

**SUBMITTAL TO THE BOARD OF DIRECTORS OF THE
REDEVELOPMENT AGENCY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

410



FROM: Redevelopment Agency

SUBMITTAL DATE:
December 28, 2011

SUBJECT: Adoption of RDA Resolution No. 2012-001, Assignment of Lease – Mission Plaza

RECOMMENDED MOTION: The Board of Directors:

1. Consent to the Assignment of Lease dated November 10, 2011, from MC & Sammy Inc., Assignor to Jonathan Connell, Assignee;
2. Authorize the Chairman of the Board of Directors to execute the Consent; and
3. Authorize the Executive Director, or designee, to execute any subsequent additional documents necessary to expedite the Assignment.

BACKGROUND: (Commences on Page 2)

[Handwritten Signature]

Robert Field
Executive Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2011/12

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

[Handwritten Signature]
BY: Jennifer L. Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: ANITA C. WILLIS
DATE: 12/28/11
Departmental Concurrence

Policy
 Policy
 Consent
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

District: 2

Agenda Number **4.1**

BACKGROUND:

The Redevelopment Agency for the County of Riverside has received an Assignment of Lease from MC & Sammy Inc., Assignor, to Jonathan Connell, Assignee, for the lease between the Redevelopment Agency and MC & Sammy Inc., as Lessee, Dated June 13, 2005, and assigned to MC & Sammy Inc., by PWS, Inc., a California Corporation, Assignor. MC & Sammy Inc., Assignor and current tenant, wishes to assign lease to Jonathan Connell, Assignee. The pre-existing lease identifies Section 19, Assignment and Subletting, recognizes the tenant's right to request consent to assignment from landlord, which consent shall not be unreasonably withheld, conditioned or delayed allowing tenants right to assignment of lease.

Staff recommends that the Board of Directors consent to the assignment.

Compliance with the terms of this lease is an enforceable obligation of the Agency as the lease was entered into prior to the effective date of the California Supreme Court Stay which restricts the activities of redevelopment agencies. The Agency has an obligation to meet it's obligations under the lease.

Agency Counsel has approved the attached documents as to legal form.

Attachments:

Consent to Assignment
Assignment of Lease
Lease Agreement

CONSENT TO ASSIGNMENT

The REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE, a public body corporate politic in the State of California, (Lessor) hereby consents to the foregoing Assignment dated November 10, 2011, between MC & SAMMY, a California Corporation, as Assignor, and JONATHAN O'CONNELL, as Assignee, and without however, waiving the restrictions contained in said Lease dated June 2, 2004, for approximately 2,700 square feet situated on premises located at 5700 Mission Boulevard , Rubidoux California, with respect to any future assignments thereunder, and without releasing the Assignor under said lease from any obligations that are not performed by JONATHAN O'CONNELL, and otherwise accepts the Assignee, JONATHAN O'CONNELL, as Lessee under said Lease to all intents and purposes as though Assignee was the original Lessee thereunder.

Date: _____

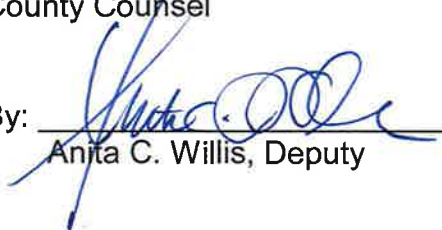
REDEVELOPMENT AGENCY FOR THE COUNTY OF RIVERSIDE, a public body corporate politic in the state of California

By: _____
Chairman, Board of Directors
John Tavaglione

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

FORM APPROVED
Pamela J. Walls
County Counsel

By: _____

By: 
Anita C. Willis, Deputy

ASSIGNMENT OF LEASE

For value received, the undersigned **MC & Sammy, Inc.** present Lessee in that certain lease dated **June 8, 2004**, which was executed by and between **Mission Plaza Properties, a California limited partnership**, Lessor, and **MC & Sammy, Inc., a California corporation**, Lessee, covering the premises located at **5700 Mission Boulevard, Riverside, CA.** does hereby assign all of their right, title and interest in and to said lease together with the options and lease security as set forth therein, to **Jonathan O'Connell**.

Dated this 10th day of November, 2011

MC & Sammy, Inc., a California corporation

Moo Chang

Moo Chang Lee, President

ASSUMPTION OF LEASE

For value received, and in consideration of the above assignment by the lessee, and in consideration of the written consent of the lessor thereto, the undersigned hereby assume and agree to make all the payments, and to perform all the terms, covenants and conditions of the foregoing lease, which the said lessee therein had agreed to be made and performed.

Dated this 10th day of November, 2011

Jonathan O'Connell

Jonathan O'Connell

909
645
7964

LEASE AGREEMENT

1. PREMISES.

1.1 Construction: The Premises leased to Tenant is to be constructed substantially in accordance with Exhibit B-1.

1.2 Location: Tenant's Premises shall be located as shown on Exhibit A. The parties acknowledge that Exhibit A describes the perimeter of the Shopping Center before the dedication or grant of easements for highways, streets, and public ways. Exhibit A sets forth a proposed general layout of the Shopping Center, and shall not be deemed a representation by Landlord that the Shopping Center shall be constructed as indicated thereon or that any tenants or occupants designated by name or nature of business thereon shall conduct business in the Shopping Center during the term of this Lease; and Landlord may in its sole discretion, increase, decrease, or change the number, locations, and dimensions of the buildings, the Premises therein, driving lanes, driveways, walkways, parking spaces and other improvements shown on Exhibit A, and Landlord reserves the right to make additions and alterations to all buildings constructed in the Shopping Center. Landlord's right in its sole discretion to change the nature, size, configuration or other aspects of the common area, shall include, without limitation the right to (i) underground or multideck the parking areas, (ii) close off any portion of such common areas for repairs or to such extent as may be legally sufficient in the opinion of Landlord's counsel to prevent a dedication thereof or the accrual of rights of the public or any person therein and/or designate certain portions of the parking areas for the exclusive use of specified tenants. Landlord reserves the right to enter the space above drop ceilings to install conduits, utilities and other items necessary to the operation of the Shopping Center so long as there is not an unreasonable interference with the business operations of Tenant. Such reservation in no way affects maintenance obligations imposed herein. Notwithstanding the above, such change(s) shall not effect Tenant's parking, accessibility or visibility.

1.3 Lease: Reference to "this Lease" include all exhibits and matters incorporated by reference as part of this Lease, and the Basic Lease Provisions appearing on the Face Page.

2. BUSINESS RIGHTS AND RESTRICTIONS.

2.1 Purpose: The Premises shall be used solely for the purpose set forth in Paragraph G under the trade name set forth in Paragraph D and for no other purpose or under any other name whatsoever.

2.2 Restrictions: Tenant shall not, without Landlord's prior written consent, (a) conduct any auction or bankruptcy sale, (b) conduct any fire sale except as a result of a fire on the Premises, (c) conduct any close-out sale except at the expiration of the lease term, (d) sell any so-called "surplus," "Army and Navy," or "secondhand" goods, as those terms are generally used at this time and from time to time hereafter, on or from the Premises, or (e) violate any restrictive use covenants.

2.3 Covenants and Easements: Tenant's consent shall not be required for the creation of any covenants, easements or rights of way which are created by or reasonably required by the action of any governmental authority. This Lease is subordinate and subject to any Reciprocal Easement Agreement executed by Landlord with respect to the Shopping Center.

2.4 Limitations on Use: No activity, occurrence or use shall be conducted or permitted on any part of the Premises which is obnoxious to, out of harmony with, or objectionable to the development or operation of the Premises and/or adjoining properties, including, without limitation, the following prohibited activities, occurrences and uses: (i) no merchandise shall be displayed or sold outside the enclosed building areas on the Premises; nor shall any use other than parking and landscaping, be made of any outside areas; (ii) no solicitation of any kind, distribution or handbills or other materials, shall be permitted outside the enclosed building areas on the Premises; (iii) no loud speakers or other sound which may be heard or experienced outside the enclosed building areas on the Premises and no nuisance, incineration, fires on or adjacent to the Premises, explosion, obnoxious odor or obnoxious noise shall be permitted; (iv) no auction, fire, bankruptcy, going out of business or similar sale shall be conducted or advertised; (v) nothing shall be done which shall be injurious to the Premises or adjoining properties or unlawful or contrary to public policy or to a law, ordinance, regulation or requirement of any public authority, or would constitute an extrahazardous use, or would violate, suspend or void any policy of insurance required to be carried on the Premises or which would increase the rate of insurance thereon, and if the insurance cost be increased by such an act, the increased cost of such insurance shall also be paid by Tenant; (vi) no use shall be made of the sidewalk area on the Premises other than pedestrian movement; (vii) there shall not be permitted the use by the public, as such, of the Premises or any part thereof without restriction or in such manner as might reasonably tend to impair Landlord's title to the Premises or in such manner as might reasonably make possible claim or claims of adverse usage or adverse possession by the public, as such, or of implied dedication of the Premises of any part thereof; (viii) no act or omission of Tenant shall permit any lien or encumbrance of any kind whatsoever to attach to the Premises; and (ix) no act or omission which would constitute a breach, or event which with passage of time, notice or either of them, would constitute a breach of any Reciprocal Easement Agreement.

2.5 Compliance with Laws: Tenant shall throughout the lease term, at Tenant's sole cost and expense, promptly comply with all laws and ordinances and notices, orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and officers thereof, and notices, orders, rules and regulations of the National Board of Fire Underwriters, or any other body now or hereafter constituted exercising similar functions, relating to all or any part of the Premises, exterior as well as interior, foreseen or unforeseen, ordinary as well as extraordinary, structural as well as non-structural, or to the use or manner of use of the Premises or to the sidewalks, curbs and access ways adjoining the Premises; if Tenant should at any time receive notice of non-compliance with any of the foregoing it shall promptly give a copy of the same to Landlord. Without limiting the generality of the foregoing, Tenant shall be in force at all times all licenses, consents and permits necessary for the lawful use of the Premises for the purposes herein provided and Tenant shall pay all income taxes, license fees, and other taxes which are or may be assessed, levied or imposed upon Tenant in connection with Tenant's operation of its business upon the Premises. Tenant shall likewise observe and comply with the requirements of all policies of public liability, fire and other policies or insurance at any time in force with respect to the Premises.

2.6 Certificate of Occupancy: In no event shall Tenant open for business unless and until Tenant shall have obtained a Certificate of Occupancy from the appropriate governmental authorities. Tenant shall provide Landlord with a copy of said Certificate of Occupancy within ten (10) days of its receipt by Tenant. The parties acknowledge any operation without a Certificate of Occupancy shall and is deemed to be a substantial material breach. Such action shall cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, in addition to all other remedies, Landlord may charge Tenant twice the minimum rent for the period Tenant is open for business without a Certificate of Occupancy, which the parties agree is a fair and reasonable estimate of the damage caused Landlord by such action. Acceptance of such rent shall not constitute a waiver of Tenant's default.

2.7 Right to Relocate: During any of the three (3) five (5) years Options to Extend, Landlord reserves the right, upon ninety (90) days prior written notice to Tenant, to relocate Tenant to another location in the Shopping Center of approximately the same size as the original Premises described herein with similar parking, availability and accessibility. Any relocation shall be at the sole cost and expense of Landlord and Tenant's minimum rent will be abated for a period of three (3) months commencing upon the completion of Tenant's relocation in the Shopping Center. In the event Tenant declines such a move, it shall inform Landlord within thirty

(30) days of the receipt of the above described written notice. Landlord shall then have the election to either terminate this Lease upon thirty (30) days written notice to Tenant which notice shall be given within thirty (30) days receipt of Tenant's Notice of Refusal or in the alternative Landlord may withdraw its Notice of Relocation.

3. TERM.

- 3.1 a. Lease Commencement: This Lease is a binding contract upon execution (hereinafter called "Commencement Date"). Landlord shall tender possession of the Premises to Tenant upon Landlord's receipt of a fully executed Lease and the first month's rent (the "Delivery Date").
- b. Duration: The term of the Lease shall be for a period of years set forth in Paragraph H commencing on the date minimum rent commences pursuant to Paragraph 4.1a below.
- c. Last Month: If the last day of the term of the Lease falls on a day other than the last of a calendar month, then the Lease shall be extended such that the expiration date shall be the last day of said calendar month.

3.2 Intentionally Deleted.

3.3 Security Deposit: Upon Assignment of the Lease, Tenant shall deposit with Landlord the sum set forth in Paragraph J as security for the faithful performance of obligations of Tenant under this Lease. This security deposit shall not constitute payment of the last month's rent hereunder. If on the expiration of the term, or any extension thereof, Tenant shall have fully performed all of Tenant's obligations hereunder then the security deposit, without interest, shall be returned to Tenant less the standard post move out cleaning charge of Two Hundred Fifty Dollars (\$250.00). Landlord shall have the right to but need not apply the deposit to pay any default of Tenant hereunder, and if Landlord does so apply the deposit Tenant shall, upon demand, immediately deposit with Landlord an amount of cash equal to the amount so applied so that Tenant shall at all times have on deposit with Landlord the amount herein specified as security. At Landlord's election, and upon thirty (30) days prior notice to Tenant, the Security Deposit shall be increased in accordance with the formula for adjustment of Minimum Monthly Rent as described in Paragraph 4.1(b). In the event that Tenant is in default under this Lease more than two (2) times in any twelve (12) month period, then in each such instance, Landlord shall have the right to increase Tenant's security deposit by an amount equal to the security deposit existing on file with Landlord at the time of such second default in any twelve (12) month period.

4. RENT.

4.1 Amount: Tenant shall pay Landlord without prior demand, deduction, set-off, counterclaim or offset during the lease term the rent provided in this Paragraph 4.1: and all other additional sums as provided in this Lease.

- a. "Fixed Minimum Rent," "Minimum Rent" or "Monthly Minimum Rent," as used herein, shall mean the monthly rate provided in Paragraph I. of the Basic Provisions, payable on the first day of each month during the term. Fixed Minimum Rent shall commence upon the earlier of (i) the date that Tenant opens for business on the Premises or (ii) one hundred twenty (120) days after the Delivery Date of the Premises ("Rent Commencement Date"). The first full calendar month's installment of Minimum Rent shall be prepaid on the execution of this Lease. The first partial month's installment of Minimum Rent, if any, shall be paid when due pursuant to the terms of this Lease. Fixed Minimum Rent does not include any other payments due under this Lease (i.e., common area charges, taxes, insurance, etc. which are payable from the Rent Commencement Date) other than the amount stated in Paragraph I of the Basic Lease Provisions.
- b. Fixed Minimum Monthly Rent shall be adjusted on the the fifth (5th) anniversary of the Delivery Date and every year thereafter on the anniversary of the Delivery Date. The first adjustment on the fifth (5th) anniversary of the Delivery Date shall be computed as follows:

The base for computing the adjustment is the Consumer Price Index for All Urban Consumers in the Los Angeles-Anaheim-Riverside Area, published by the United States Department of Labor, Bureau of Labor Statistics (1982/84 = 100) ("Index"), which is published for the month three (3) months prior to the Commencement Date ("Beginning Index") of this Lease. For the first increase, if the Index published for the month three (3) months prior to the "Adjustment Date" ("Extension Index") has increased over the Beginning Index, the Fixed Minimum Monthly Rent for the following twelve (12) month period shall be set by multiplying the Minimum Monthly Rent for the initial five (5) years of the term by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index. In no case shall the adjusted monthly rent be less than the Minimum Monthly Rent for the initial five (5) years of the Term or more than one hundred twenty percent (120%) of such Minimum Monthly Rent for the initial five (5) years of the Term.

