

2022 TAXPAYER'S OPINION OF VALUE

PREPARED FOR THE CITY OF APPLETON OPEN BOOK

Parcel Numbers

31-7-0041-00

31-7-0044-00

31-7-0043-00

PROPERTY REFERENCE / LOCATION

Marketplace at College Avenue

2600-2700 College Avenue

Appleton, WI

2022 PROPOSED MARKET VALUE: \$4,250,000

TAXPAYER'S OPINION OF MARKET VALUE: \$2,000,000

PREPARED BY

The Gibbs Firm, LPA

2355 Auburn Avenue

Cincinnati, Ohio 45219

(513) 381-3890

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EXHIBIT

A

NARRATIVE

The subject property is a 235,548 SF retail shopping center built in 1964 in Appleton, WI. The current assessment for the subject is \$4,250,000. The subject property is anchored by a Big Lots and Planet Fitness. The property is currently 44.22% occupied after signing Jumbo Wholesales to a \$3/SF Gross lease in April of 2022 (See attached lease). The enclosed stabilized income analysis was done using \$3/gross as it is the best opinion of market rents and using the current operating expenses and taking no rent loss or lease up the analysis concludes to an assessment of \$2,000,000.

EXHIBIT

B

Cash Flow Report

Marketplace College Avenue
2600 -2700 College Avenue
Appleton, WI

Date prepared: 5/12/2021
Parcel No(s): 31-7-0041-00
31-7-0044-00
31-7-0043-00

Year Built: 1964
Rentable Square Feet: 235,548
Occupancy: 44.22%

Anchors: Vacant former WG&R
Jumbo Wholesales
Big Lots

2022 Stabilized Income Approach to Value

Revenues	Annual	Percentage	Per SF
Market Rent \$3.00 PSF Gross*	\$ 706,644	111.11%	\$ 3.00
Less: Market Vacancy of 10%	\$ (70,664)	-11.11%	\$ (0.30)
Total Income	\$ 635,980	100.00%	\$ 2.70

Operating Expenses	Annual	Percentage	Per SF
CAM - Landscaping	\$ 3,077	0.48%	\$ 0.01
CAM - Snow Removal	\$ 45,000	7.08%	\$ 0.19
CAM - Janitorial	\$ 2,370	0.37%	\$ 0.01
CAM - Inspections	\$ 1,491	0.23%	\$ 0.01
Signage	\$ 498	0.08%	\$ 0.00
CAM - Waste Disposal	\$ 6,314	0.99%	\$ 0.03
CAM - Fire - Safety	\$ 12,661	1.99%	\$ 0.05
CAM - HVAC	\$ 5,800	0.91%	\$ 0.02
Lighting	\$ 344	0.05%	\$ 0.00
CAM - Roof Repairs	\$ 9,506	1.49%	\$ 0.04
CAM - General Repairs	\$ 3,632	0.57%	\$ 0.02
Painting	\$ 81	0.01%	\$ 0.00
CAM - Parking Lot R&M	\$ 895	0.14%	\$ 0.00
Supplies - Repairs	\$ 3,966	0.62%	\$ 0.02
CAM - Plumbing	\$ 1,350	0.21%	\$ 0.01
CAM - Gas - TNT	\$ 18,550	2.92%	\$ 0.08
CAM - Electric	\$ 65,774	10.34%	\$ 0.28
CAM - Water/Sewer	\$ 62,009	9.75%	\$ 0.26
IT Computer Services	\$ 172	0.03%	\$ 0.00
Surety Bond Insurance	\$ 116	0.02%	\$ 0.00
Legal	\$ 8,067	1.27%	\$ 0.03
Bank Charges	\$ 15	0.00%	\$ 0.00
Insurance	\$ 21,276	3.35%	\$ 0.09
Professional Services	\$ 602	0.09%	\$ 0.00
Property & Liability Insurance	\$ 12,611	1.98%	\$ 0.05
Total Operating Expenses	\$ 286,176	45.00%	\$ 1.21

Net Income	\$ 349,804	55.00%	\$ 1.49
Reserves @ \$0.40 Per SF	\$ 94,219	14.81%	\$ 0.40
Net Operating Income	\$ 255,585	40.19%	\$ 1.09

Capitalization Rate (10%)
Tax Rate (2.288%) 12.29%

Value Derived From Income Approach \$ 2,079,886

Say: \$ 2,080,000

**2022
Market Value**

\$ 4,250,000

*Newest lease in property is to Jumbo Wholesalers for \$3.00 Gross

EXHIBIT C

Rent Roll

Building Status: Active only
Report Date: 4/28/2022

Bldg Id	Suite Id	Occupant Name	Rent Start	Expiration	GLA Sqft	Monthly Base Rent	Annual Rate PSF	Monthly Cost Recovery	Expense Stop	Monthly Other Income	Future Rent Increases	Monthly Amt	PSF
Vacant Suites													
AW	2600-3	Vacant			1,655								
AW	2700-1	Vacant			1,000								
AW	2700-13	Vacant			2,500								
AW	2700-15	Vacant			1,280								
AW	2700-16	Vacant			1,200								
AW	2700-17	Vacant			1,300								
AW	2700-18	Vacant			4,500								
AW	2700-2	Vacant			2,830								
AW	2700-27	Vacant			1,470								
AW	2700-28	Vacant			70,819								
AW	2700-30	Vacant			29,975								
AW	2700-4	Vacant			1,458								
AW	2700-5	Vacant			6,609								
AW	2700-7	Vacant			1,200								
AW	2700-8	Vacant			2,200								
AW	2700-9	Vacant			1,400								
Occupied Suites													
AW	2600-1A	Eye-Mart Express	5/1/1990	12/31/2025	4,553	7,925.11	20.89	561.42					
										BRT	1/1/2023	8,242.11	21.72
										BRT	1/1/2024	8,571.80	22.59
										BRT	1/1/2025	8,914.67	23.50
AW	2600-1B	Tipsy Nails Studio	6/1/2006	4/30/2033	1,233	1,500.00	14.60						

Rent Roll

Bldg Id	Suite Id	Occupant Name	Rent Start	Expiration	GLA Sqft	Monthly Base Rent	Annual Rate PSF	Monthly Cost Recovery	Expense Stop	Monthly		Future Rent Increases		
										Other Income	Cat		Date	Monthly Amt
AW	2600-4	North American Mechanical	5/1/2009	9/30/2013	2,357	1,276.71	6.50	405.78			BRT	5/1/2023	1,750.00	17.03
											BRT	5/1/2024	1,802.50	17.54
											BRT	5/1/2025	1,856.58	18.07
											BRT	5/1/2026	1,912.27	18.61
											BRT	5/1/2027	1,969.64	19.17
											BRT	5/1/2028	2,028.73	19.74
											BRT	5/1/2029	2,089.59	20.34
											BRT	5/1/2030	2,152.28	20.95
											BRT	5/1/2031	2,216.85	21.58
											BRT	5/1/2032	2,283.35	22.22
AW	2700-10	One Main Financial Group	8/1/2004	7/31/2027	2,154	1,436.00	8.00	370.83			GRC	2/1/2023	1,609.50	13.80
											GRC	2/1/2024	1,641.69	14.09
											GRC	2/1/2025	1,674.52	14.35
											GRC	2/1/2026	1,708.01	14.64
											GRC	2/1/2027	1,742.17	14.93
AW	2700-12	China Moon	5/1/2001	4/30/2024	2,000	2,251.01	13.51	344.32			BRT	7/1/2022	2,318.55	13.91
											BRT	7/1/2023	2,388.10	14.33
AW	2700-14	Jumbo Wholesales	4/8/2022	4/30/2032	25,000	6,250.00	3.00				BRT	5/1/2024	8,333.33	4.00
											BRT	5/1/2025	8,583.33	4.12
											BRT	5/1/2026	8,840.83	4.24
											BRT	5/1/2027	9,106.06	4.37
											BRT	5/1/2028	9,379.24	4.50
											BRT	5/1/2029	9,660.62	4.64
											BRT	5/1/2030	9,950.44	4.78
											BRT	5/1/2031	10,248.95	4.92
											PTP	5/1/2023	0.00	0.00
AW	2700-20	Lebakkens Rent to Own	10/1/2016	8/31/2026	10,561	5,544.52	6.30	1,818.25						
AW	2700-22	Big Lots #1800	8/1/2003	1/31/2024	30,000	11,250.00	4.50	716.04						
AW	2700-24	Planet Fitness	12/1/2018	1/1/30/2031	24,894	10,666.67	5.14				BRT	12/1/2026	12,666.67	6.11
											CON	9/1/2022	0.00	0.00

Rent Roll

Bldg Status: Active only
Report Date: 4/28/2022

Bldg Id	Suite Id	Occupant Name	Rent Start	Expiration	GLA Sqft	Monthly Base Rent	Annual Rate PSF	Monthly Cost Recovery	Expense Stop	Monthly Other Income	Future Rent Increases
Totals:											
Occupied Sqft:			44.22%	10 Units	104,152	49,677.96		4,216.64		365.00	
Leased/Unoccupied Sqft:				0 Units	0						
Vacant Sqft:			55.78%	16 Units	131,396						
Total Sqft:				26 Units	235,548	49,677.96					
Total West Appleton Realty LLC:											
Occupied Sqft:			44.22%	10 Units	104,152	49,677.96		4,216.64		365.00	
Leased/Unoccupied Sqft:				0 Units	0						
Vacant Sqft:			55.78%	16 Units	131,396						
Total Sqft:				26 Units	235,548	49,677.96					
Grand Total:											
Occupied Sqft:			44.22%	10 Units	104,152	49,677.96		4,216.64		365.00	
Leased/Unoccupied Sqft:				0 Units	0						
Vacant Sqft:			55.78%	16 Units	131,396						
Total Sqft:				26 Units	235,548	49,677.96					

EXHIBIT D

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease"), as of this 8th day of February, 2022 ("Effective Date") by and between WEST APPLETON REALTY LLC, a Wisconsin Limited liability company (collectively "Landlord"), and Wasim Bilal, an adult individual, d/b/a "Jumbo Wholesales" ("Tenant").

WITNESSETH:

IN CONSIDERATION of the mutual covenants hereinafter contained, and each act performed hereunder by either of the parties, Landlord and Tenant agree as follows:

- I. **BASIC LEASE PROVISIONS.** This Article I is an integral part of this Lease and all of the terms hereof are incorporated into this Lease in all respects. In addition to the other provisions which are elsewhere defined in this Lease, the following, whenever used in this Lease shall have the meanings set forth in this Article I:
 - A. **Shopping Center:** Marketplace College Avenue, situated at 2600 West College Avenue, City of Appleton, State of Wisconsin (Article II) (as depicted on Exhibit "A").
 - B. **Premises:** Unit # 14, containing approximately 25,000 square feet of floor area (Article II) (as depicted on Exhibit "A").
 - C. **"Lease Term" or "Term":**
 - 1. The terms and provisions of this Lease shall become effective on the Effective Date and continue for a period of Ten (10) Lease Years following the Rent Commencement Date (Article III).
 - 2. **Rent Commencement Date:** Two (2) months following the Effective Date.
 - D. **Rent:** (Article IV).
 - 1. **Minimum Rent** (Article IV)

	\$ Annum	\$ Monthly
Lease Year 1	\$75,000.00	\$6,250.00
Lease Year 2	\$75,000.00	\$6,250.00
Lease Year 3	\$100,000.00	\$8,333.33
Lease Year 4	\$103,000.00	\$8,583.33
Lease Year 5	\$106,090.00	\$8,840.83
Lease Year 6	\$109,272.70	\$9,106.06

Lease Year 7	\$112,550.88	\$9,379.24
Lease Year 8	\$115,927.41	\$9,660.62
Lease Year 9	\$119,405.23	\$9,950.44
Lease Year 10	\$122,987.39	\$10,248.95

- E. **Landlord's Work:** As Is. (Article VI).
- F. **Estimated Delivery of Possession Date:** (Article VI). On or about the Effective Date provided Tenant has provided proof of insurance as required herein.
- G. **Permitted Use:** (Article IX): The Premises shall be used solely for conducting business therein as a gas station market retail facility, and for no other purpose without the prior written consent of the Landlord.
- H. **Tenant's Trade Name:** Tenant shall operate in the Premises solely under the trade name "Jumbo Wholesales" and no other name without the written consent of Landlord. Landlord makes no representation or warranty and has given no assurance, express or implied, as to the availability or continued availability of the Tenant's Trade Name.
- I. **Rent Payment Address:** Tenant shall mail or deliver the monthly Minimum Rent set forth herein to Landlord at the following address:

WEST APPLETON REALTY LLC
P.O. Box 25078
Tampa, FL 33622

- J. **Notice Address:** (Article XVII)

Tenant:

Wasim Bilal
1151 Pisces Place
De Pere, WI 54115

PHONE: 872-600-1060
EMAIL: wasim@jumbowholesale.net

Landlord:

WEST APPLETON REALTY LLC
c/o Namdar Realty Group
150 Great Neck Road
Suite 304
Great Neck, NY 11021

- K. **Security Deposit/Prepayment:** One month Minimum Rent (\$6,250.00) as Security AND One-month Minimum Rent (\$6,250.00) prepayment, each submitted in the form of a money order or bank check upon execution of this Lease (Article XVIII).

II. PREMISES.

- A. Landlord leases to Tenant, and Tenant leases from Landlord, the premises described in Article I(B) ("Premises"), as measured from the exterior face of any exterior walls and to the centerline of common walls. The shopping center described in Article I(A) ("Shopping Center") is depicted on Exhibit "A" attached hereto. Landlord shall have the right from time to time, in its sole discretion, to increase, reduce, redevelop and/or otherwise alter (i) the Shopping Center, including, without limitation, the sale and/or acquisition of land, whether or not currently subdivided, and/or (ii) the buildings comprising the Shopping Center.
- B. Landlord further reserves the right to use (or grant to other parties the right to use) and Tenant will have no right title or interest in (i) the roof of the buildings within the Shopping Center, including the Premises, (ii) exterior non-storefront portions of the Premises (including, without limitation, neutral piers, demising walls, and outer walls of buildings in which the Premises are located), (iii) air rights above the Shopping Center, including the Premises, and (iv) the right to land and improvements below the floor level of the Premises. Landlord shall have the exclusive right to lease any rooftop within the Shopping Center, including the rooftop of the Premises.
- C. Landlord and its agents/representatives shall have the right to enter upon the Premises at all reasonable hours, with reasonable prior notice, for the purpose of inspecting the Premises or to otherwise ensure compliance with the provisions of this Lease and for any other lawful purpose, except in case of emergency in which case no notice shall be required.

