

**ASSIGNMENT AND ASSUMPTION
OF GARAGE-RELATED AGREEMENTS**

This Assignment And Assumption Of Garage-Related Agreements (this "Assignment") dated as of September 27, 2016 (the "Effective Date"), is entered into by and between the City of South Bend, acting by and through its Board of Public Works (the "Board"), and the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the "Commission") (each a "Party" and collectively the "Parties").

RECITALS

A. The City of South Bend (the "City"), through its governing bodies, has constructed, equipped, maintained, and operated the parking facilities located at 126 N. Main Street (the "Main Street Garage"), 109 W. Jefferson Boulevard (the "Leighton Garage"), and 121 E. Wayne Street (the "Wayne Street Garage") (collectively, the "Garages").

B. The Board holds equitable title to the Main Street Garage and the Leighton Garage.

C. By the warranty deed dated September 15, 2016, which the Board accepted on September 27, 2016, as stated in Resolution No. 44-2016, the Commission conveyed to the Board legal title to the Wayne Street Garage.

D. Consistent with the consolidation of the Board's ownership of the Garages, the Commission desires to assign to the Board all of the Commission's rights, interests, and obligations in, to, and under certain agreements with respect to the Garages, and the Board desires to accept the assignment thereof and assume the Commission's rights, interests, and obligations thereunder.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Assignment. The Commission hereby transfers, assigns, and conveys, all of the Commission's rights, interests, and obligations in, to, and under the following agreements (collectively, the "Assigned Agreements"):

- (a) Ground and Airspace Lease by and between the Commission and Leighton Plaza Offices, LLC, as successor-in-interest to Riggs & Company, a division of Riggs Bank N.A., trustee of the Multi-Employer Property Trust, dated March 6, 1998, attached hereto as Exhibit 1 (for property located at 130 S. Main Street and adjacent to and above the Leighton Garage);
- (b) Ground Lease by and between the Commission and Memorial Hospital of South Bend, Inc., dated January 23, 1998, attached hereto as Exhibit 2 (for

property located at 111 W. Jefferson Boulevard and adjoining and above the Leighton Garage);

- (c) Lease by and between the Commission and J Weldy, LLC, as successor-in-interest to Bruno Cataldo, dated August 1, 2010, as amended by the Second Amendment to Lease, dated January 13, 2014, collectively attached hereto in reverse chronological order as Exhibit 3 (for property located in the ground level of the Leighton Garage);
- (d) Lease by and between the Commission and First Church of Christ Scientist South Bend, dated September 7, 2007, as amended by the First Amendment to Lease, dated August 16, 2012, collectively attached hereto in reverse chronological order as Exhibit 4 (for property located in the ground level of the Leighton Garage);
- (e) Lease by and between the Commission and Le Peep of South Bend, Inc., dated October 20, 2000, as amended by the First Amendment to Lease, dated February 13, 2003, the Second Amendment to Lease, dated November 2, 2007, the Third Amendment to Lease, dated November 1, 2008, and the Fourth Amendment to Lease, dated May 10, 2011, collectively attached hereto in reverse chronological order as Exhibit 5 (for property located in the ground level of the Leighton Garage);
- (f) Lease by and between the Commission and Gordon Ventures, LLC d/b/a Edible Arrangements, dated October 11, 2012, attached hereto as Exhibit 6 (for property located in the ground level of the Leighton Garage);
- (g) Lease by and between the Commission and Times Five, LLC d/b/a Linden Grill, dated April 27, 2016, attached hereto as Exhibit 7 (for property located in the ground level of the Leighton Garage);
- (h) Lease by and between the Commission and Michiana Brewer's Supply LLC, dated June 1, 2014, as amended by the First Amendment to Lease dated June 13, 2016, collectively attached hereto in reverse chronological order as Exhibit 8 (for property located in the ground level of the Leighton Garage);
- (i) Lease by and between the Commission and Sonja Young d/b/a Vesuvio's Pizza, dated July 26, 2011, as amended by the First Amendment to Lease, dated December 22, 2014, collectively attached hereto in reverse chronological order as Exhibit 9 (for property located in the ground level of the Wayne Street Garage); and
- (j) Commercial Property Management and Leasing Agreement by and between the Commission and Bradley Company, LLC, dated February 1, 2015, attached hereto as Exhibit 10 (relating to management and leasing of retail space in the Leighton Garage and the Wayne Street Garage).

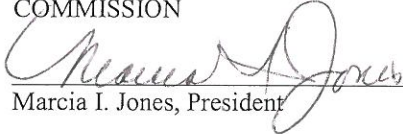
2. Assumption. The Board hereby assumes all rights, interests, and obligations of the Commission under the terms and provisions of the Assigned Agreements, whether presently existing or arising after the date of this Assignment.

3. Successors and Assigns. This Assignment shall be binding on and inure to the benefit of the Commission and the Board and their respective successors-in-interest and permitted assigns.

4. Consent. In accordance with the respective terms of the Assigned Agreements, no third party's consent is required to carry out the assignment and assumption stated herein.

IN WITNESS WHEREOF, the Commission and the Board have executed this Assignment And Assumption Of Garage-Related Agreements as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION



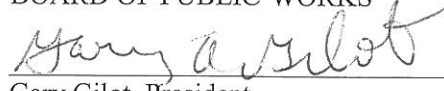
Marcia I. Jones, President

ATTEST:



Donald E. Inks, Secretary

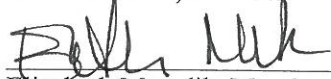
CITY OF SOUTH BEND
BOARD OF PUBLIC WORKS



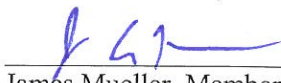
Gary Gilot, President



Therese Dorau, Member



Elizabeth Maradik, Member



James Mueller, Member



David Relos, Member

ATTEST:



Linda Martin, Clerk

EXHIBIT 1

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

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MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is entered into this 6th day of March, 1998, by and between the City of South Bend, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission (Lessor), and Riggs & Company, a division of Riggs Bank N.A., as Trustee of the Multi-Employer Property Trust, a Trust organized under 12 C.F.R. Section 9.18 (Lessee).

WHEREAS, the Lessor and Lessee on the 6th day of ~~February~~ March, 1998, entered into an a Ground and Airspace Lease (Lease) of certain real property described

at Exhibit "A" attached

hereto; and

WHEREAS, the Lease provides that the parties shall execute a Memorandum of Lease describing the leased Premises, the term of the Lease, and identifying the parties thereto.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Lease, the Lessor and Lessee do hereby state that:

1. The term of the Lease extends for a period of fifty (50) years, terminating March 31, 2048, or sooner, with a series of four (4) consecutive irrevocable options to extend the term for an additional fifty (50) years as provided in the Lease, a copy of which may be examined at the offices of Lessor, 1200 County-City Building, South Bend, Indiana 46601.

IN WITNESS WHEREOF, the undersigned have caused this Memorandum of Lease to be executed as of the date and year first written above.

LESSOR:

LESSEE:

City of South Bend,
Department of Redevelopment

Riggs & Company, a division of
Riggs Bank N.A., as Trustee of the
Multi-Employer Property Trust

By: [Signature]
Robert W. Hunt, President
South Bend Redevelopment
Commission

By: [Signature]
Patrick O. Mayberry
Its: Executive Director

Attest: [Signature]
Paula N. Auburn, Secretary

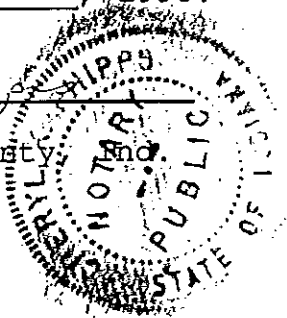
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STATE OF INDIANA)
)SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared City of South Bend, Department of Redevelopment, by Robert W. Hunt, and Paula N. Auburn, President and Secretary, respectively, of the South Bend Redevelopment Commission, and acknowledged the execution of the foregoing Memorandum of Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 23rd day of January, 1998.

Cheryl K Phipps
Notary Public
Residing in _____ County, _____
CHERYL K PHIPPS
NOTARY PUBLIC STATE OF INDIANA
ST. JOSEPH COUNTY
MY COMMISSION EXP. JAN. 7, 1999



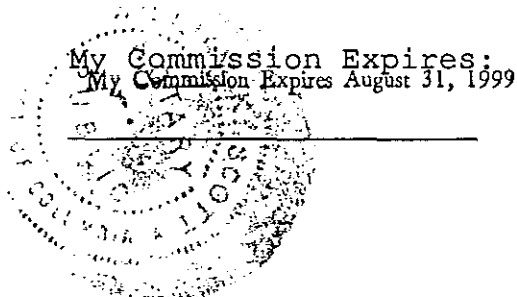
My Commission Expires:

~~STATE OF~~ DISTRICT OF)
) SS:
COLUMBIA ~~COUNTY~~)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Patrick O. Mayberry, who acknowledged that he is the Executive Director of Riggs & Company, a division of Riggs Bank N.A., the trustee of the Multi-Employer Property Trust, and acknowledged the execution of the foregoing Memorandum of Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 2nd day of MARCH, 1998.

William J. Scott
D.C. Notary Public
Residing in _____ County, _____
WASHINGTON, DISTRICT OF COLUMBIA



This instrument was prepared by Anne E. Bruneel, Chief Assistant City Attorney, City of South Bend, 1400 County-City Building, South Bend, Indiana 46601

EXHIBIT A

LEGAL DESCRIPTION OF THE OFFICE BUILDING SITE

A parcel of land being a part of Lots 27, 28, 33 and 34 in the Original Plat of the Town (now City) of South Bend, Indiana and adjacent vacated alley as shown in the Office of the Recorder of St. Joseph County, Indiana and being more particularly described as follows: Commencing at the Southwest corner of said Lot 31; thence North $0^{\circ}10'28''$ West along the East right-of-way line of Main Street, a distance of 163.82 feet; thence continuing North $0^{\circ}10'28''$ West along said East right-of-way line, a distance of 92.67 feet; thence North $89^{\circ}39'15''$ East, a distance of 182.85 feet; thence South $0^{\circ}20'45''$ East, a distance of 92.67 feet; thence South $89^{\circ}39'15''$ West, a distance of 183.12 feet to the place of beginning.

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98 MAR -9 PM 3:00

STEPHEN E. JAMES
ST. JOSEPH CO. RECORDER
STATE OF INDIANA
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GROUND AND AIRSPACE LEASE

THIS LEASE is entered into effective as of the 6th day of March, 1998, by and between RIGGS & COMPANY, a division of RIGGS BANK N.A., as Trustee of the MULTI-EMPLOYER PROPERTY TRUST, a Trust organized under 12 C.F.R. Section 9.18 ("MEPT"), and the CITY OF SOUTH BEND, INDIANA, DEPARTMENT OF REDEVELOPMENT, acting by and through the SOUTH BEND REDEVELOPMENT COMMISSION (the "Commission").

RECITALS

WHEREAS, the Commission, acting pursuant to its redevelopment authority under Ind. Code §36-7-14-1 et seq., has created the South Bend Central Development Area (the "Project Area") for the purpose of carrying out in such Project Area a redevelopment project and has adopted the South Bend Central Development Area Development Plan (the "Plan") to guide such redevelopment project. A copy of the Plan is recorded in the office of the Recorder of St. Joseph County, Indiana;

WHEREAS, the Commission is the owner of certain real estate more particularly described at Exhibit A hereto ("Real Property"); and

WHEREAS, MEPT desires to lease the Lease Parcel, which will be a part of MEPT's Leasehold Estate, from the Commission; and

WHEREAS, MEPT and the Commission desire to set forth their agreement with respect to the leasing of the Lease Parcel and certain other matters affecting the Lease Parcel.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, MEPT and the Commission agree as follows:

ARTICLE I

DEFINITIONS

Terms defined in the Recitals shall have the meanings set forth therein. The following terms, when used in this Lease with initial capital letters, have the following respective meanings:

"Basic Rent" has the meaning set forth in Section 4.1.

"Certificate of Completion" has the meaning assigned to that term in the Development Agreement.

"City" means the City of South Bend, Indiana.

"Commencement Date" has the meaning set forth in Article III.

"Condemnation Proceeds" means the total aggregate award, including any award for the Commission's fee simple title and MEPT's Leasehold Estate, in the event of a total taking or Constructive Total Taking of the Leasehold Estate.

"Constructive Total Taking" means a taking of such scope that the Leasehold Estate remaining in MEPT's ownership cannot be leased and operated so as to generate an investment return to MEPT which would be expected by institutions investing in similar office projects.