If the Index is changed so that the base year therefor differs from that used for the month which is three (3) months prior to the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other governmental index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised. In the event Landlord and Tenant fail to agree upon the use of a substitute Index, the selection of the same shall be determined by the Presiding Judge of the Superior Court of the State of California in Los Angeles County or by a Judicial officer designated by him, and such decision shall be final and conclusive upon the parties. The effect of any such decision shall be retroactively applied to the fifth (5th) anniversary of the Delivery Date.

Each year thereafter on the anniversary of the Delivery Date, commencing with the sixth anniversary of the Delivery Date, Fixed Minimum Rent shall be increased annually by an amount equal to three percent (3%) of the Fixed Minimum Rent for the immediately preceding year.

- 4.2 First Partial Month: If Fixed Minimum Rent shall commence on a day other than the first day of a calendar month:
- a. Fixed Minimum Rent for the first partial month shall be prorated on the basis which the number of days of the term of this Lease in such month bears to thirty (30), and as so prorated shall be paid on the first day of the following month.
- b. Tenant's gross sales for the first partial month shall be included as gross sales for the first lease year of this Lease, and the daily minimum rent provided in Paragraph 4.2(a) shall be deducted in computing the percentage rent payable for that lease year.

4.3 Lease Year:

a. "Lease Year" shall mean that period of twelve (12) consecutive months the first commencing with the first day of the first full calendar month of the Term and successive Lease Years commencing on the succeeding anniversary thereof

4.4 Intentionally Deleted.

4.5 Intentionally Deleted.

4.6 Intentionally Deleted.

4.7 Intentionally Deleted.

4.8 Intentionally Deleted.

4.9 Definition of Rent: The term, "rent", whenever used in this Lease, shall also mean Percentage Rent and all other charges payable by Tenant in addition to Fixed Minimum Rent, including Tenant's share of real estate taxes, insurance and common area charges whether or not the same be designated as rent. Unless otherwise provided in this Lease, all rent except Fixed Minimum Rent shall commence upon the date of delivery of the Premises to Tenant. The date Fixed Minimum Rent shall commence shall be set forth in Section 4.1(a), above.

Landlord's Initials: AS
Tenant's Initials: C

4.10 **Accord and Satisfaction:** No payment by Tenant or receipt by Landlord of a lesser amount of monthly rent or any other sum due hereunder, shall be deemed to be other than a payment of the earliest due rent or payment, nor shall any endorsement or statement on a check or any letter accompanying any such check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in equity. Landlord may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law.

5. **COMMON AREA.**

5.1 **Definition:** The common area is that area within the Shopping Center which is neither occupied by buildings (excluding roof overhangs and canopies, columns supporting roof overhangs and canopies, and subsurface foundations; enclosed hallways and restrooms not located within the Premises of a single tenant, all of which shall be deemed to be a part of the common area) nor devoted permanently to the exclusive use of a particular tenant, except that areas containing pylon signs and buildings or structures which are used with respect to the operation of the common area shall be deemed to be part of the common area. The common area includes any area designated as a building area on Exhibit A until such time as it is improved with a building.

5.2 **Intentionally Deleted.**

5.3 **Use:** During the lease term Tenant, its subtenants, concessionaires, licensees, invitees, customers, and employees shall have the nonexclusive right to use the common area in common with Landlord, other owners of portions of the Shopping Center, other tenants, and their respective subtenants, concessionaires, licensees, invitees, customers, and employees, subject to the provisions of this Lease.

5.4 **Maintenance:** Subject to reimbursement by Tenant as set forth in this Lease, Landlord shall pay and be responsible for maintaining all improvements on the common area in good and sanitary order, condition, and repair, including making replacements as Landlord deems necessary or desirable, including without limitation, (1) managing, (2) cleaning and removing rubbish and dirt, (3) labor, payroll taxes, materials, and supplies, (4) all utility services utilized in connection therewith, including sewer service fees, (5) maintaining, repairing, and replacing paved and unpaved surfaces, curbs, directional and other signs, landscaping, water, lighting facilities, drainage, and other similar items, (6) all premiums on compensation, casualty, public liability, property damage, and other insurance on the common area, (7) rental cost for or straight-line depreciation on tools, machinery, and equipment used in connection with the above, (8) all real property and personal property taxes and assessments levied or assessed against the common area, and (9) any regulatory fee or surcharge or similar imposition imposed by governmental requirements based upon or measured by the number of parking spaces or the areas devoted to parking in the common area, (10) policing the parking areas (including costs of security guards, if necessary), (11) replacements, alterations or additions made in compliance with governmental requirements (the cost of such items to be depreciated or amortized as part of common area costs instead of direct costs if appropriate under generally accepted accounting principles), (12) Christmas decorations, holiday decorations, promotional and Shopping Center grand opening costs, removal of hazardous or toxic materials. For its services so rendered, Landlord shall be entitled to an administration fee equal to ten percent (10%) of the additional charges (excluding real estate taxes and insurance expenses) due pursuant to this Lease.

Notwithstanding any of the foregoing, if Tenant causes additional costs by reason of its operation, such as insurance, security or lighting for abnormal operating hours, Landlord may in its discretion charge such costs directly to Tenant.

5.5 **Records:** Landlord shall keep accurate records showing in detail all expenses incurred for such maintenance for a period of three (3) years or the maximum amount of time required by law. These records shall, upon reasonable request, be made available during business hours at the offices of Landlord for inspection by Tenant.

5.6 **Tenant's Contribution:** The contribution for expenses by major tenants, if any, shall be deducted from the total expenses before other tenants pro-rata shares are calculated and the square footage of such major tenants shall not be included in the total square footage of the Shopping Center for calculating Tenant's pro-rata share of common area costs. Additionally, with respect to specific common area expenditures, Landlord shall have the right, at its reasonable option, to exclude from the total square footage of the Shopping Center the square footage of any premises in which the occupant of such premises does not in any way benefit from the expenditure, in which case, for purposes of such expenditure(s), Tenant's pro-rata share shall be calculated after excluding the square footage of such occupant(s) who do not benefit from such expenditure(s). Tenant's pro-rata share shall be calculated at based on the ratio which Tenant's floor area specified in Paragraph F of the Basic Provisions, bears to the total floor area in the Shopping Center described in Paragraph E (adjusted for major tenants and any non-benefitting tenants as set forth above and exclusive of outside sales areas, basements and mezzanines). Tenant shall pay to Landlord within three (3) days after delivery of Landlord's statement, but not more often than monthly, Tenant's pro-rata share of the amount of all expenses described in Paragraph 5.4 together with estimated taxes per Section 6.2 and estimated insurance per Section 9.3 based either on (a) the amount of such expenses actually incurred for the billing period, or (b) equal periodic installments which have been estimated in advance by Landlord for a particular calendar year, in which event Landlord shall within ninety (90) days after the end of such year, adjust the estimated expenses to reflect the actual expenses incurred for such year. The definition of "major tenant" for purposes of this Paragraph 5.6 is a tenant that occupies 15,000 square feet or more of floor area.

5.7 **Operation and Control:** Landlord shall have general possession and control of the entire common area and may from time to time adopt rules and regulations pertaining to the use thereof. Landlord shall, except as otherwise provided herein, operate and maintain the common area during the lease term. The manner in which the common area shall be operated and maintained and the expenditures therefor shall be in the Landlord's reasonable discretion. Landlord reserves the right to appoint a substitute operator, including but not limited to, any tenant in the Shopping Center, to carry out any or all of Landlord's rights and duties with respect to the common area as provided in this Lease; and Landlord may enter into a contract either by a separate document or in a lease agreement with such operator on such terms and conditions and for such period as Landlord shall deem proper, and if Landlord does so, Landlord shall pay the charges therefore from the management fees described in Paragraph 5.4.

5.8 **Employee Parking:** Landlord may designate what part of the common area, if any, shall be used for automobile parking by tenants, owners, occupants, licensees and/or their employees. No tenant (including Tenant), owner, occupant, licensee and/or any employee of any such tenant, owner, occupant, or licensee shall use any part of the common area for parking except such area or areas as may be so designated. As part of the Rules and Regulations, Landlord may require Tenant to supply a list of license plate numbers of its owners', occupants', licensees' and employees' automobiles, and Landlord shall have the right to a) tow any automobile(s) illegally parked without liability to Tenant or the automobile owner, and/or b) impose fines or charges on Tenant for illegally parked automobiles owned by Tenant or any owner, occupant, employee or licensee of Tenant.

5.9 **Obstructions:** No fence, wall, structure, division, rail or obstruction shall be placed, kept, permitted or maintained upon the common area or any part thereof by Tenant; nor shall the sale, display, advertising, promotion, or storage of merchandise or any business activities of any kind whatsoever be conducted therein without Landlord's prior written consent; nor shall Tenant permit any person to use the common area for solicitations, demonstrations, or any other activities that would interfere with the conduct of business in the Shopping Center or which might tend to create civil disorder or commotion.

6. **TAXES.**

6.1 **Personal Property Taxes:** Tenant shall pay before delinquency all license fees, public charges, property taxes and assessments on the furniture, fixtures, equipment and other property of or being used by Tenant at any time situated on or installed in the Premises.

6.2 **Real Property Taxes:**

- a. Tenant shall pay as additional rent any and all real property taxes and general or special assessments, and installments thereof (including any tax or assessment imposed as a result of Tenant's business operation, or upon its trade fixtures, leasehold improvements, merchandise and/ or other personal property located in, on or upon the Premises, and including any tax on rent whether or not substituted in whole or in part for real property taxes or assessments and any license fee imposed by a local governmental body on the collection of rent, and excluding federal and state income taxes), which shall during the lease term be levied or assessed against all or any portion of the Premises or imposed on Landlord. Said real property taxes and assessments for the first and last lease years hereunder shall, if necessary, be prorated and apportioned between Landlord and Tenant to coincide with the commencement and expiration of the lease term. Tenant shall pay its estimated share of taxes, monthly, as part of common area maintenance charges pursuant to Section 5.6. Tenant hereby acknowledges that its estimated share of taxes may include an amount reasonably estimated by Landlord to reflect a "supplemental assessment" due to the transfer or remodel of the Shopping Center, and that such portion of the estimated taxes payable by Tenant shall be reconciled at the end of the year that the bill from the County Assessor fixing such special assessment is received by Landlord.
- b. Tenant shall be liable only for that portion of the taxes and assessments attributable to the Premises based upon individual assessment valuations (proration) supplied by the County Assessor. Said proration shall be conclusive upon both parties unless the parties otherwise mutually agree in writing. In the absence of a proration supplied by the County Assessor or a written agreement by the parties, Tenant's share shall be determined by multiplying the amount payable set forth in the tax bill by a fraction in which the numerator is the floor area of the Premises, as specified in Paragraph F, and in which the denominator is the floor area of all premises included in the tax bill, or (ii) the floor area of all premises in the Parcel.
- c. If the Premises are separately billed pursuant to a segregation, Tenant shall pay as additional rent the amount of such taxes and assessments directly to the tax collector. If the Premises are not separately assessed, Tenant shall pay Tenant's share of such taxes and assessments to Landlord as specified above. Each party shall furnish the other, upon written request, evidence of payment of such taxes and assessments.
- d. Tenant acknowledges and understands that in the event Landlord should at any time in the future sell the Premises, then pursuant to California Constitution Article XIII A (Proposition 13, Jarvis-Gann Initiative) there would probably be a substantial increase in the real property taxes which will be pro-rata borne by Tenant. Landlord expressly retains the right to sell or otherwise transfer the Premises and/or the Shopping Center, and neither Landlord nor its purchaser shall have any liability to Tenant should Tenant's liability for real property taxes be increased by reason of such sale or transfer.

6.3 **Business Taxes:** Tenant shall pay all special taxes and assessments or license fees levied, assessed or imposed by law or ordinance, by reason of the use of the Premises for the specific purposes set forth in this Lease.

7. **UTILITIES.** Commencing on the Delivery Date, Tenant shall pay as additional rent before delinquency all charges for water, gas, heat, air cooling, electricity, power, telephone, sewer service fees, and any other utility services used on or serving the Premises during the lease term, including hookup or connection fees. If any utility is not separately metered, Tenant agrees to reimburse Landlord for the costs of such service, as Landlord shall reasonably determine to be Tenant's share thereof, within ten (10) days of Tenant's receipt of a request for such reimbursement. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being furnished to the Premises. Nothing contained in this Lease shall limit Landlord in any way from granting or using easements on, across, over, and under the Shopping Center for the purpose of providing utility services. If Tenant operates any type of food service operation Tenant shall install and maintain at Tenant's expense, a grease trap.

Notwithstanding any of the foregoing, if Tenant causes additional and/ or excessive utility costs by reason of its operation, Landlord may in its discretion charge such additional costs directly to Tenant.

8. **REPAIRS, MAINTENANCE, ALTERATIONS.**

8.1 **Landlord's Repairs:** Landlord shall keep in good condition and repair the foundation, roof and exterior and bearing walls of the Premises at Landlord's sole cost and expenses. Subject to reimbursement by Tenant as set forth in this Lease, Landlord shall perform major parking lot repairs and replacements, and will paint the exterior of the Premises. The cost of such repairs, painting and any necessary replacements shall be a portion of the common area expense as specified in Paragraph 5 above. Because of the substantial cost of any such repairs and the long time between the necessity for such repairs, Tenant's non-refundable contribution toward such repairs is hereby established at the rate of ten percent (10%) of all other common area maintenance charges computed per Section 5.4 above. Any portion of the Tenant's contribution not expended in any year shall be reserved for future expenses so that Tenant's contribution to the common area charge for repairs and replacements made under this Paragraph 8 shall not exceed said amount unless the cost of such replacements has exhausted the repair and replacement reserve created by this charge. This contribution is in addition to Tenant's contribution to common area expenses as set forth in Paragraph 5. No portion of said contribution shall be returned to Tenant upon termination of this Lease, whether or not fully expended at that time. Landlord may, at its option, employ a roof maintenance service company and/ or an air conditioning service company to provide preventative maintenance for roofs and/ or air conditioning units. Costs of said services shall be included in the common area charges and shall be prorated pursuant to Paragraph 5.6. For purposes of this particular proration, floor area of any premises not included in said roof maintenance service or air conditioning service shall be excluded from denominator.

