of performing a portion of the contract obligations of Lessor under this Lease:

"Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions:

As provided in Charter Section 470(c)(12) and related ordinances, you are a subcontractor on that certain Office Lease between 9136 Sepulveda, LLC and the Los Angeles Department of Water & Power. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Lease is signed. Subcontractor is required to provide to Lessor names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information included must be provided to Lessor within five business days. Failure to comply may result in termination of this Lease or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org> or by calling (213) 978-1960."

Lessor, subcontractors, and their principals shall comply with these requirements and limitations. Violation of this provision shall entitle the Lessee to terminate this Lease and pursue any and all legal remedies that may be available.

1.6 Tax Registration Certificates and Tax Payments. This Section is applicable where Lessor engaged in business within the City of Los Angeles and Lessor is required to obtain a Tax Registration Certificate ("TRC") pursuant to one or more of the following articles (collectively "Tax Ordinances") of Chapter II of the Los Angeles Municipal Code: Article 1 (Business Tax Ordinance) [Section 21.00, et seq.], Article 1.3 (Commercial Tenant's Occupancy Tax) [Section 21.3.1, et seq.], Article 1.7 (Transient


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Occupancy Tax) [Section 21.7.1, et seq.], Article 1.11 (Payroll Expense Tax) [Section 21.11.1, et seq.], or Article 1.15 (Parking Occupancy Tax) [Section 21.15.1, et seq.]. Prior to the execution of this Lease or the effective date of any extension of the term or renewal of this Lease, Lessor shall provide to Lessee proof satisfactory to the Real Estate Department that Lessor has the required TRC and that Lessor is not then currently delinquent in any tax payment required under the Tax Ordinances. Lessee may terminate this Lease if Lessee determines that Lessor failed to have the required TRC or was delinquent in any tax payments required under the Tax Ordinances at the time of entering into, extending the term of, or renewing this Lease. Lessee may also terminate this Lease at any time during the Lease Term if Lessor fails to maintain required TRC or becomes delinquent in tax payments required under the Tax Ordinances and Lessor fails to cure such deficiencies within the thirty (30) day period. For additional information regarding applicability of the City Business Tax Registration, contact the Office of Finance at (844) 663-4411.

1.7 Contractor Responsibility Ordinance. This Lease is subject to the Contractor Responsibility Ordinance ("CRO") (Section 10.40, et seq., of the Los Angeles Administrative Code "LAAC") and the rules and regulations promulgated pursuant thereto as they may be updated. Lessor shall comply with all of the provisions of the CRO and shall ensure that its subcontractors meet the criteria for responsibility set forth in the CRO and any rules and regulations promulgated thereto. Lessor may not use any subcontractor that has been determined or found to be a non-responsible contractor by Lessee. The listing of non-responsible contractors may be accessed on the internet at: <http://www.lacity.org/bidresp>. Failure to comply with the provisions of the CRO shall constitute a material breach of this Lease and Lessee shall be entitled to terminate this Lease and otherwise pursue legal remedies that may be available, including those set forth in the CRO.

1.8 Service Contract Worker Retention Ordinance. This Lease is subject to the Service Contract Worker Retention Ordinance ("SCWRO") (Section 10.36, et seq., of the Los Angeles Administrative Code). The SCWRO requires that, unless specific exemptions apply, all employers (as defined in the SCWRO) under contracts that are primarily for the furnishing of services to or for the City of Los Angeles and that involve an expenditure or receipt in excess of \$25,000 and a contract term of at least three (3) months shall provide retention by a successor contractor for a ninety-day (90- day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRO. Under the provisions of Section 10.36.3(c) of the Los Angeles Administrative Code, Lessee has the authority, under appropriate circumstances, to terminate this Lease and otherwise pursue legal remedies that may be available if Lessee determines that the subject contractor violated the provisions of the SCWRO.

F. All records relating to common area expense shall be kept in Los Angeles County, California, which will be available for the Lessee to audit. The Lessee shall have the right to audit common area expenses for the previous calendar year. If the audit determines that expenses are overstated, the Lessor will refund the over payment to Lessee. If the amount of over payment is greater than 10% of the actual expenses, then the Lessor will pay the costs of the audit.