"Development Agreement" means the Amended and Restated Agreement for the Lease and Development of Real Property Within the South Bend Central Development Area by and between the South Bend Redevelopment Commission and Riggs & Company, a division of Riggs Bank N.A., as Trustee of the Multi-Employer Property Trust, a Trust organized under 12 C.F.R. Section 9.18, dated March 6, 1998, all exhibits and documents incorporated by its terms, and any amendments to it. The terms and conditions of the Development Agreement are incorporated.

"Environmental Laws" means federal, state and local laws and implementing regulations, effective on or after the date of execution of this Lease, relating to pollution or protection of the environment, including laws or regulations relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances, wastes or materials into the environment (including, without limitation, ambient air, surface water, ground water or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances, wastes or materials. Such laws shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq. the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §3251 et seq., the Clean Air Act, as amended 42 U.S.C. §1857, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §466 et seq., and Indiana Code, Title 13 - Environment, as amended.

"Environmentally Regulated Material" has the meaning set forth in Section 5.6(a).

"Event of Default" has the meaning set forth in Section 16.1.

"Hazardous Material(s)" has the meaning set forth at Section 5.6(a).

"Improvements" has the meaning set forth in Section 2.2.

"**Interest Rate**" means the rate of eight (8%) simple interest per annum.

"**Lease Parcel**" has the meaning set forth at Section 2.2.

"**Leasehold Estate**" has the meaning set forth at Section 2.2.

"**Mortgage**" or "**Mortgage Loan**" means both so-called permanent loans and interim building or construction loans, and all advances thereunder, relating to and secured by a mortgage lien upon MEPT's Leasehold Estate, or any part thereof; and also shall refer to and include security agreements, financing statements and any other documentation evidencing such liens and encumbrances.

"**Mortgagee**" means the mortgagee or any assignee of the mortgagee under any Mortgage Loan.

"**Office Building**" has the meaning set forth at Section 2.2.

"**Office Site**" has the meaning set forth in the Development Agreement.

"**Parking Garage**" means the above-ground and underground parking garage to be constructed and maintained by the Commission on the Real Property consisting of approximately 215 underground parking spaces and approximately 429 above-ground parking spaces and a Transit stop facility, as depicted with more particularity in the plans and specifications listed on Exhibit E.

"**Permitted Exceptions**" has the meaning set forth at Section 2.3.

"**Plans**" means preliminary construction plans prepared by or for MEPT in sufficient detail to show exterior design, structural design, exterior materials, positioning and appearance of the Office Building.

"**Public Plaza**" means the open plaza to be constructed and maintained by the Commission on the roof of the underground Parking Garage and as shown on the plans and specifications listed on Exhibit E.

"**Rent**" has the meaning set forth in Section 4.2.

"**Taxes**" means all real estate taxes, personal property taxes, special and general assessments, sewer service charges and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, which may be assessed, levied, or become due and payable with respect to, or become a lien on, any part of or interest in the Leasehold Estate.

"**Term**" has the meaning set forth in Article III.

"Unavoidable Delay" means and includes any delay caused by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, fire or other casualty, "acts of God", restrictive governmental authority, riots, insurrection, war, or the act, failure to act, or default of the other party, or other reason beyond the subject party's reasonable control and not avoidable by reasonable diligence.

ARTICLE II

LEASED PREMISES

Section 2.1. Warranty of Leasehold. The Commission hereby warrants and represents that (a) it holds marketable title to the Lease Parcel subject only to Permitted Exceptions and that (b) it has the authority to convey to MEPT the Leasehold Estate.

Section 2.2. Lease Parcel and Leasehold Estate. The Commission hereby leases to MEPT and MEPT hereby leases from the Commission, upon and subject to the terms, conditions, covenants and provisions hereof, the Lease Parcel. The Lease Parcel shall be that three-dimensional parcel of real estate (part of the Real Property) which (a) lies above the Horizontal Plane and (b) is further bounded by vertical planes determined by the outer boundaries of the Office Site. The Office Site is legally described on Exhibit B and depicted on Exhibit B-1. The Horizontal Plane means that plane defined by the upper surface of the structural concrete slab to be constructed by the Commission within the boundaries of the Office Site to serve as both the upper enclosure of the Parking Garage and the first or ground floor slab of the Office Building. As currently planned, the Horizontal Plane is expected to be at elevation 708.67 feet above sea level, but its exact elevation shall be subject to adjustment and confirmation by the Commission and MEPT when the structural slab is complete. MEPT's Leasehold Estate shall mean (c) the Lease Parcel; (d) the Office Building; (e) the easements granted by the Commission to MEPT by the documents listed on Exhibit C; (f) the machinery, equipment and improvements constructed or installed by MEPT within the easements described in the Development Agreement; (g) MEPT's continuing contractual rights under the Development Agreement existing for the Term and any extensions of it; and (h) all appurtenances, rights, privileges, interests, tenements, hereditaments and easements in any way now or later belonging, appurtenant to or relating to the real property interests described in clauses (c) through (g). The "Office Building" shall mean the Class A building of approximately 60,000 gross square feet to be constructed by MEPT within the Lease Parcel for office, retail and commercial uses. "Improvements" shall be a collective reference to the Office Building and the property referred to in clause (f) in this Section.

Section 2.3. Leasehold Title. The Leasehold Estate is granted by the Commission subject to the following:

(a) The lien of all real estate taxes, all general and special assessments and all other governmental dues, charges and impositions not delinquent;

(b) All easements, restrictions, agreements, covenants and other matters set forth in the policy of title insurance being delivered to and approved by MEPT on or before the Commencement Date and made Exhibit D; and

(c) All applicable zoning, building and land use and other governmental restrictions, laws, ordinances, rules and regulations.

The Leasehold Estate may be subject to the Development Plan included as one exception to the policy of title insurance referred to in (b) and the laws, ordinances, rules and regulations described in (c) only if and for so long as the warranties and representations of the Commission appearing in Section 2.6 remain true and correct. The matters to which the Leasehold Estate may be subject as described earlier in this Section are collectively referred to as "Permitted Exceptions".

Section 2.4. Covenant of Quiet Enjoyment. Commission covenants and agrees that MEPT, upon paying the Rent to be paid by it as herein provided and upon keeping, observing and performing all other covenants and agreements to be kept, observed or performed by it hereunder, shall at all times during the Term have the peaceable and quiet enjoyment and possession of the Lease Premises, without hinderance from the Commission or anyone claiming under the Commission, subject to the matters to which the Leasehold Estate is subject as provided in the foregoing Section 2.3. The Commission's covenant under this Section shall be deemed to include and extend to the easements and other rights and interests included in the Leasehold Estate. A breach by the Commission of its obligations under such documents shall be a violation of this covenant and a material breach by the Commission of this Lease.

Section 2.5. Parking Garage and Public Plaza Construction. The Commission shall cause the Public Plaza and the Parking Garage to be constructed as specified in the Development Agreement. Without limiting the generality of the preceding sentence, neither the Commission nor anyone engaged by, acting for or otherwise designated by the Commission in the design or construction of the Parking Garage shall make any change or otherwise take action which (a) changes the location, configuration, number or bearing capacity of the support points for the Office Building; (b) otherwise compromises or adversely affects the structural integrity of the Office Building; (c) changes the location of or otherwise modifies the design, configuration, capacity or nature of the utility installations being constructed or installed by the Commission's Contractor in the Parking Garage up to the edge of the Lease Parcel in order that such utility services be available to the Office Building;

(d) will materially impact the design, cost or construction schedule for the Office Building.

Section 2.6. Compliance With Zoning and Other Governmental Requirements. The Commission warrants and represents that (a) the Lease Parcel has been lawfully created and subdivided from the Real Property and (b) the Office Building may be lawfully constructed and used for office, retail and commercial purposes under the Plan and all applicable zoning, building and land use and other governmental restrictions, laws, ordinances, rules and regulations and land use ordinances of the City of South Bend, subject only to compliance with the building code applicable to the Office Building and the procedures and administrative requirements for the issuance of a building permit for the Office Building.

Section 2.7. Commencement of Construction of Parking Garage, Etc. The Commission warrants and represents to MEPT that (a) it has procured the financing necessary to its construction of the Parking Garage and the Public Plaza and (b) that it has begun or is ready to begin construction of the Parking Garage and Public Plaza.

ARTICLE III

TERM

The term of this Lease (the "Term") shall commence on March 6, 1998, or the date of substantial completion of the structural slab as described in Section VII (B) of the Development Agreement, whichever is later (the "Commencement Date") and shall end on March 31, 2048, unless sooner terminated as provided in this Lease. The Commission hereby grants MEPT a series of four (4) consecutive irrevocable options to extend the term of this Lease each for an additional fifty (50) years, upon the same terms and conditions, except that the rental shall be for the annual sum of One Dollar (\$1.00). To exercise an option, there must not be an Event of Default in existence on the date the first day of the extension would otherwise take effect. Each option will be deemed exercised with no notice or action required by MEPT unless MEPT gives written notice to the Commission not less than ninety (90) days before the end of the term of this Lease (whether the Term or an extension of the Term) that it does not intend to exercise the option for the applicable extension.

ARTICLE IV

RENT

Section 4.1. Basic Rent. MEPT shall pay to the Commission as basic rent for the Lease Premises for the Term, the total sum calculated as the product of (a) the total area, in square feet, within the outer boundaries of the Office Site measured at the

Horizontal Plane multiplied by (b) the rental rate of \$4.45 per square foot, the resultant product to be endorsed hereon. The Basic Rent shall be paid in full in advance on the Commencement Date. Any additional rent payments, as described in Section 4.2, below, shall be paid as provided in Section 4.2.

Total Rental, Initial Term: Seventy-five Thousand Four Hundred Fifty-eight and 65/100 Dollars (\$75,458.65)

Section 4.2. Rent Payments. The term "Rent" as used herein shall mean and include basic rent and all additional sums, charges or amounts of whatever nature to be paid by MEPT to the Commission in accordance with the provisions of this Lease, whether or not such sums, charges or amounts are referred to as Rent. All payments of Rent shall be made to the Commission at the address specified in Article XIX, or at such other place or to such other person, firm or corporation as the Commission shall designate by notice to MEPT. Rent shall be paid (i) without relief from valuation and appraisal laws, (ii) without notice, demand, offset, deduction or counterclaim and (iii) with costs of collection and reasonable attorneys' fees.

Section 4.3. Rent to Be Net to the Commission. It is the intention of the parties that the Rent payable hereunder shall be net to the Commission and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Leasehold Estate shall be paid by MEPT, except to the extent this Lease or the Development Agreement states that the Commission is to be obligated to pay any sum or render a performance.

Section 4.4. Interest. Any Rent not paid within fifteen (15) days after the same is due shall bear interest from the date payment is due until paid in full at the rate of six percent (6%) per annum.

Section 4.5. Conditions Subsequent for Benefit of MEPT and Refunds of Rent. This Lease shall terminate and MEPT shall receive a refund of the entirety of the Rent, together with interest at the Interest Rate if (a) a building permit is not issued on or before March 31, 1998, to MEPT by the City for the Office Building and the Improvements, provided, however, that Developer shall timely file for, and diligently pursue, the building permit; (b) the Commission fails to commence its construction of the Parking Garage and the Public Plaza on or before the date specified in the Development Agreement; or (c) Real Property tax abatement is not granted for the Office Building in favor of Developer.

ARTICLE V

USE OF LEASED PREMISES

Section 5.1. Permitted Uses. MEPT and its subtenants and assignees shall use and occupy the Leased Premises for purposes

consistent with its use and operation of a multi-use facility comprising office, retail and other commercial uses, for the construction of the Office Building to be so used, and for no other purposes without the prior permission of the Commission, which permission the Commission agrees not to unreasonably withhold or delay.

Section 5.2. Signs. MEPT shall have the right (a) to erect and maintain on the Office Building and the Improvements all signs that are reasonably appropriate to the rental, occupancy and operation of the Office Building and (b) as part of its Leasehold Estate, shall have the additional right to erect and maintain a monument sign and public art pursuant to the easement for such purposes identified in the Development Agreement, subject, however, to the provisions of the South Bend Municipal Code and to the approval of the Design Development Administrator of the City. Developer shall have the additional right to place directional signage in the Parking Garage, subject to approval of the Commission as to location and design.