III. TERM.

- A. **Lease Term.** The terms and provisions of this Lease shall become effective on the Effective Date and shall expire on the last day of the last consecutive full lease year following the Rent Commencement Date, unless sooner terminated. The term "Lease Year" shall mean a period of twelve (12) consecutive full calendar months beginning with the Rent Commencement Date. If the Rent Commencement Date does not occur on the first day of a calendar month, the first lease year shall include any partial calendar month.

IV. RENT.

- A. **Minimum Rent.** Commencing on the Rent Commencement Date, all Minimum Rent and any other sums owed by Tenant under this Lease shall be payable, in lawful U.S. currency, without notice or demand and without deduction, diminution, abatement, counterclaim, or set off of any amount or for any reason whatsoever to Landlord, at the address listed in Article I, Section I above (or other place as Landlord may from time to time designate), as "Minimum Rent" for the Premises during the Lease Term, without any deduction or setoff, the amount(s) set forth herein, in advance, on the first day of each calendar month. Minimum Rent and Additional Rent (as hereinafter defined) shall be prorated on a per diem basis (based upon a thirty (30) day calendar month) for any partial month included in the first lease year.

Notwithstanding Tenant's obligation to pay Minimum Rent and/or Additional Rent as of the first day of each month during the Lease Term, in the event that an insolvency,

bankruptcy or similar proceeding is filed by or against Tenant, Tenant shall be obligated to pay all such Minimum Rent and/or Additional Rent on a ratable basis from the date of the commencement of any such proceeding through the end of the month in which such proceeding is commenced. Neither Landlord's failure to send an invoice nor Tenant's failure to receive an invoice for will relieve Tenant of its obligation to timely pay any rent and charges herein.

V. TAXES.

A. Tax Payment Definitions.

1. **"Base Tax Amount"** shall mean the Taxes (as defined below), as finally determined, for the Base Tax Year.
2. **"Base Tax Year"** means the first full municipal taxation year within the Term of this Lease, in which the taxes are levied and assessed against the Lands/Tax Lot on which the Premises is located.,
3. **"Tax Payment"** shall mean an amount equal to Tenant's Tax Share of the amount by which the Taxes for such Tax Year are greater than the Base Tax Amount.
4. **"Tax Year"** shall mean the fiscal year for which Taxes are levied by the relevant governmental authorities in which the Premises are located.
5. **"Tenant's Tax Share"** shall be calculated as a fraction, the numerator of which is the number of rentable square feet in the Premises and the denominator of which is the number of rentable square feet in the buildings on the Tax Lot (hereinafter defined) recognized by the relevant governmental authorities/taxing bodies as being used for purposes which are not exempt from real estate taxation as of the date on which the assessment is made for the tax year in question as either may change from time to time throughout the Term. The "Tax Lot" means the tax lot(s) on which the Premises is located.
6. **"Taxes"** shall mean the real estate taxes (state, county, school, village, and the like) and assessments, and special assessments, special or otherwise, levies, charges, special assessments and business improvement district charges and fees (whether voluntary or mandatory) imposed upon the Shopping Center and the land on which the Premises is part. If at any time during the Term the methods of taxation prevailing at the Effective Date shall be altered so that in lieu of or as an addition to or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed or imposed (i) a tax, assessment, levy, imposition or charge wholly or partially as capital levy or otherwise on the rents received therefrom, or (ii) a tax, assessment, levy, imposition or charge measured by or based in whole or in part upon the Shopping Center and/or the land thereunder (the "Land") and imposed upon Landlord, or (iii) a license fee measured by the rents payable by Tenant to Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof so

measured or based, shall be deemed to be included within the term "Taxes" for the purposes hereof.

B. Tax Payment.

1. If the Taxes for any Tax Year shall be more than the Base Tax Amount, Tenant shall pay, as Additional Rent for such Tax Year, the Tax Payment. Commencing upon the first Tax Year after the Base Tax Year (the "Initial Comparison Tax Year"), because Taxes are paid in advance, Tenant shall pay an Initial Tax Payment (as defined below) and, thereafter, monthly installments on account of future Tax Payments to Landlord as follows: (i) after the expiration of the Base Tax Year, Landlord shall provide a statement of the Tax Payment due for the Initial Comparison Tax Year based on the tax bill or statement for the Initial Comparison Tax Year (the "Initial Tax Payment") and Tenant shall reimburse Landlord the amount of the Initial Tax Payment within 15 days after the date of the statement thereof and (ii) thereafter, during the Initial Comparison Tax Year, and every subsequent Tax Year, Tenant shall pay, together with payments of Minimum Rent, monthly installments of the estimated Tax Payment for the following Tax Year. The monthly installments for any Tax Year shall be based upon Landlord's reasonable estimate of the Tax Payment for the following Tax Year; *provided*, that Landlord shall have the right to adjust such estimate from time to time in its reasonable discretion, it being the parties' intention that by the date that Landlord is obligated to pay the Taxes to the relevant governmental authorities, Landlord shall have collected from Tenant (by payment of such installments) the Tax Payment on account of such Taxes. The Tax Payment shall be appropriately prorated, if necessary, to correspond with that portion of a Tax Year occurring within the term of this Lease. In no event shall Tenant be entitled to any refund or credit and, in no event shall the Minimum Rent be reduced below the amount set forth herein if Taxes in any given Tax Year are lower than the Base Tax Amount. For the avoidance of doubt, the Tax Payment shall be paid by Tenant as provided herein regardless of the fact that Tenant may be exempt, in whole or in part, from the payment of any taxes by reason of Tenant's diplomatic or other tax exempt status or for any other reason whatsoever.
2. Only Landlord shall be eligible to institute tax reduction or other proceedings to reduce the assessed valuation of the Land and Building. Should Landlord be successful in any such reduction proceedings and obtain a rebate or a reduction in assessment for periods during which Tenant has paid or is obligated to pay Tenant's Tax Share of increases in Taxes then either (a) Landlord shall, in the event a rebate is obtained, return Tenant's Tax Share of such rebate to Tenant after deducting Landlord's expenses, including without limitation, reasonable attorneys' fees and disbursements in connection with such rebate (such expenses incurred with respect to a rebate or reduction in assessment being hereinafter referred to as "Tax Expenses"), or, (b) if a reduction in assessment is obtained prior to the date Tenant would be required to pay Tenant's proportionate share of such increase in Taxes, Tenant shall pay to Landlord, upon written request, Tenant's Tax Share of such Tax Expenses. If Taxes for the Initial Comparison Tax Year are reduced as a result of protest or otherwise, Landlord may use the final reduced amount of Taxes for the Initial Comparison Tax Year to compute Tenant's obligations for increases in Taxes during the Term. In such case, Tenant shall pay Landlord, within thirty (30) days after notice, any additional amount of

Taxes required by such computation for any period that has theretofore occurred during the Term following the Initial Comparison Tax Year.

3. After receipt of any bill or invoice for Taxes from the relevant governmental authorities for any Tax Year after the Initial Comparison Tax Year, Landlord shall deliver to Tenant a statement of (i) the amount of the Tax Payment based on such bill or invoice and (ii) the amount of any estimated installments on account of such Tax Payment made by Tenant in accordance with this Article (the "**Tax Payment Reconciliation**"). If the Tax Payment Reconciliation shows amounts due to Landlord, Tenant shall within 15 days after the date of the applicable statement, tender to Landlord an amount equal to such excess as Additional Rent. If the Tax Payment Reconciliation shows credits due to Tenant, then Landlord shall credit against Tenant's next monthly installment or installments of Additional Rent an amount equal to such difference until the credit is exhausted or if no more Additional Rent will be due during the Term, Landlord shall return the balance to Tenant.
- C. **Rental Taxes.** If any governmental taxing authority shall levy, assess, or impose any tax, excise or assessment (other than income or franchise tax) upon or against the rents payable by Tenant to Landlord ("Rent Tax"), either by way of substitution for or in addition to any existing tax on land, buildings or otherwise, Tenant shall directly pay, or reimburse Landlord for, the Rent Tax, as the case may be.
- D. **Impact Fees.** Tenant shall pay all impact fees, including, without limitation, any commercial impact fees for water and sewer, attributable to Tenant's usage of such utilities at the Premises and/or based on the number of square feet within the Premises. Tenant shall reimburse Landlord for any such fees previously paid by Landlord and attributable to the Premises.
- E. **Additional Tax Obligations.** Tenant shall be solely responsible for and shall pay before delinquency, all income taxes, sales taxes, excess profit taxes, or any franchise, capital stock, inheritance or estate taxes, license fees, inspection fees, and any special assessments not related to real estate taxes.

VI. **CONSTRUCTION.**

- A. **Landlord's Work.** Landlord shall have no obligation to perform or cause the performance of construction of any improvements to the Premises prior to delivery thereof to Tenant.
- B. **Delivery of Premises.** Landlord shall use reasonable efforts to deliver the Premises to Tenant on or before the Estimated Delivery of Possession Date set forth herein, in an "as is" condition, subject to delays caused by any circumstances beyond Landlord's reasonable control. Under no circumstances shall Landlord be liable to Tenant for any damages which may be caused by any delay in commencing or completing any construction of the Premises or for a total failure to complete same or for Landlord's failure to deliver the Premises on the date set forth herein. Tenant hereby acknowledges that Landlord has made no representations or warranties to Tenant with respect to the condition of the Premises or the working order of any systems or improvements therein existing as of the date of delivery. Tenant waives the right to make any claim against Landlord for any matter directly or indirectly arising out of the condition of the Premises,

appurtenances thereto, the improvements thereon and the equipment thereof. **LANDLORD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR HABITABILITY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TENANT WAIVES ALL EXPRESS OR IMPLIED WARRANTIES OF LANDLORD AS TO THE QUALITY OR CONDITION OF THE PREMISES OR THE SHOPPING CENTER, OR AS TO THE FITNESS OR SUITABILITY OF THE PREMISES OR THE SHOPPING CENTER FOR ANY PARTICULAR USE AS WELL AS ALL WARRANTIES THAT THE PREMISES ARE SUITABLE FOR TENANT'S USE OR ARE FREE FROM VICES, DEFECTS, OR DEFICIENCIES, WHETHER HIDDEN OR APPARENT.**

If the Tenant, upon prior written permission of Landlord, enters into possession prior to the date of the Effective Date, the Tenant, its agents, servants, employees and contractors shall not interfere with any work which the Landlord is required to perform hereunder prior to the date of the commencement of the Term of this Lease. All of the terms of this Lease shall govern any such earlier possession. Without prior written permission, Tenant is not authorized to enter into possession prior to the Effective Date.

- C. **Tenant's Construction.** Within thirty (30) days from the date of this Lease, Tenant shall prepare and deliver to Landlord detailed plans and specifications of the improvements to the Premises to be constructed by Tenant. Within fifteen (15) days following Landlord's receipt of Tenant's plans and specifications Landlord shall notify Tenant whether Tenant's plans and specifications are acceptable to Landlord. If Tenant's plans and specifications are not acceptable to Landlord, Landlord will advise Tenant of the required modifications to Tenant's plans and specifications. Tenant shall modify and deliver to Landlord its revised plans and specifications within five (5) days from receipt of Landlord's required modifications. Landlord and Tenant will continue this process until Landlord has approved Tenant's plans and specifications ("Tenant's Work"). Within five (5) days from receipt of Landlord's approval of Tenant's plans and specifications, Tenant will apply for any and all permits and other governmental approvals necessary to perform Tenant's Work and Tenant will diligently pursue such application until approved. Tenant shall not modify Tenant's plans and specifications approved by Landlord without Landlord's prior written consent. Upon Landlord's delivery of the Premises, and provided Landlord has approved Tenant's plans and specifications, Tenant will commence construction of Tenant's improvements to the Premises in accordance with the plans and specifications approved by Landlord and all Tenant's Work shall be performed in strict compliance with local, state, and federal laws, regulations, orders, or directives. Tenant's Work shall be performed with materials of good quality and in a proper workmanlike manner, and, unless Landlord gives its prior written consent otherwise, all items installed by Tenant in the Premises shall be new. Tenant shall not commence any work in the Premises until Tenant delivers to Landlord a policy of public liability and property damage insurance in accordance with the requirements of this Lease. In the event Tenant has not complied with each of the foregoing conditions, Landlord may, in its sole and absolute discretion, reasonably control Tenant's access to the Premises to the extent Landlord deems necessary without such actions resulting in any postponement or delay of the Rent Commencement Date set forth in Article I of this Lease. The approval by Landlord of such plans and specifications shall not constitute the assumption of any liability on the part of Landlord for their accuracy or their conformity with requirements of any building code, or other municipal or governmental regulation or ordinance.

All Tenant's Work (and any alterations thereafter) shall be performed and completed such that the Premises is in accordance with all applicable laws, codes, ordinances and rules and regulations of all governmental authorities having jurisdiction over the Premises.

Tenant hereby acknowledges that Tenant is responsible for any and all improvements of the systems and interior of the Premises under this Lease.

- D. **Signage.** Tenant shall install no exterior sign without Landlord's prior written approval, which approval may be withheld in Landlord's sole discretion. Tenant shall submit to Landlord for Landlord's approval Tenant's plans and specifications for Tenant's exterior signage. If Landlord so approves, Tenant shall be permitted to erect a sign or signs upon the Premises at Tenant's sole cost and expense, provided all signage is in compliance with size, location and other requirements of Landlord and as may be set forth by applicable ordinances and regulations including, but not limited to, sign and design ordinances. All signage shall conform to aesthetic and design criteria, themes, and standards of the Shopping Center. Upon the expiration or earlier termination of this Lease and upon written demand therefor from Landlord, Tenant shall promptly remove all signage and return the Premises to its original condition. All signs shall be installed, maintained and removed, at Tenant's sole cost and expense. At Landlord's discretion, Tenant shall remove all signage at the expiration or earlier termination of this Lease at its sole cost and expense. All such signage shall be subject to Tenant's obtaining all required governmental approvals. All permitted signs shall be maintained by Tenant at its expense in a first-class and safe condition and appearance. Tenant hereby acknowledges that, notwithstanding Landlord's approval of Tenant's Signage, Landlord has made no representation or warranty to Tenant with respect to the probability of obtaining all necessary governmental approvals and permits for Tenant's Signage. In the event Tenant does not receive the necessary governmental approvals and permits for Tenant's Signage, Tenant's and Landlord's rights and obligations under the remaining terms and conditions of this Lease shall be unaffected.