G. Shopping Center Exclusives-

The following Shopping Center Exclusive uses have been granted to other (non-LADWP) tenants:

1 Aram Grigoryan DDS Exclusive Use.

"During the term of the Lease and any extension term, Landlord shall not Lease any portion of the Center to a tenant whose business relates to a dental office or orthodontic office or periodontic office or pedodontic office or endodontic office or oral surgery office."

2 LAJJ Ice Cream Exclusive Use.

"Provided Lessee is open and operating as an ice cream store and not in default of the Lease, Lessor shall not lease space to another tenant whose primary use is an ice cream and popsicles store. This exclusive shall not apply to the space currently occupied by Vallarta."

3 Stinkin Crawfish Exclusive Use.

"Provided Lessee remains in good standing under the Lease and maintains as its primary usage the sale of Cajun food or seafood for on-premises consumption, Lessor shall not hereafter lease space or approve the subleasing of space to another tenant in the Shopping Center which is allowed to sell Cajun food or seafood as its primary usage. This limitation shall not apply to any existing tenant's in the Shopping Center which are not limited by their leases from selling Cajun food or seafood, nor to their sublessees, assignees, or replacements. For the purpose of this paragraph, "primary shall mean" 50% or more of a tenant's total Gross Sales. In the event of a violation of this limited exclusive by Lessor, and in the event such violation continues for a period of ninety (90) days or longer, Lessee shall have the right to (A) terminate its Lease at its sole and exclusive remedy by providing to Lessor thirty (30) days prior written notice of its intention to terminate or (B) pay 50% of the then base rent until violation ceases. Notwithstanding the foregoing, if Lessor cures the violation within the notice period, the Lease shall remain in full force and effect."

4 Tutti Frutti Exclusive Use.

"Exclusive sales of self-serve frozen yogurt."

H. Lessor's Work: Lessor agrees to complete all of the work to the roof of the Premises identified as the "Scope of Work for Coating Installation" and "Option" in the report prepared by Prime Waterproofing & Roofing, dated July 17, 2020, attached hereto as Exhibit C ("Lessor's Work"). Lessor shall engage with and hire the roofing contractor within thirty (30) days after the Commencement Date of the Lease, and Lessor's Work shall be completed by Lessor within ninety (90) days after the Commencement Date of the Lease at Lessor's cost. After Lessor's completion and Lessee's acceptance of Lessor's Work, the Lessor will bill the actual costs of Lessor's Work to Lessee, and Lessee will reimburse Lessor for such costs within ninety (90) days as an additional rent payment. Notwithstanding the foregoing, Lessor agrees that the amount of Lessor's Work billed to Lessee will not exceed \$29,800.00.

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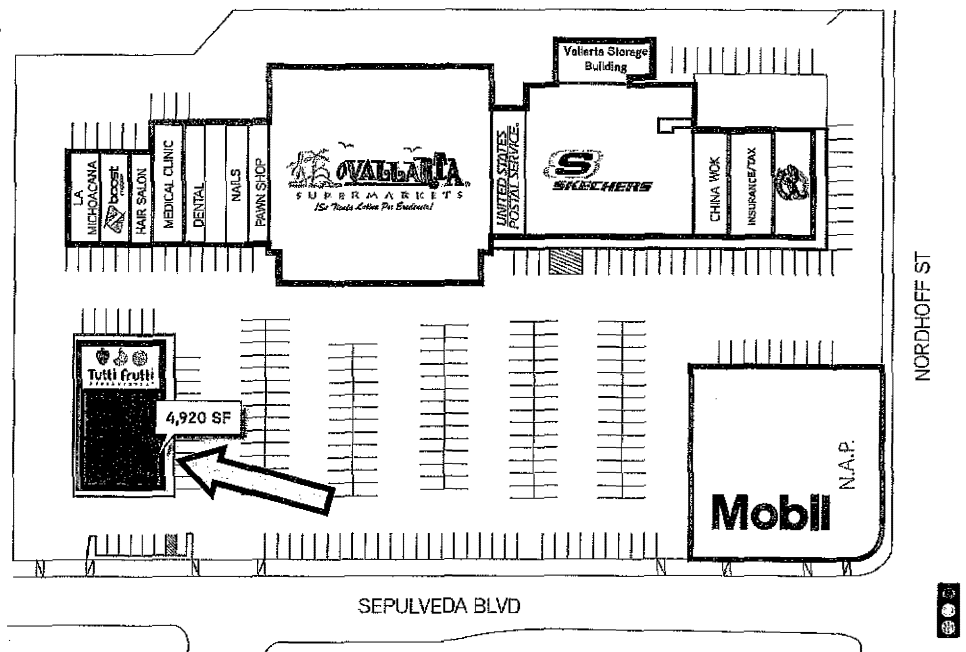