Section 5.3. Compliance with Laws, Insurance Policies, Etc. MEPT, at its expense, shall observe and comply with all present and future statutes, laws, ordinances, requirements, orders, rules and regulations (including, without limitation, the Americans With Disabilities Act and all Environmental Laws) of all governmental authorities and all orders, rules and regulations of the National Board of Fire Underwriters, the Indiana Board of Fire Underwriters, or any other body or bodies exercising similar functions, applicable to the Office Building or any part thereof, or the construction of the Office Building and the Improvements or the use or manner of use of the Office Building and Improvements. Commission, at its expense, shall observe and comply with all present and future statutes, laws, ordinances, requirements, orders, rules and regulations (including, without limitation, the Americans With Disabilities Act and all Environmental Laws) of all governmental authorities and all orders, rules and regulations of the National Board of Fire Underwriters, Indiana Board of Fire Underwriters or any other body or bodies exercising similar functions applicable to the Parking Garage and the Public Plaza. If compliance with any such statute, law, ordinance, rule, regulation, order or requirement legally may be delayed pending the prosecution of any such proceeding, a party to any such proceeding may delay such compliance until a final determination of such proceeding.

Section 5.4. Covenant Against Waste, Nuisance. MEPT shall not (i) commit or permit any waste to, or (ii) cause or permit any nuisance (public or private) to occur or exist in or on the Lease Parcel, the Office Building and the Improvements, or any part thereof.

Section 5.5. Non-Discrimination. MEPT shall not discriminate on the basis of race, creed, color, ancestry, national origin, religion, handicap, sex or political affiliation in the leasing of the Office Building and shall comply with all

applicable federal, state and local laws and regulations prohibiting such discrimination.

Section 5.6. Hazardous Substances.

(a) The Commission warrants and represents to MEPT that no Hazardous Materials or Environmentally Regulated Material are now placed, held, located or disposed upon, under or at the Real Property. For purposes of this Lease, "Hazardous Material" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any Environmental Law. An Environmentally Regulated Material shall mean any substance or material to the extent regulated by any Environmental Law or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or at any time hereafter regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Material, underground storage tanks or petroleum products.

(b) MEPT covenants and agrees that it will not and it will not authorize its contractors, subtenants and designees to place, hold, locate or dispose upon, under or at the Lease Parcel, Office Building, or the Improvements or any part thereof, any Hazardous Material or Environmentally Regulated Material except as specified later in this Section and it will take reasonable action to require that its contractors, subtenants and designees not place, hold, locate or dispose upon, under or at the Lease Parcel, the Office Building, the Improvements or any part thereof, any hazardous material or environmentally regulated substance except as specified later in this subsection. Contractors engaged by MEPT for the construction of the Office Building may place, hold, store and use upon, under or at the Lease Parcel Hazardous Materials or Environmentally Regulated Materials if (a) necessary or appropriate to the construction, maintenance and reconstruction of the Office Building or the Improvements; (b) necessary or appropriate to the cleaning, operation and maintenance of the Office Building and the Improvements and (c) used, held, located or disposed of in compliance with any applicable Environmental Law or any other law applicable to an Environmentally Regulated Material. Subtenants of portions of the Office Building may place, hold, store and use upon, under or at the Lease Parcel Hazardous Materials or Environmentally Regulated Materials if (a) necessary or appropriate to the cleaning, use and occupancy of the portions of the Office Building leased by the subtenants for the uses and purposes authorized in this Lease and (b) used, held, located or disposed of in compliance with any applicable Environmental Law or any other law applicable to an Environmentally Regulated Material.

(c) Commission covenants and agrees that it will not and it will not authorize its contractors, subtenants and designees to place, hold, locate or dispose upon, under, at or about the Parking Garage, the Public Plaza or any part thereof any underground storage tank, any petroleum products, or any other

Hazardous Material or Environmentally Regulated Material except as specified in this subsection and it will take reasonable action to require that its contractors, tenants and designees not place, hold, locate or dispose upon, under or at the Parking Garage, or the Public Plaza or any part thereof, any tank, product or material referred to in the preceding sentence. Contractors engaged by the Commission or by any tenant of the Commission for the construction or operation of the Parking Garage, the Public Plaza and any other building to be constructed on the Real Property may place, hold, store and use upon, under, at or about the Real Property (except the Lease Parcel) Hazardous Materials or Environmentally Regulated Material if (a) necessary or appropriate to the construction, maintenance and reconstruction of the Parking Garage, the Public Plaza and the other improvements described in this Section; (b) necessary or appropriate to the cleaning, operation and maintenance of the Parking Garage, Public Plaza and the other improvements described in this paragraph but this authorization shall not extend to petroleum products stored at, sold or dispensed in the Parking Garage; (c) in the tanks of vehicles parked in the Parking Garage; and (c) used, held, located and disposed of in compliance with any applicable Environmental Law or any other law applicable to an Environmentally Regulated Material.

(d) If either party has knowledge of or receives any notice of (i) the happening of any event involving the spill or discharge of any Hazardous Material affecting the respective property for which each has responsibility under subsections (b) or (c) of this Section and which is required to be reported to the Indiana Department of Environmental Management or the United States Environmental Protection Agency (a "Hazardous Discharge") or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental health or safety matter with respect to the respective property for which each has responsibility under subsections (b) or (c) of this Section (an "Environmental Complaint") from any person or entity, including without limitation the United States Environmental Protection Agency, such party shall give immediate notice thereof to the other disclosing full details of the Hazardous Discharge or Environmental Complaint, as applicable.

(e) Each party shall indemnify and hold the other party harmless from all loss, cost, claims, damages, fines, penalties, liability and/or expense, including but not limited to reasonable attorney's fees, incurred by the other party as a result of (i) any failure to observe the requirements in subsections (a), (b) or (c) of this Section, (ii) an Environmental Complaint which arose from a party's failure to observe its obligations under subsections (b) and (c) of this Section, or (iii) a Hazardous Discharge which arose from a party's failure to observe its obligations under subsections (b) and (c) of this Section. The Commission shall indemnify and hold harmless MEPT, its trustee, consultants and contractors from all loss, cost, claims, damages, fines, penalties, liabilities and/or expense, including but not

limited to reasonable attorneys' fees, incurred by any such person as a result of an inaccuracy in or breach of the warranty and representation appearing in subsection (a) of this Section.

ARTICLE VI

ASSIGNMENT AND SUBLETTING

Section 6.1. Lease Termination Does not Terminate Sublease. In the event of the termination of this Lease from any cause whatsoever (including its expiration or the voluntary surrender thereof by MEPT), and while any sublease allowed under this Lease Agreement is in full force and effect, such termination shall not act as a merger, and MEPT's interest as sublessor in each of said subleases shall be deemed automatically assigned, transferred, and conveyed to the Commission. From and after such termination, the Commission (as well as any such sublessee) shall be bound by the provisions of each of the subleases, then in full force and effect, on the part of MEPT (as sublessor) to be performed thereunder, and each of the sublessees shall be deemed thereupon (and without further act) to have been turned over or assigned by operation of law to the Commission. It is the intention hereof to provide that the termination of this Lease while any such sublease is in full force and effect shall not in any way, by reason thereof, terminate such sublease or militate against the rights of any such sublessee. The foregoing is further subject to the right of the Commission following any termination of this Lease to terminate any sublease which is in default (notice thereof, if any required, having been given and the time for curing such default having expired), and to any other rights and remedies reserved to MEPT in any such sublease, and any other rights and remedies afforded to a lessor of real property against a defaulting lessee by law or in equity. The Commission will, at the request of MEPT, execute and deliver to any sublessee, or proposed sublessee, a document (a) reciting, in substance, that any default by MEPT under this Lease or any termination of this Lease thereby, or otherwise, before the natural expiration of the Term or of any extension of the Term shall not, by reason thereof, affect the rights of such sublessee or proposed sublessee while such sublease or proposed sublease is in full force and effect; and (b) agreeing that the subtenant shall not be disturbed in its possession and rights under the sublease so long as it is not in default of its obligations under the sublease and that the Commission shall assume the obligations to the subtenant under the sublease.

Section 6.2. Default by Sublessee. Each such sublease entered into by MEPT covering any portion of the Office Building shall contain a provision therein substantially providing that in the event the sublessee defaults in any of the provisions thereunder on the part of sublessee to be performed, after notice of such default and the failure to cure same by sublessee, MEPT may, after the expiration of the notice period (if notice is applicable), reenter that portion of the Office Building

subleased by summary proceedings, or otherwise have the right to expel the sublessee; and shall further provide that the notice period for any default shall not exceed thirty (30) days for the nonpayment of any moneys due to MEPT and shall not exceed sixty (60) days for the failure to perform any other provision under such sublease on the part of sublessee to be performed, unless the performance of such other provisions cannot reasonably be accomplished within said sixty (60) day period, in which case sublessee may be permitted the additional time reasonably necessary to complete performance.

Section 6.3. Assignment. MEPT shall not be entitled to assign this Lease before the issuance of the Certificate of Completion without first obtaining the Commission's written approval. After the Certificate of Completion is issued, MEPT may freely assign its rights and delegate its duties associated with its Leasehold Estate, including those arising under this Lease and the Development Agreement upon written notification to the Commission. Any permitted assignment of this Lease by MEPT shall automatically and without any further documentation or action assign (a) all of MEPT's right, title and interest to all of the Leasehold Estate and (b) all of the rights of MEPT under the Development Agreement. Such assignment shall delegate to the assignee all of MEPT's future obligations under this Lease, the documents included in the Leasehold Estate and the obligations of the Development Agreement and shall release and discharge MEPT from any and all liability for the future payment of Rent or the performance of any other obligations which may arise or accrue after the effective date of the assignment under this Lease, the Development Agreement or any of the other documents constituting part of the Leasehold Estate.

ARTICLE VII

TAXES

Section 7.1. Payment of Taxes and Assessments.

(a) To the extent the same are imposed, MEPT shall pay and discharge punctually, as and when the same shall become due and payable all taxes and all installments of assessments which are due and payable with respect to the Lease Parcel, the Office Building and the Improvements, or any part thereof, or any appurtenances or equipment owned by or leased to MEPT thereon or therein during any calendar year (or part thereof within the Term or any extension of it or in which the Term or any extension of it ends), together with all interest and penalties thereon.

(b) MEPT shall be deemed to have complied with the covenants of this Section 7.1 if payment of taxes shall have been made either within any period allowed by applicable law before the same shall become a lien upon the Lease Parcel, the Office Building or the Improvements; or, if the tax constitutes a lien before it is due and payable, then, before any penalty or

interest is assessed with respect thereto. MEPT shall send to the Commission satisfactory evidence of payment of real estate taxes and any other payment hereunder if requested to do so by the Commission in writing. MEPT reserves the right to contest the assessment of the Leasehold Estate, following the procedures set forth for such contests in Indiana law.

Section 7.2. Proration of Real Estate Taxes. Real estate taxes or installments of assessments due and payable with respect to the Lease Parcel, the Office Building and the Improvements, or any part thereof, during the calendar year in which the Term or any extension of the Term ends shall be prorated based upon the number of days within such calendar year as shall fall within the last year of the Term or the extension of the Term. MEPT shall pay on the date of termination of this Lease such pro rata share of real estate taxes due and payable during the calendar year in which the Term or any extension of the Term ends. Similarly, any real estate taxes or installments of assessments due and payable with respect to the Lease Parcel, the Office Building and the Improvements, or any part thereof, during the calendar year in which the Commencement Date occurs shall be prorated based on the number of days within such calendar year after the Commencement Date and MEPT's prorata share of any such real estate taxes or installments shall be due on the Commencement Date.

Section 7.3. Separate Assessments. Upon request of MEPT at any time, the Commission will make application individually, or will join in the Commission's application, and will execute such instruments as may be necessary or appropriate to obtain separate tax assessments for the Lease Parcel, the Office Building and the Improvements.

ARTICLE VIII

CONSTRUCTION OF IMPROVEMENTS

Section 8.1. Nature of Improvements. Pursuant to and in accordance with the terms and conditions of the Development Agreement, MEPT shall design and construct the Office Building and the Improvements.

Section 8.2. Default Under the Development Agreement. Any default by MEPT or the Commission under any provision of the Development Agreement shall constitute a default under this Lease and shall entitle the nondefaulting party to exercise any and all rights and remedies provided in either the Development Agreement or this Lease or both. Rights and remedies under this Lease may be exercised only following an Event of Default and only to the extent authorized in this Lease.

Section 8.3. Ownership of Leasehold Estate. Subject to defeasance at the expiration of the Term, or any extension of the Term or at any earlier termination of this Lease, the Office Building, the Improvements and the other elements of the

Leasehold Estate shall be and remain the property of MEPT, but MEPT shall have no right to demolish or to remove any part of the Office Building and the Improvements outside the proper course of operating the Office Building.