VII. COMMON AREAS.

- A. **Common Areas.** Landlord grants to Tenant and Tenant's customers and invitees the non-exclusive right to use the areas designated by Landlord from time to time as Common Areas. The term "Common Areas" shall mean the parking areas, roadways, pedestrian sidewalks, loading docks, delivery areas, exterior surfaces of Shopping Center buildings, landscaped areas, service courts, open and enclosed courts and malls, fire corridors, meeting areas and public restrooms, and all other areas or improvements which may be provided by Landlord for the common use of the tenants of the Shopping Center. Landlord does not represent or warrant that the Common Areas will be free from interruption of service or use for reasons beyond Landlord's reasonable control. In no event shall Landlord be liable for compensatory, incidental or consequential damages by reason of such interruption. Landlord hereby reserves the following rights with respect to the Common Areas:
1. To establish reasonable rules and regulations for the use thereof;
 2. To use or permit the use by others to whom Landlord may have granted such rights for promotional activities;

3. To close all or any portion thereof as may be deemed necessary by Landlord to prevent a dedication thereof or the accrual of any rights to any person or the public herein;
 4. To change the layout of such Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise, and shall have the right to retain revenue from income producing events whether or not conducted for promotional purposes;
 5. To erect and install signs, kiosks, landscaping (including planters), fountains, sculptures, free standing buildings and other structures, additional stories to existing buildings or otherwise; and
 6. To operate, manage, equip, light, repair and maintain said Common Areas for their intended purposes in such manner as Landlord shall in its sole discretion from time to time determine.
 7. To determine the nature and extent of the Common Areas and of making such changes, rearrangements, additions or reductions in and to the Common Areas, which, in Landlord's sole opinion, are deemed to be desirable or which are made as a result of any governmental requirements.
- B. Snow Removal.** Notwithstanding anything to the contrary contained herein, Landlord shall commence snow removal from the parking lots and walkways of the Common Areas any time during the Term no later than when the snowfall initially reaches the three inch (3") level, and subsequently thereafter. Notwithstanding anything to the contrary contained herein, the reasonable cost of such salting and snow removal service shall be reimbursed by Tenant based on Tenant's pro rata share (dividing Premises approximate square footage by approximate square footage of the Shopping Center) of said costs related to snow removal. Tenant shall receive an invoice from Landlord and tender the invoiced amount to Landlord within five (5) days following receipt of same.

VIII. UTILITIES AND RUBBISH DISPOSAL.

- A. Utility Charges.** Commencing on the Effective Date, Tenant shall be solely responsible to make all arrangements for and to pay for all utilities provided to or for the benefit of the Premises, including but not limited to water/sewer, demand or reservation fees, connection fees, sprinkler, tap fees, gas, electricity, fuel, light, heat, power, telephone, cable, and trash and garbage removal, together with all taxes levied or other charges on such utilities and governmental charges based on utility consumption. Tenant shall, at its sole cost and expense, pay for the cost of installation of meters for the Premises and any and all related costs and expenses if such meters do not exist at the Premises on the date possession of the Premises is made available to Tenant.
1. Tenant shall transfer the utilities into its name as soon as it takes possession of the Premises. If Tenant fails to transfer the utilities into its name within thirty (30) days after taking possession of the Premises, Tenant shall pay Landlord a fee of one hundred dollars (\$100.00) per month as an item of Additional Rent for each month that it fails to do so. Tenant shall keep the gas and electric services on continuously throughout the Term of the Lease and any extension term. Tenant shall be responsible as an item of Additional Rent for all costs to the

Landlord in the event gas and electric services to the Premises are not on, or are shut off, disconnected or discontinued by the public utility for non- payment/use.

- 2. Notwithstanding the foregoing, if any utilities are not separately metered or are only partly separately metered and are used in common with other tenants of the Shopping Center Landlord shall have the right, but not the obligation, to supply Tenant with any or all utility services provided to or for the benefit of the Premises and Tenant shall pay to Landlord or Landlord's agent the cost of such utilities provided to Tenant at the Premises pursuant to Section C of this Article VIII. Landlord shall, in Landlord's sole discretion, compute Tenant's cost of such utilities to reasonably reflect Tenant's consumption of such utilities from the Premises. In no event, however, shall the cost of such utility service(s) supplied by Landlord exceed a rate which Tenant would otherwise pay for such utility service(s) if Tenant obtained such utility service(s) directly from the applicable utility supplier. Landlord and Tenant further agree that Landlord shall have the right to discontinue supplying such utility service(s) upon ten (10) days prior written notice to Tenant, provided Landlord shall not discontinue such utility service(s) until Tenant has obtained the discontinued utility service(s) from the applicable utility supplier and Tenant has provided Landlord with written notice thereof.**

Landlord and Tenant hereby acknowledge that electrical service to the Premises may be furnished by one or more companies providing electrical generation, transmission and/or distribution services. Landlord hereby reserves the right to charge Tenant for the cost of electrical service to the Premises as a single charge or divided into and billed in a variety of categories such as distribution charges, transmission charges, generation charges, public good charges or other similar categories. Landlord further reserves the right, at its sole discretion, to select the company(ies) providing electrical service(s) to the Shopping Center, including the Premises, to aggregate the electrical service for the Premises and other premises within the Shopping Center, to purchase electricity for the Shopping Center, including the Premises, through a broker and/or buyers group and to change the providers and/or manner of purchasing electricity from time to time. Landlord shall be entitled to receive a reasonable fee (if permitted by law) for the services provided by Landlord in connection with the selection of utility companies and the negotiation and administration of contracts for the generation of electricity to the Shopping Center. In addition, if Landlord bills Tenant directly for the cost of any utility service to the Premises, the cost of electricity service may include (if permitted by law) an administrative fee and Tenant shall reimburse Landlord for the cost of reading meters, preparing invoices and related costs. Tenant shall be responsible for all improvements within the Premises.

Tenant shall not at any time overburden or exceed the capacity of the mains, feeders, ducts, conduits or other facilities by which utilities are supplied to, distributed in, or serve the Premises.

The water supply and sanitary waste system shall be used for ordinary lavatory purposes only. The cost to the Landlord for any unauthorized use of these services, including, but not limited to, the costs of water and water dispersion and cesspool testing and cleaning shall be borne by Tenant as an item of additional rent.

No foreign substances, including but not limited to, cloths, paints, solvents, degreasers, fuel, lubricants, etc. are permitted to be introduced into the sanitary or storm water drainage systems. The cost to clean and remove any foreign substances from these systems shall be reimbursable to Landlord as Additional Rent.

- B. **Rubbish Disposal.** Commencing on the Effective Date, Tenant shall be solely responsible for trash and garbage removal from the Premises, including the placing of all trash and garbage in containers for such purpose. Notwithstanding anything to the contrary contained herein, Landlord shall have the option, in its sole discretion, to provide Tenant with trash and waste compaction, disposal collection, and storage services, collectively referred to as "Waste Removal Services", directly or through a contractor, or to require Tenant to contract independently with a contractor for Waste Removal Services. If Landlord elects to provide Waste Removal Services to Tenant, Tenant shall pay to Landlord or Landlord's representative or contractor for the cost of such service including administrative costs of fifteen percent (15%) of the cost of Waste Removal Services. Tenant shall not dispose of any hazardous materials or environmentally sensitive or restricted item of waste in any trash facilities, and in lieu thereof, Tenant shall arrange, at its sole cost and expense, to have all such items lawfully removed from the Premises and Shopping Center.
- C. **Payment.** If and to the extent Landlord shall bill Tenant for utilities and/or rubbish disposal pursuant to this Article VIII, such charges shall be paid by Tenant in monthly installments on the first day of each month based upon the annual amount to be reasonably estimated by Landlord from time to time. Subsequent to the expiration of the period used by Landlord in estimating Tenant's share of such cost, Landlord shall furnish to Tenant a statement of the actual amount of Tenant's proportionate share of utilities and/or rubbish disposal for such period and within fifteen (15) days, Tenant shall pay to Landlord or Landlord shall remit to Tenant, as the case may be, the difference between the estimated amounts previously paid by Tenant and the actual amount of Tenant's utilities and/or rubbish disposal charges for such period as shown by Landlord's statement.
- D. **Landlord Utility Indemnification.** In no event shall Landlord be liable for the quality, quantity, failure, or interruption of the foregoing utility and rubbish disposal services to the Premises.

IX. USE OF PREMISES BY TENANT.

- A. **Tenant's Use of Premises.** Tenant shall use the Premises under the Trade Name set forth herein and only for the uses set forth in this Lease and for no other purpose. Tenant shall indemnify, defend and hold Landlord harmless from any and all losses, claims, causes of action, judgments and liabilities (including but not limited to costs of investigation, attorneys' fees and costs) arising out of or relating to Tenant's use of the Trade Name, including but not limited to trademark and service mark infringement and dilution claims. The foregoing obligation shall survive the expiration or earlier termination of this Lease.
- B. **Operation of Business.** Tenant agrees to open its store for business fully fixtured, stocked and staffed and to continuously conduct business in 100% of the Premises, on all days during the Term of this Lease (and any renewal or extension thereof) during such hours as are from time to time imposed by Landlord and required of a majority of the other tenants in the Shopping Center (the "Store Hours"), the business described above,

except where Tenant is prevented from doing so by strikes, casualty or other causes beyond Tenant's control. Tenant shall cause its business to be conducted and operated in good faith and in such manner as shall assure the transaction of the maximum volume of business in and at the Premises. Tenant agrees to complete or cause to be completed Tenant's construction of the Premises and the installation of fixtures, equipment and merchandise and to open its business to the public in the Premises no later than the Rent Commencement Date. If any governmental license or permit or other approval shall be required for the proper and lawful conduct of Tenant's business, Tenant shall be responsible for and shall at its own cost and expense, procure and maintain such license, permit or approvals. A vacation of premises or cessation of operations by any other tenant(s) in the Shopping Center shall not in any way release Tenant from Tenant's obligations under this Lease, such obligations being independent covenants of this Lease.

1. Tenant, at its sole cost and expense, shall comply with and shall cause the Premises to comply with (i) all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations affecting the Premises or any part thereof, or the use thereof, including, but not limited to, those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same, and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or Landlord's fire insurance rating organization or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions which apply to the Premises.
2. Tenant shall, at its sole cost and expense, diligently pursue and procure (and maintain throughout the Term of the Lease) in good faith any and all necessary permits, approvals, credits, certificates, licenses or other authorizations required by any and all applicable governmental authorities for its use of the Premises as set forth herein. Tenant hereby acknowledges that, Landlord has made no representation or warranty to Tenant with respect to the probability of obtaining all necessary governmental approvals and permits. Tenant agrees to make its initial submittal for the foregoing approvals no later than thirty (30) days after the Effective Date. Tenant will use commercially reasonable efforts to obtain its permits. Landlord will cooperate with Tenant, at no expense to Landlord, in obtaining the foregoing approvals.
3. Tenant shall not do, permit or suffer to be done anything in or about the Premises or the Shopping Center which will in any way obstruct or interfere with the rights of other tenants or occupants of the Shopping Center or injure or annoy them, their customers or clients, nor shall Tenant use or allow the Premises to be used for any purpose which is objectionable or offensive in Landlord's reasonable judgment or which may be unlawful. In no event shall Tenant use the Premises in any manner which violates any recorded restriction applicable to the Premises or the Shopping Center.
4. If Tenant permits or engages in any activity which, in Landlord's reasonable judgment, is objectionable, offensive or otherwise constitutes a nuisance to the customers or other tenants of the Shopping Center or that may be unlawful, or in violation of this Lease, Tenant shall immediately discontinue such activity or

take immediate action to cause the activity to be discontinued with all due diligence if it cannot be immediately discontinued. Tenant's failure to comply shall constitute a material breach and default of this Lease and entitle Landlord to pursue its remedies for such a breach and default.

X. TENANT'S COVENANTS WITH RESPECT TO OCCUPANCY.

A. In regard to the use and occupancy of the Premises, Tenant (at its expense) hereby agrees:

- 1. To occupy the Premises in a safe and careful manner and in compliance with all laws, ordinances, rules, regulations and orders of any governmental bodies having jurisdiction over the Premises, and without committing or permitting waste;**
- 2. To neither do nor suffer anything to be done or kept in or about the Premises which contravenes Landlord's insurance policies or increases the premiums therefor;**
- 3. To conduct its business in all respects in a dignified manner in accordance with high standards of store operation consistent with the quality of operation of the Shopping Center as determined by Landlord and provide an appropriate mercantile quality comparable with the entire Shopping Center;**
- 4. To permit no reproduction of sound which is audible outside the Premises or permit odors to be unreasonably dispelled from the Premises;**
- 5. To park Tenant's vehicles and to require all employees to park only in such places as may be designated from time to time by Landlord for the use of Tenant and its employees, and specifically not to permit parking of any Tenant or employee vehicles in any service court area. Landlord reserves the right to impose fines against Tenant for any violation of these parking restrictions by Tenant and/or Tenant's employees and to have towed, at Tenant's cost and expense, any automobile parked in violation of this Section;**
- 6. To keep any rubbish, garbage and waste generated by Tenant from the Premises in proper dumpsters provided by Tenant adjacent to the Premises or such other area designated by Landlord from time to time until such rubbish, garbage and waste is removed from the Shopping Center and to permit no refuse to accumulate around the exterior of the Premises;**
- 7. To neither load nor unload or permit the loading or unloading of merchandise, equipment or other property from any doors of the Premises that open onto the front sidewalk areas, nor from any other doors except from the rear of the Premises and to use its best efforts to prevent the parking or standing of vehicles and equipment upon Shopping Center land except when actually engaged in loading or unloading. In the event Tenant violates this covenant, Tenant shall have twenty-four (24) hours following receipt of notice from Landlord (which notice may be given by personal delivery to the Premises including, but not limited to, oral notice by Landlord's representative at the Shopping Center) to cease such activity or be deemed to be in default under this Lease,**

notwithstanding any cure periods set forth herein, and Landlord shall have the immediate right to invoke any legal or equitable remedies to enjoin Tenant from such activity;