8.2 **Tenant's Repairs:** Except as expressly provided in Paragraph 8.1, and subject to Landlord's prior written approval thereof, Tenant shall make all required repairs, replacements or additions of any kind whatsoever upon the exterior or interior of the Premises including, but not limited to all utility meters, pipes and conduits, all fixtures, plumbing, sewage and electrical systems servicing the Premises (whether or not located in the Premises), air conditioning, heating and ventilation equipment serving the Premises and any other equipment therein, and any equipment installed by Tenant which is part of such system, the storefront, ceiling, walls, partitions, floors, sprinklers, all signs, locks and closing devices, all window sashes, casements or frames, all glass doors and door frames, all floor coverings, including carpeting, terrazzo or any other special flooring, and all items of repair, maintenance and/ or alteration as well as any and all improvements or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction over the Premises and/ or the Shopping Center, including all replacements or additions required pursuant to the Americans with Disabilities Act (42 USC sections 12101 et seq.) ("ADA"). All glass, both exterior and interior, is at the sole risk of Tenant, and any glass broken shall be promptly replaced by Tenant with glass of the same type, size and quality. Tenant shall be responsible for pest control within its Premises. Tenant shall be liable for any interior damages caused by roof leaks. Unless Landlord elects to provide a Shopping Center trash removal service as part of the Common Area Maintenance set forth in Paragraph 5.4 above, Tenant shall provide its own daily trash removal service sufficient to remove the rubbish generated by Tenant, its employees, and invitees. In the event that Landlord does not elect to employ an air conditioning service company to provide preventative maintenance for the air conditioning unit(s) as provided by Paragraph 8.1 above, then Tenant shall employ an air conditioning service company to provide preventative maintenance for its air conditioning unit(s) and shall provide Landlord with a copy of said service contract.

Should Tenant fail to make such repairs, replacements or additions or otherwise maintain the Premises within three (3) days after written demand by Landlord, or should Tenant commence but fail to complete any repairs, replacements or additions within a reasonable time after written demand by Landlord (in no event to exceed one hundred twenty [120] days), Landlord may make any

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repairs, replacements or additions, without liability to Tenant for any loss or damage that may accrue to Tenant's stock or business as a result thereof, and Tenant shall pay to Landlord, as additional rental, the costs incurred by Landlord in the making of such repairs, replacements or additions, together with a management fee in an amount equal to fifteen percent (15%) of the costs incurred by Landlord, plus interest at the maximum legal rate from the date of commencement of the work to and including the date of payment.

- 8.3 **Alterations:** Tenant shall not make any alterations, changes or improvements (collectively called "improvements") in or to the interior or exterior of the Premises without the prior written consent of Landlord. All improvements shall become part of realty upon installation thereof. Any interior work which may affect the air conditioning system must receive Landlord's prior written consent and shall be accomplished at Tenant's sole risk. Tenant must utilize and pay Landlord's roofing contractor to perform any roof penetrations and to repair and/or restore the roof. Tenant shall be liable for any consequential damages as a result of these improvements.
- 8.4 **Notice:** Before the commencement of any improvements, Tenant at its cost, shall furnish to Landlord a Performance and Completion Bond issued by an insurance company qualified to do business in California, in a sum equal to the cost of the improvements (as determined by the construction contract between Tenant and its contractor) guaranteeing the completion of the improvements free and clear of all liens and other charges, and in accordance with the plans and specifications. The improvements shall be performed in a manner that will not interfere with the quiet enjoyment of the other tenants of the Shopping Center. Tenant shall give Landlord not less than ten (10) days' notice in writing prior to the commencement of the improvements and Landlord shall have the right to post a Notice of Non-Responsibility in or on the Premises, as provided by law and the costs incurred by Landlord in procuring and recording such Notice shall be immediately payable by Tenant to Landlord as additional rent.
- 8.5 **Status of Alterations:** Any improvements made shall remain on and be surrendered with the Premises on the expiration or termination of the term, except that Landlord can elect within thirty (30) days before the expiration of the term, or within thirty (30) days after termination of the term, to require Tenant to remove any Improvements that Tenant has made to the Premises. If Landlord so elects, Tenant, at its cost, shall restore the Premises to the condition specified in Paragraph 21.
- 8.6 **As Built Plans:** On completion of any work of alteration, addition or improvement by Tenant, or any subtenant, Tenant shall supply Landlord with "as built" drawings accurately reflecting all such work.
9. **INSURANCE.**
- 9.1 **Liability Insurance:**
- a. Tenant shall during the lease term maintain in full force a policy or policies of comprehensive liability insurance issued by one or more insurance carriers, insuring against liability for injury to or death of persons and loss of or damage to property occurring in or on the Premises and any portion of the common area which is subject to Tenant's exclusive control. Said liability insurance shall be in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily and personal injury and property damage, which amount may be reasonably increased from time to time by Landlord.
- b. Landlord shall during the lease term, subject to reimbursement from tenants, maintain in full force a policy or policies of comprehensive liability insurance issued by one or more insurance carriers, insuring against liability for injury to or death of persons and loss of or damage to property occurring in or on the common area, except any portion thereon subject to Tenant's exclusive control. Said liability insurance shall be in an amount of not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily and personal injury and property damage. The cost thereof shall be included within the common area expense provisions of Paragraph 5.6.
- 9.2 **Worker's Compensation Insurance:** Tenant shall at all times maintain Worker's Compensation Insurance in compliance with California law with limits of not less than One Hundred Thousand Dollars (\$100,000.00).
- 9.3 **Fire Insurance:**
- a. Landlord shall pay for and shall maintain in full force and effect during the term of this Lease a standard form of extended coverage endorsement and standard form of lender's loss payable endorsement issued to the holder or holders of a mortgage or deed of trust secured by the Premises and on all or part of the Shopping Center in an amount equal to the full replacement cost (without deduction for depreciation) of the Premises (which may include, at Landlord's option, but not be limited to malicious mischief, special extended coverage, earthquake, environmental, and sprinkler leakage coverage), and rental insurance equal to Fixed Minimum Rent plus Tenant's share of insurance, taxes and other common area maintenance expenses for up to one (1) year. Tenant shall reimburse Landlord for premiums incurred by Landlord for such insurance, and for any deductible paid by Landlord in the event of a claim, as part of common area expense provisions of Paragraph 5.6. If such insurance covers premises in addition to Tenant's Premises, Tenant's share of the premiums shall be based on the premium allocation made by the insurance carrier or insurance broker, and if the carrier or insurance broker does not make such allocation, then at Landlord's election, on the basis which Tenant's floor area, specified in Paragraph F, bears to either (i) the total occupied floor area covered by such insurance, or (ii) the total occupied floor area in the Parcel.
- b. Tenant shall pay for and shall maintain in full force and effect during the term of this Lease a standard form policy or policies of fire, extended coverage and vandalism, with standard form of extended coverage endorsement covering all stock in trade, trade fixtures, equipment, and other personal property located in the Premises and used by Tenant in connection with its business.
- 9.4 **Waiver of Subrogation:** Each party ("insured") hereby waives its entire right of recovery against the other party, the other party's officers, directors, agents, representatives, employees, successors and assigns with respect to any loss of damage, including consequential loss or damage, to the insured's property caused or occasioned by any peril or perils (including negligent acts) covered by any policy or policies carried by the insured.
- 9.5 **General Requirements:**
- a. All policies of insurance to be carried hereunder by Tenant shall be written by companies satisfactory to Landlord and licensed to do business in California, and holding a Best's Policy Holding Rating of "A" and a size category of "XIV" or better.
- b. Each policy of public liability insurance required to be carried under Paragraphs 9.1(a) and (b) shall be primary and noncontributing with the insurance carried by the other party, except for automobile liability insurance carried by the other party, and shall be excess over such automobile liability insurance.
- c. The policy required under Paragraph 9.1(a) shall expressly include, severally and not collectively, as named or additionally-named insured thereunder, Landlord and any person or firm designated by the Landlord and having an insurable interest thereunder, hereinafter called "additional insured," as their respective interests may appear.
- d. Said insurance shall not be subject to cancellation or reduction in coverage except upon at least thirty (30) days prior written notice to each additional insured. The policies of insurance or duly executed certificates evidencing them, together with satisfactory evidence of the payment of premiums thereon, shall be deposited with each additional insured at the commencement of the term and not less than thirty (30) days prior to the expiration of the term of such coverage. If the primary insured fails to comply with this requirement, any additional insured may obtain such insurance and keep it in effect, and the primary insured shall pay to the additional insured the premium cost thereof upon demand with interest from date of payment by the additional insured to the date of repayment by the primary insured.

e. If Tenant fails to provide an appropriate certificate of insurance at least fifteen (15) days prior to the commencement of the term and each renewal thereof Landlord may procure such insurance and add the cost thereof to the next monthly rent due from Tenant with interest.

9.6 **Blanket Insurance:** Each party shall be entitled to fulfill its insurance obligations hereunder by maintaining a so-called "blanket" policy or policies of insurance in such form as to provide by specific endorsement coverage not less than that which is required hereunder for the particular property or interest referred to herein.

10. **DAMAGE AND RESTORATION.**

10.1 **Duty to Restore:** If the improvements on the Premises or the Shopping Center are partially or totally damaged by fire or other casualty so as to become partially or totally untenantable, which damage is insured against under any policy of fire or extended coverage insurance then covering the damaged improvements, this Lease shall not terminate and said improvements shall be rebuilt by Landlord with due diligence at Landlord's expense unless Landlord elects to terminate this Lease as provided in Paragraph 10.2.

10.2 **Election to Terminate:** If the improvements on the Premises or the Shopping Center, whether or not the Premises are a part thereof, are damaged by an insured casualty to the extent of at least twenty-five percent (25%) of their replacement cost (cost to repair or replace at the time of loss without deduction for physical depreciation) during the term of this Lease other than during the last three (3) lease years of said term, or to the extent of at least ten percent (10%) thereof during the last three (3) lease years of said term or to any extent by an uninsured cause at any time during the lease term, or by an insured or uninsured cause during any extension or renewal of the lease term, Landlord shall, within not more than ninety (90) days after such damage, notify Tenant of Landlord's election to terminate this Lease or to restore the improvements on the Premises and such portion of the improvements in the balance of the Shopping Center as in Landlord's sole discretion is necessary to create an economically feasible commercial unit. If Landlord elects to repair or restore the damaged improvements, then with respect to the Premises, Landlord and Tenant each shall restore them in the same manner and to the same extent as work was done by each of them in the original construction and fixturing of the improvements. If Landlord elects not to restore as aforesaid, this Lease shall terminate effective as of the date of such damage upon the giving of notice of election by Landlord as aforesaid. If Landlord elects to restore or fails to give notice of its election as aforesaid, then this Lease shall remain in full force and effect.

10.3 **Rent After Damage:** If this Lease is not terminated as provided in this Paragraph 10, then during the period of repair and restoration the Fixed Minimum Rent and the common area expense reimbursement shall be proportionately reduced or abated in the same proportion that Tenant is unable to use the Premises.

11. **FLOOR AREA DEFINED.** "Floor Area" or "floor area" means (a) as to each building or part thereof within the Shopping Center, including Tenant's Premises, the actual number of square feet of ground floor space measured to the exterior faces of exterior walls and to the center of party walls, including columns, stairs, elevators and escalators, excluding exterior ramps and loading docks, and (b) the actual number of square feet of any area in the Shopping Center exclusively used by a particular tenant, measured from the exterior faces of outside walls, fences, or boundary markers. If there is more than one floor, the area of each floor shall be included (excluding mezzanines).

12. **EMINENT DOMAIN.**

12.1 **Definition:** If there is any taking of or damage to all or any part of the Shopping Center or any interest therein because of the exercise of the power of eminent domain or inverse condemnation, whether by condemnation proceedings or otherwise, or any transfer of any part thereof or any interest therein made in avoidance thereof (all of the foregoing being hereinafter referred to as "taking") before or during the term hereof, the rights and obligations of the parties with respect to such taking shall be as provided in this Paragraph 12.

12.2 **Total Condemnation:** If there is a taking of all of the Premises, this Lease shall terminate as of the date of such taking.

12.3 **Partial Condemnation:** If twenty-five percent (25%) or more of the floor area of Tenant's Premises shall be taken, either party shall be entitled to terminate this Lease, or if twenty-five percent (25%) or more of the floor area of all buildings in the Shopping Center shall be taken whether the Premises are taken or not, Landlord shall be entitled to elect to terminate this Lease; and the terminating party shall give the other party written notice of such election not later than thirty (30) days after the date Landlord delivers notice to Tenant that possession or title to the portion of the Premises taken has vested in the condemnor. If neither party gives such notice or less than twenty-five percent (25%) of the floor area of either the Premises or buildings in the Shopping Center shall be taken, this Lease shall remain in full force and effect and rent shall be adjusted as provided in Paragraph 12.7.

12.4 **Common Area:** If twenty-five percent (25%) or more of the common area within a radius of four hundred (400) feet from the main entrance to the Premises shall be taken, either party shall be entitled to elect to cancel and terminate this Lease and shall give the other party written notice of such election not later than thirty (30) days after the date Landlord delivers notice to Tenant that possession or title to said portion of the common area taken has vested in the condemnor. If neither party gives such notice or more than seventy-five percent (75%) of said portion of the common area will be available after such taking, this Lease shall remain in full force and effect. In no event shall Tenant have the right to terminate this Lease if Landlord provides additional common area which, when combined with the remaining common area provides a common area which is at least seventy-five percent (75%) as large as said portion of the common area before the taking.

12.5 **Termination Date:** If this Lease is terminated in accordance with the provision of this Paragraph 12, such termination shall become effective as of the date physical possession of the condemned portion is taken.

12.6 **Repair and Restoration:** If this Lease is not terminated as provided in this Paragraph 12, Landlord shall at its sole expense restore with due diligence the remainder of the improvements occupied by Tenant so far as practicable to a complete unit of like quality, character, and condition as that which existed immediately prior to the taking, provided that the scope of the work shall not exceed the scope of the work to be done by Landlord originally in constructing the Premises, and further provided that Landlord shall not be obligated to expend an amount greater than that which was awarded to Landlord for such taking.

12.7 **Rent Adjustment:** If this Lease is not terminated as provided in this Paragraph 12, the Fixed Minimum Rent shall be reduced by that proportion which the floor area taken from the Premises bears to Tenant's total floor area immediately before the taking. There shall be no other abatement.

12.8 **Award:** The entire award or compensation in such proceedings, whether for a total or partial taking or for diminution in the value of the leasehold or for the fee shall belong to and be the property of Landlord; provided that Tenant shall be entitled to recover from the condemnor such compensation as may be separately awarded by the condemnor to Tenant or recoverable from the condemnor by Tenant in its own right for the taking of trade fixtures and equipment owned by Tenant (meaning personal property, whether or not attached to real property, which may be removed without injury to the Premises), for the expense of removing and relocating same, for loss of goodwill to Tenant's business, and for no other cause.