ARTICLE IX

ALTERATIONS, REPLACEMENTS

Section 9.1. Maintenance and Repair by MEPT. MEPT shall, at its expense, keep and maintain or cause to be kept and maintained the Lease Parcel, the Office Building and the Improvements in good, clean and safe condition and repair including, without limitation, the making of all necessary structural repairs and replacements unless such structural repairs and replacements are the responsibility of the Commission under Section 9.2 or the Development Agreement. Except as provided in Section 9.2 and the Development Agreement, the Commission shall not be required to make any improvements, repairs or alterations in or to the Office Building or the Improvements during the Term. MEPT may make alterations and improvements to the Office Building and the Improvements so long as such alterations and improvements do not cause to be exceeded the load bearing capacity of the structural elements supporting the Office Building which are the Commission's responsibility under this Lease.

Section 9.2. Maintenance and Repair by Commission. The Commission shall at all times, at its expense, put, keep and maintain or cause to be put, kept and maintained the Parking Garage and the Public Plaza in a good, safe, clean and well-lighted condition as appropriate to a first-class Parking Garage and as amenities to a first-class office building. The Commission's obligation under this Section shall extend to the making of all necessary structural repairs and replacements to the foundation and structural elements outside the Lease Parcel but providing support and stiffening to the Office Building and the Improvements. Without limiting the generality of the previous sentences of this Section 9.2, the Commission shall (a) put, maintain and replace all structural foundations, pilings, footings, walls, columns, beams and other elements within the Parking Garage providing support and structural stiffening to and making up the ground floor of the Office Building and accommodating the other Improvements and (b) put, keep and maintain in good condition and repair and keep from freezing, corroding, leaking and deteriorating the utility services to the Office Building passing through the Parking Garage and servicing the Office Building.

Section 9.3. Covenant to Operate Parking Garage. The Parking Garage shall be open and fully operational no later than the specified date in the Development Agreement and shall thereafter during the entirety of the Term and any extension of it be kept and put (if necessary) in operation as a first-class

parking garage providing parking spaces for no less than the number of vehicles specified in the definition of the term "Parking Garage". Hours of operation and other requirements applicable to the Parking Garage and the rights of MEPT with respect to the Parking Garage are specified in the Development Agreement.

Section 9.4. Public Plaza. The Public Plaza shall be maintained as such and in a clean, well-lighted and secure condition at all times during the entirety of the Term and any extension of it. The provisions of the Development Agreement applicable to the maintenance, cleaning and operation of the Public Plaza shall be applicable for the entirety of the time period specified in the preceding sentence.

Section 9.5. Mechanical Security The Commission shall install and maintain a mechanical card-key system which will limit after-hours access to monthly parkers in the Parking Garage.

ARTICLE X

MECHANICS' LIENS; INDEMNIFICATION; NONLIABILITY

Section 10.1. Mechanics' Liens. With respect to any work performed by either MEPT or the Commission, the party causing the work to be performed shall, at its expense, promptly after filing, discharge of record any mechanics' materialmen's or other lien, or notice of intention to file any such lien, filed against the Leasehold Estate or any part thereof or interest therein. Provided, however, that any such party shall have the right to contest the validity of any such lien in any manner permitted by law so long as it (i) shall provide title insurance, an indemnity, bond or other assurance or security reasonably satisfactory to the other party; and (ii) shall thereafter diligently proceed to cause such lien or notice of intention to file a lien to be removed and discharged. If any such party through which a lien has been filed shall fail to so discharge, or to seek to discharge, any such lien or notice of intention to file a lien, then the other party may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or in such other manner as is or may be permitted by law. The party through which the lien was filed shall reimburse and indemnify the other party in respect thereto.

Section 10.2. Indemnification by MEPT. Unless allegedly caused or alleged to be caused by the several, joint, concurrent or contributory negligence, or sole negligence, of the Commission, MEPT shall, at its sole cost and expense, indemnify and save harmless the Commission, against and from any and all claims, damages, losses, fines, penalties, liability, costs and/or expenses (including but not limited to reasonable

attorneys' fees) arising from MEPT's possession, use, operation or control of the Lease Parcel, the Office Building, the Improvements, any part thereof, or any easement granted as part of the Leasehold Estate; (ii) any breach or default on the part of MEPT in the performance of any covenant or agreement on the part of MEPT to be performed pursuant to the terms of this Lease, (iii) any willful and wrongful or negligent act or omission of MEPT or any of its agents, or (iv) any accident, injury to or death of persons or damage to property whatsoever in the Leasehold Estate or any part thereof. In case any claim, action or proceeding shall be brought against the Commission by reason of any such claim, damage and/or liability, MEPT, upon written notice from the Commission, shall defend such action or proceeding with counsel reasonably acceptable to the Commission.

Section 10.3. Nonliability. The Commission shall not be responsible or liable to MEPT, or any person, firm or corporation claiming by, through or under MEPT for, or by reason of, (i) any injury or damage occurring to the Office Building, the Improvements or any equipment or apparatus or appliances in the Office Building or other Improvements, (ii) any failure or defect of water, heat, electric light or power supply, or of any apparatus or appliance in connection therewith, or for any injury or loss or damage to person or property resulting therefrom, or (iii) any injury, loss or damage to any persons or to the Lease Parcel, Office Building or the Improvements, or to any property of MEPT or of any other person, contained in or upon the Lease Parcel, Office Building or the Improvements, caused by or arising or resulting from the electric wiring, or plumbing, water, steam, sewerage, or other pipes, or by or from any machinery or apparatus, or by or from any defect in or leakage, bursting or breaking of any of the foregoing the same, or by or from, any leakage, running or overflow of water or sewerage in any part of said premises, or by or from any other defect or other cause whatsoever, except where the same (i.e., any matter described in clauses (i), (ii) or (iii)) is caused by the negligence or intentional and wrongful act of the Commission or by a default by the Commission in the performance of its obligations under this Lease.

Section 10.4. Indemnification by Commission. Unless caused by the several, joint, concurrent or contributory negligence, or sole negligence, of MEPT, the Commission shall, at its sole cost and expense, indemnify and save harmless MEPT, its trustee and investment consultants against and from any and all claims, damages, losses, fines, penalties, liability, costs and/or expenses (including but not limited to reasonable attorney' fees) arising from (i) the possession, use, operation or control of the Parking Garage or the Public Plaza or any part thereof; (ii) any breach or default on the part of the Commission in the performance of any covenant or agreement on the part of the Commission to be performed pursuant to the terms of this Lease or the Development Agreement, (iii) any willful or negligent act or omission of the Commission, or any of its agents, contractors or tenants; or (iv) any accident, injury to or death of persons or

damage to property whatsoever in or about the Parking Garage or Public Plaza or any part thereof. If any claim, action or proceeding shall be brought against MEPT by reason of any such claim, damage and/or liability, the Commission, upon written notice from MEPT, shall defend such action or proceeding.

ARTICLE XI

INSURANCE

Section 11.1. Liability Insurance by MEPT. MEPT shall maintain and keep in force at all times, with an insurance company or companies licensed to do business in the State of Indiana, selected by MEPT and acceptable to the Commission (i) comprehensive general public liability insurance covering any and all claims for injuries to or death of persons or damage to property occurring in or upon the Lease Parcel, the Office Building and the Improvements and having initial minimum levels of combined coverage for bodily injury (including death resulting therefrom) and property damage, including umbrella coverage, of not less than Five Million and No/100 Dollars (\$5,000,000.00), for each occurrence and on an annual aggregate basis. MEPT's comprehensive general public liability insurance shall have extensions of coverage to include blanket contractual liability for written and oral contracts, broad form property damage and premises operations (including explosion, collapse and underground coverage). In addition, MEPT shall maintain or cause its contractor(s) or construction manager to maintain products and completed operations coverage through the period ending two (2) years after completion of the construction of the Office Building and the Improvements. Each policy referred to in this Section 11.1 shall name the Commission as an additional insured. Such liability insurance may be provided by a single policy or combination of underlying policies, with the balance provided by an excess or umbrella liability policy; provided such excess or umbrella insurance complies with all of the other requirements of this Lease with respect to such insurance.

Section 11.2. Property Insurance by MEPT. MEPT shall keep the Office Building and the Improvements insured with an insurance company licensed to do business in the State of Indiana, selected by MEPT and acceptable to the Commission for the benefit of MEPT and the Commission, as their respective interests may appear, against loss or damage by fire or other casualty (including earthquake, to the extent customary and available on reasonable terms) covered by a customary extended coverage endorsement, in an amount equal to one hundred percent (100%) of the replacement cost thereof. The deductible under such policies of property insurance shall be in maximum amounts of (a) the greater of (i) 2% of the replacement cost or (ii) \$100,000 for earthquake coverage, (b) \$100,000 for flood coverage and (c) \$25,000 for all other perils. The replacement cost of the Building and the Improvements shall be certified by a registered architect, registered engineer, or professional

appraisal engineer selected by MEPT and employed at the expense of MEPT at the time of completion of the Office Building and the Improvements and on or before each anniversary of such completion date thereafter; [provided, however, that such certification shall not be required so long as such insurance shall be maintained in an amount at least equal to the amount specified by MEPT on or before such completion date and on or before each anniversary date thereof.] Notwithstanding the foregoing, MEPT shall at all times maintain such insurance in an amount sufficient to meet all co-insurance requirements under such insurance policy. The Commission shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by MEPT hereunder, if the effect of such separate insurance would be to reduce the protection or the payment to be made under MEPT's insurance.

Section 11.3. Liability Insurance by Commission. The Commission shall either purchase and maintain and keep in force at all times, with an insurance company or companies licensed to do business in the State of Indiana, or provide substantially the same coverage through the City of South Bend self-insurance program (i) comprehensive general public liability insurance covering any and all claims for injuries to or death of persons or damage to property occurring in or upon the Parking Garage or the Public Plaza and having initial minimum levels of combined coverage for bodily injury (including death resulting therefrom) and property damage, including umbrella coverage, of not less than Five Million and No/100 Dollars (\$5,000,000.00), for each occurrence and on an annual aggregate basis and (ii) workmen's compensation and employer's liability insurance in such amounts as shall be required by law from time to time, but in no event less than One Hundred Thousand Dollars (\$100,000) per accident. The Commission's comprehensive general public liability insurance shall have extensions of coverage to include blanket contractual liability for written and oral contracts, broad form property damage and premises operations (including explosion, collapse and underground coverage). In addition, the Commission shall maintain or cause its contractor(s) or construction manager to maintain products and completed operations coverage through the period ending one (1) year after completion of the construction of the Parking Garage and the Public Plaza. Each policy referred to in this Section 11.3 shall name MEPT as an additional insured. Such liability insurance may be provided by a single policy or combination of underlying policies, with the balance provided by an excess or umbrella liability policy; provided such excess or umbrella insurance complies with all of the other requirements of this Lease with respect to such insurance.

Section 11.4. Property Insurance by Commission. The Commission shall keep the Parking Garage and the Public Plaza insured with an insurance company licensed to do business in the State of Indiana, having a rating according to the Best's Insurance Key Rating Guide for Property Casualties of no less than "A", selected by the Commission and acceptable to MEPT against loss or damage by fire or other casualty (including

earthquake, to the extent customary and available on reasonable terms) covered by a customary extended coverage endorsement, in an amount equal to one hundred percent (100%) of the replacement cost thereof. The deductible under such policies of property insurance shall be in maximum amounts of (a) \$50,000 for earthquake coverage, (b) \$100,000 for flood coverage and (c) \$25,000 for all other perils. The replacement cost of the Parking Garage and the Public Plaza shall be certified by a registered architect, registered engineer, or professional appraisal engineer selected by the Commission and employed at the expense of the Commission at the time of completion of the Parking Garage and the Public Plaza and on or before each anniversary of such completion date thereafter; [provided, however, that such certification shall not be required so long as such insurance shall be maintained in an amount at least equal to the amount specified by the Commission or before such completion date and on or before each anniversary date thereof.] Notwithstanding the foregoing, the Commission shall at all times maintain such insurance in an amount sufficient to meet all co-insurance requirements under such insurance policy. MEPT shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by the Commission hereunder, if the effect of such separate insurance would be to reduce the protection or the payment to be made under the Commission's insurance.

Section 11.5. Proof of Insurance. Each party shall deliver a certificate showing the coverages required by this Article XI to the other party on or before the date of execution of this Lease, and thereafter a reissued certificate with respect to each replacement policy shall be provided not less than ten (10) days prior to the expiration of the policy being replaced. Each such policy referred to in this Article XI shall contain a provision providing that the policy shall not be canceled, not renewed or materially amended without thirty (30) days prior written notice to the Commission and MEPT.