8. To conduct no auction, fire, bankruptcy, liquidation, going-out-of-business, moving, relocating or any other similar sale without the prior written consent of Landlord;
9. Not to permit to be attached or recorded against the Premises or any other portion of the Shopping Center any lien, encumbrance or charge arising out of any work performed or materials furnished by any contractor, mechanic, laborer, or materialman for or at the request of Tenant. Tenant will not enter into any mortgages, conditional sale, security agreement or like instrument nor suffer any other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired or diminished. If any lien or notice of lien on account of an alleged debt of Tenant or any notice of contract by a party engaged by Tenant or Tenant's contractor to work on the Premises is filed against the Premises or any part of the Shopping Center, Tenant will, within ten (10) calendar days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, letter of credit or other adequate security. If Tenant fails to cause such lien or notice of lien to be discharged within such period, Landlord, its managing agent, or Landlord's lender, may, but shall not be obligated to, discharge the same either by paying the amounts claimed to be due or by procuring the discharge of such lien by deposit, bond or otherwise, and Tenant shall, immediately upon demand, reimburse Landlord, its managing agent, or Landlord's lender for any and all costs and expenses incurred by Landlord, its managing agent, or Landlord's lender, to discharge such lien including, without limitation, all attorneys' fees, court costs and similar expenses;
10. To comply with all reasonable rules and regulations which Landlord may from time to time establish for the use and care of the Premises and the Common Areas;
11. To keep the inside and outside of all glass in the doors and windows of the Premises clean and keep all exterior store surfaces of the Premises clean;
12. To prohibit the operation on the Premises or in any part of the Shopping Center of any coin or token-operated vending machines, video games or similar devices;
13. To permit Landlord or its agents, during 180-day period preceding the expiration of the Term of this Lease, to show the Premises to potential tenants, and to place on the Premises notices offering the Premises for lease or sale;
14. That it shall make no installations upon or any penetrations through the roof or the exterior walls of the Premises without the prior written consent of Landlord. Any unauthorized roof installations or penetrations by Tenant shall be subject to immediate removal and repair, at Tenant's sole cost and expense, upon notice from Landlord. Repairs shall be made with materials of equal or better quality and by contractors approved by Landlord;

15. Not to cause any nuisance or to become a blighting influence and a hazard to the health and safety of patrons, neighbors and the public;
16. To keep the sidewalks immediately abutting the Premises free from obstructions of all nature, properly swept, and snow and ice removed therefrom;
17. Tenant shall not place a load upon any floor of the Premises which exceeds the floor load per square foot area which such floor was designed to carry. If Tenant shall desire a floor load in excess of that for which the floor of any portion of the Premises is designed, upon submission to Landlord of plans showing the location of and the desired floor live load for the area in question, Landlord may strengthen and reinforce the same, at Tenant's sole expense, so as to carry the live load desired. Business machines and mechanical equipment used by Tenant which cause vibration or noise that may be transmitted to or through the Premises shall be placed and maintained by Tenant, at its expense, in settings of cork, rubber or spring-type vibration eliminators sufficient to eliminate such vibration or noise.

Tenant acknowledges that any breach or violation of the foregoing will cause substantial damages and irreparable harm to Shopping Center and Landlord for which there may be no adequate remedy at law. Thus, in addition to any other remedies, Landlord will be entitled to temporary and/or permanent injunctive relief to enforce the provisions of this Lease without the necessity of proving actual damages or posting bond or other security.

XI. REPAIRS AND ALTERATIONS.

- A. **Repairs by Landlord.** Landlord shall keep the foundations, roof, and structural portions of the outer walls of the Premises in working order, except for repairs required thereto by reason of the acts of Tenant, Tenant's employees, agents, invitees, licensees, or contractors. Notwithstanding anything herein to the contrary, some or all of these repairs will be subject to inclusion in Tenant's Minimum Rent or Additional Rent, including, but not limited to, the cost of painting of the outer walls of the Shopping Center buildings, including the Premises. Landlord shall not be required to commence any repairs required to be performed by it until after notice from Tenant that same are necessary, which notice, except in the case of an emergency, shall be in writing and shall permit Landlord a reasonable time to undertake and complete such repairs. The provisions of this Article XI, Section A, shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain, in which events the obligations of Landlord shall be controlled by either Article XIII or Article XV hereof. Tenant acknowledges and agrees that no diminution or abatement of Minimum Rent or other compensation shall be claimed or allowed for inconvenience or discomfort arising from the Landlord's making of additions, repairs or improvements to the Premises, Shopping Center or to its equipment and fixtures, nor for any space taken to comply with any law, ordinance or order of a governmental authority except as specifically provided in this Lease.

When necessary by reason of accident or other casualty occurring in the Shopping Center or at the Premises or in order to make any necessary repairs, alterations or improvements in or relating to the Shopping Center or the Premises or other portions of Landlord's Real Property, Landlord reserves the right to interrupt, temporarily, and on notice to Tenant (except in the case of an emergency), the supply of utility services until said repairs or improvements shall have been completed.

It is expressly understood that Landlord shall not be responsible for any portions of the Premises constructed by Tenant or any prior occupant of the Premises.

In the event that structural repairs, replacements or alterations or any other repairs or replacements included under this Lease as being Landlord's obligation hereof, shall be necessitated or occasioned, in whole or in part, by the acts, omissions, or negligence of Tenant or any person claiming through or under Tenant or any of their servants, employees, contractors, agents, visitors or licensees, or by the use or occupancy or manner of use or occupancy of the Premises by Tenant, or any such person, Landlord shall make such repairs, replacements or alterations at Tenant's sole cost and expense, reimbursable by Tenant promptly upon demand from Landlord.

- B. Repairs by Tenant.** Tenant shall keep the Premises and any fixtures, facilities, signs or equipment contained therein, in first-class, clean, sanitary and safe condition and perform any repair and/or replacement to all exterior and interior portions (including those non-structural portions under the floor slab) of the Premises not required to be maintained by Landlord, including, but not limited to, all doors, door checks and operations, windows, plate glass, and showcases surrounding the Premises, the heating, loading docks, air conditioning, HVAC, ceilings, electrical, plumbing, sprinkler and sewer systems, fire safety system, elevators and escalators (if any), the exterior doors, window frames, and all portions of the store front area, and shall make any replacements of the foregoing and of all broken and/or cracked plate and window glass which may become necessary during the Term of this Lease, and any renewals thereof. In connection with Tenant's obligation to maintain the HVAC system serving the Premises, Tenant shall, during the Term of this Lease, and any renewals thereof, at its sole cost and expense, maintain a service contract for the routine performance of standard HVAC system maintenance, including but not limited to, periodic replacement of filters, oiling of mechanical components and inspection for wear and tear. Landlord reserves the right to designate an HVAC contractor with whom Tenant shall contract for such routine HVAC system maintenance so long as the fee charged by Landlord's designated contractor shall be the same or less than the fee charged by Tenant's contractor for similar services. If Tenant fails to commence or complete repairs promptly and adequately, Landlord may make or complete said repairs and Tenant shall pay the cost thereof to Landlord upon demand, together with the sum of fifteen percent (15%) of said costs for overhead and an additional sum equal to ten percent (10%) of said amount for profit. Tenant hereby acknowledges that Tenant is responsible for any and all repairs and replacements of the systems and interior of the Premises under this Lease.

Tenant agrees that all repairs shall be accomplished by licensed, insured contractors using UL Listed Class A non-combustible materials or materials which are of the highest standard and consistent with the ISO fire classification of the Shopping Center and that all required governmental permits and approvals be obtained prior to commencement of any such work. All contractors employed by Tenant must be approved by the Landlord in advance; all work shall meet or exceed all applicable governmental rules, regulations/codes, and all directions, rules and regulations of the health officer, fire marshal, building inspector or other proper officials of the governmental agencies having jurisdiction over the Premises. Any such work shall be accomplished so as not to interfere with the use by other tenants of the Shopping Center.

- C. Alterations or Improvements by Tenant.** Tenant shall not, without Landlord's prior written consent, make, or permit to be made, any alterations, additions or improvements

to the Premises, which consent Landlord may withhold in its sole discretion. Any alterations which may be permitted by Landlord shall be based upon plans and specifications submitted by Tenant and approved by Landlord and upon the condition that Tenant shall promptly pay all costs, expenses, and charges thereof, shall make such alterations and improvements in accordance with applicable laws and building codes and ordinances and in a good and workmanlike manner, and shall fully and completely indemnify Landlord, its managing agent, and Landlord's lender against any mechanic's lien or other liens or claims in connection with the making of such alterations, additions, or improvements. Tenant shall promptly repair any damages to the Premises, or to the buildings of which the Premises are a part, caused by any alterations, additions or improvements to the Premises by Tenant. Notwithstanding anything in this Lease to the contrary, if Tenant constructs, makes or installs or causes to be constructed, made or installed any improvement or alteration in or to the Premises (including but not limited to Tenant's Work), Tenant shall be solely responsible for ensuring that such improvements and/or alterations do not violate any provision in any local, state or federal law or regulation relating to accessibility for handicapped persons or the removal of architectural or communication barriers to accessibility ("Disability Law"), including but not limited to The Americans with Disabilities Act.

- D. **Removal of Improvements.** At the expiration or earlier termination of the Lease Term, all improvements included in Landlord's Work, if any, all heating and air conditioning equipment, and all alterations, additions and other improvements by Tenant shall become the property of Landlord and shall not be removed from the Premises. All trade fixtures, furniture, furnishings, and signs installed in the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and shall be removed upon the expiration of the Lease Term, provided that Tenant shall repair any damage caused to the Premises by the removal of any such items that are affixed to the Premises. If Tenant fails to remove such items from the Premises prior to the expiration or earlier termination of this Lease, or if Tenant has not fully performed all of the covenants and agreements to be performed by Tenant under the provisions of this Lease, all such trade fixtures, furniture, furnishings, and signs shall become the property of Landlord. In such event, Landlord shall have the right to remove and sell such trade fixtures, furniture, furnishings, and signs to pay for the cost of removal and/or repairs to the Premises. To the extent the revenue received by Landlord's sale of such trade fixtures, furnishings, and signs is insufficient to recover Landlord's cost of removing the same and/or repairs to the Premises, then Landlord shall have the right to proceed directly against Tenant to recover any balance. Notwithstanding anything contained to the contrary in this Lease, if Tenant removes such items from the Premises but fails to repair any damage caused by such removal, Landlord may make or complete said repairs without providing Tenant notice prior to the reimburse Landlord the cost thereof upon demand, together with the sum of fifteen percent (15%) of said costs for overhead and an additional sum equal to ten percent (10%) of said amount for profit. Tenant's obligations under this Section D shall survive the termination of this Lease.

XII. INDEMNITY AND INSURANCE.

- A. **Indemnification by Tenant.** Tenant hereby covenants and agrees to indemnify and save Landlord and Landlord's members, managers and managing agents, if any, harmless against all liability, obligation, damage, penalty, claim, cost and expense, including reasonable attorneys' fees and disbursements, for or on account of any injury, loss or damage to person or property incurred as a result of (i) the business conducted in or about

the Premises, (ii) the use by Tenant of the Premises, (iii) the non-compliance of the Premises with any law or ordinance or (iv) the breach by Tenant, its agents, subtenants, contractors, employees, invitees or licensees, of any covenant or condition of this Lease or the negligence or willful misconduct of any such persons. The comprehensive general liability coverage maintained by Tenant pursuant to this Lease shall insure the contractual obligations of Tenant as set forth in this Section but do not limit Tenant's liability hereunder.

- B. Tenant's Insurance.** Effective as of the date Tenant first enters the Premises and continuing throughout the Lease Term and any extensions or renewals thereof, including, without limitation, any holdover with or without Landlord's consent, Tenant shall procure, pay for and keep in full force and effect, the following types of insurance:
1. **Commercial General Liability Insurance Policy** insuring the Premises and Tenant's use thereof, together with contractual liability endorsements covering Tenant's obligations set forth in Article XII, Section A, above, in a form satisfactory to Landlord with companies having an A.M. Best Rating or its equivalent of A-VIII or better, and such insurance shall be for such limits that are reasonably required by Landlord from time to time but not less than a minimum limit of One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence and a minimum limit of Two Million Dollars (\$2,000,000.00) annual general aggregate covering bodily injury (including death), property damage, personal and advertising injury, products and completed operations and fire damage legal liability, each in connection with the use and occupancy of the Premises, Shopping Center, their Common Areas and/or surrounding areas. The aggregate limit may be satisfied through a combination of primary and umbrella/excess liability insurance. Such insurance shall also provide that the general aggregate limits apply separately to each insured location, if applicable. The foregoing policy shall name Landlord and such other parties as Landlord may from time to time designate in writing to Tenant as additional insureds under Tenant's insurance policy. Such insurance policy shall (a) be an occurrence basis policy; (b) be primary to all insurance applicable to the Premises and operations on the Premises and without any regards to any insurance maintained by the Landlord; (c) provide "first dollar" coverage (d) and contain a waiver of subrogation; and (e) bear endorsements to the effect that the insurer agrees to notify all additional insureds not less than thirty (30) days in advance of any modification or cancellation thereof.
 2. **Special Form Cause of Loss Property Insurance Policy**, including extended coverage endorsements insuring (but not limited to) all leasehold and building improvements in the Premises, Tenant's stock-in-trade, trade fixtures, furniture, merchandise, furnishings, special equipment, floor and wall coverings, and all other items of personal property of Tenant located on or within the Premises against fire and such other additional perils as now are or hereafter may be included in a standard extended coverage endorsement in general use in the county in which the Shopping Center is located. Such coverage to be in an amount equal to one hundred percent (100%) of the replacement costs thereof, and business interruption or loss of income insurance in an amount equal to the Minimum Rent and any other Additional Rent (hereunder defined) payable under this Lease for a minimum period of twelve (12) months. The foregoing policy shall name Landlord, and such other parties as Landlord may from time to time

designate in writing to Tenant as loss payee under Tenant's insurance policy with regard to the permanent leasehold improvements within the Premises, including mechanical equipment and permanent fixtures and shall bear endorsements to the effect that the insurer agrees to notify all loss payees not less than thirty (30) days in advance of any modification or cancellation thereof;

3. Workers' compensation insurance (meeting the requirements of the workers' compensation laws of the State in which the Premises is located) and employer liability insurance covering all of Tenant's employees at the Premises. Tenant shall also use good faith efforts to ensure all contractors, sub-contractors, vendors, leased employees, and temporary employees are properly insured for workers' compensation;
4. Plate glass insurance covering all plate glass on the Premises at full replacement value; and,
5. Commercial automobile liability insurance for hired, owned/registered under Tenant's name and non-owned vehicles, including contractual liability with a single limit of liability not less than \$1,000,000 per accident for bodily injury and property damage combined; and
6. If Tenant is engaged in any way in the manufacture, sale or distribution of alcoholic beverages, either for consumption of alcoholic beverages on or off the Leased Premises, Tenant will also maintain liquor liability insurance on an occurrence basis with the limits of not less than \$2,000,000 each common cause and \$3,000,000 aggregate
7. Any insurance policies reasonably designated necessary by Landlord with regard to Tenant's, or Tenant's contractors' construction of Tenant's Work, as well as with regard to the construction of alterations including, but not limited to, contingent liability and "all risk" builders' risk insurance.
8. Such other types of insurance, such additional amounts of insurance and any increases in coverage as, in Landlord's judgment, are necessitated by good business practice, as may be standard and customary to the industry or as may be consistent with Landlord's other similar shopping centers.