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Exhibit A - premises





CA #826928 AZ #ROC 232483 NV #0072533
www.primewaterproofing.com

July 17, 2020

Cyd Marindo
Property Manager
License No. 01879129
Dir +1 818 325 4128
Main +1 818 325 4100 | Fax +1 818 325 4000
cyd.marindo@colliers.com
Colliers International
16830 Ventura Blvd., Suite J | Encino, CA 91436 | USA

Location of maintenance coating system: **9154 Sepulveda Blvd., North Hills CA.**

SCOPE OF WORK FOR COATING INSTALLATION:
APPROXIMATELY 8,100 SQUARE FEET

1. Carefully inspect the roof surface, clean roof and drain sumps of all dirt, debris and abandoned trash.
2. Power wash area with detergent and 3000 PSI power washer.
3. Build up all locations of standing water with APP membrane and rigid insulation.
4. Replace all wood sleepers and set on buffer pads.
5. Seal all details and seams with acrylic mastic and reinforcement fabric.
6. Install in two passes Tropical #911 acrylic Title 24 compliant roof coating at 27 dry mils or 3 gallons per 100 square feet.
7. Clean out drains, reflash and flush with water to insure flow.
8. Coating to be installed up all parapet walls. Coat areas of standing water with silicone to prevent peeling.
9. Seal all related coping metal and counter flashings.
10. Clean up related debris.
11. Provide ten year warranty.

OPTION:

1. Replace roof hatch to match.

~~~~~  
ALL MATERIAL IS GUARANTEED TO BE AS SPECIFIED, AND THE ABOVE WORK TO BE PERFORMED IN ACCORDANCE WITH THE DRAWINGS AND/OR SPECIFICATIONS SUBMITTED FOR THE ABOVE WORK AND COMPLETED IN A SUBSTANTIAL WORKMANLIKE MANNER FOR THE SUM OF:

Coating system: **\$ 29,800.00 Twenty nine thousand eight hundred dollars.**

Roof Hatch: **\$ 1,915.00 One thousand nine hundred fifteen dollars**

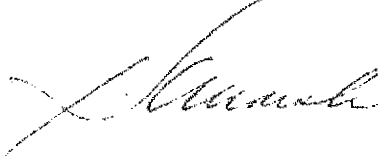
~~~~~  
WITH PAYMENTS TO BE MADE AS FOLLOWS:

Balance upon completion

Roofing and Waterproofing Services
8148 Phlox Street, Downey CA 90241 • Phone (562) 696-4473 • Fax (562) 696-6896

**PRIME WATERPROOFING
& ROOFING**

Respectfully submitted by,

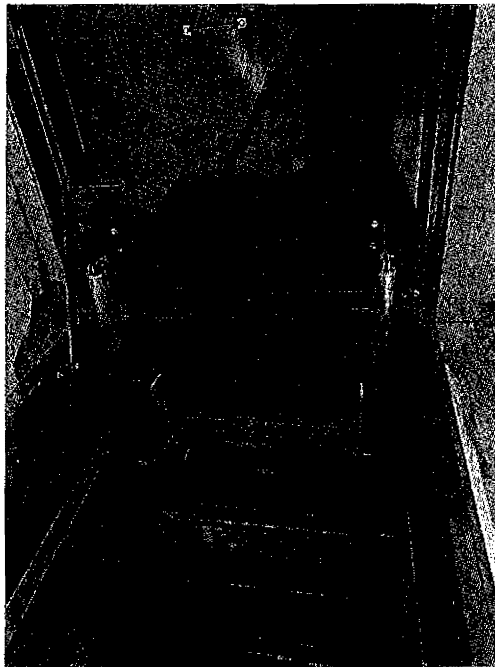


Hank Marsh
Prime Waterproofing & Roofing, Inc.