Section 11.6. Waiver of Subrogation. MEPT and the Commission waive all rights against each other and against those for whom the other is legally liable for all losses covered by insurance provided under this Article XI to the extent the upper limits of such insurance are adequate to cover such losses, it being the intent of this provision to allocate all risk of such loss to such insurance: Provided, however, that this waiver shall not be effective if it would preclude or prejudice the right of MEPT or the Commission to recover under such insurance policy. If the policies of insurance provided for under this Article XI require an endorsement to provide for continued coverage where there is a waiver of subrogation, each party will cause such policies to be so endorsed.

Section 11.7. Insurance Proceeds. The proceeds of any and all policies of property insurance maintained pursuant to Section 11.2 and 11.4 remaining after any required payment to any Mortgagee shall be used as toward the repair, reconstruction,

replacement or rebuilding of the property covered by the policy. The Commission, MEPT, and any Mortgagee shall cooperate fully in collecting such insurance proceeds and will execute and deliver any and all proofs, receipts, releases and other instruments whatsoever as may be necessary or proper for such purpose.

Section 11.8. General Provisions. In the event either party shall fail or refuse to obtain any insurance required by this Article XI, the other party, in addition to any other right the other party may have under this Lease at law or in equity, shall have the right to obtain such insurance following notice of the failure to obtain or continue the insurance policy and the lapse of ten (10) days without the party providing evidence of the existence of such coverage. The cost of such insurance shall constitute a debt payable by the party obligated to procure the insurance upon demand for payment by the other party.

ARTICLE XII

DESTRUCTION

Section 12.1. MEPT's Obligation to Repair. If during the first term of this Lease, the Office Building, the Improvements or both shall be destroyed or damaged by fire or other cause, MEPT shall cause the same to be repaired, replaced or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable, subject to Unavoidable Delays. In the repair or restoration of the Office Building, the Improvements or both hereunder, MEPT will repair, replace or rebuild to the condition immediately before such damage or destruction, subject to all these applicable laws, ordinances, or regulations of any governmental authority affecting the same. If the insurance proceeds recovered in respect of any such damage or destruction, less any cost of recovery and any amounts required to be paid to any Mortgagee, shall be insufficient to pay the entire cost of such restoration, repair, replacement or rebuilding, MEPT shall provide for the deficiency. In such event, the time within which MEPT shall be required to commence and complete its obligations hereunder shall include a reasonable time to obtain and close the necessary commitments for equity or mortgage financing to cover the deficiency or deficiencies.

Section 12.2. No Rent Rebate. In no event shall Basic Rent or other charges due hereunder be rebated in the event of damage or destruction described in Section 12.1.

Section 12.3. Commission's Obligation to Repair. To the extent that funds are available, and subject to appropriation by the South Bend Common Council, if, during the first term of this Lease, the Parking Garage or the Public Plaza shall be destroyed or damaged by fire or other cause, the Commission shall cause the same to be repaired, replaced or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable, subject to Unavoidable Delays. In the repair or restoration of

the Parking Garage or the Public Plaza, or both hereunder, the Commission will repair, replace or rebuild to the condition immediately before such damage or destruction, subject to all these applicable laws, ordinances, or regulations of any governmental authority affecting the same. To the extent permitted by law, Commission agrees to commit all available insurance proceeds to the repair or replacement of the Parking Garage or Public Plaza, as may be applicable. If the insurance proceeds recovered in respect of any such damage or destruction, less any cost of recovery and any amounts required to be paid to any bondholder, shall be insufficient to pay the entire cost of such restoration, repair, replacement or rebuilding, the Commission shall, subject to appropriation by the South Bend Common Council, provide for the deficiency. In such event, the time within which the Commission shall be required to commence and complete its obligations hereunder shall include a reasonable time to obtain and close the necessary commitments for financing to cover the deficiency or deficiencies.

Section 12.4. Mutual Obligation to Repair. Notwithstanding any provision to the contrary, in the event that both the Office Building and the Parking Garage are damaged or destroyed, neither party shall have an obligation to repair or replace its improvements unless and until the other party commits to repair or replace its improvements.

ARTICLE XIII

CONDEMNATION

Section 13.1. Total Condemnation. If there shall be a total taking or a Constructive Total Taking of the Leasehold Estate in condemnation proceedings or by any right of eminent domain or by a conveyance in lieu thereof, (a) this Lease shall terminate on the date of such taking; (b) the Basic Rent prepaid by MEPT shall be prorated over the Term (or the extended term) and the overpayment refunded by the Commission to MEPT; and (c) any other Rent payable by MEPT hereunder shall be prorated and paid to the date of such taking.

Section 13.2. Proceeds of Total Condemnation. In the event of any such total taking or Constructive Total Taking and the termination of this Lease, the Condemnation Proceeds applicable to the Leasehold Estate shall be paid to MEPT but shall be applied by MEPT in the following order or priority:

(a) First, to the payment of expenses and charges, including without limitation reasonable attorneys' fees, incurred by MEPT in connection with such taking;

(b) Second, to any Mortgagee in the order of priority of such Mortgages to the extent of unpaid principal amount of such Mortgages and all accrued and unpaid interest thereon and all costs, expenses and advances pursuant thereto and all advances

made by such Mortgagee for the benefit of the Lease Premises and the continued use and operation thereof;

(c) Third, to MEPT.

Nothing herein contained shall impair the right of MEPT to the full award, compensation or damages payable as an award for loss of rental or for moving expenses, as long as such award shall not reduce the amount of the award otherwise recoverable by the Commission from the condemning authority for the interest remaining in it after taking into account the Leasehold Estate.

Section 13.3. Partial Condemnation. In the event of a taking of the Leasehold Estate that is less than a Constructive Total Taking, this Lease shall not terminate or be affected in any way, except as provided in Section 13.4. The Condemnation Proceeds applicable to the interests of MEPT and the Commission in such event shall be apportioned and paid, to the extent available (following any required payments to Mortgagees), in the following order of priority:

(a) MEPT and the Commission shall first be entitled to their expenses and charges, including without limitation reasonable attorneys' fees, incurred in connection with the taking;

(b) The balance of the Condemnation Proceeds shall be payable to MEPT for application by MEPT to the costs of restoring, repairing, replacing or rebuilding the Office Building or the Improvements in the manner then reasonably feasible as required by Section 13.4;

(c) The Condemnation Proceeds, if any, remaining after restoration, repair, replacement or rebuilding shall be paid to MEPT, except to the extent of an equitable portion of the Condemnation Proceeds allocable by agreement of the Commission and MEPT on account of (i) any taking of title to any portion of the Lease Parcel or (ii) the remainder of the Real Property subjected to easements or those other rights granted to MEPT and included in the Leasehold Estate.

Section 13.4. Restoration. In the event of a taking that is less than a Constructive Total Taking, MEPT shall proceed with due diligence, subject to Unavoidable Delays, to restore, repair, replace or rebuild the remaining portions of the Office Building or the Improvements substantially the same as before the taking to the extent such repair, replacement or restoration is reasonably feasible and to the extent of the Condemnation Proceeds available for such purposes.

Section 13.5. Temporary Condemnation. If the whole or any part of the Leasehold Estate shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this Article shall not apply, and, except to the extent that MEPT may be prevented from

so doing pursuant to or by reason of the terms of the order of the condemning authority, MEPT shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of MEPT to be performed and observed, as though such taking had not occurred. In the event of any such taking of the character referred to in this Section 13.5, MEPT shall be entitled to receive the entire amount of the Condemnation Proceeds paid for such taking, whether paid by way of damages, rent, costs of moving or restoration or otherwise. Upon the expiration of any such period of temporary use or occupancy, if it be during the initial Term, MEPT will, at its sole cost and expense, restore the Office Building and the Improvements, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such taking.

Section 13.6. Rights to Appear. MEPT the Commission and any Mortgagee shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights hereunder, and in this connection, specifically and without limitation, to introduce evidence to establish the value of or damage to the Leasehold Estate or any part thereof or any interest therein.

Section 13.7. Restoration by Commission. In the event of a taking of the Parking Garage or Public Plaza that is less than a Constructive Total Taking, Commission shall proceed with due diligence, subject to Unavoidable Delays, to restore, repair, replace or rebuild the remaining portions of the Parking Garage and Public Plaza substantially the same as before the taking to the extent such repair, replacement or restoration is reasonably feasible and to the extent of the Condemnation Proceeds available for such purposes.

Section 13.8 Temporary Condemnation of Parking Garage or Public Plaza. If the whole or any part of the Parking Garage or Public Plaza shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this Article shall not apply, and, except to the extent that Commission may be prevented from so doing pursuant to or by reason of the terms of the order of the condemning authority, Commission shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Commission to be performed and observed, as though such taking had not occurred. In the event of any such taking of the character referred to in this Section 13.8, Commission shall be entitled to receive the entire amount of the Condemnation Proceeds paid for such taking, whether paid by way of damages, rent, costs of moving or restoration or otherwise. Upon the expiration of any such period of temporary use or occupancy, if it be during the initial Term, Commission will, at its sole cost and expense, restore the Parking Garage or Public Plaza, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such taking.

ARTICLE XIV

MORTGAGES

Section 14.1. Restriction of the Commission Mortgages.

During the Term or any extension of it, the Commission shall not have the right or power to mortgage or otherwise create any security or other liens or encumbrances upon or affecting its interest in the Lease Parcel, or any part thereof. Any mortgage or indenture upon or affecting the Real Property (a) shall expressly be subordinated to each of the easements constituting parts of the Leasehold Estate and (b) shall be subordinated to this Lease or shall require that the secured party execute an agreement, in form satisfactory to MEPT, in substance providing that so long as termination of the Leasehold Estate is not authorized by this Lease, MEPT's Leasehold Estate shall not be diminished, interfered with or disturbed and the secured party will not join MEPT in any foreclosure or realization action on the mortgage or indenture.

ARTICLE XV

DEFAULTS

Section 15.1. Events of Default. Each of the following events, if not remedied as hereinafter provided, shall be deemed an "Event of Default":

(a) MEPT's failure to pay any installment of Rent when the same shall be due and payable and the continuance of such failure for a period of fifteen (15) days after notice in writing to MEPT from the Commission;

(b) MEPT's failure to perform any other covenant or agreement herein contained on MEPT's part to be kept or performed and the continuance of such failure for a period of ninety (90) days after notice in writing to MEPT from the Commission specifying the nature of such failure, and provided the Commission shall not cure said failure as provided in Section 15.3(e);

(c) There is any default by MEPT as described in subsection XVIII.B of the Development Agreement (default prior to commencement of construction of the Office Building) and that default continues beyond the cure period specified in that subsection of the Development Agreement and;

(d) There is any default by MEPT as described in subsection XVIII.C of the Development Agreement (default after commencement of construction of the Office Building but prior to completion of the Office Building) and that default continues beyond the cure period specified in that subsection of the Development Agreement;

(e) MEPT's default in the performance of any other covenant or agreement under the Development Agreement to be performed on MEPT's part and the continuance of such default for a period of ninety (90) days after notice in writing to MEPT from the Commission specifying the nature of such default;

* (f) There is any default by the Commission in the performance of any covenant or agreement to be performed under this Lease or the Development Agreement on the part of the Commission to be performed and the continuance of such default for a period of ninety (90) days after notice in writing to the Commission from MEPT specifying the nature of such default.

Section 15.2. Extensions. If the Commission gives notice at any time of a default of a nature that cannot be cured within the applicable cure period, then such default shall not be deemed an Event of Default so long as MEPT, following notice from the Commission, proceeds to cure the default as soon as reasonably possible and continues to take all reasonable steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. In addition, no Event of Default shall be deemed to have occurred if and so long as MEPT shall be delayed in or prevented from curing the same within the applicable cure period by Unavoidable Delay.

Section 15.3. Remedies.

(a) Upon the occurrence of an Event of Default by MEPT and for so long thereafter as the same as described in subsection 15.1(c) or any other Event of Default by MEPT which occurs prior to commencement of construction of the Office Building, and for so long thereafter as the same is not cured by MEPT, the Commission, as its sole and exclusive remedy, may elect in writing to terminate the Development Agreement, this Lease and MEPT's Leasehold Estate. In the event of such termination, (i) MEPT shall forfeit the Performance Guaranty under the Development Agreement to the Commission, and (ii) MEPT shall pay to Commission the lesser of (A) \$250,000 or (B) an amount equal to the Commission's actual damages proximately caused by such Event of Default (excluding any consequential damages), less all Rent paid by MEPT under this Lease. A failure on the part of MEPT to relinquish the Leasehold Estate and its possession of the Leasehold Estate following such termination shall authorize the Commission to bring legal action to evict MEPT from the Lease Parcel.