13. **INDEMNITY: WAIVER.**

- 13.1 **Indemnity:** Tenant shall indemnify and save Landlord harmless from and against any and all liens, claims, demands, actions, causes of action, obligations, penalties, charges, liability, damages, loss, cost or expense, including reasonable attorney's fees for the defense thereof, arising from or in connection with the conduct or management of the business conducted by Tenant on the Premises or any portion of the common area which is under the exclusive control of Tenant (the Premises and such portion of the common area which is under the exclusive control of Tenant being referred to as "Tenant's Premises" in Paragraphs 13.1 and 13.2), or the use or occupancy of Tenant's Premises, or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or from violations of or noncompliance with any governmental requirements or insurance requirements, or from any acts or omissions of Tenant or any person upon Tenant's Premises by license or invitation of Tenant or occupying Tenant's Premises or any part thereof under Tenant.
- 13.2 **Waiver:** All property kept, stored or maintained on Tenant's Premises shall be so kept, stored or maintained at the sole risk of Tenant; and except in the case of Landlord's willful misconduct, Landlord shall not be liable, and Tenant waives all claims against Landlord, for damages to persons or property sustained by Tenant or by any other person or firm resulting from the building in which the Premises are located or any roof or by reason of the Tenant's Premises or any equipment located therein becoming out of repair, or through the acts or omissions of any persons present in the Shopping Center or renting or occupying any part of the Shopping Center, or for loss or damage resulting to Tenant or its property from burst, stopped or leaking sewers, pipes, conduits, or plumbing fixtures, or for interruption of any utility services, or from any failure or defect in any electric line, circuit, or facility, or any other type of improvement or service on or furnished to Tenant's Premises or resulting from any accident in, on, or about Tenant's Premises or the building in which the Tenant's Premises are located. Landlord shall have no liability for conduct of others upon the Premises or the Shopping Center.
- 13.3 **Lender Waiver:** Tenant, on behalf of itself or its successors and assigns, hereby releases, waives and discharges Landlord's lender, mortgagee and/or lienholder, and their respective successors and assigns, ("Lender", for the purposes of this Paragraph 13 only), from all present and future claims, damages, suits, legal and administrative proceedings, whether or not lender has become the owner of the Premises through judicial or non-judicial foreclosure, deed in lieu of foreclosure or any other means, arising from the existence of any Hazardous Materials (as defined in paragraph 47.3 of this Lease) in, under or around the Shopping Center. Tenant, on behalf of itself and its successors and assigns, acknowledges that it is aware of and familiar with Section 1542 of the California Civil Code which provides as follows:
- "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known by him must have materially affected his statement with the debtor".
- With respect to the foregoing release of Lender, Tenant, on behalf of itself and its successors and assigns, hereby waives and relinquishes all rights and benefits which it or they may have under Section 1542 of the California Civil Code.
- The indemnities contained in this Paragraph 13 shall survive the expiration or earlier termination of this Lease.
14. **OPERATION OF BUSINESS.** Tenant shall continuously and uninterruptedly, subject only to Paragraph 18, during the entire lease term; (a) remain open for business at least six (6) days a week and at least eight (8) hours a day; (b) adequately staff its store with sufficient employees to handle the maximum business and carry sufficient stock of merchandise of such amount, character and quality to accomplish this purpose; (c) keep the display windows and signs, if any, well lighted during the hours from sundown to 12 midnight; (d) keep the Premises and exterior and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (e) warehouse, store or stock only such merchandise as Tenant intends to offer for sale at retail; (f) use for office other non-selling purposes only such space as is reasonably required for Tenant's business in the Premises; (g) refrain from burning any papers or refuse of any kind in the Shopping Center; (h) store in the area designated by Landlord all trash and garbage in neat and clean containers so as not to be visible to members of the public shopping in the Shopping Center and arrange for the regular pickup and cartage of such trash or garbage at Tenant's expense or cooperate in the employment of a trash removal contractor designated by Landlord if Landlord deems it desirable to have all waste materials removed by one contractor; (i) observe and promptly comply with all governmental requirements (including the ADA, as defined in Section 8.2 above) and insurance requirements affecting the Premises or any part of the common area which is under Tenant's exclusive control and promulgated during the term of this Lease; (j) not use or suffer or permit to be used the Premises or any part thereof in any manner that will constitute a nuisance or unreasonable annoyance to the public, to other occupants of the Shopping Center or to Landlord, or that will injure the reputation of the Shopping Center, or for any extra hazardous purpose, or in any manner that will impair the structural strength of the building of which the Premises are a part; and (k) operate the type of business set forth in Paragraph G under the trade name set forth in Paragraph D of the Basic Provisions.
- For purposes of computing percentage rent, the gross sales and business transacted for any time when Tenant does not continuously and uninterruptedly conduct its business as required by this subparagraph shall be deemed to be the greater of the gross sales and business transacted in the Premises during such period or during the corresponding period of the preceding lease year.
15. **SIGNS AND ADVERTISING.**
- 15.1 **General:** Sign rights and criteria are set forth in Exhibit D, subject to the limitations of Paragraphs 15.2 and 15.3.
- 15.2 **Interior:** Tenant may at its own expense erect and maintain upon the interior sales areas of the Premises all signs and advertising matter customary and appropriate in the conduct of Tenant's business which comply with governmental requirements, subject to Landlord's right to remove any signs or advertising matter which violate Paragraph 14(j), 15.3, or other provisions of this Lease.
- 15.3 **Exterior:** Tenant must, at its own expense, erect an exterior sign on its sign band which conforms to the criteria in Exhibit D, but subject to Landlord's written approval of said sign. Except for those signs and advertising devices which (a) conform to Exhibit D and plans and specifications, or a scale sign drawing submitted by Tenant and approved in writing by Landlord and (b) comply with government requirements, Tenant shall not erect, place, paint, and maintain in or on the Premises, any sign, exterior advertising medium, or any other object of any kind whatsoever, including paper or cardboard signs, temporary signs (exclusive of contractor signs), stickers or decals whether an advertising device or not, visible or audible outside of the Premises. The foregoing shall permit the placement at the entrance of each Tenants' space of a small sticker or decal, indicating hours of business, emergency telephone numbers and anything required by applicable regulatory agencies. Tenant shall not change the color, size, location, composition, wording, or design of any sign or advertisement on the Premises that may have been theretofore approved by Landlord and governmental authorities without the prior written approval of Landlord and said authorities. Tenant shall at its own expense maintain and keep in good repair all installations, signs, and advertising devices which it is permitted by Landlord to maintain and shall pay all charges required to keep them in good repair. Tenants' sign must be installed and operating concurrent with its opening for business. Tenants' sign shall be deemed part of the realty once installed. Tenant's sign shall be duly inspected and approved by the appropriate governmental department or authority. Tenant shall provide Landlord with a copy of the signed inspection report evidencing such approval within ten (10) days of its receipt by Tenant. In the event Landlord remodels the Shopping Center, Tenant shall, within six (6) months following completion of the remodeling, cause Tenant's sign to conform to any new sign criteria promulgated for the Shopping Center.
16. **LIENS.** Tenant shall keep the Premises and the Shopping Center free of any liens or claims of lien arising from any work performed, material furnished, or obligations incurred by Tenant in connection with the Premises.
17. **ENTRY BY LANDLORD.** Landlord reserves, and shall at any and all times have, the right to enter the Premises during business hours to inspect the same, to submit said Premises to prospective purchasers or Tenants, to post notices of non-responsibility, to

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repair the Premises and any portion of the Building of which the Premises are a part that Landlord may deem necessary or desirable, without abatement of rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of the Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages or for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy, or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord shall have the right to use any and all means which Landlord may deem proper in an emergency, to obtain entry to the Premises without liability to Tenant except for any failure to exercise due care for Tenant's property and any entry to the Premises obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

18. **DELAYING CAUSES.** If either party is delayed in the performance of any covenant of this Lease because of any of the following causes (referred to elsewhere in this Lease as a "delaying cause"); acts of the other party, action of the elements, war, riot, labor disputes, inability to procure or general shortage of labor or materials in the normal channels of trade, delay in transportation, delay in inspections, or any other cause beyond the reasonable control of the party so obligated, whether similar or dissimilar to the foregoing, financial inability excepted, then such performance shall be excused for the period of the delay and the period for such performance shall be extended for a period equivalent to the period of such delay, except that the foregoing shall in no way affect Tenant's obligation to pay rent and other charges for the length of the term of this Lease, except to the extent any rent abatement period otherwise provided herewith shall be extended by such delaying cause.

19. **ASSIGNMENT AND SUBLETTING.**

19.1 **Consent Required:** Notwithstanding anything to the contrary contained in this Lease, Tenant shall not assign this Lease or any interest herein or sublet, license, grant any concession, or otherwise give permission to anyone other than Tenant to use or occupy all or any part of the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Any request by Tenant to Landlord for Landlord's consent to any assignment or sublease shall be accompanied by the following.

- a. Complete financial information with respect to the proposed assignee or subtenant;
- b. Copies of all documents in connection with such sublease or assignment including, where appropriate, copies of documents with respect to a sale of Tenant's business;
- c. Intentionally deleted.
- d. Proof that all payments due Landlord and all reports due have been delivered to Landlord; and
- e. A Five Hundred Dollar (\$500) payment to cover Landlord's handling charges for each such transaction it is requested to approve. However, the first Assignment shall be without charge. The sale, assignment, transfer, or disposition, whether for value, by operation of law, gift, will, or intestacy, of (a) twenty-five percent (25%) or more of the outstanding stock of Tenant if Tenant is a corporation, or (b) the interest of any general partner, joint venturer, associate, or cotenant, if Tenant is a partnership, joint venture, association, or cotenancy, shall be deemed an assignment of this Lease under this Paragraph, whether such transfer is legal, equitable, otherwise, or a combination thereof.

19.2 **General Conditions:** In the event of any assignment of this Lease, Tenant shall remain primarily liable on its covenants hereunder unless released in writing by Landlord. In the event of any assignment or sublease the assignee or subtenant shall agree in writing to perform and be bound by all of the covenants of this Lease required to be performed by Tenant. After any one assignment or subletting by Tenant of its interest in this Lease pursuant to Paragraph 19.1, no further assignment or subletting shall be made without Landlord's prior written consent. Tenant shall be released from all future lease liability five (5) years after Assignment.

19.3 **Landlord's Rights with Respect to Tenant's Assignment or Subletting:** Any assignment or subletting without the prior written consent of Landlord shall be voidable at the election of Landlord. In the event that Tenant makes a request to Landlord seeking Landlord's consent to an assignment or subletting, or in the event that Tenant makes or suffers such assignment or subletting without Landlord's written consent (including assignment or subletting by operation of law), then such request for consent, or such act or sufferance or assignment or subletting shall be deemed to grant an option to Landlord to terminate this Lease, and the tenancy created hereby (including subtenancies). Such option must be exercised by Landlord within two (2) months of the date it receives the written notices described herein; upon the exercise of said option by Landlord, Tenant shall have a reasonable time, not exceeding the end of the succeeding calendar month within which to vacate the entirety of the Premises, at which date the tenancy created by this Lease shall be deemed to have terminated, and any further occupancy by Tenant (and those holding under Tenant) shall constitute an unlawful detention. Landlord's consent to any assignment or subletting shall not relieve Tenant from each and all of Tenant's obligations hereunder and Tenant shall continue to remain jointly and severally liable hereunder with said assignee or subtenant.

19.4 Intentionally Deleted.

20. **NOTICES.** Whenever under this Lease provision is made for notice, demand, or request for consent, it shall be in writing and signed by or on behalf of the party giving the notice or making the demand and served by registered or certified mail. If served by registered or certified mail, it shall be deposited in the United States mail postage prepaid, with return receipt requested, addressed to the party to whom such notice or demand is to be given at the address stated in Paragraphs L or M as the case may be, and shall be conclusively deemed served on the date indicated on the return receipt and if the receipt is not returned, then forty-eight (48) hours after mailing. The address of either party may be changed for the purpose of this Paragraph by notice to the other party.

21. **SURRENDER OF POSSESSION.**

21.1 **Surrender:** At the expiration of the tenancy created hereunder, whether by lapse of time or otherwise, Tenant shall remove all signs and surrender the Premises broom clean and in the same condition and repair as at the commencement date of the Lease, ordinary wear and tear excepted, subject to the provisions of Article 33.

21.2 **Holding Over:**

- a. If Tenant holds the Premises after the expiration of the term hereof, such holding over shall, in the absence of a written agreement on the subject, be deemed to have created a tenancy from month to month, terminable on thirty (30) days' written notice by either party to the other, at a Minimum Monthly Rental equal to 1.5 times the average monthly rental (including percentage rent) paid by Tenant to Landlord during the immediately preceding year, and otherwise subject to all terms of this Lease, including the payment of percentage rental and all other charges payable by Tenant hereunder. Neither acceptance of rent nor of anything contained in this subparagraph shall be construed as an express or implied consent to such holding over, nor affect Landlord's right to recovery of possession as a consequence of holding over.
- b. If Tenant fails to surrender the Premises upon the termination of this Lease, Tenant shall indemnify and hold harmless Landlord from loss or liability resulting from such failure, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant arising out of such failure.

22. **QUIET ENJOYMENT.** Subject to the provisions of this Lease and conditioned upon performance of all of the provisions to be performed by Tenant hereunder, Landlord shall secure to Tenant during the Lease term the quiet and peaceful possession of the Premises and all rights and privileges appertaining thereto.

23. **SUBORDINATION.** Tenant agrees that this Lease, at Landlord's option, shall be subordinated to any mortgages, trust deeds or other real property security interests that may hereafter be placed upon said Premises and to any advances to be made thereunder, any interest thereon, and all renewals, replacements and extensions thereof, provided that such mortgagees or beneficiaries first request such subordination. Tenant shall execute and deliver, without cost to Landlord, whatever instruments may be required to effect such subordination. Tenant shall at any time, hereafter, on the request from Landlord execute any instruments, Leases or other documents that may be required to render Tenant's interest hereunder prior to the lien of any Mortgage or Deed of Trust and the failure of Tenant to execute any such instrument, Lease or other document shall constitute a default hereunder. However, should the Premises be purchased or otherwise acquired by any person in connection with any sale or other proceeding under the terms of any mortgage or trust deed, this Lease shall continue in full force and effect, and Tenant hereby attorns and agrees to attorn to such person. Any breach of this Paragraph by Tenant shall be and is deemed to be a substantial material breach.

24. **OFFSET STATEMENT/FINANCIAL INFORMATION.** Tenant shall, at any time and from time to time within ten (10) days after written request therefor by Landlord, deliver (a) a certificate to Landlord or to any proposed mortgagee, trust deed beneficiary, purchaser, or successor in interest, certifying the commencement and expiration date of the Lease term, the security deposit held by Landlord, the date through which rental has been paid, that this Lease is then in full force and effect and setting forth the amount and nature of modifications, defenses, or offsets, if any, claimed by Tenant (collectively, "Certificate"), and (b) financial statements, including, but not limited to, balance sheets, profit and loss statements, income statements, and statements of changes in financial condition and Tenant's federal and state income tax returns pertaining to Tenant's business conducted upon the Premises. If Tenant fails to deliver such Certificate and/or financial statements as may be required by Landlord within said ten (10) day period, (i) Tenant hereby appoints Landlord as Tenant's attorney in fact for the purpose of completing, executing and delivering the Certificate to the person or firm requesting it, (ii) such failure shall be deemed to be a substantial material breach. Tenant hereby acknowledges that the failure to submit such Certificate and/or financial statements in a timely manner will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, in addition to all other remedies, Landlord may impose a charge equal to one month's minimum rent for failure of Tenant to timely submit such Certificate or financial statements which the parties agree represents a fair and reasonable estimate of the damage caused by Landlord by such failure. Acceptance of such charge shall not constitute a waiver of Tenant's default.