Tenant shall deposit with Landlord prior to the date of any use or occupancy of the Premises by Tenant certificates and endorsements evidencing Tenant's compliance with each of the required coverage's. For clarification purposes, Landlord shall not be required to deliver possession until Tenant provides certificates and endorsements evidencing Tenant's compliance with each of the required coverage's detailed herein. To the extent that any of the foregoing policies shall change in name and/or coverage due to general changes in the insurance industry, Tenant shall obtain and maintain the equivalent policies and coverage's as are then recognized in the insurance industry. Such policies shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of such insurance shall not limit Tenant's liability nor relieve Tenant of any obligations hereunder. If Tenant fails to procure or to maintain any insurance required by this subsection, then Landlord may procure such insurance and pay the premiums therefor without notice to Tenant, and the cost for same, plus a fifteen percent (15%) administrative fee, shall be deemed Additional Rent payable by Tenant upon Landlord's

demand. Notwithstanding anything to the contrary contained herein, Tenant's insurance shall be primary, and any insurance maintained by Landlord or any other additional insureds hereunder shall be excess and noncontributory. All such insurance shall be written so as to provide that the insurer waives all right of recovery by way of subrogation against Landlord and Namdar Realty Group LLC in connection with any loss or damage covered by the policy.

All certificates of insurance required of Tenant pursuant to this Article shall name each Landlord entity, the Namdar Realty Group LLC, any underlying ground lessor, mortgagee, trustee or purchaser of the Shopping Center that shall succeed to Landlord's interest in this Lease of which Landlord notifies Tenant, and any other entities as may be from time to time requested by Landlord as Additional Insureds and Certificate Holders.

- C. **Contractor's Insurance.** Before any work or maintenance or repair is undertaken by or on behalf of Tenant, Tenant shall require any contractor and subcontractors performing work on the Premises to carry and maintain, at no expense to Landlord, in addition to workers' compensation insurance as required by the jurisdiction in which the Premises is located, Commercial General Liability Insurance (including, without limitation, Contractor's Liability coverage, Contractual Liability coverage and Completed Operations coverage), written on an occurrence basis with a minimum combined single limit of \$5,000,000.00 with the general aggregate limit to apply "per project" and adding the "Landlord Parties" (and any other designees of Landlord as the interest of such designees shall appear) as additional insureds. Such insurance policy shall be primary to all insurance applicable to the Premises and operations on the Premises and shall include a waiver of subrogation in favor of Landlord Parties and Tenant. In addition, the policy must not contain any limitations or exclusions pertaining to action over claims or injuries suffered by workers from any contractor or subcontractors.
- D. **Landlord's Liability.** Notwithstanding anything to the contrary contained herein, Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims for, loss or damage to Tenant's business or damage to person or property sustained by Tenant resulting from any accident or occurrence (unless caused by or resulting from the gross negligence of Landlord, its agents, servants or employees other than accidents or occurrences against which Tenant is insured) in or upon the Premises or the Shopping Center, including, but not limited to, claims for damage resulting from: (i) any damage to Tenant's personal property, inventory, equipment, fixtures or improvements located in the Premises, regardless of the cause of such damage; (ii) any act, omission or negligence of other tenants, licensees or of any other persons or occupants of the Shopping Center or Premises or of adjoining or contiguous buildings or of owners of adjacent or contiguous property; (iii) for any condition of the Premises whatsoever unless Landlord is responsible for the repair thereof, and has failed to make such repair after notice from Tenant of the need therefor, and expiration of a reasonable time for the making of such repair; (iv) injury done or occasioned by wind; (v) any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, gas, water, or steam pipes, stairs, porches, railings or walks; (vi) broken glass; (vii) the backing up of any sewer pipe or downspout; (viii) the bursting, leaking or running of any tank, tub, washstand, water closet, waste pipe, drain or other pipe or tank in, upon or about the Building or the Premises; (IX) the escape of steam or hot water; (X) water, snow or ice being upon or coming through the roof, skylight, trapdoor, stairs, doorways, windows, walks or any other place upon or near the Shopping

Center or the Premises or otherwise; and (XI) the falling of any fixture, plaster, tile or stucco. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises and to use such other portions of the Shopping Center as Tenant is herein given the right to use, at Tenant's own risk.

XIII. DAMAGE AND DESTRUCTION. In the event the Premises are damaged by any peril covered by the insurance policies that Landlord is required to maintain pursuant to this Lease, the damage shall, except as hereinafter provided, promptly be repaired by Landlord, at Landlord's expense. In the event (a) the Premises are damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, (b) the buildings on the Shopping Center are damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damages to the Premises, or (c) the building containing the Premises is damaged to the extent of fifty percent (50%) or more of the cost of replacement, notwithstanding the extent of damage to the Premises or (d) any damage to the Premises occurs during the last three (3) years of the Term of this Lease, Landlord may elect either to repair or rebuild the Premises or the buildings on the Shopping Center, as the case may be or to terminate this Lease upon giving notice of such election in writing to Tenant within ninety (90) days after the event causing the damage. If the casualty, repairing, or rebuilding shall render the Premises untenable, in whole or in part, a proportionate abatement of the Minimum Rent and Additional Rent in proportion to the sales floor area of the Premises rendered untenable shall be allowed until the date Landlord completes the repairs or rebuilding.

XIV. ASSIGNMENT AND SUBLETTING. Tenant shall not assign this Lease nor sublet, mortgage or transfer the Premises or any part thereof, without in each case the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. Tenant shall not permit any business to be operated in or from the Premises by any concessionaire or licensee without the prior written consent of Landlord, which consent Landlord may withhold in its sole discretion. In the event Tenant shall request Landlord's consent to an assignment of this Lease or subletting of the Premises, Tenant shall pay Landlord, as a condition to obtaining Landlord's consent the reasonable costs and expenses incurred by Landlord to review and/or prepare documents in connection with such assignment or sublease (including Landlord's reasonable attorneys' fees) and, in addition, a consent fee of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per request, regardless of whether such assignment or sublease is consummated by Tenant or consented to by Landlord. No consent by Landlord shall operate to relieve Tenant and/or Guarantor, if any, from primary liability for the performance of Tenant's obligations under this Lease.

Any sale, assignment, bequest, inheritance, transfer or other disposition of the ownership of Tenant's entity which shall result in a change in the effective control of Tenant including, without limitation, the sale of (a) stock in a corporate tenant, (b) partnership interests in a partnership tenant, or (c) member interests in a limited liability company tenant shall be deemed an assignment of this Lease requiring Landlord's prior written consent.

XV. EMINENT DOMAIN. In the event the Shopping Center or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriate proceedings or by any right of eminent domain, the entire compensation award thereof, including, but not limited to, all damages as compensation for diminution in value of the leasehold, reversion and fee, shall belong to Landlord, without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title, and interest to any such award. Tenant shall have the right to recover

from the condemning authority, but not from Landlord, such compensation as may be separately awarded to Tenant.

In the event of a taking under the power of eminent domain of (i) more than twenty-five percent (25%) of the Premises or (ii) a sufficient portion of the Shopping Center so that after such taking less than fifty percent (50%) of the leasable floor area within all buildings located on the Shopping Center (as constituted prior to such taking) are occupied by tenants, either Landlord or Tenant shall have the right to terminate this Lease by notice in writing given within ninety (90) days after the condemning authority takes possession, in which event all rents and other charges shall be prorated as of the date of such termination.

In the event of a taking of any portion of the Premises not resulting in a termination of this Lease, Landlord shall use so much of the proceeds of Landlord's award for the Premises as is required therefor to restore the Premises to a complete architectural unit and this Lease shall continue in effect with respect to the balance of the Premises, with a reduction of Minimum Rent in proportion to the portion of the Premises taken.

XVI. DEFAULT BY TENANT. If Tenant defaults in the payment of Minimum Rent or other charges and such payment is not made within five (5) days following Landlord's written notice that same is due, or if Tenant shall default in the performance of any other of Tenant's obligations hereunder and Tenant fails to remedy such default within fifteen (15) days after written notice from Landlord, provided that in no event shall Landlord be obligated to provide Tenant with written notice of any default, monetary or otherwise, more than once per calendar year, or if a receiver of any property of Tenant on the Premises is appointed, or Tenant's interest in the Premises is levied upon by legal process, or Tenant be adjudged bankrupt and Tenant fails within thirty (30) days to cause the vacation of such appointment, levy or adjudication, or if Tenant files a voluntary petition in bankruptcy, disposes of all or substantially all of its assets in bulk, or makes an assignment for the benefit of its creditors, then and in any such instance, without further notice to Tenant, Landlord shall have the right to exercise any and all rights or remedies available to Landlord at law, in equity or otherwise, arising from such default, including but not limited to the right to (i) terminate this Lease, or (ii) enter upon the Premises without terminating this Lease and relet the Premises in Landlord's name for the account of Tenant for the remainder of the Term upon terms and conditions reasonably acceptable to Landlord and immediately recover from Tenant any deficiency for the balance of the Term, plus expenses of reletting. In addition to the foregoing, any time after such default and the lapse of any applicable notice period, Landlord shall have the right to make such payments in default or perform such act in default for the account and at the expense of Tenant, and all unpaid Minimum Rent or other charges which are not paid when due and all sums paid by Landlord pursuant to this sentence, including reasonable attorneys' fees as specifically provided below, shall accrue interest at the annual rate of (i) fifteen percent (15%), or (ii) five percent (5%) above the prime lending rate most recently published by the Wall Street Journal, whichever is greater, which shall constitute Additional Rent under this Lease and shall be payable upon demand. Notwithstanding the foregoing, Landlord shall have no duty to mitigate the damages suffered by Landlord rising from the default by Tenant of any of its obligations under this Lease. If Tenant shall issue a check to Landlord which is dishonored by Tenant's depository bank and returned unpaid for any reason, including without limitation, due to insufficient funds in Tenant's checking account, Tenant shall (i) pay to Landlord as an administrative fee, the lesser of (a) the sum of Seventy-five and 00/100 Dollars (\$75.00), or (b) the maximum amount permitted by State law, and (ii) at Landlord's option, make all subsequent rental payments by bank certified check. The foregoing remedies shall be in addition to any other rights or remedies available to Landlord at law.

Tenant's failure to pay Rent, Additional Rent, or any other Lease costs when due under this Lease may cause Landlord to incur unanticipated costs. The exact amount of such costs is impractical or extremely difficult to ascertain. Such costs may include, but are not limited to, processing and accounting charges and late charges that may be imposed on Landlord by any ground lease, mortgage, or deed of trust encumbering the Shopping Center. Therefore, if Landlord does not receive the Rent, Additional Rent, or any other Lease costs in full on or before the fifth (5th) day of the month it becomes due, Tenant shall pay Landlord a late charge, which shall constitute liquidated damages, equal to Fifty Dollars (\$50.00) a day for each day rent is late after the first of the month ("Late Charge"), which shall be paid to Landlord together with such Rent, Additional Rent, or other Lease costs then in arrears. The parties agree that such Late Charge represents a fair and reasonable estimate of the cost Landlord will incur by reason of such late payment. All Late Charges and any returned check charges shall then become Additional Rent and shall be due and payable immediately along with such other Rent, Additional Rent, or other Lease costs then in arrears.

Unless specifically earmarked by Tenant, money paid by Tenant to Landlord shall be applied to Tenant's account in Landlord's sole discretion. Nothing herein contained shall be construed so as to compel Landlord to accept any payment of Rent, Additional Rent, or other Lease costs in arrears or Late Charge or returned check charge should Landlord elect to apply its rights and remedies available under this Lease or at law or equity in the event of default hereunder by Tenant. Landlord's acceptance of Rent, Additional Rent, or other Lease costs in arrears or Late Charge or returned check charge pursuant to this clause shall not constitute a waiver of Landlord's rights and remedies available under this Lease or at law or equity.

At any time after the termination of this Lease, Landlord shall be entitled to additional damages ("Liquidated Damages") in an amount equal to the Minimum Rent and Additional Rent (collectively "Rent"), which, but for the termination of this Lease, would have become due for the entire balance of the then current Term (less the amount of Rent, if any, which Landlord shall receive during such period). The foregoing Liquidated Damages shall become, immediately due and payable upon demand, together with all other charges, payments, costs, and expenses payable by Tenant as though such amounts were payable in advance. If any statute or rule of law shall limit the amount of such final liquidated damages to less than the amount detailed herein, Landlord shall be entitled to the maximum amount allowable under such statute or rule of law. The foregoing payment shall not constitute a penalty or forfeiture but shall constitute Liquidated Damages for Tenant's failure to comply with the terms and provisions of this Lease (Landlord and Tenant agreeing that Landlord's actual damages in such an event are impossible to ascertain and that the amount set forth above is a reasonable estimate thereof).

Additionally, Tenant agrees to pay to Landlord upon demand, as Additional Rent, a sum equal to all costs and expenses (including attorney fees, professional fees, costs of investigation and disbursements) incurred by Landlord in enforcing any or all of its rights hereunder, specifically including the cost of collecting sums due, whether or not an action or proceeding is commenced, or levying and collecting on any judgment or arbitration award in Landlord's favor, plus an additional sum equal to fifteen percent (15%) of all such costs and expenses representing the cost of Landlord's administrative expense to enforce its rights under this Lease.