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**ACCEPTANCE OF PROPOSAL:** THE ABOVE PRICES, SPECIFICATIONS AND  
CONDITIONS ARE SATISFACTORY AND ARE HEREBY ACCEPTED PER THE ATTACHED  
GENERAL CONDITIONS. YOU ARE AUTHORIZED TO COMPLETE THE WORK AS  
SPECIFIED. PAYMENT WILL BE MADE AS OUTLINED ABOVE.

By:

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



PRIME WATERPROOFING  
& ROOFING



**General Terms and Conditions**

1. This proposal is given for acceptance within 30 days from date above. This proposal shall become a binding Contract between the parties when signed by both Purchaser and Authorized Representative. This Contract is Not Transferable.
2. **PARTIES AND SCOPE OF WORK**  
Prime Waterproofing & Roofing, Inc. (hereinafter called "Contractor"), shall mean the company performing the Work. "Work" means that specific labor and materials to be provided by the Contractor as set forth on the proposal. "Client" refers to the person(s) or business entity ordering the work to be done by Contractor and shall be responsible for the payment thereof. If the Client is ordering the work on behalf of another, the Client represents and warrants that the Client is the duly authorized agent of said party for the purpose of ordering and directing said work, unless otherwise stated in writing, the Client assumes responsibility for determining whether the nature of the work ordered by the Client is adequate and sufficient for the Client's intended purpose.
3. Contractor will not perform any environmental remediation under this agreement unless otherwise stipulated in the proposal.
4. **RIGHT OF ENTRY**  
The Client shall, provide rights of entry for Contractor and/or its representatives and necessary permissions in order for Contractor and/or its representative to complete its services.
5. **CHANGES IN WORK**
  - 5.1 Any modification to this Agreement which changes the costs, labor, materials, work to be performed or estimated completion date, must be in writing and signed by all parties hereto.
  - 5.2 Unless otherwise specified in writing, the price for the Work is based on the understanding that all structural members and other components are in fact in sound condition. If structural members or other



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components are in fact in sound condition, or if any unsound conditions are encountered that are not currently visible, then any labor and material necessary to correct such unsound conditions will be a modification to this Agreement. If Client and Contractor cannot agree to the terms of such modification, then this Agreement shall be terminated.

5.3 Client agrees that contractor has the right to be substitute materials with equal or superior quality materials should the materials listed in the description of the work become unavailable for any reason. Contractor has the right to make such substitution with notice to or permission from the client.

### **6. SCHEDULING OF WORK**

If Contractor is required to delay commencement of the Work or if, upon embarking upon its Work, Contractor is required to stop or interrupt the progress of the Work as a result of changes in the Work or to fulfill the requirements of third parties or due to strikes, accidents or other interruptions in the progress of construction, or other causes beyond the direct control of Contractor, additional charges may be applicable and payable by the Client and the approximate completion date of the Work shall be extended to take into account the period of delay damages. Delays caused by events beyond the direct control of Contractor do not constitute abandonment, and are not included in calculating time frames for payment or performance of the Work.

### **7. TERMINATION**

In the event of a change in Work occurs and the Client and Contractor are unable to reach agreement as to modification of this Agreement within twenty-one (21) days after Contractor gives written notice of such change in the Work to Client, this Agreement shall be immediately terminated on the 22<sup>nd</sup> day after such notice, and Client shall immediately pay the Contractor compensation based on Contractor's normal rates for any Work completed prior to the effective date of termination, including charges for both labor performed and materials purchased by Contractor prior to such date.

### **8. WARRANTY**

The Work will be performed in accordance with this Agreement, all applicable building codes, these General Conditions, and generally accepted practices. Contractor will comply with all local requirements for building permits, inspection and zoning. Workmanship is guaranteed as stipulated from date of installation. Contractor is not responsible for pre-existing conditions and makes no warranty whatsoever foregoing warranties and remedies are exclusive and in lieu of all other warranties, remedies, guaranties and liabilities, expressed or implied, arising by law or otherwise, including, without limitation, the implied warranties of merchantability and fitness for particular purpose, all of which are expressly excluded. All warranties are void if sums due to contractor are not paid in full, or unauthorized service, alterations or adjustments have been made to any of the work.