25. **DEFAULT.**

25.1 **Notice and Remedies:** In the case of Tenant's failure to pay or to perform any of Tenant's other obligations under this Lease, or any part thereof, when due or called for hereunder, (such failure in each instance being deemed to be a material breach) Tenant shall have a period of ten (10) days after service of written notice by Landlord specifying the nature of Tenant's default within which to cure such defaults provided that if the nature of a non-monetary default is such that it cannot be fully cured within said three (3) day period, Tenant shall have such additional time as may be reasonably necessary (not exceeding one hundred twenty (120) days) to cure such default so long as Tenant begins promptly after service of Landlord's notice and proceeds diligently at all times to complete said cure. If Tenant fails to comply with the foregoing provisions, or if Tenant has breached its obligations in a fashion which cannot be cured, such as the submission of false financial statements of Tenant or a guarantor Tenant shall be deemed to be in material breach of this Lease, and Landlord with or without further notice or demand of any kind shall have the following options:

- a. Landlord shall have the right to terminate this Lease by giving to Tenant written notice of such termination.
- b. If Landlord elects to terminate this Lease as provided in subparagraph (a) hereof, Landlord may then or at any time thereafter, re-enter the Premises, or any part thereof, and expel or remove therefrom Tenant and any other persons occupying the same, using such force as may be necessary so to do, and again possess and enjoy the Premises, without prejudice to any other remedies that Landlord may have by reason of Tenant's default or of such termination.
- c. If Landlord elects to terminate this Lease, as provided in subparagraph (a) hereof, Landlord shall have all of the rights and remedies of a Landlord provided by Section 1951.2 of the California Civil Code. The amount of damages which Landlord may recover in the event of such termination shall include: (i) the worth at the time of award (computed by allowing interest at the maximum rate permitted by law) of the unpaid rent and charges equivalent to rent earned as of the date of termination hereof; (ii) the worth at the time of the award (computed by allowing interest at the maximum rate allowable by law) of the amount by which the unpaid rent and charges equivalent to rent which would have been earned after the date of termination hereof until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of award (computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%) of the amount by which the unpaid rent and charges equivalent to rent for the balance of the term hereof after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; (iv) any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom; and (v) any other amount which Landlord may by law hereafter be permitted to recover from Tenant to compensate Landlord for the detriment caused by Tenant's default.
- d. After terminating this Lease pursuant to subparagraph (a) hereof, Landlord may, without any further demand or notice, remove any and all personal property located on the Premises and place such property in a public or private warehouse or elsewhere at the risk and sole cost and expense of Tenant. In the event that Tenant shall not immediately pay the cost of storage of such property after the same has been stored for a period of thirty (30) days or more, Landlord may sell any or all thereof at a public or private sale in such a manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to or demand upon Tenant. Tenant waives all claims for damages that may be caused by Landlord's re-entering and taking possession of the Premises or by removing or storing or selling the property as herein provided, and Tenant shall indemnify and hold Landlord free and harmless from and against any and all losses, costs and damages, including without limitation all court costs and attorney's fees of Landlord occasioned thereby.
- e. Continue the Lease and Tenant's right to possession and recover the Rent as it becomes due, in which event Tenant may sublet or assign Tenant's interest, subject only to reasonable limitations. Pursuant to this provision, Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue Lease in effect after Tenant's breach and abandonment and recover rent as it becomes due, if Tenant has right to sublet or assign, subject only to reasonable limitations).
- f. Landlord shall have the right to cause a receiver to be appointed in any action against Tenant to take possession of the Premises and/or to collect the rents or profits derived therefrom. Said receiver may, if it is necessary or convenient in order to collect such rents or profits, conduct the business and may use the same in conducting such business on the Premises without compensation to Tenant for such use. Neither the application for the appointment of such receiver nor the appointment of such receiver shall constitute an election on the part of the Landlord to terminate this Lease unless a written notice of such intention is given to Tenant.
- g. Landlord may at Landlord's election re-enter the Premises, and, without terminating this Lease, at any time and from time to time relet the Premises and improvements or any part or parts of them for the account and in the name of Tenant or otherwise. Any reletting may be for the remainder of the Term or for a longer or shorter period. Landlord may execute any leases made under this provision either in Landlord's name or in Tenant's name and shall be entitled to all rents from the use, operation, or occupancy of the Premises or improvements or both. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus Landlord's expenses, less the avails of any reletting or attachment. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant notice of termination.
- h. If Landlord elects to re-enter the Premises without termination, as provided in subparagraph (f) hereof, Landlord may at Landlord's election use Tenant's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for use or damage, or store them for the account and at the cost of Tenant. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the

Landlord's Initials: BS

Tenant's Initials: LS

same item at a later time.

- i. Notwithstanding anything to the contrary set forth herein, Landlord's re-entry to perform acts of maintenance or preservation of or in connection with efforts to relet the Premises or any portion thereof, or the appointment of a receiver upon Landlord's initiative to protect Tenant's interest under this Lease shall not terminate Tenant's right to possession of the Premises or any portion thereof, and until Landlord does elect to terminate this Lease by written notice to Tenant, this Lease shall continue in full force and effect.
- j. Nothing in this Article 25 shall be deemed to affect Landlord's right to defense and indemnification for liability or liabilities arising prior to the termination of this Lease for personal injuries or property damage under the indemnification clause or clauses contained in this Lease.
- k. In addition to the other remedies provided in this Lease, Landlord shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any covenant, agreement, condition or provision of this Lease and to a decree compelling performance of any covenant, agreement, condition or provision of this Lease and to any other remedy allowed to Landlord at law or in equity.

25.2 **Notice of Termination:** No reentry or reletting of the Premises shall be construed as an election by Landlord to terminate Tenant's right to possession and this Lease unless a written notice of such intention is given by Landlord to Tenant; and notwithstanding any such reletting without such termination, Landlord may at any time thereafter elect to terminate Tenant's right to possession and this Lease in the event that at such time Tenant remains in default hereunder.

25.3 **Waiver of Notice; Performance by Landlord:** Notwithstanding any provision of this Paragraph 25, (a) if Tenant is required to comply with any governmental requirement, Tenant shall not be entitled to notice of default from Landlord and right to cure beyond the period within which such compliance may be required by such requirement; or (b) if this lease expressly provides that this Lease may be terminated effective on service of notice, Tenant shall be entitled to cure its default only if the right to cure is required by law; or (c) if in Landlord's judgment the continuance of any default by Tenant for the full period of notice provided for herein will jeopardize the Premises or the rights of Landlord, Landlord may, with or without notice, elect to perform those acts in respect to which Tenant is in default for the account and at the expense of Tenant. If by reason of such default by Tenant, Landlord is compelled to pay or elects to pay any sum of money, including, but without limitation, reasonable attorneys' fees, such sum or sums so paid by Landlord, with interest thereon from the date of such payment at the rate provided in this Lease, shall be due from Tenant to Landlord on the first day of the month next following such payment by Landlord.

25.4 **Interest:** Any sum accruing to Landlord under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the lower of eighteen percent (18%) per annum or the highest rate permitted under the then existing Usury Statutes for Non-consumer obligations, from the date the same becomes due and payable by the terms and provisions of this Lease until paid, unless otherwise specifically provided in this Lease.

25.5 **Other Remedies:** Nothing contained in this Lease shall limit Landlord to the remedies set forth in this Paragraph 25, and particularly those which are set forth in Paragraph 25.1; and upon Tenant's default Landlord shall be entitled to exercise any right or remedy then provided by law, including, but without limitation, the right to obtain injunctive relief and the right to recover all damages caused by Tenant's default in the performance of any of its obligations under this Lease.

25.6 **Default/Payment of Rent:**

- a. In the event that Tenant is in default under any provision of this Lease and Landlord gives Tenant a notice to pay rent or to cure any other default under this Lease more than two times during the term of this Lease or any extension, then in addition to any and all other rights and remedies under this Lease or any applicable law, rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding Paragraph 4 or any other provision of this Lease to the contrary.
- b. In the event that Tenant pays rent or any other sum(s) due pursuant to this Lease by means of a personal and/or business check, and the check is not honored by the institution upon which it is drawn, then in addition to any and all other rights and remedies under this Lease or any applicable law, rent shall automatically become due and payable via cashier's check, notwithstanding Paragraph 4 or any other provision of this Lease to the contrary. Additionally, Tenant shall pay Landlord, as additional rent, an administration fee equal to Fifteen Dollars (\$15.00) for each check which is not honored by the institution upon which it is drawn.

25.7 Intentionally Deleted.

26. **BANKRUPTCY OR INSOLVENCY.**

26.1 In the event that Tenant shall become a Debtor under Chapter 7 of the Bankruptcy Code, and Trustee or Tenant shall elect to assume this Lease for the purpose of assigning the same or otherwise, such election and assignment may only be made if all of the terms and conditions of this Lease are satisfied. If such Trustee shall fail to elect or assume this Lease within sixty (60) days after the filing of the Petition, this Lease shall be deemed to have been rejected. Landlord shall be thereupon immediately entitled to possession of the Premises without further obligation to Tenant or Trustee, and this Lease shall be cancelled, but Landlord's right to be compensated for damages in such liquidation proceeding shall survive.

26.2 In the event that a Petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Bankruptcy Code, or a proceeding is filed under Chapter 7 of the Bankruptcy Code and is transferred to Chapters 11 or 13, the Trustee or Tenant, as Debtor-In-Possession, must elect to assume this Lease within seventy-five (75) days from the date of the filing of the Petition under Chapters 11 or 13, or the Trustee or Debtor-In-Possession shall be deemed to have rejected this Lease. No election by the Trustee or Debtor-In-Possession to assume this Lease, whether under Chapters 7, 11, or 13, shall be effective unless each of the following conditions, which Landlord and Tenant acknowledge are commercially reasonable in the context of a bankruptcy proceeding of Tenant, have been satisfied, and Landlord has so acknowledged in writing:

- a. The Trustee or the Debtor-In-Possession has cured, or has provided Landlord adequate assurance that:
 - (1) Within ten (10) days from the date of such assumption the Trustee will cure all monetary defaults under this Lease; and
 - (2) Within thirty (30) days from the date of such assumption the Trustee will cure all non-monetary defaults under this Lease.
- b. The Trustee or the Debtor-In-Possession has compensated, or has provided to Landlord adequate assurance that within ten (10) days from the date of assumption Landlord will be compensated for any pecuniary loss incurred by Landlord arising from the default of Tenant, the Trustee, or the Debtor-In-Possession as recited in Landlord's written statement of pecuniary loss sent to the Trustee or Debtor-In-Possession.
- c. The Trustee or the Debtor-In-Possession has provided Landlord with adequate assurance of the future performance of each of Tenant's, Trustee's or Debtor-In-Possession's obligations under this Lease; provided, however, that:
 - (1) The Trustee or Debtor-In-Possession shall also deposit with Landlord, as security for the timely payment of rent, an amount equal to three (3) months' rent and other monetary charges accruing under this Lease; and
 - (2) If not otherwise required by the terms of this Lease, the Trustee or Debtor-In-Possession shall also pay in advance on the date minimum rent is payable one-twelfth (1/12th) of Tenant's annual obligations under this Lease for maintenance, common area charges, real estate taxes, insurance and similar charges;
 - (3) From and after the date of the assumption of this Lease, the Trustee or Debtor-In-Possession shall pay as minimum rent an amount equal to the sum of the minimum rental otherwise payable hereunder, plus the highest amount of the annual percentage rent paid by Tenant to Landlord within the five (5) year period prior

(4) to the date of Tenant's Petition under the Bankruptcy Code, which amount shall be payable in advance in equal monthly installments on the date minimum rent is payable;
The obligations imposed upon the Trustee or Debtor-In-Possession shall continue with respect to Tenant or any assignee of the Lease after the completion of bankruptcy proceedings.

- 26.3 In the event that this Lease is assumed by a Trustee appointed for Tenant or by Tenant as Debtor-In-Possession under the provisions of Section 26.2 hereof and thereafter Tenant is liquidated or files a subsequent Petition for reorganization or adjustment of debts under Chapters 11 or 13 of the Bankruptcy Code, then, and in either of such events, Landlord may, at its option, terminate this Lease and all rights of Tenant hereunder, by giving Tenant written notice of its election to so terminate, by no later than thirty (30) days after the occurrence of either of such events.
- 26.4 When, pursuant to the Bankruptcy Code, the Trustee or Debtor-In-Possession shall be obligated to pay reasonable use and occupancy charges for the use of the Premises or any portion thereof, such charges shall not be less than the minimum annual rent as defined in this Lease and other monetary obligations of Tenant for the payment of maintenance, common area charges, real estate taxes, insurance and other charges payable by Tenant hereunder.
- 26.5 Neither Tenant's interest in the Lease, nor any lesser interest of Tenant herein, nor any estate of Tenant hereby created, shall pass to any trustee, receiver, assignee for the benefit of creditors, or any other person or entity, or otherwise by operation of law under the laws of any state having jurisdiction of the person or property of Tenant (hereinafter referred to as the "state Law") unless Landlord shall consent to such transfer in writing. No acceptance by Landlord of rent or any other payments from any such trustee, receiver, assignee, person or other entity shall be deemed to have waived, nor shall it waive Landlord's right to terminate this Lease nor the need to obtain Landlord's consent for any transfer of Tenant's interest under this Lease without such consent.
27. **REMEDIES CUMULATIVE.** The various rights, elections, and remedies of Landlord and Tenant contained in this Lease shall be cumulative, and no one of them shall be construed as exclusive of any of the others, or of any right, priority, or remedy allowed or provided for by law.
28. **ATTORNEYS' FEES.** If either party hereto shall file any action or bring any proceeding against the other party arising out of this Lease or for the declaration of any rights hereunder, the prevailing party therein shall be entitled to recover from the other party, all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party as determined by the court. If either party ("secondary party") without its fault is made a party to litigation instituted by or against the other party ("primary party") primary party shall pay to the secondary party all costs and expenses, including reasonable attorneys' fees, incurred by the secondary party in connection therewith.
29. **WAIVER OF DEFAULT.** The waiver by either party of any default in the performance by the other of any covenant contained herein shall not be construed to be a waiver of any preceding or subsequent default of the same or any other covenant contained herein. The subsequent acceptance of rent or other sums hereunder by Landlord shall not be deemed a waiver of any preceding default other than the failure of Tenant to pay the particular rental or other sum or portion thereof so accepted, regardless of Landlord's knowledge of such preceding default at the time of acceptance of such rent or other sum.
30. **ABANDONMENT.** Tenant shall not vacate or abandon the Premises at any time during the term hereof; such act shall constitute a default. (The cessation of business for a continuous period of fifteen (15) days or more except by legal compulsion not created by the act, omission or defalcation of Tenant shall conclusively be deemed an abandonment.)
31. **SUBTENANCIES.** The voluntary or other surrender of this Lease by Tenant or a mutual cancellation of this Lease shall not effect a merger and shall, at Landlord's option, terminate all existing subtenancies or operate as an assignment to Landlord of any or all of such subtenancies.
32. **SUCCESSORS.** Subject to the provisions of Paragraph 19, this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their successors. The term "successors" is used herein in its broadest possible meaning and includes, but is not limited to every person succeeding to any interest in this Lease or the Premises, of Landlord or Tenant herein, whether such succession results from the act or omission of such party. Every covenant and condition of this Lease shall be binding upon all assignees, subtenants, licensees, and concessionaires of Tenant.
33. **TENANT'S PROPERTY.**
- 33.1 **Removal of Tenant's Property:** Upon the expiration of the term of this Lease or upon any earlier termination thereof, Tenant shall remove at its own expense all trade fixtures, equipment, merchandise, and personal property (collectively called "Tenant's property" in this Lease) which were installed by Tenant or any subtenant, concessionaire or licensee in or upon the Premises; but if Tenant is in default, Tenant shall not remove Tenant's property unless notified by Landlord to do so. In case of any injury or damage to the building or any portion of the Premises resulting from the removal of Tenant's property, Tenant shall promptly pay to Landlord the cost of repairing such injury or damage. Tenant shall complete such removal by the time provided in the first sentence of this Paragraph 33.1 unless prevented from so doing by a delaying cause, or Landlord may, at Landlord's option, retain any or all of Tenant's property; and title thereto shall thereupon vest in Landlord without the execution of documents of sale or conveyance by Tenant, or Landlord may remove any or all items of Tenant's property from the Premises and dispose of them in any manner Landlord sees fit, and Tenant shall pay upon demand to Landlord the actual expense of such removal and disposition together with interest from the date of payment by Landlord until repayment by Tenant.
- 33.2 Intentionally Deleted.
34. **EFFECT OF CONVEYANCE.** If during the term of this Lease, Landlord conveys its interest in the Premises, or this Lease, then from and after the effective date of such conveyance, Landlord shall be released and discharged from any and all further obligations and responsibilities under this Lease except those already accrued of which Landlord has notice at the time of conveyance.
35. **LANDLORD'S DEFAULT; NOTICE TO LENDER.**
- 35.1 **Landlord's Default:** In the case of a monetary default, Landlord shall have a period of ten (10) days after notice thereof from Tenant to cure such monetary default. In the case of a non-monetary default, Landlord shall commence promptly to cure such default immediately after receipt of written notice from Tenant specifying the nature of such default and shall complete such cure within thirty (30) days thereafter, provided that if the nature of the non-monetary default is such that it cannot be cured within said thirty (30) day period, Landlord shall have such additional time as may be reasonably necessary to complete its performance so long as Landlord has proceeded with diligence after receipt of Tenant's notice and is then proceeding with diligence to cure such default. Tenant shall have no right to terminate this Lease or to withhold or to deduct rent as a remedy for any Landlord default hereunder; Tenants' only right shall be a claim for damages, and it is expressly agreed that any judgment for damages obtained by Tenant shall be satisfied only out of Landlord's net equity in the Shopping Center.
- 35.2 **Notice to Lender:** Whenever Tenant is required to serve notice on Landlord of Landlord's default, written notice shall also be served at the same time upon the mortgagee under any mortgage or beneficiary under any deed of trust. Such mortgagee or beneficiary shall have the periods of time within which to cure Landlord's defaults as are provided in Paragraph 35.1, which periods shall commence to run ten (10) days after the commencement of the periods within which Landlord must cure its defaults under