All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

1. Legal Expenses

(1) In the event that Landlord should retain counsel and/or institute any suit against Tenant for violation of or to enforce any of the covenants or conditions of this Lease, or should Tenant institute any action against Landlord for violation of any covenants or conditions of this Lease, or should either party institute a suit against the other for a declaration of rights hereunder, or should either party intervene in any suit in which the other is a party, to enforce or protect its interests or rights hereunder, the prevailing party in any such suit shall be entitled to all its costs, expenses and reasonable fees to its attorney(s) in connection therewith.

(2) In the event that a bankruptcy proceeding is filed by or against Tenant under any chapter of the Bankruptcy Code, or Tenant makes an assignment for the benefit of creditors or commences or otherwise becomes the subject of any insolvency, receivership or similar proceeding, Landlord shall be entitled to recover its reasonable attorneys' fees and costs incurred in or in connection with any such proceeding from Tenant or any trustee, custodian, receiver, assignee or other representative acting on its behalf, all of which fees and expenses shall constitute, in addition to any other sums due and owing under this Lease (i) an obligation of Tenant hereunder, and (ii) a component of any cure claim assertable by Landlord under 11 U.S.C. § 365(b) or otherwise.

2. Confession of Judgment

(1) If Tenant shall default in the payment of the rent or any other sums due hereunder by Tenant, or in the event of any other event of default as defined herein, Tenant hereby irrevocably authorizes and empowers any prothonotary or attorney of any court of record within the United States of America, or elsewhere, to appear for Tenant, with or without complaint filed; and in said suits or actions to confess judgment, or a series of judgments, against Tenant and all persons claiming through or under Tenant, in favor of Landlord, for all or any part of said rental and/or said other sums, including, but not limited to, the amounts due from Tenant to Landlord under subsection (a) or subsection (b) of this section, and including any amount to which Landlord would be entitled as damages under the provisions of this Lease, and for interest and costs, and a reasonable attorney's commission not to exceed fifteen percent (15%) for collection, for which this Lease, or a true and correct copy thereof, shall be sufficient warrant, and such powers may be exercised as well after the termination or expiration of the term of this Lease.

Tenant hereby acknowledges that by agreeing to the foregoing confession of judgment and warrant of attorney, Tenant waives the right to notice and a prior judicial proceeding to determine its rights and liabilities, and further acknowledges that Landlord may, on default by Tenant under the Lease, subject to such notice requirements, if any, as are herein expressly provided, obtain a judgment against Tenant for all sums due hereunder, and levy execution on such judgment against any and all property of Tenant without any opportunity of Tenant to raise any defense, setoff, counterclaim or other claim that Tenant may have, and that Tenant knowingly, voluntarily and intelligently grants Landlord the foregoing right to confess judgment and warrant of attorney as an explicit and material part of the consideration bargained for between Tenant and Landlord. Tenant certifies that it has been represented by (or has had the opportunity to be

represented) at the signing of this Lease and in the granting of this confession of judgment and warrant of attorney by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss the confession of judgment and warrant of attorney with counsel. Tenant further certifies that it has read and understands the meaning and effect of the foregoing confession of judgment and warrant of attorney.

(2) When this Lease or Tenant's right of possession shall be terminated by reason of the breach of any provision of the Lease, or in the event of a deliberate event of default as defined herein, either during the term or any renewal or extension thereof, and also when and as soon as the term shall have expired or been terminated, Tenant hereby irrevocably authorizes and empowers any prothonotary or attorney of any court of record as attorney for Tenant and any persons claiming through or under Tenant, with or without complaint filed, to confess judgment in ejectment against Tenant and all persons claiming through or under Tenant, in favor of Landlord, for the recovery by Landlord of possession of the Premises, for which this Lease, or a true and correct copy thereof, shall be sufficient warrant, whereupon if Landlord so desires, a writ of execution or of possession may issue forthwith, without any prior writ or proceedings whatsoever, and provided that if for any reason after such action shall have been commenced the same shall be determined, canceled or suspended and possession of the Premises remain in or be restored to Tenant or any person claiming through or under Tenant, Landlord shall have the right upon any subsequent default or defaults, or upon any subsequent termination or expiration of this Lease, or any renewal or extension hereof, or of Tenant's right of possession as hereinbefore set forth, to confess judgment in ejectment as hereinbefore set forth one or more additional times to recover possession of the Premises.

Tenant hereby acknowledges that by agreeing to the foregoing confession of judgment and warrant of attorney, Tenant waives the right to notice and a prior judicial proceeding to determine its rights and liabilities, and further acknowledges that Landlord may, on default by Tenant under the Lease, subject to such notice requirements, if any, as are herein expressly provided, obtain a judgment against Tenant for possession of the Premises without any opportunity of Tenant to raise any defense, setoff, counterclaim or other claim that Tenant may have, and that Tenant knowingly, voluntarily and intelligently grants Landlord the foregoing right to confess judgment and warrant of attorney as an explicit and material part of the consideration bargained for between Tenant and Landlord. Tenant certifies that it has been represented by (or has had the opportunity to be represented) at the signing of this Lease and in the granting of this confession of judgment and warrant of attorney by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss the confession of judgment and warrant of attorney with counsel. Tenant further certifies that it has read and understands the meaning and effect of the foregoing confession of judgment and warrant of attorney.

(3) In any action of or for ejectment or for rent or other sums, if Landlord shall first cause to be filed in such action an affidavit made by it or someone acting for it setting forth the facts necessary to authorize the entry of judgment, such affidavit shall be conclusive evidence of such facts; and if a true copy of this Lease (and of the truth of the copy such affidavit shall be sufficient evidence)

be filed in such action, it shall not be necessary to file the original as a warrant of attorney, any rule of court, custom or practice to the contrary notwithstanding. Tenant hereby waives and releases to Landlord, and to any and all attorneys who may appear for Landlord, all procedural errors in any proceedings taken by Landlord, whether by virtue of the warrants of attorney contained in this Lease or not, stay of execution and extension of time of payment, all laws exempting real or personal property from execution and all liability therefor, and no benefit of exemption will be claimed under and by virtue of any exemption law now in force or which may hereafter be passed.

3. Waivers.

Tenant expressly waives:

(1) The benefit of all laws, now or hereafter in force, exempting any goods on the Premises, or elsewhere, from distraint, levy or sale in any legal proceedings taken by Landlord to enforce any rights under this Lease.

(2) The benefit of all laws existing now or hereafter enacted regarding any limitation as to the goods upon which, or the time within which, distress is to be made after removal of goods of the Tenant the goods distrained, it being the purpose and intent of this provision that all goods of Tenant, whether upon the Premises or not, shall be liable to distress for rent at any time after Tenant's default under this Lease, including particularly, but not limited to, those goods removed from the Premises clandestinely and fraudulently, as defined above in this Lease.

(3) The right to issue a writ of replevin for the recovery of any goods seized under a distress for rent or levy upon an execution for rent, damages or otherwise.

(4) The right to delay execution on any real estate that may be levied upon to collect any amount which may become due under the terms and conditions of this Lease and any right to have the same appraised, and Tenant authorizes any Prothonotary or clerk to enter a writ of execution or other process upon Tenant's voluntary waiver and further agrees that said real estate may be sold on a writ of execution or other process.

(5) All rights relating to the Landlord-Tenant relationship under any law, ordinance or statute, to the extent that they might limit Landlord's right to cause the distrained goods to be sold, Tenant now specifically and knowingly authorizes Landlord to sell any goods distrained for rent at a public auction sale to be held at any time at least seven (7) days after that distraint without appraisal and condemnation of the goods, but upon five (5) days' notice to Tenant of the date, place and terms of sale, including Landlord's right to purchase all or any of the property.

4. Release. IN ANY ACTION OR PROCEEDING DESCRIBED IN OR IN CONNECTION WITH ARTICLE XVI(2), IF A COPY OF THIS LEASE IS VERIFIED BY LANDLORD (OR SOMEONE ACTING FOR LANDLORD) TO BE A TRUE AND CORRECT COPY OF THIS LEASE

(AND SUCH COPY SHALL BE CONCLUSIVELY PRESUMED TO BE TRUE AND CORRECT BY VIRTUE OF SUCH VERIFICATION), THEN THE FILING OF THE ORIGINAL OF THIS LEASE SHALL NOT BE NECESSARY, NOTWITHSTANDING ANY STATUTE, RULE OF COURT OF LAW, CUSTOM OR PRACTICE TO THE CONTRARY. TENANT HEREBY RELEASES TO LANDLORD, ANYONE ACTING FOR LANDLORD, AND ALL ATTORNEYS WHO MAY APPEAR FOR TENANT, ALL ERRORS IN PROCEDURE REGARDING THE ENTRY OF JUDGMENT OR JUDGMENTS BY CONFESSION OR OTHERWISE AND ALL LIABILITY THEREFOR.

XVII. NOTICES. Any notice or consent required to be given by or on behalf of either party to the other shall be given in writing and mailed by certified mail or by overnight courier service which provides a receipt, at the addresses stated herein, or at such other address as may be specified, from time to time, by notice in the manner herein set forth. Notices shall be deemed given upon actual receipt or first rejection.

XVIII. SECURITY DEPOSIT. Tenant has deposited with Landlord, as security for Tenant's compliance with this Lease, the Security, equivalent to one month Minimum Rent. If Tenant defaults in performing any of its obligations under this lease, Landlord may use all or any portion of the Security to cure such breach or for the payment of any other amount due and payable from Tenant to Landlord in accordance with this lease. If Landlord uses all or any part of the Security, Tenant shall, within fifteen (15) days following Landlord's notice, deposit with Landlord an amount sufficient to restore the full amount of the Security. Tenant waives any requirement of any applicable law that would require Landlord to hold the Security Deposit in trust for Tenant, and Tenant shall not be entitled to any interest upon the Security Deposit. Landlord shall not be required to keep the Security Deposit in a segregated account, and the Security Deposit may be comingled with other funds of Landlord. Tenant shall not assign (other than to a permitted assignee of this lease) or encumber the Security, and no prohibited assignment or encumbrance by Tenant of the Security shall bind Landlord. Landlord shall not be required to exhaust its remedies against Tenant or the Security before having recourse to Tenant, any Guarantor, the Security or any other security held by Landlord, or before exercising any right or remedy, and recourse by Landlord to any one of them, or the exercise of any right or remedy, shall not affect Landlord's right to pursue any other right or remedy or Landlord's right to proceed against the others. If there is then no uncured breach, the Security and any accrued and unpaid interest thereon if required by law, or any balance, shall be paid or delivered to Tenant promptly after the Expiration Date and Tenant's vacating of the Premises in accordance with this lease. If Landlord's interest in the Real Property is sold or leased, Landlord shall transfer the Security and any accrued and unpaid interest thereon, or any balance, to the new Landlord and, upon such transfer, the assignor shall thereupon be automatically released by Tenant from all liability for the return of the Security or any interest (and Tenant agrees to look solely to the assignee for the return of the Security or any interest).

XIX. MORTGAGE SUBORDINATION. This Lease, and Tenant's rights hereunder shall be subject and subordinate to the lien of any mortgages, ground leases or deeds of trust or other similar instrument that may now exist or may hereafter be placed upon the Shopping Center and all renewals, replacements, and extensions thereof without further notice or action on the part of Landlord or Tenant. Tenant agrees, at the request of any underlying ground lessor, mortgagee or trustee, their respective affiliates, successors and assigns and any purchaser of the Shopping Center that shall succeed to Landlord's interest pursuant to this Section, to attorn to any underlying ground lessor, mortgagee or trustee, their respective affiliates, successors and assigns

and any purchaser of the Shopping Center that shall succeed to Landlord's interest in this Lease in a foreclosure proceeding, by power of sale, by a deed in lieu of foreclosure or other proceeding or by any other action for the enforcement of such mortgages, deeds of trust or other similar instruments. Tenant shall execute and deliver to Landlord within fifteen (15) days from receipt of Landlord's request such instruments (including but not limited to a Memorandum if required by Landlord's mortgagee or trustee to evidence such subordination and attornment). Any document executed by Tenant evidencing subordination of this Lease shall provide that any underlying ground lessor, mortgagee or trustee, their respective affiliates, successors and assigns and any purchaser of the Shopping Center that shall succeed to Landlord's interest shall not be (i) liable for any action or omission of any prior landlord (including Landlord) under this Lease, (ii) subject to any off sets, claims or defenses which Tenant might have against prior landlord (including Landlord), (iii) bound by any Rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord), (iv) bound by any amendment, modification or termination of this Lease or any other agreement concerning this Lease made without any underlying ground lessor's, mortgagee's or trustee's, their respective affiliates', successors' and assigns' and any purchaser's written consent, and/or (v) responsible in any way for any Security Deposit which was delivered to Landlord but was not subsequently delivered to any underlying ground lessor, mortgagee or trustee, their respective affiliates, successors and assigns and any purchaser of the Shopping Center that shall succeed to Landlord's interest.

XX. ESTOPPEL CERTIFICATES. At any time and from time to time, Tenant agrees, upon request in writing from Landlord, to execute and deliver to Landlord, for the benefit of such persons as Landlord names in such request, a statement in writing and in substance satisfactory to Landlord certifying to such of the following information as Landlord shall request: (i) that this Lease constitutes the entire agreement between Landlord and Tenant and is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the Minimum Rent and other charges hereunder have been paid, and the amount of any security deposited with Landlord; (iii) that the Premises have been completed on or before the date of such letter and that all conditions precedent to this Lease taking effect have been carried out; (iv) that Tenant has accepted possession, that the Lease Term has commenced, that Tenant is occupying the Premises, that Tenant knows of no default under the Lease by Landlord and that there are no defaults or offsets which Tenant has against enforcement of this Lease by Landlord; (v) the Rent Commencement Date of this Lease and the expiration date of this Lease; and (vi) that Tenant's store is open for business, provided such facts are true and ascertainable. If Tenant fails to timely deliver the estoppel certificate as required hereunder, then without limiting any other rights and remedies of Landlord, Landlord shall have the right to charge Tenant an amount equal to \$250.00 for each day until Tenant delivers to Landlord the estoppel certificate. Tenant acknowledges and agrees that such charge is a reasonable estimate of the damages Landlord shall suffer as a result of Tenant's failure to deliver the required reports and/or statements, which damages include Landlord's additional administrative and other costs associated with such failure and the parties agree that it would be impracticable or extremely difficult to fix Landlord's actual damage in such event.

XXI. QUIET ENJOYMENT. Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have the peaceable and quiet enjoyment and possession of the Premises without any hindrance from Landlord or any person or persons lawfully claiming the Premises, subject, nevertheless, to the terms and conditions of this Lease, and any mortgage, leases and other matters to which this Lease is subject or subordinate.