(b) Upon the occurrence of any Event of Default by MEPT as described in subsection 15.1(c) or any other Event of Default by MEPT which occurs after commencement of construction of the Office Building but prior to completion of the Office Building, and for so long thereafter as the same is not cured by MEPT, the Commission may (i) file suit in St. Joseph County Court for the Commission's actual damages proximately caused by such Event of Default (excluding any consequential damages); (ii) file suit in St. Joseph County Court for specific performance or other

equitable relief; (iii) if Section 15.3(e) is applicable, remedy the default by MEPT as described in Section 15.3(e) and demand the cost thereof together with interest at the Interest Rate from the date of its demand; or (iv) terminate the Development Agreement this Lease and MEPT's Leasehold Estate. by written notice to MEPT. In the event of a termination under clause (iv) of the preceding sentence, (A) MEPT shall forfeit all Rent paid by MEPT under this Lease and the Performance Guaranty paid by MEPT under the Development Agreement to the Commission, and (B) the Commission shall, within sixty (60) days following delivery of written notice of an election under clause (iv) pay to MEPT an amount equal to the aggregate of the cash amount paid by MEPT and the amount of the obligations incurred by MEPT in connection with the design, permitting, and construction of the Office Building and the Improvements (including all hard and soft construction costs) and in connection with obtaining of the Leasehold Estate, the Development Agreement and the Leasehold Estate. A failure on the part of MEPT to relinquish the Leasehold Estate and its possession of the Leasehold Estate following such termination and payment shall authorize the Commission to bring legal action to evict MEPT from the Lease Parcel.

(c) Upon the occurrence of any Event of Default by MEPT which occurs after completion of construction of the Office Building, and for so long thereafter as the same is not cured by MEPT, the Commission may (i) file suit in St. Joseph County Court for the Commission's actual damages proximately caused by such Event of Default (excluding any consequential damages); (ii) file suit in St. Joseph County Court for specific performance or other equitable relief; or (iii) if Section 15.3(e) is applicable, remedy the default by the Commission as described in Section 15.3(e) and demand the cost thereof together with interest at the Interest Rate from the date of the demand. In no event shall the Commission have the right under these circumstances to terminate the Development Agreement, this Lease or MEPT's Leasehold Estate.

(d) Upon any Event of Default by the Commission and for so long thereafter as the same is not cured by the Commission, MEPT may (i) file suit in St. Joseph County for MEPT's actual damages proximately caused by such Event of Default (excluding any consequential damages); (ii) file suit in St. Joseph County Court for specific performance or other equitable relief; or (iii) if Section 15.3(e) is applicable, remedy the default by the Commission as described in Section 15.3(e) and demand the cost thereof together with interest at the Interest Rate from the date of the demand.

* (e) Upon any Event of Default by either party, the other party may enter upon the premises of the other party (the Lease Parcel, the Office Building or the Improvements if MEPT is the defaulting party or the underground Parking Garage or the Public Plaza if the Commission is the defaulting party) to correct the condition or situation giving rise to the Event of Default if

(i) the condition or situation is imperiling the safety or structural integrity of the nondefaulting party's improvements, or is preventing or materially interfering with the nondefaulting party's use and enjoyment of its property interests, and (ii) the nondefaulting party gives not less than thirty (30) days' notice of its intent to enter and exercise its self-help remedy under this subsection. If an emergency exists where the situation or condition is creating an imminent and grave risk to safety of occupants or the public or of collapse or other material damage to property, the right of entry and to correct shall exist in the absence of notice and an Event of Default only to the extent necessary to allow shoring or other emergency action to mitigate the immediate risk and hazard.

ARTICLE XVI

NON-WAIVER

Failure of MEPT or the Commission to complain of any act or omission on the part of the other party, however long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by MEPT or the Commission at any time, express or implied, of any breach of any other provision of this Lease or the Development Agreement or a consent to any subsequent breach of the same or any other provision. No acceptance by the Commission of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

ARTICLE XVII

FORCE MAJEURE

In the event that MEPT or the Commission shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of Unavoidable Delay, then performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of the Unavoidable Delay.

ARTICLE XVIII

NOTICES

No notice, approval, consent or other communication authorized or required by this Lease shall be effective unless the same shall be deemed given when either (i) hand delivered, with signed receipt obtained therefor, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested, directed or addressed in each case to the other party at its address set forth below, or such other address as either

party may designate by notice given from time to time in accordance with this Article XIX or (iii) sent by nationally recognized overnight courier service with all charges prepaid or billed to sender.

The address for notices to MEPT is:

Multi-Employer Property Trust
c/o Riggs & Company,
a division of Riggs Bank N.A.
Attn: Patrick O. Mayberry,
Executive Director and Division Manager
808 17th Street N.W.
Washington, DC 20006

with a copy to:

McNaul Ebel Nawrot Helgren & Vance P.L.L.C.
Attn: Louis F. Nawrot, Jr.
27th Floor, One Union Square
600 University Street
Seattle, WA 98101-3143

The address for notices to the Commission is:

1200 County-City Building
South Bend, IN 46601
Attention: Director of Redevelopment

with a copy to:

South Bend City Attorney
1400 County-City Building
South Bend, IN 46601

ARTICLE XIX

CERTIFICATES *

Section 19.1. Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request:

(d) As to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;

* (e) As to the validity and force and effect of this Lease, in accordance with its tenor as then constituted;

(f) As to the existence of any default hereunder;

(g) As to the existence of any offsets, counterclaims or defenses thereto on the part of such other party;

(h) As to the commencement and expiration dates of the Term or any extension thereof;

(i) As to whether or not the Plans for the Office Building and the Improvements required by the Development Agreement have been accepted and approved by the Commission; and

X (j) As to any other matters as may reasonably be so requested.

Any certificate referred to in this Article XIX may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

Section 19.2. Specific Performance. MEPT shall be entitled to specific performance to enforce the provisions of this Article XIX, it being agreed that money damages is not an adequate remedy for any breach thereof.

ARTICLE XX

GENERAL

Section 20.1. Governing Law. This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Indiana.

Section 20.2. Partial Invalidity. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall at any time or to any extent be held invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term, covenant, condition and provision of this Lease shall continue to be valid, binding and enforceable to the fullest extent permitted by law.

Section 20.3. Memorandum of Lessee. The parties shall, at the request of either of them, promptly execute and deliver duplicate originals of an instrument, in recordable form which will constitute a memorandum of this Lease, setting forth a description of the Lease Parcel, the term of this Lease and any other portions thereof.

Section 20.4. Interpretation. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders,

and vice versa, as the context shall require. The section headings and references to sections used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 20.5. Entire Agreement. No oral statement or prior written matter shall have any force or effect. This agreement shall not be modified or canceled except by a writing signed by the parties.

Section 20.6. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of MEPT and the Commission and their respective successors and assigns. The terms "MEPT" and "Commission" shall be deemed to include their respective successors and assigns. Except as expressly provided in this Section, the covenants, conditions, and agreements contained in this Lease shall not inure to the benefit of third parties, including, but not limited to, lessees and invitees of either party.

Section 20.7. Attorneys' Fees. MEPT shall, subject to all the terms and conditions of this Lease, pay and indemnify the Commission against all reasonable legal costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in obtaining possession of the Lease Parcel upon (a) the expiration of the Term or any extension thereof or (b) an Event of Default by MEPT and the Commission's election to evict MEPT and regain possession of the Lease Parcel as authorized by Section 16.3(b).

Section 20.8. Authority. MEPT and the Commission each represent and warrant to the other that they have the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by it hereunder.

Section 20.9. Survival. Each party's obligation under this Lease to indemnify and hold harmless the other shall survive the expiration of the Term or any extension of the Term or earlier termination of this Lease.

Section 20.10. Relationship of Parties. Nothing contained herein, including, but not limited to, the method of computing Rent, shall be deemed or construed by the parties thereto or by any third party as creating between the parties hereto the relationship of principal and agent, partnership, joint venturer, or any relationship other than the relationship of lessor and lessee.

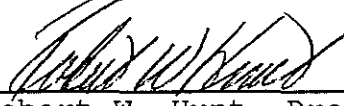
Section 20.11. ERISA Certificate. MEPT and the Commission shall each execute contemporaneously with the execution of this Lease an ERISA Certificate in the form attached as Exhibit E.

Section 20.12. Exculpatory Provision. MEPT has executed this Assignment by its trustee signing in a representative capacity. Such trustee executes not personally, but solely in the representative capacity so designated. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against, the trustee of MEPT, any consultant to such trustee, any advisor of MEPT or its trustee or any beneficiary of MEPT on account of any agreement contained in this Lease or the Development Agreement, whether express or implied. Liability with respect to the entry and performance of this Lease or the Development Agreement, however it may arise, with respect to MEPT shall be asserted and enforced only against the corpus of the trust which is designated in the previous sentence. Any and all personal liability, if any, beyond that which may be asserted under this Lease or the Development Agreement, is expressly waived and released by the Commission and by all persons claiming by, through or under the Commission.

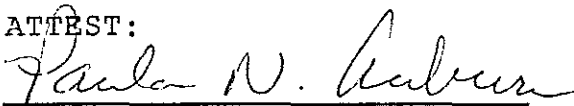
Section 20.13. Construction. The provisions of this Lease shall not be construed against either party.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.


CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT,
acting by and through the
SOUTH BEND REDEVELOPMENT COMMISSION

By: 
Robert W. Hunt, President

ATTEST:


Paula N. Auburn, Secretary

RIGGS & COMPANY, a division of
RIGGS BANK N.A., as Trustee of the
Multi-Employer Property Trust, a
trust organized under 12 C.F.R.
Section 9.18

By: 
Name: Patrick O. Mayberry
Its: Executive Director

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, a Notary Public in and for said County and State personally appeared Robert W Hunt & Paula V Anderson, President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Ground Lease as their voluntary act and deed this 23rd day of January, 1998.

Cheryl K Phipps
Notary Public
Residing in St. Joseph County, IN

My Commission Expires: CHERYL K PHIPPS
NOTARY PUBLIC STATE OF INDIANA
ST. JOSEPH COUNTY
MY COMMISSION EXP. JAN. 7, 1999

DISTRICT OF COLUMBIA) SS:

98 I hereby certify that on this 2nd day of March, 1997, before me, the undersigned, a notary public of the aforesaid jurisdiction, personally appeared Patrick O. Mayberry, who acknowledged that he is the Executive Director of Riggs & Company, a division of Riggs Bank N.A., the trustee of the Multi-Employer Property Trust, and executed the foregoing Ground and Airspace Lease on behalf of the Multi-Employer Property Trust for the purposes contained therein.

IN WITNESS WHEREOF, I have unto set my hand and official seal this 2 day of MARCH, 1998.

D.C. William F Scott [SEAL]
Notary Public

My Commission Expires: My Commission Expires August 31, 1999

RIGGS1.98

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A parcel of land being a part of the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, and being more particularly described as follows:

Beginning at the Southwest corner of Lot 31 as the same is shown and designated on the Original Plat of the Town (now City) of South Bend and recorded in the office the Recorder of St. Joseph County, Indiana; thence North $89^{\circ}58'12''$ East (Bearing Assumed for this survey) along the North right-of-way line of Jefferson Boulevard, a distance of 345.54 feet to the Southeast corner of Lot 30 in said Original Plat; thence North $0^{\circ}20'45''$ West, along the West right-of-way line of Michigan Street, a measured distance of 277.24 feet; thence North $89^{\circ}54'06''$ West, a distance of 52.81 feet; thence North $0^{\circ}20'45''$ West, a distance of 12.49 feet; thence South $89^{\circ}39'15''$ West, a distance of 77.22 feet; thence South $0^{\circ}20'45''$ East, a distance of 11.89 feet; thence North $89^{\circ}54'06''$ West, a distance of 214.68 feet to the East right-of-way line of Main Street; thence South $90^{\circ}10'28''$ East along the East right-of-way line of Main Street, a measured distance of 278.01 feet to the place of beginning containing 96,756 square feet.

The above described parcel of land being subject to the legal rights of public highways, if any, and subject to any easements, covenants or restrictions of record.