Paragraph 35.1. In this connection any representative of the mortgagee or beneficiary shall have the right to enter upon the Premises for the purpose of curing the Landlord's default. Such mortgagee or beneficiary shall notify Landlord and Tenant in the manner provided by Paragraph 20 of the address of such mortgagee or beneficiary to which such notice shall be sent, and the agreements of Tenant hereunder are subject to prior receipt of such notice.

36. Intentionally Deleted.

37. **INTERPRETATION.** The captions by which the paragraphs of this Lease are identified are for convenience only and shall not affect the interpretation of this Lease. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular, the neuter gender shall include the masculine and feminine genders. If there is more than one signatory hereto as Tenant, the liability of such signatories shall be joint and several. If any provision of this Lease shall be held to be invalid by a court, the remaining provisions shall remain in effect and shall in no way be impaired thereby.

38. **REPRESENTATIONS.** Tenant warrants and represents that there have been no representations or statements of fact with respect to the Premises, the Shopping Center, the surrounding area or otherwise whether by Landlord, its agents or representatives, any lease broker or any other person, which representations or statements have in any way induced Tenant to enter into this Lease or which have served as the basis in any way for Tenant's decision to execute this Lease, except as contained in this Lease. Tenant agrees and acknowledges that no lease broker, agent, or other person has had or does have the authority to bind Landlord to any statement, covenant, warranty or representation except as contained in this Lease and that no person purporting to hold such authority shall bind Landlord to any statement, covenant, warranty or representation except as contained in this Lease and that it is not reasonable for Tenant to have assumed that any person had or has such authority. Further, neither Landlord's execution of this Lease nor any other of its acts shall be construed in any way to indicate Landlord's ratification, consent to or approval of any act, statement or representation of any person except as specifically set forth in this Lease.

39. **CONSTRUCTION FINANCING AND GOVERNMENT APPROVAL.** It is mutually understood and acknowledged that Landlord may have to finance the construction of the initial improvements on the leased Premises through a mortgage loan or mortgage loans and that before said loans are approved and closed, said mortgagees must approve the terms of this Lease as to credit value of Tenant for mortgage purposes as to legal form, contents and economic terms. In addition, one or more governmental agencies must grant permits and/or variances to permit occupancy of the Premises by Tenant for the intended use.

40. **REAL ESTATE BROKERS; FINDERS.** Each party represents that it has not had any dealings with any real estate broker, finder, or other person, with respect to this Lease in any manner, except as set forth in Paragraph P. Each party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder or other person with whom the other party has or purportedly has dealt, except said brokers. Each party shall pay any commissions or fees that are payable to the brokers listed under its name in Paragraph P in accordance with the provisions of a separate commission contract.

41. **PROHIBITION AGAINST RECORDING LEASE.** Neither this Lease nor any memorandum thereof shall be recorded. The recording hereof by or on behalf of Tenant shall be deemed a material breach.

42. **SEVERABILITY.** The unenforceability, invalidity, or illegality of any provision shall not render the other provisions unenforceable, illegal or invalid.

43. **LATE CHARGES AND INTEREST.** Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord 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 on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installments of rent or any other sum due from rent shall not be received by Landlord or Landlord's designee within five (5) days after such amount shall be due, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payments by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. In addition, Tenant shall pay interest on all rentals and other charges not paid on the date when due at an annual interest rate of eighteen percent (18%) or the highest rate permitted by law, whichever is lower.

44. **SAFETY AND HEALTH.** Tenant covenants at all times during the term of this Lease to comply with the requirements of the Occupational Safety and Health Act of 1970, 29 U.S.C. Section 651 et seq. and any analogous legislation in California (collectively the "Act"), to the extent that the Act applies to the Premises and any activities thereon. Without limiting the generality of the foregoing, Tenant covenants to maintain all working areas, all machinery, structures, electrical facilities and the like upon the Premises in a condition that fully complies with the requirements of the Act, including such requirements as would be applicable with respect to agents, employees or contractors of Landlord who may from time to time be present upon the Premises (except to the extent that the particular activities of such agents, employees or contractors of Landlord on the Premises require safety precautions or alterations of the conditions of the Premises beyond the requirements of such Act otherwise applicable to the Premises, in which event Tenant shall not be obligated to undertake or provide any such additional safety precautions or alterations of conditions), and Tenant agrees to indemnify and hold Landlord harmless from and against any liability, claim or damages, arising as a result of a breach of the foregoing covenant and from all costs, expenses and charges arising therefrom, including without limitation, reasonable attorney's fees and court costs incurred by Landlord in connection therewith, which indemnity shall survive the expiration or termination of this Lease.

45. Intentionally Deleted.

46. **GENERAL PROVISIONS.**

46.1 **No Partnership:** Landlord shall not in any way or for any purpose be deemed a partner, joint venturer, or member of any joint enterprise with Tenant.

46.2 **Covenants and Conditions:** Each provision of this Lease performable by Tenant shall be deemed both a covenant and a condition.

46.3 **Choice of Law:** This Lease shall be governed by the laws of the State of California; any action brought to enforce or nullify this Lease or the provisions hereof must be brought in Orange County, State of California and in no other forum. Each party that executes this Lease as a Tenant specifically agrees and consents that service of legal process may be effected by personal delivery, or registered or certified mail, postage prepaid, with return receipt requested, mailed to the Tenant at the address specified in Paragraph M of the Basic Lease Provisions. Service shall be deemed to be completed as provided in Paragraph 20 (Notices) of this Lease.

46.4 **Net, Net, Net Lease:** Landlord and Tenant understand and agree that this Lease is what is commonly known in the business as a "net, net, net Lease." Tenant recognizes and acknowledges without limiting the generality of any other terms or provisions of this Lease, that it is the intent of the parties hereto that any and all rentals in this Lease provided to be paid by Tenant to Landlord, shall be net to Landlord, and any and all expenses incurred in connection with the Premises and Shopping Center, or in connection with

the operations thereon, including any and all taxes, assessments, general or special license fees, insurance premiums, public utility bills and costs of repair, maintenance and operation of the Premises and the Shopping Center and all buildings, structures, permanent fixtures and other improvements comprised therein, together with the appurtenances thereto, shall be paid by Tenant, in addition to the rentals herein provided for.

- 46.5 **Financial Statements:** If Landlord desires to finance, refinance, sell, transfer or otherwise convey the Premises, or any part thereof, or to confirm the gross sales figures as reported pursuant to Paragraphs 4.5 and 4.6 hereof, then Tenant agrees to deliver to Landlord within ten (10) days after request, Tenant's financial statements and federal income tax returns for the immediately preceding three (3) fiscal years of Tenant.
- 46.6 **Time of Essence:** Time is of the essence.
- 46.7 **Incorporation of Prior Agreements; Amendments:** This Lease contains all agreements of the parties with respect to any matters mentioned herein. No prior agreement or understanding pertaining to any matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.
- 46.8 **Rules and Regulations:** Tenant shall observe faithfully and comply directly with the Rules and Regulations as Landlord may from time to time reasonably adopt for the safety, care and cleanliness of the Shopping Center or the preservation of good order therein. Landlord shall not be liable to Tenant for violation of any such Rules and Regulations, or for the breach of any covenant or condition in any lease, by any other tenant in the Shopping Center.
- 46.9 **Mutual Agency; Co-Tenant:** Each and every party who now is or hereinafter becomes a tenant under this Lease hereby appoints each and every other tenant as his, her or its agent, representative, and attorney in fact, or act for and on behalf of said Principal with respect to all matters relating to, or arising from this Lease, the tenancy created hereby, the obligations herein set forth, and the use and occupancy of the subject Premises, specifically including, but not limited to the right to alter, amend, modify, extend, supplement and terminate this Lease, and the tenancy created hereunder. This agency shall continue and is irrevocable at all times during the period that the Premises are occupied by any tenant.
- 46.10 **Corporate Authority:** If Tenant is a corporation, each individual executing this Lease on behalf of said corporation represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation with the duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation, and that this Lease is binding upon said corporation in accordance with its terms. Further, Tenant shall, within thirty (30) days after execution of this Lease, deliver to Landlord a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Lease.
- 46.11 **Waiver of Jury Trial:** Landlord and Tenant waive the right to a trial by jury in any action, proceeding, or counterclaim based upon, or related to, the subject matter of claims arising only out of the non-payment of rent and additional charges due pursuant to this Lease. This waiver is knowingly, intentionally, and voluntarily made by Tenant and Tenant acknowledges that neither Landlord nor any person acting on behalf of Landlord has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Tenant further acknowledges that it has been represented (or has had the opportunity to be represented) in the signing of this Lease and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel. Tenant further acknowledges that it has read and understands the meaning and ramifications of this waiver provision.
47. **HAZARDOUS MATERIALS.**
- 47.1 **Definitions:**
- a. For purposes of this Lease, the term "Hazardous Materials" means any substance:
- (1) Which is defined as "hazardous materials" or "hazardous substances" in Section 25501 of the California Health and Safety Code;
 - (2) The presence of which requires any investigation or remediation under any Federal statute (including but not limited to the Resource, Conservation and Recovery Act of 1980, 42 U.S.C. § 6901, et seq. ("RCRA") and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), and/or any State of California or local statute, regulation, ordinance, order, action, policy or common law;
 - (3) Which is or which becomes defined as a "hazardous waste," "hazardous substance," "hazardous material," "pollutant" or "contaminant" under any Federal, State of California or local statute, regulation, rule or ordinance or amendment thereto including, without limitation, CERCLA or RCRA;
 - (4) Which is toxic, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, explosive or otherwise hazardous or is or becomes regulated by any governmental agency, authority, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof;
 - (5) The presence of which causes or threatens to cause a nuisance upon the Premises, the Shopping Center or to other properties or that poses or threatens to pose a hazard to the health, safety or welfare of persons or the environment;
 - (6) The presence of which on other properties could constitute a trespass by Tenant;
 - (7) Which contains gasoline, diesel fuel or other petroleum hydrocarbon; and/or
 - (8) Which contains polychlorinated biphenyls (PCBs), asbestos or urea formaldehyde foam insulation; and/or
 - (9) Which emits radon gas.
- b. For purposes of this Lease, the term "Environmental Requirements" means all applicable present and future statutes, regulations, rules, ordinances, licenses, codes, permits, orders, approvals, requirements, demands, plans authorizations, concessions, franchises and the like of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, the State of California and/or any political subdivisions thereof and all applicable judicial, administrative and regulatory decrees, judgments, orders or rulings relating to the protection of human health or welfare or the environment, including, without limitation:
- (1) All requirements relating to storage, treatment, disposal, reporting, licensing, use, permitting, investigation, control or remediation of any emissions, discharges, releases or threatened releases of Hazardous Material whether solid, liquid or gaseous in form or nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, transport or handling of any such substances;
 - (2) All requirements relating to the protection of the health, safety and welfare of the public; and
 - (3) The requirement of this Lease.
- 47.2 **Acknowledgment of Existing Condition of the Premises and Shopping Center:** Tenant acknowledges and agrees that, prior to Tenant's execution of this Lease, Tenant has had a reasonable opportunity to perform, and has performed, such investigations, inspections and testing of the Premises and the Shopping Center as Tenant deems necessary to determine the environmental condition of the Premises and the Shopping Center as of the date of this Lease. Tenant further acknowledges and agrees that such investigations, inspections and testing did not disclose or otherwise imply that any Hazardous Materials are present on, within, under, from and/or about the Premises and the Shopping Center. Tenant also acknowledges and understands that neither Landlord, nor any of Landlord's employees, agents or independent contractors, have made any oral or written representations or warranties to Tenant concerning the presence of Hazardous Materials on, within, under, from and/or about the Premises and the Shopping Center.
- 47.3 **Use of Hazardous Material:** Tenant shall not cause or permit any Hazardous Materials to be brought upon, stored, used, generated, released or disposed of on, within, under, from and/or about the Premises and/or the Shopping Center (which for purposes of this Article shall include,

but is not limited to, air, subsurface soil and ground water) without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. Any such consent by Landlord may be conditioned upon Tenant's ability to demonstrate (in Landlord's sole and absolute discretion) that such Hazardous Materials are necessary or useful to Tenant's business and will be stored, used, generated and disposed of in a manner that complies with all Environmental Requirements and with good business practices. Without limiting any other rights or remedies of Landlord under this Lease, Tenant shall pay the cost of any cleanup and/or remediation work performed on, within, under, from and/or about the Premises and the Shopping Center as required by this Lease and/or any Environmental Requirements.