XXII. LIABILITY OF LANDLORD. Notwithstanding anything to the contrary provided in this Lease, it is specifically understood and agreed, such agreement being a primary consideration for the execution of this Lease by Landlord, that if Landlord shall fail to perform any covenant, term or condition of this Lease upon Landlord's part to be performed and, as a consequence of such default, Tenant shall recover a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levy thereon against the right, title, and interest of Landlord in the Shopping Center, as the same may then be encumbered, and neither Landlord nor any of its officers or shareholders shall be liable for any deficiency. It is understood that in no event shall Tenant have any right to levy execution against any property of Landlord other than its interest in the Shopping Center as hereinbefore expressly provided. In the event of the sale or other transfer of Landlord's right, title and interest in the Premises or the Shopping Center, Landlord shall be released from all liability and obligations under this Lease. In no event shall Landlord be responsible for or be liable to Tenant for any consequential or special damages that occur as a result of Landlord's breach of a term, covenant, obligation or condition under this Lease. No default by Landlord under this Lease shall give Tenant the right to terminate this Lease. Landlord's obligations to Tenant and Tenant's obligation to pay Rent are independent covenants in all respects.

XXIII. MISCELLANEOUS PROVISIONS.

- A. **Accord and Satisfaction.** No payment by Tenant, or anyone occupying the Premises by, through or under Tenant, or receipt by Landlord of a lesser amount than the rents stated herein shall be deemed to be other than on behalf of Tenant and on account of the next due rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.
- B. **Waiver.** No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant shall be valid unless it be in writing signed by Landlord. No waiver by Landlord with respect to one or more tenants or occupants of the Shopping Center shall constitute a waiver in favor of any other tenant, nor shall the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant. Tenant shall be deemed to have waived the right to dispute any matter relating to Tenant's obligation to pay or prior payment of Rent or Additional Rent including, without limitation, Minimum Rent, Taxes, Common Area Charges or Insurance Charges, unless Tenant provides notice to Landlord within twelve (12) months from earlier of (i) the date Tenant receives Landlord's billing statement setting forth the exact amount of such charge, or (ii) the date such payment is due pursuant to the terms of this Lease.
- C. **Broker's Commission.** Tenant warrants that, except for any amounts payable by Landlord to its broker (the "Commission"), there are no claims for broker's commissions or finder's fees in connection with its execution of this Lease, and Tenant agrees to indemnify and save Landlord harmless from any liability that may arise from such claims, including reasonable attorney's fees. In the event this Lease shall be terminated for any reason prior to the natural expiration of the initial Term of this Lease, Tenant shall pay to Landlord the unamortized portion of the Commission, said amortization to be computed based upon a five (5) year term commencing on the Rent Commencement Date.

- D. **No Partnership.** Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.
- E. **Lease Inures to the Benefit of Assignees.** This Lease and all of the covenants, provisions, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns respectively, of the parties hereto, provided, however, that no assignment by, from, through, or under Tenant in violation of the provisions hereof shall vest in the assigns any right, title, or interest whatsoever.
- F. **Entire Agreement.** This Lease and the exhibits attached hereto set forth the entire agreement between Landlord and Tenant, and all prior promises and agreements, oral or written, between them are merged into this Lease. No amendment to this Lease shall be binding upon Landlord or Tenant unless in writing.
- G. **Abandonment, Surrender and Holding Over.** Tenant shall peaceably surrender possession of the Premises to Landlord at the expiration or sooner termination of this Lease, broom clean and in the same condition in which Tenant has agreed to keep the same during the Term of this Lease, promptly delivering to Landlord at its office all keys for the Premises. Tenant shall remove any and all merchandise and other personal property of Tenant from the Premises at the expiration of the Term (or as earlier terminated). If Tenant does not remove its property as herein provided, such property shall be deemed abandoned by Tenant and Landlord may dispose of same as it sees fit without liability to Tenant therefor. Tenant shall repair any damage to the Premises or the Shopping Center caused by Tenant's removal of any personal property.

If Tenant remains in possession of the Premises after the expiration or earlier termination of this Lease, Tenant shall be bound by the terms and provisions of this Lease except that no tenancy or interest in the Premises shall result, but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction, and Tenant shall (with no additional notice required by Landlord) pay to Landlord, as liquidated damages, a sum equal to the greater of (i) double the fair market rental value of the Premises, as determined by Landlord, in its sole discretion, or (ii) two hundred percent (200%) of the Minimum Rent payable during the calendar month immediately preceding the expiration or earlier termination of this Lease for any period during which Tenant shall hold the Premises after the stipulated Term of this Lease shall expire or may have terminated. If Tenant vacates the Premises prior to the scheduled expiration of the Lease Term, Tenant shall be in default of this Lease, and if Tenant has not re-entered the Premises and resumed the operation of the business set forth herein within the next thirty (30) consecutive days, Tenant shall be deemed to have abandoned the Premises, and Landlord shall have the right, but not the obligation, to take sole possession of the Premises on or after the tenth (10th) day following the expiration of said thirty (30) day period and Landlord may relet said Premises. Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

- H. **No Option.** The submission of this Lease by Landlord for review by Tenant does not constitute a reservation of or option for the Premises, and shall vest no right in Tenant. This Lease becomes effective as a Lease only upon execution and delivery thereof by the parties hereto.

- I. **Additional Rent.** Any amounts to be paid by Tenant to Landlord pursuant to the provisions of this Lease, whether such payments are periodic or recurring, shall be deemed to be "Additional Rent" and otherwise subject to all provisions of this Lease and of law as to the default in the payment of rent.
- J. **Power of Attorney.** In the event Tenant fails to deliver any documents required to be delivered to Landlord under the terms herein within fifteen (15) days after Landlord's written request, Tenant does hereby make, constitute, and irrevocably appoint Landlord as its attorney-in-fact and in its place and stead to do so.
- K. **Financial Statements.** Tenant shall, within ten (10) days after receipt of a written request from Landlord, furnish to Landlord Tenant's and Guarantor's (if applicable) current financial statement and such other financial information as Landlord may request. Landlord covenants that the financial information provided by Tenant and Guarantor (if applicable) shall be treated as confidential, except that Landlord may disclose such information to any prospective purchaser, prospective or existing lender or prospective or existing ground or underlying lessor upon the condition that the prospective purchaser, prospective or existing lender or underlying lessor shall also covenant to treat such information as confidential.
- L. **Severability.** In the event that any provision or section of this Lease is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Lease shall be deemed to have never been included therein, and the balance of this Lease shall continue in effect in accordance with its terms.
- M. **Scaffolding.** If a sidewalk bridge or scaffolding is installed or erected in front of the Premises for the purpose of making any repairs, alterations or additions to the Shopping Center or any adjacent building(s). Landlord shall not be liable for any damage Tenant may sustain thereby and Tenant shall not be entitled to any compensation therefor nor abatement of Rent nor shall the same release Tenant from its obligations hereunder nor constitute an eviction.
- N. **Changes.** Landlord reserves the right, at any time, in its sole and absolute discretion and without incurring any liability to Tenant therefor, and without it constituting an actual or constructive eviction, (i) to make such changes in or to the areas surrounding the Premises, Shopping Center and surrounding buildings and/or the fixtures and equipment thereof, as well as in or to the size, composition, number, arrangement or location of the public entrances, doors, doorways, halls, passages, elevators, escalators and stairways and other public portions thereof, as it may deem necessary or desirable, (ii) change the name of the Shopping Center and the address or designation of the Premises or the Shopping Center, (iii) subdivide or combine tax parcels; *provided*, that Tenant Tax Share (and any other charges based on Tenant's Proportionate Share) shall be adjusted to reflect any such subdivision or combination (iv) install, maintain, alter and remove signs on or about the exterior and interior of the Shopping Center, and (v) add land, easements or other interests to or eliminate the same from the Shopping Center, and grant easements and other interests and rights in the Shopping Center to other parties.
- O. **Redevelopment.** Notwithstanding anything to the contrary contained herein, if Landlord intends to demolish, renovate, remodel or alter the Shopping Center to such an extent that Landlord requires possession of the Premises, then Landlord (in its sole discretion and without penalty), upon providing Tenant with One Hundred Twenty (120) days prior

written notice, shall have the right to terminate this Lease and this Lease shall expire One Hundred Twenty (120) days following the date the termination notice is sent to Tenant without compensation of any kind to Tenant. Landlord and Tenant shall each remain liable for all obligations and liabilities accruing under the Lease up to and including the date of expiration of said foregoing notice period.

- P. **Counterparts.** This Lease may be executed in multiple counterparts, each of which shall constitute an original and all of which taken together shall constitute one and same agreement binding upon the parties, notwithstanding that all the parties are not signatories to the same counterpart. In order to facilitate the agreements contemplated by this Lease, signatures transmitted by facsimile machine or signatures transmitted via e-mail in a "PDF" format may be used in place of original signatures on this Lease. Each party intends to be bound by such party's facsimile or "PDF" format signature on this Lease, is aware that the other parties are relying on such party's facsimile or "PDF" format signature, and hereby waives any defenses to the enforcement of this Lease based upon the form of signature. Promptly following any facsimile transmittal or e-mail transmittal of "PDF" format signatures, the parties shall deliver to the other parties the original executed Lease by reputable overnight courier to the addresses shown herein.
- Q. **Consents.** With respect to any provision of this Lease which provides or infers, in effect, that Landlord shall not unreasonably withhold or unreasonably delay its consent or approval, Tenant, in no event, shall be entitled to make, nor shall Tenant make, any claim against Landlord for money damages, and Tenant hereby waives any claim or assertion by Tenant that Landlord has unreasonably withheld or unreasonably delayed any consent or approval, but Tenant's sole remedy shall be an action or proceeding to enforce any such provision of this Lease, or for specific performance, injunction or declaratory judgment.
- R. **Force Majeure.** In the event Landlord or Tenant is prevented or delayed in the performance of any improvement or repair or fulfilling any other obligation required under this Lease due to delays caused by fire, pandemic, endemic, catastrophe, strikes or labor trouble, civil commotion, acts of God, governmental prohibitions or regulation, inability or difficulty to obtain materials or other causes beyond the performing party's reasonable control, then the period of such delay shall be added to the time for performance thereof on a day-to-day basis. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. A Party suffering a Force Majeure event shall notify the other Party as soon as reasonably practicable specifying the cause of the event, the scope of commitments under the Lease affected by the event, and a good faith estimate of the time required to restore full performance. Any party claiming a Force Majeure event shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Lack of funds will not be a basis for avoidance or delay of any obligation under this Lease. Notwithstanding anything to the contrary contained herein, this provision shall not excuse Tenant from its obligation to pay Minimum Rent, utilities and Additional Rent.
- S. **Joint and Several Liability.** In the event Tenant shall be comprised of more than one (1) individual or business entity, each such individual or business entity comprising Tenant shall be jointly and severally liable for each and every obligation of Tenant under the terms of this Lease.

- T. Relocation.** As a material inducement for Landlord to enter into this Lease with Tenant, Landlord shall, throughout the Term of this Lease and any renewals thereof, have the right to relocate Tenant to another premises ("New Premises") within the Shopping Center. In the event Landlord elects to exercise the right of relocation to the New Premises, Landlord shall deliver written ninety (90) days' notice to Tenant identifying the location of the proposed New Premises ("Landlord's Notice"). Tenant shall, within 90 days after receipt of Landlord's Notice, vacate the Premises and relocate all of Tenant's trade fixtures, equipment and inventory to the new premises designated by Landlord. Tenant's reasonable and necessary expenses for moving such trade fixtures, equipment and inventory shall be reimbursed by Landlord within 90 days of Landlord's receipt of invoices for such moving expenses. All other costs of remodeling, outfitting and furnishing the New Premises shall be borne by Tenant. Tenant shall arrange for the transfer of all utilities to the New Premises.

In the event Tenant shall not agree to the New Premises proposed by Landlord within ten (10) days of receiving Landlord's Notice, Landlord shall have the right to terminate this Lease by delivering notice of termination ("Landlord's Termination Notice"), in which Landlord shall elect a Termination Date of not less than ninety (90) days from the date Tenant receives Landlord's Termination Notice. Tenant shall be liable for the payment of all Gross Rent, Minimum Rent, and/or Additional Rent and charges due under the Lease up to and including the Termination Date, even if such sums are billed subsequent to such date. Tenant shall vacate, surrender and deliver possession of the Premises to Landlord on or prior to the Termination Date in accordance with the terms of the Lease.

- U. Payment Under Protest.** All rent and other amounts payable hereunder shall be payable without demand, offset or deduction. If at any time a dispute shall arise as to any amount or sum of money to be paid by Tenant to Landlord under the provisions hereof, Tenant shall make such payment "under protest" and under no circumstances shall Tenant be entitled to withhold any payment due hereunder. If Tenant makes a payment "under protest" and it is subsequently determined that Tenant was not obligated to pay all or a portion of an amount paid "under protest," Landlord shall refund to Tenant the portion of the payment made "under protest" which Tenant was not obligated to pay.
- V. Waiver of Trial By Jury.** To the extent permitted by applicable law Landlord and Tenant waive all right to trial by jury in any claims, action, proceeding or counterclaim by either Landlord or Tenant against each other or any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant or Tenant's use or occupancy of the Premises.
- W. Hazardous Materials.** Tenant shall not permit or cause the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center. Tenant shall defend, protect, indemnify and hold Landlord harmless from and against any and all claims, causes of action, liabilities, damages, costs and expenses, including, without limitation, attorney fees, arising because of any alleged personal injury, property damage, death, nuisance, loss of business or otherwise, by Landlord, any employee of Landlord, or from and against any governmental act or enforcement, arising from or in any way connected with conditions existing or claimed to exist with respect to Hazardous Materials (as hereinafter defined) within the Shopping Center which are the result of Tenant's use, occupancy or operation of the Premises. As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous release (as such terms are defined in any federal, state or local law,

rule, regulation or ordinance, including without, limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and other said wastes. In the event Tenant shall cause or permit the presence of Hazardous Materials in, on or under the Premises or any other portion of the Shopping Center, Tenant shall promptly, at Tenant's sole cost and expense, take any and all action necessary (as required by appropriate government authority or otherwise) to return the areas affected thereby to the condition existing prior to the presence of any such Hazardous Materials thereon, subject to Landlord's prior written consent. The foregoing covenants shall survive termination of this Lease.