### **9. PAYMENTS**

9.1 If payments due under this Agreement are not paid in full within thirty (30) days of the date such payments are due. Contractor reserves the right to pursue all appropriate remedies, including stopping work on two (2) days prior written notice.

9.2 If at any time a payment due under this Agreement remains unpaid for a period in excess of thirty (30) days from the date of billing, interest at the rate of one and one-half percent (1.5%) per month (an effective maximum rate of eighteen percent (18%) per annum) will be charged on such past due amounts from the date billing until the past due amount is paid in full.

9.3 Timely payment of amounts due under this Agreement is a condition of this Agreement. Failure to make payments in full within the time limits stated above will be considered substantial non-compliance with the terms of this Agreement and will be cause for termination of this Agreement by Contractor if Contractor so chooses.

9.4 In the event a lien or suit is filed by Contractor to collect any amounts owed under the Agreement, Client agrees to pay Contractor's reasonable attorney's fees, plus all costs and other expenses incurred by Contractor in connection with such lien or suit.

### **10. LIMITATION OF LIABILITY**

10.1 Contractor shall not be liable for damages of any kind which result from fire, flood, strike, third parties, acts of god, acts for government, terrorism, acts of an alien enemy or by any other circumstances which are beyond the control of the contractor.

10.2 Contractor's liability for damages of any kind due to breach of warranty, Contract, error, omission or negligence or any tort shall be limited to a maximum of the total amount paid to contractor under this contract. Under no circumstances shall contractor be liable for special, indirect or consequential damages.

10.3 In the event Client desires to make any claim against Contractor, Client shall provide Contractor with



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written notice of the claim within seven days from the date Client, or its agents, first discovers the claim or the same shall be barred. Any claims against Contractor brought on this contract or in any way arising out of this contract must be filed within one year from the time the cause of action accrued or it shall time barred.

**11. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)**

Contractor carries CGL insurance written by Wells Fargo Insurance Services, USA, Inc. You may call the insurance company at (310) 543-8995 to check Contractor's coverage.

**12. WORKER'S COMPENSATION INSURANCE**

Contractor carries worker's compensation insurance for employees.

**13. INFORMATION ABOUT CONTRACTORS STATE LICENSE BOARD (CSLB)**

Go to: [www.cslb.ca.gov](http://www.cslb.ca.gov)

**NOTICE OF INFORMATION ABOUT CONTRACTORS STATE LICENSE BOARD**

CSLB is the state consumer protection agency that licenses and regulates construction contractors. You may contact CSLB for information about the licensed contractor you are considering; including information about dis-closable complaints, disciplinary actions and civil judgments that are reported to CSLB has authority to investigate the complaint. If you use an unlicensed contractor, CSLB may not be able to help you resolve your complaint. Your only remedy may be civil court, and you may be liable for damages arising out of any injuries to the unlicensed contractor or the unlicensed contractor's employees. For more information VISIT: CSLB's website at [www.cslb.ca.gov](http://www.cslb.ca.gov) CALL: CSLB at: 1-800-3321-CSLB (2752). WRITE: CSLB at P. O. Box 26000, Sacramento CA 95826.

**Exclusions**

1. Unless otherwise stipulated in the proposal, Contractor is not responsible for standing water left on the surface.
2. Any work that is not specifically included in Scope of Work shall not be any part of this Contract.
3. Unforeseen conditions below surface of deck or roof.
4. Unforeseen rotted structural members.
5. Backing out of deck fasteners.
6. Faulty mechanical units.
7. Prevailing wage.
8. Recalibrating satellite dishes.
9. Unless otherwise state in the Scope of Work, the cost of third party clearance testing is not part of the contract Amount.
10. Leakage as a result of non-roof or waterproofing related issues such as leaking mechanical units, interior plumbing, sprinklers, etc.
11. Replacement of skylights, roof hatches or coping metal unless otherwise indicated.
12. Replacement of falling or dislodged ceiling foil.
13. Abatement of asbestos or mold.