47.4 **Routine Reporting Requirements:** Tenant shall comply with all requirements for, immediately notify Landlord of, and, where possible, provide Landlord with true, correct, complete and legible copies of, all communications and documents relating to Environmental Requirements, including without limitation all reports, permits, permit applications, warnings, citations, complaints, disclosures and/or notices which are received by, served upon and/or prepared by Tenant and/or Tenant's agents, employees and independent contractors in connection with the possession, use, presence, generation, storage, disposal, discharge and/or release of Hazardous Materials on, within, under, from and/or about the Premises and/or the Shopping Center. Such communications further include, without limitation: (a) all reports prepared by or on behalf of Tenant pursuant to any self-reporting requirements; (b) all manifests, shipping documents, Material Safety Data Sheets and invoices concerning the purchase of any Hazardous Materials for use or sale by or on behalf of Tenant within the Premises; (c) all manifests, shipping documents and invoices concerning the removal of any Hazardous Materials from the Premises or the Shopping Center; (d) all reports or plans filed by or on behalf of Tenant pursuant to any Environmental Requirements or this Lease; (e) all permit applications filed by or on behalf of Tenant; (f) all permit monitoring reports, including those required to be given or posted at, on, or about the Premises or the Shopping Center; (g) all "Proposition 65", "right to know," hazard communications, workplace exposure and community exposure warnings; and (h) all notices and all other reports, disclosures, plans or documents (even those which may be characterized as privileged or confidential) relating to water discharges, air pollution, waste generation or disposal, underground storage tanks or Hazardous Materials.

47.5 **Transportation Reporting Requirements:** Tenant shall give Landlord at least fifteen (15) days' prior written notice of the delivery to and/or removal from the Premises of any Hazardous Materials. Such written notice shall set forth the following: (a) the type and quantity of Hazardous Materials being delivered to or removed from the Premises; (b) the time and date that such Hazardous Materials will be delivered to or removed from the Premises; (c) the identity and qualifications of all third parties retained by Tenant in connection with the delivery to or removal from the Premises of such Hazardous Materials. Landlord and/or Landlord's agents, employees and independent contractors shall be entitled to be present when any Hazardous Materials are being delivered to or removed from the Premises.

47.6 **Incident Reporting Requirements:** In addition to Tenant's routine reporting obligations described in this Article, Tenant shall immediately notify Landlord of (a) all discharges releases and/or disposal of any Hazardous Materials by or on behalf of Tenant to which Landlord has not consented under this Article; (b) the commencement of any legal action against Tenant and/or any Tenant's officers, shareholders, directors, partners, affiliates, agents, employees and independent contractors arising out of or resulting from any purported violation of any Environmental Requirement; (c) the threat of any claim or legal action being brought against Tenant and/or any of Tenant's officers, shareholders, directors, partners, affiliates, agents, employees and independent contractors arising out of or resulting from alleged exposure to or the purported storage, use, generation, release or disposal of any Hazardous Materials on, within, under, from and/or about the Premises and/or the Shopping Center by Tenant and/or Tenant's agents, employees and independent contractors. Concurrently with any notice delivered by Tenant under this Section, Tenant shall disclose and deliver to Landlord all materials which Tenant discovers, learns about and/or has in its possession or under its control relating to the matter of which Tenant is notifying Landlord, including, without limitation, true, correct, complete and legible copies of all reports and correspondence with or from all governmental agencies, authorities or any other persons and all complaints, pleadings and other legal documents.

In the event of any discharge, release, spillage, migration, contamination, controlled loss, seepage or filtration of any Hazardous Materials within, under, from and/or about the Premises and/or the Shopping Center as a result of any conduct of or omission by Tenant, or any employee or agent or agent of independent contractor engaged by or on behalf of Tenant, Tenant shall cease, contain, remove or mitigate the same immediately in accordance with all Environmental Requirements and to the extent necessary to restore the Premises and the Shopping Center to the condition they were in before such discharge, release, spillage, migration, contamination, uncontrolled loss, seepage or filtration.

47.7 **Monitoring of Compliance; Disclosure:** Tenant shall establish and maintain at its sole expense a system to assure and to monitor continued compliance on the Premises with the Environmental Requirements. On each anniversary of this Lease (herein referred to as the "Disclosure Date"), until and including the first Disclosure Date occurring after the expiration or sooner termination of the Lease, Tenant shall disclose to Landlord in writing the names and amounts of all Hazardous Materials, or any combination thereof, which were stored, generated, used, released from or disposed of on, within, under, from and/or about the Premises and/or the Shopping Center by Tenant and/or Tenant's agents, employees and independent contractors for the twelve (12) month period prior to and after each Disclosure Date, or which Tenant intends, during the twelve (12) month period after each Disclosure Date, to store, generate, use or dispose of on, under or about the Premises and/or the Shopping Center.

Tenant shall, upon the request of Landlord, take all action, including, without limitation, the conducting of tests or analyses (all at the sole expenses of Tenant) to confirm that no Hazardous Material is being manufactured, generated, stored, treated or disposed of on, within, under, from and/or about the Premises and/or the Shopping Center in violation of any Environmental Requirements of this Lease. Tenant shall provide Landlord with a copy of any report prepared by any agent, employee or independent contractor of Tenant concerning compliance.

47.8 **Inspections; Compliance:** At all times during the term of this Lease, Landlord and Landlord's employees, agents and independent contractors shall have the right, but not the obligation, at Tenant's expense, to enter into the Premises for the purpose of inspecting, investigating, sampling and/or monitoring Tenant's compliance with this Article. Such inspections, investigations, sampling and/or monitoring may include, without limitation, the performance of any air, soil, water, groundwater or other sampling and any other testing, digging, drilling or analyses which Landlord may deem desirable. In connection with any such inspection, investigations, sampling and/or monitoring, Tenant shall provide Landlord with full access to all relevant facilities, records and personnel. If Tenant is not in compliance with any of the provisions of this Article, Landlord shall have the right, but not the obligation, without limitation upon any of Landlord's other rights and remedies under this Lease, to immediately enter upon and permit entry upon the Premises and to discharge Tenant's obligations under this Article at Tenant's expense, notwithstanding any other provision of this Lease. All sums disbursed, deposited or incurred by Landlord in connection therewith, including, but not limited to, all costs, expenses and attorneys', consultants and experts fees, shall be due and payable by Tenant to Landlord as additional rent, on demand by Landlord, together with interest thereon at the maximum rate allowable from the date of such demand until paid by Tenant.

47.9 **Legal Actions:** Landlord, at Tenant's sole cost and expense, shall have the right, but not the obligation, to join and participate in any legal proceedings or actions initiated in connection with any claims or causes of action arising out of the storage, generation, use, removal or disposal by Tenant, its agents, employees, contractors or invitees, of any Hazardous Materials on, within, under, from and/or about the Premises or the Shopping Center. If the presence of any Hazardous Materials on, within, under, from and/or about the Premises or the Shopping Center that is caused or permitted by Tenant, its agents, employees, contractors or invitees, results in or could result in (a) injury to any person, (b) injury to or any contamination of the Premises or the Shopping Center, or (c) injury to or contamination of any real or personal property wherever situated, then Tenant, at its sole cost and expense, shall immediately take all actions necessary to return the Premises and the Shopping Center to the condition existing prior to the commencement of the Lease and to prevent, remedy or repair any such injury or contamination. Notwithstanding the foregoing, however, Tenant shall not, without Landlord's prior written consent, take any remedial action in response to the presence of any Hazardous Materials on, under or about the Premises and/or the Shopping Center, or enter into any settlement agreement, consent, decree or other compromise with any governmental agency with respect to any Hazardous Materials claims; provided, however, Landlord's prior written consent shall not be necessary in the event that such Hazardous Materials pose an immediate threat to the health, safety or welfare of any individual, or are of such a nature that an immediate remedial response is necessary and it is not possible to obtain Landlord's consent before taking such action.

47.10

Indemnification: To the fullest extent permitted by law, Tenant hereby agrees to indemnify, hold harmless, protect and defend (with attorneys acceptable to Landlord) Landlord, Landlord's agents, officers, shareholders, directors, partners, affiliates, employees and independent contractors and any beneficiaries under any deeds or trust or mortgages encumbering the Shopping Center (the "Indemnitees"), from and against any and all liabilities, costs, losses, damages (including, but not limited to, injury to persons and/or property, damages for the loss or restriction on use of rentable or usable space or any amenity of the Premises and the Shopping Center or damages arising from any adverse impact on marketing of space in the Premises and the Shopping Center, diminution in the value or financeability of the Premises and the Shopping Center), judgements, fines, demands, claims, recoveries, deficiencies, costs and expenses (including, but not limited to, actual attorneys' fees, disbursements and court costs and all other professional or consultant's expenses), and expenses of complying with Environmental Requirements, whether foreseeable or unforeseeable, arising directly or indirectly out of the release of, or actual or alleged exposure to, the presence, use, generation, storage, removal, neutralization, treatment, disposal or transportation of Hazardous Materials on, within, under, from and/or about the Premises and the Shopping Center by or permitted by Tenant and/or Tenant's agents, partners, affiliates, employees, independent contractors, licensees or invitees. Tenant's obligation to the Indemnitees hereunder specifically requires Tenant to reimburse Landlord for the costs of any required or necessary containment, removal, abatement, repair, restoration, clean-up (including, but not limited to, the costs of investigation and removal) of Hazardous Materials or detoxification of the Premises and the Shopping Center and the preparation of any closure or other required plans, whether or not such action is required or necessary during the Term or after the expiration of this Lease, and is not limited by any non-delegable duty, negligence, strict or vicarious liability of Indemnitees, except to the extent of Indemnitees' sole negligence or strict liability.

47.11

Tenant's Responsibility at Conclusion of Lease: Promptly upon the expiration or sooner termination of this Lease, Tenant shall represent to Landlord in writing that (a) Tenant has made a diligent effort to determine whether any Hazardous Materials are on, under or about the Premises, and (b) no Hazardous Materials exist on, under or about the Premises other than as specifically identified to Landlord by Tenant in writing. To ensure performance of Tenant's diligence obligations under this Article, Landlord may, at any time within one (1) year of the expiration of the Term, or upon the occurrence of an Event of Default, by notice to Tenant, require that Tenant promptly commence and diligently prosecute to completion an environmental evaluation of the Premises. In connection herewith, Landlord may require Tenant, at Tenant's sole cost and expense, to immediately hire an outside consultant satisfactory to Landlord to perform a complete environmental audit of the Premises, a complete copy of which shall be delivered to Landlord within thirty (30) days after Landlord's request therefor. If Tenant or the environmental audit discloses the existence of Hazardous Materials on, under or about the Premises, Tenant shall, at Landlord's request, immediately prepare and submit to Landlord within thirty (30) days after such request, a comprehensive plan, subject to Landlord's approval, specifying the actions to be taken by Tenant to return the Premises to the condition existing on or at the introduction of such Hazardous Materials. Upon Landlord's approval of such clean up plan, Tenant shall, at Tenant's sole cost and expense, without limitation on any rights and remedies of Landlord under this Lease, immediately implement such plan and proceed to clean up such Hazardous Materials in accordance with all Environmental Requirements and as required by such plan and this Lease.

47.12

Default: Any failure of Tenant to fully satisfy its obligations under this Article shall be deemed to constitute an incurable material default of this Lease entitling Landlord to exercise all of its rights under Article 25 of this Lease.

47.13

Insurance: In the event Landlord consents to Tenant's use, generation or storage of Hazardous Materials on, under or about the Premises hereunder, Landlord shall have the continuing right to require Tenant, at Tenant's sole cost and expense, to purchase insurance specified and approved by Landlord, with coverage of no less than Five Million Dollars (\$5,000,000.00), insuring (a) any Hazardous Materials shall be removed from the Premises, (b) the Premises shall be restored to a clean, neat, attractive, healthy, safe and sanitary condition, and (c) any liability of Tenant, Landlord and Landlord's employees, agents and independent contractors arising from Hazardous Materials.

48.

ADDITIONAL PROVISIONS.

48.1

Premises Taken "As Is": The Premises are leased to Tenant "as is", without representation or warranty by the Landlord, and Tenant accepts the Premises in the condition existing as of the date of occupancy subject to all applicable zoning, municipal, county and state laws, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term of any period of the term hereof, regulating the Premises. Tenant has conducted its own inspections and has relied entirely thereupon and upon those of its agents, representatives and consultants in evaluating the Premises.

48.2

Right to Remodel: Tenant understands that Landlord may remodel the Shopping Center at some time in the future. Landlord reserves the right, upon thirty (30) days notice to Tenant to close the Tenant's Premises during the time of remodeling for a period not to exceed one (1) month. Landlord will pay the costs of transportation, storage and security for the contents of the Tenant's Premises. Landlord will pay to reconstruct the Premises and redeliver the Premises to Tenant substantially as described in Exhibit B-1. No rent shall be due to Landlord during the time the Tenant's Premises are closed for remodeling. During any remodeling project of the Shopping Center, Landlord agrees to use commercially reasonable efforts to minimize interference with Tenant's conduct of its business in the Shopping Center.

TENANT ACKNOWLEDGES NO REPRESENTATIONS OR STATEMENTS HAVE BEEN MADE BY LANDLORD, ANY AGENT OF LANDLORD, OR ANY REAL ESTATE BROKER, EXCEPT THOSE CONTAINED IN THIS LEASE. THE SUBMISSION OF THIS LEASE BY LANDLORD, ITS AGENT OR REPRESENTATIVE FOR EXAMINATION OR EXECUTION BY TENANT DOES NOT CONSTITUTE AN OPTION OR OFFER TO LEASE THE PREMISES UPON THE TERMS AND CONDITIONS CONTAINED HEREIN OR A RESERVATION OF THE PREMISES IN FAVOR OF TENANT, IT BEING INTENDED HEREBY THAT THIS LEASE SHALL BECOME BINDING UPON LANDLORD ONLY UPON LANDLORD'S DELIVERY TO TENANT OF A FULLY EXECUTED COUNTERPART HEREOF.

CONSULT YOUR ATTORNEY

THIS LEASE HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS OR HER APPROVAL.

IN WITNESS WHEREOF, the parties hereto have executed this Lease consisting of sixteen (15) pages, including the page on which these signatures appear, plus Addendum I, Exhibits A, B-1, B-2, C-1, C-2, D, E, F, G and H of Lease as per the day and year first above written.