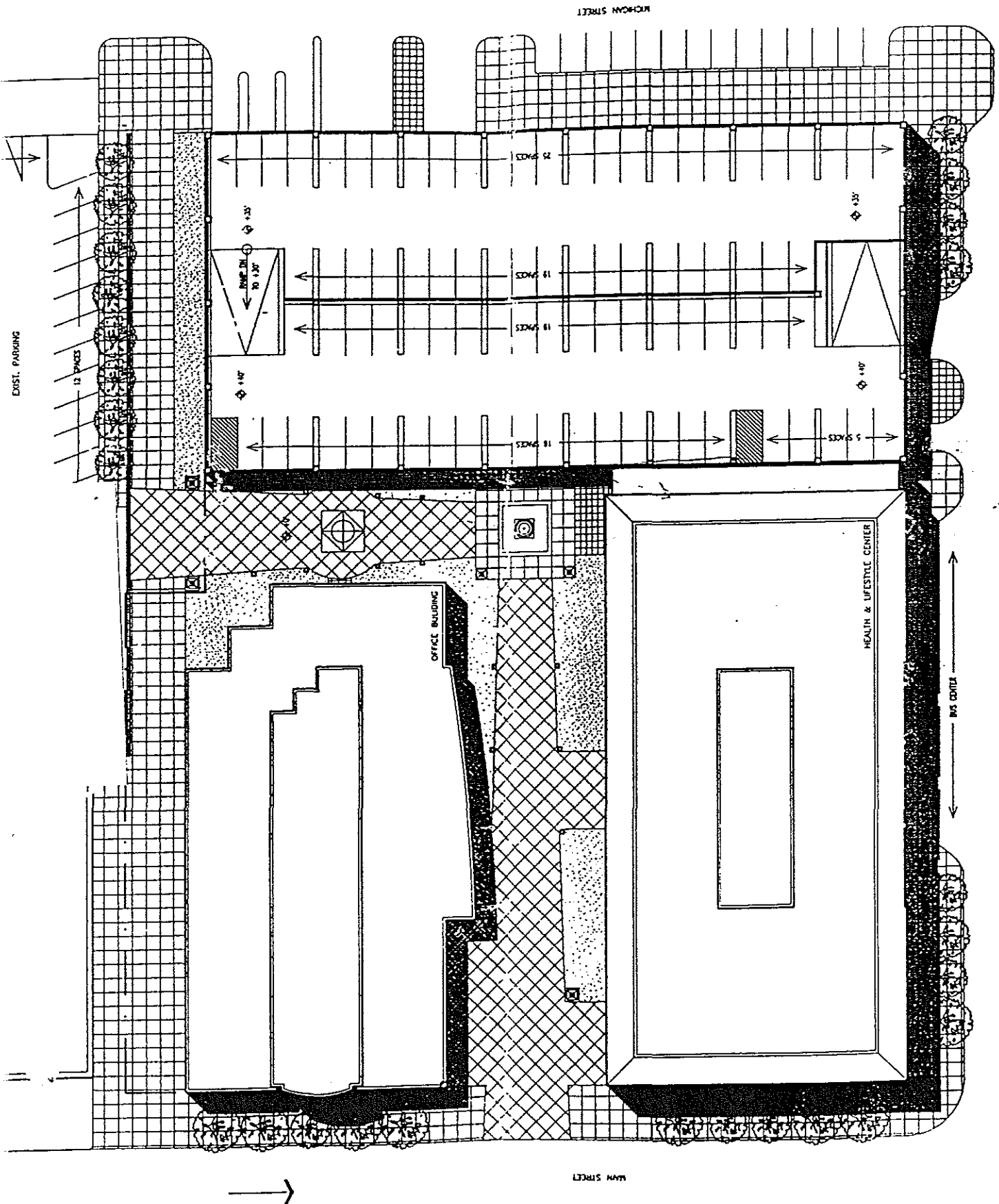
PROPDES\ENTIRE

EXHIBIT B

LEGAL DESCRIPTION OF THE OFFICE BUILDING SITE

A parcel of land being a part of Lots 27, 28, 33 and 34 in the Original Plat of the Town (now City) of South Bend, Indiana and adjacent vacated alley as shown in the Office of the Recorder of St. Joseph County, Indiana and being more particularly described as follows: Commencing at the Southwest corner of said Lot 31; thence North $0^{\circ}10'28''$ West along the East right-of-way line of Main Street, a distance of 163.82 feet; thence continuing North $0^{\circ}10'28''$ West along said East right-of-way line, a distance of 92.67 feet; thence North $89^{\circ}39'15''$ East, a distance of 182.85 feet; thence South $0^{\circ}20'45''$ East, a distance of 92.67 feet; thence South $89^{\circ}39'15''$ West, a distance of 183.12 feet to the place of beginning.

EXHIBIT B-1



NET: 1504 BLVD.

EXHIBIT C
MEPT EASEMENTS

- 1) Construction, Staging, Reconstruction, Repair and Maintenance Easement
- 2) Public Plaza and Parking Garage Easement
- 3) Elevator and Stairwell Easement
- 4) Public Art and Monument Sign Easement
- 5) Foundation Easement

SCHEDULE A

EXHIBIT D

PROFORMA LEASEHOLD OWNERS POLICY

AGENTS ORDER NUMBER	AMOUNT OF INSURANCE	DATE OF POLICY
9604805A	\$115,000.00	at 8:00 A.M.

OWNERS POLICY NO.

1. Name of Insured:

RIGGS & COMPANY, A DIVISION OF RIGGS BANK N.A., AS TRUSTEE OF THE MULTI-EMPLOYER PROPERTY TRUST

2. The estate or interest in the land described herein and which is covered by this policy is: Leasehold under the ground and air space lease described at Item 4 of Schedule A herein.
3. The estate or interest referred to herein is at Date of Policy vested in the insured.
4. The land herein described is encumbered by the following mortgage or trust deed, and assignments:

Ground and Airspace Lease by and between City of South Bend, Indiana, Department of Redevelopment, acting by and through The South Bend Redevelopment Commission, and Riggs & Company, a division of Riggs Bank N.A., as Trustee of the Multi-Employer Property Trust, dated _____ and recorded _____ as Document Number _____ in the Office of the Recorder of St. Joseph County, Indiana.

5. The land referred to in this policy is located in the County of St. Joseph State of Indiana and described as follows:

Lease Premises: TRAMMEL CROW BUILDING PAD: A parcel of land being a part of Lots 27, 28, 33 and 34 in the Original Plat of the Town (now City) of South Bend, Indiana and adjacent vacated alley as shown in the Office of the Recorder of St. Joseph County, Indiana and being more particularly described as follows: Commencing at the Southwest corner of said Lot 31; thence North 00°10'28" West along the East right-of-way line of Main Street, a distance of 163.82 feet; thence continuing North 00°10'28" West along said East right-of-way line, a distance of 92.67 feet; thence North 89°39'15" East, a distance of 182.85 feet; thence South 00°20'45" East, a distance of 92.67 feet; thence South 89°39'15" West, a distance of 183.12 feet to the place of beginning.

Rights and benefits of a Public Plaza and Parking Garage Easement
-continued-

Agent Lawyers Title Insurance Corporation

This Policy valid only if Schedule B is attached

ALTA OWNERS FORM

SCHEDULE A CONTINUED

Policy Number
Loan

Agents Reference No. 9604805A

Policy Number
Owners

Agreement, dated the _____ day of January, 1998, by and between the City of South Bend, Indiana and Riggs & Company, a division of the Riggs Bank, N.A., as Trustee of the Multi-Employee Property Trust, recorded the _____ day of January, 1998, as Document Number _____ in the Office of the Recorder of St. Joseph County, Indiana.

Rights and benefits of a Foundation Easement Agreement, dated the _____ day of January, 1998, by and between the City of South Bend, Indiana and Riggs & Company, a division of the Riggs Bank, N.A., as Trustee of the Multi-Employee Property Trust, recorded the _____ day of January, 1998, as Document Number _____ in the Office of the Recorder of St. Joseph County, Indiana.

Rights and benefits of an Elevator and Stairwell Easement Agreement, dated the _____ day of January, 1998, by and between the City of South Bend, Indiana and Riggs & Company, a division of the Riggs Bank, N.A., as Trustee of the Multi-Employee Property Trust, recorded the _____ day of January, 1998, as Document Number _____ in the Office of the Recorder of St. Joseph County, Indiana.

Rights and benefits of a Public Art and Monument Sign Easement Agreement, dated the _____ day of January, 1998, by and between the City of South Bend, Indiana and Riggs & Company, a division of the Riggs Bank, N.A., as Trustee of the Multi-Employee Property Trust, recorded the _____ day of January, 1998, as Document Number _____ in the Office of the Recorder of St. Joseph County, Indiana.

Rights and benefits of a Construction, Staging, Reconstruction, Repair and Maintenance Easement Agreement, dated the _____ day of January, 1998, by and between the City of South Bend, Indiana and Riggs & Company, a division of the Riggs Bank, N.A., as Trustee of the Multi-Employee Property Trust, recorded the _____ day of January, 1998, as Document Number _____ in the Office of the Recorder of St. Joseph County, Indiana.

ALTA OWNERS FORM

SCHEDULE B

Policy Number _____ Agents Reference No. 9604805A
 Loan

Policy Number _____
 Owners

PART I

This Policy does not insure against loss or damage by reason of the following:

General Exceptions:

1. Rights or claims of parties in possession not shown by the public records.
2. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
3. Easements or claims of easements not shown by the public records.
4. Any Lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

} DELETE

Special Exceptions: The mortgage, if any, referred to in Item 4 of Schedule A, and the following exceptions:

1. Taxes for the year 1996, payable in 1997 are a lien not yet due and payable.
2. Taxes for the year 1996, payable in 1997 are as follows:

Key No. 18-3006-0188 - South Bend. (Affects N 1/2 Lot 34 and 15' N and S x 40' E and W NE cor S 1/2 Lot 34)
 1st installment due May 10, 1997 \$0 - None due.
 2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0189 - South Bend. (Affects Lot 34 S 1/2 ex 15 x 40' N and S x 40' E and W NE cor and N 1/2 vac alley S and adj)
 1st installment due May 10, 1997 \$0 - None due.
 2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0190 - South Bend. (Affects Lot 33 ex 42 1/2' x 80' SW cor and pt S 1/2 vac alley N and adj)
 1st installment due May 10, 1997 \$0 - None due.
 2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0191 - South Bend. (Affects 42 1/2' x 80' SW cor Lot 33)
 1st installment due May 10, 1997 \$0 - None due.
 2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0192 - South Bend. (Affects 22' N side Lot 32)
 1st installment due May 10, 1997 \$0 - None due.
 2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0193 - South Bend. (Affects Lot 32 22' mid pt)
 1st installment due May 10, 1997 \$0 - None due.
 2nd installment due Nov 10, 1997 \$0 - None due.

-continued-

ALTA OWNERS FORM

SCHEDULE B CONTINUED

Policy Number
Loan

Agents Reference No. 9604805A

Policy Number
Owners

Key No. 18-3006-0194 - South Bend. (Affects Lot 32 22' S side 80' W end)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0195 - South Bend. (Affects 22' E side ex 80' W end Lot 32 and all Lot 31)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0196 - South Bend. (Affects Lots 25 and 26 23' W end ea)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0197 - South Bend. (Affects Lot 25 and 26 20' E side 43' W end ea)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0198 - South Bend. (Affects Lots 25 and 26 E 20' of W 63' ea)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0199 - South Bend. (Affects Lots 25 and 26 20' on Wash St. and 132' dp beg 82' W NE cor)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0200 - South Bend. (Affects 21.5' x 60' NE cor Lot 25)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0201 - South Bend. (Affects 21.1' Mich St. x 60' dp 22' W end 46.2' N side and 23 5-6' S end Lot 25 and 8 5-6ths' N side 82' E end Lot 26)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0202 - South Bend. (Affects 20' on Mich St. x 82' dp mid pt Lot 26)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0203 - South Bend. (Affects 21 1-5th' mid pt 82' E end Lot 26)
1st installment due May 10, 1997 \$0 - None due.
2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0204 - South Bend. (Affects 16' on Mich St. and 82' dp SE cor Lot 26).
1st installment due May 10, 1997 \$0 - None due.

-continued-

ALTA OWNERS FORM

SCHEDULE B CONTINUED

Policy Number
Loan

Agents Reference No. 9604805A

Policy Number
Owners

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0205 - South Bend. (Affects 22' x 165' N side Lot 27)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0206 - South Bend. (Affects 22' mid pt Lot 27)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-020701 - South Bend. (Affects S 1/3 rd Lot 27 and vac alley S and adj)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-020801 - South Bend. (Affects 26' N side Lot 28)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0209 - South Bend. (Affects 24' mid pt. Lot 28)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0210 - South Bend. (Affects 16' S side Lot 28 and 4' N side Lot 29)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0211 - South Bend. (Affects 25' S side 29' N side Lot 29)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0212 - South Bend. (Affects 37' S side Lot 29 and N side 95' E end Lot 30)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0213 - South Bend. (Affects 30' W end Lot 30)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0214 - South Bend. (Affects 40' E end 70' W end Lot 30)

1st installment due May 10, 1997 \$0 - None due.