- X. **Payment By Third Party.** In no event shall Landlord's acceptance of the payment of Minimum Rent or Additional Rent from any party other than Tenant constitute a release of Tenant's primary obligations under this Lease or Landlord's acceptance of any other party as an assignee or sublessee of Tenant, regardless of the number of payments accepted by Landlord or the length of time that said party made such payments.
- Y. **Recording.** This Lease shall not be recorded in any public records office or department by Landlord or Tenant.
- Z. **Interpretation.** This Lease, and any riders and exhibits hereto, have been mutually negotiated by Landlord and Tenant. Any ambiguities will not be interpreted in favor of either party. The captions contained herein are for convenience and reference only and will not be deemed as part of this Lease or construed in any manner limiting or amplifying the terms and provisions of this Lease to which they relate.
- AA. **Certification.** Tenant represents and warrants to Landlord that (i) Tenant is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation, named by any Executive Order or the United States Treasury Department as a "terrorist", "Specially Designated National and Blocked Person", or other banned or blocked person, group, or nation (collectively, "Banned Persons") pursuant to any anti-terrorism law; (ii) Tenant is not engaged in this Lease transaction, or instigating or facilitating this Lease, directly or indirectly on behalf of any Banned Person; (iii) Tenant currently does not appear, and throughout the Lease Term, neither Tenant, nor any officer, director, shareholder, partner, member or other owner of Tenant shall appear, on any list of Banned Persons; (iv) no anti-terrorism law prohibits Landlord from doing business with Tenant; (v) Tenant, its officers, directors, or principal shareholders, partner, member, or other owner of Tenant, shall not, during the Lease Term, violate any anti-terrorism laws; and (vi) Tenant, its officers, directors, principal shareholders, partners or members shall not, during the Lease Term, do business with any party, individual, or entity that has violated or will violate any anti-terrorism laws. For purposes of this Lease, "anti-terrorism laws" shall mean Executive Order 13224 and related regulations promulgated and enforced by the Office of Foreign Assets Control, the Money Laundering Control Act, the United States Patriot Act, or any similar law, order, rule or regulation enacted in the future. Tenant hereby agrees to defend, indemnify, protect, and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, expenses (including attorneys' fees) and costs arising from or related to a breach of the foregoing representations and warranties. The foregoing indemnity obligations of Tenant shall survive the termination or expiration of this Lease.
- BB. **Payment.** All payments to be made to Landlord or Tenant pursuant to the terms of this Lease shall be made in lawful currency of the United States of America.

CC. **Execution.** The submission of this Lease to Tenant or its broker, or other agent, does not constitute an offer to Tenant to lease the Premises. This Lease shall have no force and effect until (a) it is executed and delivered by Tenant to Landlord, and (b) it is fully reviewed and executed by Landlord; provided, however, that upon execution of this Lease by Tenant and delivery to Landlord, such execution and delivery by Tenant shall, in consideration of the time and expense incurred by Landlord in reviewing the Lease and Tenant's credit, constitute an offer by Tenant to lease the Premises upon the terms and conditions set forth herein (which offer to lease shall be irrevocable for twenty (20) business days following the date of delivery).

DD. **Exhibits.** The following Exhibits are attached to this Lease and incorporated herein by reference:

Exhibit "A" - Site Plan of Shopping Center

EE. **Reciprocal Easement Agreement.** Tenant understands and agrees with Landlord that, notwithstanding anything to the contrary contained in this Lease, the Premises are let subject to covenants, restrictions and easements, governmental laws, rules, regulations and orders, and the reservation by Landlord of all air rights above, around and about the Premises and all rights to increase the sizes of surrounding buildings based on the air rights appurtenant to the Premises, as, if and when permitted by any present or future zoning laws, ordinances, orders or regulations, and all rights to grant future utility easements, provided said future easements do not unreasonably interfere with the use of the Premises by Tenant.

FF. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the state and in the county in which the Premises demised under this Lease is located. Tenant irrevocably consents to the personal and subject matter jurisdiction of those courts in any legal action or proceeding relating to the Lease. This consent to jurisdiction is self-operative and no further instrument or legal action, other than service of process in any manner permitted by law, is necessary in order to confer jurisdiction upon the person of Tenant and the subject matter in question in any such court.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed, in triplicate, as of the date and year first above written.

WITNESSES AS TO LANDLORD:

David Asmanti
David Asmanti (Print Name)

(Print Name)

LANDLORD:
WEST APPLETON REALTY LLC, a
Wisconsin limited liability company

By: Igal Namdar
Igal Namdar, authorized signatory

WITNESSES AS TO TENANT:

Asim
Asim (Print Name)

Rebecca Bilal
Rebecca Bilal (Print Name)

TENANT:
Wasim Bilal, an adult individual

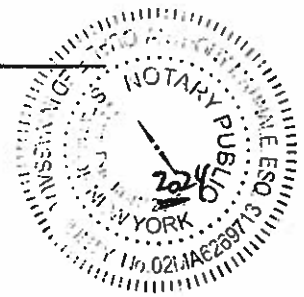
By: Wasim Bilal
Name: WASIM BILAL
Title: OWNER

STATE OF New York)
) SS:
COUNTY OF Albany)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, Teal Nomin, known to me to be the authorized Signer of West Appleton Realty LLC the entity/individual which executed the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument for and on behalf of said corporation being thereunto duly authorized, and that the same is his/her free act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Grant Neck New York this 7 day of February, 2022

[Signature]
Notary Public



STATE OF WISCONSIN)
) SS:
COUNTY OF OUTAGAMIE)

Personally appeared before me, the undersigned, a Notary Public, in and for said County and State, WASIM BILAL, known to me to be the OWNER of JIMBO WHOLESALERS, the entity/individual which executed the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument for and on behalf of said corporation being thereunto duly authorized, and that the same is his/her free act and deed and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Appleton, WI this 4th day of Feb, 2022

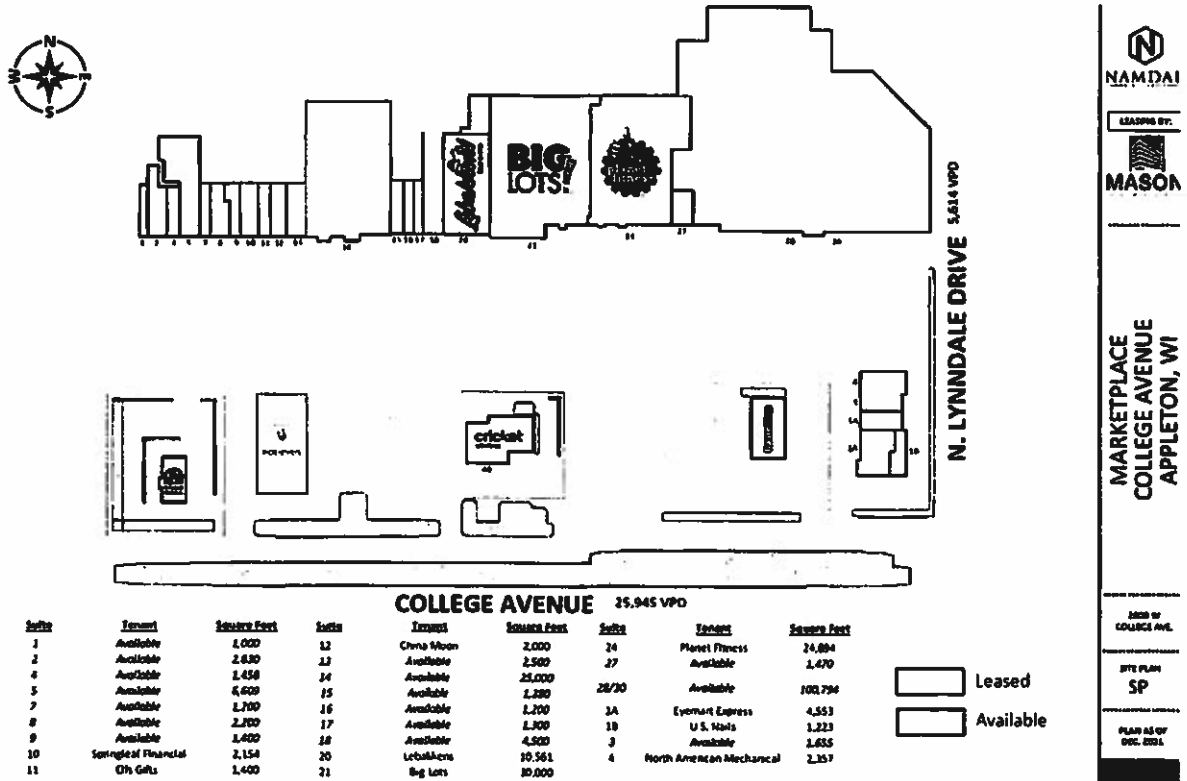
[Signature]
Notary Public

COMMISSION EXPIRES 04/26/2023



EXHIBIT A

Site Plan of Shopping Center and Premises





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/03/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Van Handel Agency, Inc. 2500 N. Richmond St, PO Box 1053 Appleton, WI 54912-1053	CONTACT NAME:	Bob Van Handel	
		PHONE (AG, Ho, Ext):	(920)733-1440	FAX (AG, No):
		E-MAIL ADDRESS:	rvanhandel@vanhandelagency.com	
		INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	Jumbo Wholesale LLC Wasim Bilal 2600 West College Ave, Unit 14 Appleton, WI 54914	INSURER A:	ACUITY INSURANCE	14184
		INSURER B:	1st Auto & Casualty Insurance Co	44726
		INSURER C:		
		INSURER D:		
		INSURER E:		

COVERAGES CERTIFICATE NUMBER: 00014107-0 REVISION NUMBER: 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y Y	ZG0707	08/19/2021	08/19/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y Y	BAW001671	08/28/2021	08/28/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y N/A	ZG0707	08/19/2021	08/19/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Wholesale / Retail sales

Namdar Realty Group LLC, West Appleton Holding LLC and West Appleton Realty LLC are named as additional insureds as per policy form as respects to leased property located at 2600 - 2700 West College Ave, Appleton WI 54914. 30 Day Notice of cancellation/10 day notice for non-payment of premium. Policies are Primary and Non Contributory. Waiver of Subrogation is included.

CERTIFICATE HOLDER

Namdar Realty Group LLC
 West Appleton Holding LLC
 West Appleton Realty LLC
 150 Great Neck Rd, Suite 304
 Great Neck, NY 11021

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robert A. Handel

(BVH)

JUMBO WHOLESALE LLC
2333 W WISCONSIN AVE
APPLETON, WI 54914-3148

3765

12-1/750

DATE

PAY TO THE ORDER OF WEST Appleton Realty LLC

\$ 12,500.00 ⁰⁰/₁₀₀

Twelve Thousand Five Hundred ⁰⁰/₁₀₀.

DOLLARS 

Security Features
Included.
Details on Back.

CHASE

JPMorgan Chase Bank, N.A.
www.Chase.com

MEMO First Month to Deposit (2600K College)

[Signature]

MP

⑆075000019⑆

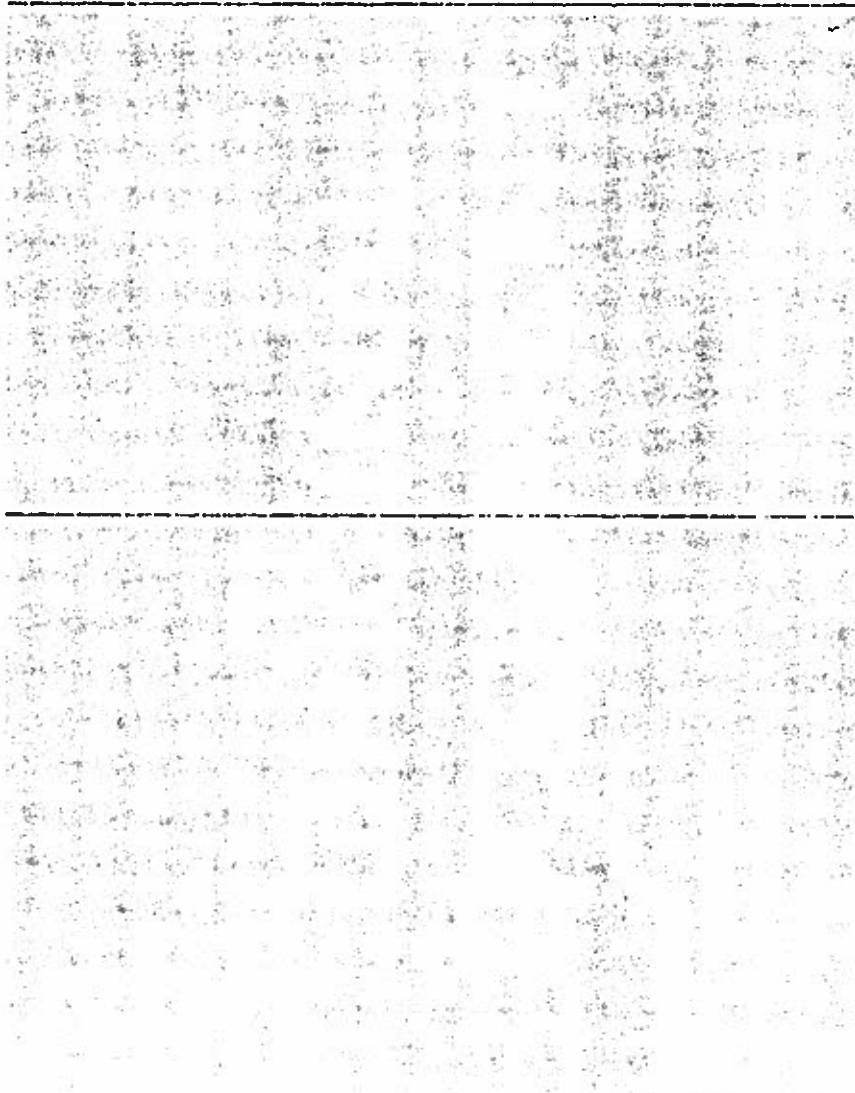
6006276671⑆3765

 **ENDORSE HERE**


CHECK HERE AFTER MOBILE OR REMOTE DEPOSIT

DATE _____

**DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE ***



RS-52

 *The security features listed below, as well as those not listed, exceed industry guidelines.*

Security Features:	Results of document alteration:
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Chemically Sensitive Paper	• Stains or spots may appear with chemical alteration
Security Screen	• Absence of "Original Document" verbiage on back of check

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