LANDLORD

Mission Plaza Properties, LTD, a California limited partnership, by its general partner, Mission Plaza Properties, Inc., a California corporation,


TENANT

PWS, Inc., a California corporation,

By:


Peter Schultz, President

By:

 6/2/2004
Eric Steinberg, President

ADDENDUM 1

OPTIONS TO EXTEND

- A. **Option to Renew Lease.** Provided Tenant is not or has not been in material default with notice and uncured under the Lease, either at the time of exercise of its rights hereunder or at the commencement date of the Option Term; then Tenant shall have the right to renew the term of the Lease (referred to herein as "Option Term") for three (3) consecutive terms of five (5) years from the termination date of the Lease. In the event Tenant is in default at the time of exercise of its rights hereunder or at the commencement of the Option Term, then Landlord, at Landlord's option, may terminate this Lease concurrently with the last day of the Lease term or the last day of the then existing Option Term, as the case may be.
- B. **Notice of Election to Renew.** Tenant's Notice of Election to Renew shall be made by serving upon Landlord a notice in writing to the effect that Tenant elects to extend the term of the Lease for the extended term provided herein which notice shall be directed to Landlord one hundred eighty (180) days prior to the expiration date of the term of this Lease or the expiration date of the then existing five (5) year Option Term, as the case may be. In the event Tenant shall not have given Landlord written notice in the manner prescribed herein this Lease shall terminate concurrently with the last day of the Lease term or the last day of the then existing Option Term, as the case may be.
- C. **Rent for Extended Terms.** Minimum Rent for the first year of each extended term of the Lease, and each year thereafter, shall be increased annually by an amount equal to three percent (3%) of the Minimum Rent for the immediately preceding lease year.

Landlord's Initials: AS
Tenant's Initials: LS

EXHIBIT B-1

DESCRIPTION OF LANDLORD'S WORK

Tenant accepts the premises in its "as is" condition, has fully inspected same, and has not relied upon any representations or statements made with regard thereto by Landlord or any representative or agent of Landlord. Landlord shall have no responsibility for any deficiencies arising out of the use or occupation of the premises, and Landlord shall have no responsibility for any work which may be required upon the premises or for any work in remodeling the premises.



EXHIBIT B-2

DESCRIPTION OF TENANT'S WORK

All improvements made by Tenant shall have the prior written approval of Landlord prior to commencement of construction of such improvements. Tenant, at its sole cost and expense, (except as provided herein) shall diligently and continuously complete any items of work which may be required upon the premises including, without limitation, Tenant's Work described in this Exhibit "B-2," and undertake any remodeling upon the premises prior to the initial opening for business of Tenant and all such work and remodeling shall be done in accordance with plans and specifications which have received the prior written approval of Landlord and in accordance with all applicable building codes and regulations governing said construction in accordance with this Exhibit "B-2," and all such improvements shall once completed become the property of Landlord at option of Landlord.

Upon execution of this Lease, Tenant will have prepared at Tenant's sole cost and expense plans and specifications for the work designated as Tenant's Work on this Exhibit "B-2" and shall deliver a full set of plans to Landlord within thirty (30) days thereafter. Landlord shall have the right to approve, disapprove or require modification of said plans and specifications, which changes shall be made by Tenant and revised plans submitted promptly to Landlord for approval. The foregoing procedures shall be followed until an approved set of plans and specifications has been prepared. Within thirty (30) days after completion of said construction of the premises, Tenant shall deliver to Landlord a set of reproducible "as built" drawings.

Any changes in the work described in this Exhibit "B-2" or the plans and specifications requested by Tenant or required by any governmental authority shall be at Tenant's sole cost and expense. Tenant shall pay Landlord any costs which Tenant is required to pay pursuant to this Exhibit "B-2" within five (5) days following Landlord's periodic billings therefor. Tenant acknowledges that incorporation of any materials containing asbestos or other toxic or hazardous substances into the premises, or any portion of Tenant's Work is absolutely prohibited. Tenant agrees and warrants that it shall not incorporate or permit or suffer to be incorporated, knowingly or unknowingly, any material containing asbestos or other toxic or hazardous substances into the premises or Tenant's Work.

All material or construction deliveries shall be made through the rear entrance of the premises. By opening for business, Tenant shall be deemed to have acknowledged that all work, if any, required to be performed in connection with the premises and any and all obligations to be performed by Landlord on or before the opening of the premises have been satisfactorily completed, except for reasonable and proper "punchlist" items shown on a list delivered to Landlord within ten (10) days of the date Landlord tenders possession of the premises to Tenant. Failure to deliver such a list shall constitute conclusive evidence that the premises are satisfactory to Tenant as tendered.

TENANT'S WORK

[TO BE PROVIDED]



RECEIVED
JUN 17 2004

EXHIBIT C-1

RECEIPT FOR KEY DELIVERY AND
ACCEPTANCE OF OCCUPANCY OF THE PREMISES

I, Sharon Talkington, acknowledge I have received the keys and have accepted formal
occupancy of the Premises known as 5700 Mission, Riverside in the _____
Shopping Center, Riverside, California, on the following date:
6/10/04

By: Sharon Talkington
By: _____

INITIAL
48

DESIGNATION OF AUTHORITY

Kodash, Inc.
3625 Del Amo Blvd., Suite 130
Torrance, CA 90503

Attention: Sabrina Frucht

RE: Lease Agreement dated _____ by and between _____
____ (as "Landlord"), and _____ (as "Tenant"), for the Premises
located at _____ (The "Lease").

Dear Mrs. Frucht:

Please refer to the above referenced Lease. The purpose of this letter is to unconditionally authorize _____ As the Tenant's designee for purpose of taking possession of the keys to the Premises described in the Lease for the purpose of accepting occupancy of said Premises. All actions taken by such authorized designee shall constitute actions of Tenant.

Very truly yours,

_____, Tenant

By: _____

Name: _____

Title: _____

Exhibit D
Sign Specifications

ALL SIGNAGE TO BE APPROVED BY LANDLORD AND COUNTY OF RIVERSIDE.
EXTERIOR SIGNS ARE TO BE MANUFACTURED AND INSTALLED PURSUANT TO
COUNTY SIGN SPECIFICATIONS FOR THE SHOPPING CENTER.



EXHIBIT F

RULES AND REGULATIONS

Tenant agrees as follows:

1. All loading and unloading of goods shall be done in the areas and through the entrances designated for such purposes by Landlord. Tenant shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading and services to the premises prior to 10:00 a.m. of each day. Tenant shall not permit or cause delivery trucks or other vehicles servicing the premises to park or stand in front of, or at the rear of, the premises from 10:00 a.m. to 9:00 p.m. of each day. Landlord reserves the right to further regulate the activities of the Tenant in regard to deliveries and servicing of the premises by the adoption of rules and regulations relating thereto.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the premises shall be subject to such rules and regulations as in the judgment of Landlord are necessary for the proper operation of the premises or Shopping Center.
3. No person shall use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which permission to use such area is given.
4. No employee shall use any area for motor vehicle parking, except the area or areas specifically designated for employee parking by Landlord subject to the provisions of the Lease. No employer shall designate any area for employee parking, except such area or areas as are designated in writing by Landlord.
5. No person without the express written consent of Landlord shall within any portion of common area of the Shopping Center or outside the premises leased to such person:
 - (a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
 - (b) Exhibit any sign, placard, banner, notice or other written material;
 - (c) Distribute any circular, booklet, handbill, placard or other material;
 - (d) Solicit membership in any organization, group or association or contribution for any purpose;
 - (e) Parade, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede use of the common areas by Landlord, or any occupancy or any employee, or invitee of any occupant, create a disturbance, attract attention, or harass, annoy, disparage, or be detrimental to the interest of any business establishment within the Shopping Center;
 - (f) Use the common area for any purpose when none of the business establishments within the Shopping Center is open for business or employment;
 - (g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind;
 - (h) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvements within, or property situated within, the Shopping Center.
6. Display exterior and interior signs that obscure more than twenty-five (25) percent of the total window area of any window visible from a public street, right-of-way or parking lot.
7. The outside areas immediately adjoining the premises shall be kept clean and free from dirt and rubbish by Tenant to the satisfaction of Landlord, and Landlord shall not place or permit any obstructions or merchandise in such areas.
8. The plumbing facilities shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.
9. No portion of the premises shall be used for lodging purposes.



AGREEMENT TO ASSIGN LEASE
(THE "ASSIGNMENT")

Investor's Name: _____ (the "Investor")

Address of Leased Premises (the "Premises") _____

In consideration of Alliance Laundry Systems LLC ("ALS") extending credit to the Investor to finance certain equipment in accordance with the terms of a certain Lease and/or Promissory Note and Security Agreement (in either case, the "Agreement") dated _____ relating to said equipment, which equipment is or will be installed as personal property in the Premises, the Investor hereby represents, warrants, covenants and agrees with ALS as follows:

1. The Investor has a valid and subsisting written lease of the Premises dated _____ (the "Lease").
2. Until all sums owed to ALS under the Agreement are paid in full, the Investor agrees (i) not to cancel, surrender, modify or assign the Lease, or sublet the Premises or any part thereof to any other person or entity, without in each case the prior written consent of ALS, and (ii) to pay all rentals coming due under the Lease and to keep and perform all the terms, conditions, and provisions of the Lease.
3. In the event of any breach or default by the Investor under this Assignment or the Agreement, then ALS shall have the right, hereby expressly granted (without prior demand or notice, and without thereby waiving or prejudicing any other rights, powers or remedies under the Agreement), (a) to enter on the Premises to take possession of the equipment for purposes of protecting or removing the same and/or (b) to appoint another person or entity (the "New Tenant") to take over the Premises and operate the equipment, in which case the Investor agrees to assign the Lease to the New Tenant upon request of ALS, and if the Investor fails to do so, then the New Tenant is hereby authorized to occupy and sublet the Premises for the unexpired term of the Lease (less the last day of said term), provided the New Tenant agrees in writing to pay directly to the Landlord all amounts thereafter to become due under the Lease. ALS shall not in any way be liable on the Lease or liable for the failure of the New Tenant to pay rent. If the equipment is removed by ALS, damage to the Premises directly related to such removal will be promptly repaired in a responsible manner by ALS.
4. This Assignment shall be binding upon all successors and assigns of the parties (and any reference to a party shall include its successors and assigns), and upon any guarantor with respect to the Agreement. This Assignment shall be paramount and enforceable as to any other (whether prior or subsequent) agreements between the Landlord, the Investor, and any other parties in interest. The Investor agrees that this Assignment shall be attached to the Lease, and to all other written agreements affecting the Premises, until all obligations owed to ALS by the Investor under the Agreement are satisfied in full.

Dated this _____ day of _____, 20__.

By: _____

(Name of Investor)

<

LANDLORD'S CONSENT

The undersigned, Landlord under the Lease attached hereto as Exhibit "A", for valuable consideration, hereby acknowledges receipt of a duplicate copy of the foregoing "Agreement to Assign Lease" (the "Assignment") and hereby consents to all terms and conditions of the Assignment, including the provisions of paragraph 3 thereof. This consent is given only upon the following conditions:

- (1) any New Tenant appointed under paragraph 3 to whom the Lease is assigned (or to whom the Premises are sublet) **shall be mutually acceptable to the Landlord and to ALS**; and
- (2) such New Tenant shall agree in writing to pay to Landlord all amounts thereafter to become due under the Lease; and
- (3) the Investor shall remain fully liable to the Landlord for the prompt payment of all rentals and the performance of all provisions of the Lease; and
- (4) the Assignment shall be binding upon all successors, assigns and guarantors of the parties, and any reference to a party shall include its successors and assigns. This Assignment shall be paramount and enforceable as to any other (whether prior or subsequent) agreements between the Landlord, the Investor, and any other parties in interest. Landlord agrees that the Assignment and this Landlord's Consent shall be attached to the Lease, and to all other written agreements affecting the Premises, until all obligations owed to ALS by the Investor are satisfied in full.

Dated this _____ day of _____, 20__.

Landlord Signature

Witness to Landlord Signature

Please print: Landlord name, title, company

Witness Name & Title

Landlord address

Telephone

2



6500 Flotilla Street
Los Angeles, CA 90040

Telephone: 323.721.8832
Fax: 323.726.8904

May 18, 2004

Sabrina Frucht
Kodash
c/o James R. Pickett, esq.
32847 Abana Court
Temecula, CA. 92592

RE: Premises lease for the coin laundry to be located at 5700 Mission Blvd.,
Riverside, CA. 92509

Dear Mr. Pickett:

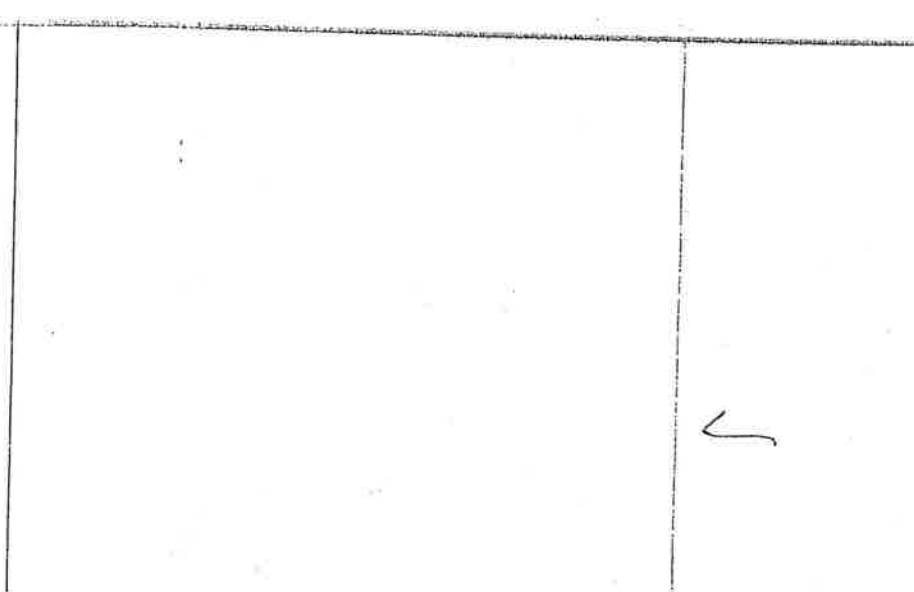
This letter is intended to respond to your concerns regarding the Alliance Laundry Systems "Agreement to Assign Lease" form which we have requested be attached as an exhibit to the above referenced leases. PWS herein acknowledges that despite anything to the contrary in the lease agreements, PWS agrees to be bound to the terms of this letter.

Please be aware that once the laundry is completed and the premises lease is assigned to a qualified, mutually approved buyer, PWS, Inc herein commits to the following. This agreement shall remain in place for as long as the loan with Alliance Laundry Systems is outstanding.

1. In the event of a default under the above referenced premises lease, so long as the Assignee has been removed from the premises, PWS, Inc herein agrees to:
 - a. take possession of the premises, under the terms and conditions of the lease;
 - b. *promptly remit delinquent rent and/or CAM to the Landlord, should there be any due;*
 - c. *remit future rent and CAM while in possession of the premises;*
 - d. advice Alliance Laundry Systems of a default under the premises lease.

2. In the event of a default under the loan referencing the attached Agreement to Assign lease form and upon Alliance Laundry Systems removing the Debtor from the premises, PWS, Inc herein agrees to:
 - a. take possession of the premises, under the terms and conditions of the lease;

EXHIBIT H



- b. *promptly remit delinquent rent and/or CAM to the Landlord, should there be any due;*
- c. *remit future rent and CAM while in possession of the premises;*
- d. PWS shall remain in possession of the premises, remitting all associated payments, until another acceptable buyer is agreed upon by all parties.

With this agreement in place, we feel the enclosed Alliance Laundry Systems document should now be attached to both premises leases.

We appreciate your assistance and cooperation in this matter.

Sincerely,



Eric Steinberg
President

Cc: David Horton
Sharon Talkington

Enc.