2nd installment due Nov 10, 1997 \$0 - None due.

Key No. 18-3006-0215 - South Bend. (Affects 95' E end ex 9' N side Lot 30)

1st installment due May 10, 1997 \$0 - None due.

-continued-

ALTA OWNERS FORM

SCHEDULE B CONTINUED

Policy Number
Loan

Agents Reference No. 9604805A

Policy Number
Owners

2nd installment due Nov 10, 1997 \$0 - None due.

1. Land Use Plan containing controls and restrictions for the use of property in the Central Downtown Urban Renewal Area, Project No. R-66, recorded November 6, 1969 in Miscellaneous Record 252, pages 650 to 704, both inclusive in the Office of the Recorder of St. Joseph County, Indiana.
2. Terms and provisions contained in Lease by and between the City of South Bend Department of Redevelopment (Lessor) and Teachers Credit Union (Lessee), dated December 17, 1984 and recorded December 28, 1984 as Document Number 8427271 and amended by First Amendment of Agreement for Lease, recorded November 17, 1986 as Document Number 8632314 in the Office of the Recorder of St. Joseph County, Indiana. (Affects all of Lots 25 and 26 and the North 28 feet of Lot 37.) (Affects parking area only.)
3. Terms and provisions as contained in a Short Form No-Lien Agreement dated _____, and recorded _____, as Document Number _____, in the Office of the Recorder of St. Joseph County, Indiana.

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The Standard Exceptions shown at Items 2(a) through 2(d) inclusive on Part II, Schedule B of the above referenced commitment have hereby been deleted.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The General Exceptions shown at Items (1) through (4) inclusive on Part I, Schedule B of the above referenced policy have hereby been deleted.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for commercial purposes.

The Company insures the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

(a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or

(b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes: None

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

1. The Company insures the Insured against loss or damage sustained by reason of any incorrectness in the assurance that, at Date of Policy:
 - a. According to applicable zoning ordinances and amendments thereto, the land is classified C-1.
 - b. The following use or uses are allowed under that classification subject to compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorizations as a prerequisite to the use or uses: Office Building Complex.
2. The Company further insured against loss or damage arising from a final decree of a court of competent jurisdiction
 - (a) prohibiting the use of the land, with any structure presently located thereon, as specified in paragraph 1 (b); or
 - (b) requiring the removal or alteration of the structure on basis that, at

-continued-

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT CONTINUED

Commitment No.

9604805A

Date of policy, the ordinances and amendments thereto have been violated with respect to any of the following matter:

- (i) Area, width or depth of the land as a building site for the structure;
- (ii) Floor space area of the structure;
- (iii) Setback of the structure from the property lines of the land; or
- (iv) Height of the structure.

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The Company hereby assures the insured notwithstanding the terms of the Conditions and Stipulations or schedule of Exclusions from Coverage to the contrary, that in the event of loss or damage insured against under the terms of the policy, the Company will not deny its liability thereunder to said insured on the grounds that said insured had knowledge of any matter solely by reason of notice thereof imputed to it through Trammel Crow MW, Inc. by operation of law.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By: _____

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The Company hereby insures the insured that the real estate evidenced in Schedule A, Item 5 is one and the same real estate as that evidenced on a survey by Lang Feeney & Associates, dated _____, Surveyor's File No. _____.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The policy insures the insured that the real estate described in Schedule A, Item 5 has direct, open, and uninterrupted access to Main Street, Jefferson Boulevard, Michigan Street, and Washington Street, dedicated streets.

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The Company assures the Insured that the land described in Schedule A of this policy is a lawfully created parcel according to the applicable subdivision laws and regulations and local ordinances adopted pursuant thereto.

The Company hereby insures the Insured against losses which said Insured shall sustain in the event that the assurances hereinabove shall prove to be incorrect. This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT

Re: SOUTH BEND DEPARTMENT OF REDEVELOPMENT
9604805A

ISSUED BY: Lawyers Title Insurance Corporation

Attached to and forming a part of Policy of Title Insurance No.

The Company agrees that if, within five years after the date of the policy, application is made to increase the face amount of the policy or to issue a new policy, it will issue additional title insurance policies, or increase the face amount of the policy insuring such title or interest as may then exist in the insured or the insured's designee. The amount of the insurance to be issued will not exceed the amount of mortgage to be placed on the land nor the fair market value of the land or improvements therein at the date of the application. In the event a claim has been made or is pending against the Company, or a defect title has been discovered, the Company shall not be required to issue insurance for an amount greater than the face amount of this policy as to the defect discovered or resulting in said claim. Upon the receipt of the application to issue a subsequent policy or increase the face amount of the policy, the Company will extend its examination of the title to the then current date, and will then issue its policy or increase the face of the policy, subject to such matters created, first appearing in the public records, attaching subsequent to the effective date of the policy, or which have become known to either the Insured or the Company.

The insurance to be issued shall be subject to rules, regulations and rates in

-continued-

This endorsement, when countersigned below by a Validating Signatory, is made a part of said policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph 3 (a) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior, endorsements, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

Dated:

Lawyers Title Insurance Corporation

Meridian Title Corporation

By:

FRANK A. ANTONOVITZ
VICE PRESIDENT/COUNSEL

ENDORSEMENT CONTINUED

Commitment No.

9604805A

effect at the date the subsequent insurance coverage is issued. The Company shall not be obligated to issue additional insurance coverage which would exceed the amount of the usual reinsurance retention of the Company if, after the exercise of reasonable effort, the Company is unable to obtain reinsurance or co-insurance as may be required in order for it to issue the full amount of additional insurance for which application is made.

ALTA OWNERS FORM

SCHEDULE B CONTINUED

Policy Number
Loan

Agents Reference No. 9604805A

Policy Number
Owners

We are here to serve you....

As our policyholder, your satisfaction is very important to us. If you have a question about your policy, if you need assistance with a problem, or if you have a claim, you should first contact your insurance agent or us at (219) 232-5845. Should you have a valid claim, we fully expect to provide a fair settlement in a timely fashion.

Should you feel you are not being treated fairly with respect to a claim, you may contact the Indiana Department of Insurance with your complaint.

To contact the Department, write or call:

Consumer Services Division
Indiana Department of Insurance
311 West Washington Street, Suite 300
Indianapolis, IN 46204-2787
317-232-2395 or 1-800-622-4461

"EXHIBIT E"

Phase I

1-02.20 Surface Exc. & Demo.
1-02.30 Mass Exc. & Sheet

Phase II

2.03.50 First Floor Bldg Found.
2.03.60 Site Concrete
2-07.10 Plaza Waterproofing
2-11.10 Plaza Pavers
2-11.20 Plaza Precast Hardscapes
2-11.30 Landscaping & Lawn Irrig.
2-12.50 TCU - Surface Lot
2-16.30 Plaza Lighting

Phase III

3-03.70 Concrete Work
3-03.73 Precast Parking Structure
3-06.50 Gen'l Construction Package
3-14.10 Elevators
3-15.10 Plumbing
3-15.20 Sprinkler System
3-15.30 Mechanical System
3-16.20 Electrical System

EXHIBIT 2

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

27

9804643

GROUND LEASE

STEPHEN E. JAWORSKI
ST JOSEPH CO. RECORDER
STATE OF INDIANA
FILED FOR RECORD

98 FEB -3 PM 2:31

38

THIS LEASE is entered into effective as of the 23rd day of January, 1998, by and between MEMORIAL HOSPITAL OF SOUTH BEND, INC. ("Memorial") and the CITY OF SOUTH BEND, INDIANA, DEPARTMENT OF REDEVELOPMENT, acting by and through the SOUTH BEND REDEVELOPMENT COMMISSION (the "Commission").

RECITALS

WHEREAS, the Commission, acting pursuant to its redevelopment authority under Ind. Code §36-7-14-1 et seq., has created the South Bend Central Development Area (the "Project Area") for the purpose of carrying out in such Project Area a redevelopment project and has adopted the South Bend Central Development Area Development Plan (the "Plan") to guide such redevelopment project. A copy of the Plan is recorded in the office of the Recorder of St. Joseph County, Indiana;

WHEREAS, the Commission is the owner of certain real estate more particularly described at Exhibit A hereto and hereinafter referred to as the Lease Parcel; and

WHEREAS, Memorial desires to lease the Leased Premises, which is a part of the Lease Parcel, from the Commission; and

WHEREAS, Memorial and the Commission desire to set forth their agreement with respect to the leasing of the Lease Parcel and certain other matters affecting the Lease Parcel.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Memorial and the Commission agree as follows:

ARTICLE I

DEFINITIONS

Terms defined in the Recitals shall have the meanings set forth therein. The following terms, when used in this Lease with initial capital letters, have the following respective meanings:

"**Basic Rent**" has the meaning set forth in Section 4.01.

"**City**" means the City of South Bend, Indiana.

"**Commencement Date**" has the meaning set forth in Section 3.01.

"**Condemnation Proceeds**" means the total aggregate award, including any award for the Commission's fee simple title or

Memorial's leasehold estate, in the event of a total taking or Constructive Total Taking of the Leased Premises.

"Constructive Total Taking" means a taking of such scope that the remaining portion of the Leased Premises and Improvements after restoration thereof is not suitable to achieve the objectives of Memorial.

"Development Agreement" means the Amended and Restated Agreement for the Lease and Development of Real Property Within the South Bend Central Development Area by and between the South Bend Redevelopment Commission and Memorial Hospital of South Bend, Inc., dated January 23, 1998.

"Environmental Laws" means federal, state and local laws and implementing regulations, effective on or after the date of execution of this Lease, relating to pollution or protection of the environment, including laws or regulations relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances, wastes or materials into the environment (including, without limitation, ambient air, surface water, ground water or land), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances, wastes or materials. Such laws shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601, et seq. the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §3251 et seq., the Clean Air Act, as amended 42 U.S.C. §1857, et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §466 et seq., and Indiana Code, Title 13 - Environment, as amended.

"Improvements" means all buildings, structures, landscaping, driveways, walkways, parking lots, paved surfaces and other improvements which are to be located or constructed on the Lease Parcel as provided in this Lease.

"Lease Parcel" has the meaning set forth in Exhibit A.

"Leased Premises" has the meaning set forth in Exhibit B.

"Mortgage" or **"Mortgage Loan"** means both so-called permanent loans and interim building or construction loans, and all advances thereunder, relating to and secured by a mortgage lien upon the Commission's leasehold interest in the Leased Premises, or any part thereof, permitted under this Lease; and also shall refer to and include security agreements, financing statements and any other documentation evidencing such liens and encumbrances.

"Mortgagee" means the mortgagee or any assignee of the mortgagee under any Mortgage Loan.

"Plans" means preliminary construction plans prepared by or for Memorial in sufficient detail to show exterior design, structural design, exterior materials, positioning and appearance of the Improvements to be constructed on the Lease Parcel and landscaping plans (including a schedule of plants to be utilized).

"Rent" has the meaning set forth in Section 4.01.

"Taxes" means all real estate taxes, personal property taxes, special and general assessments, sewer service charges and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, which may be assessed, levied, or become due and payable with respect to, or become a lien on, the Leased Premises or Improvements, or any part thereof or appurtenance thereto.

"Term" has the meaning set forth in Article III.

"Unavoidable Delay" means and includes any delay caused by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, fire or other casualty, "acts of God", restrictive governmental authority, riots, insurrection, war, or the act, failure to act, or default of the other party, or other reason beyond the subject party's reasonable control and not avoidable by reasonable diligence.

ARTICLE II

LEASED PREMISES

Section 2.01. Warranty of Leasehold. The Commission hereby warrants and represents that it holds marketable title to the Lease Parcel and subject to those matters set forth at Section 2.03 and that it has the authority to convey to Memorial the leasehold estate hereby created.

Section 2.02. Leased Premises. The Commission hereby leases to Memorial and Memorial hereby leases from the Commission, upon and subject to the terms, conditions, covenants and provisions hereof, the Leased Premises described on Exhibit B attached hereto and made a part hereof, which is included as a part of the Lease Parcel, including the entirety of the surface of the concrete deck which is the roof of the Parking Garage contained within the perimeter of the Leased Premises and all air rights above that surface, but excluding any portion of the Leased

Premises extending below the surface of the Parking Garage roof deck which is used as a parking garage, and all appurtenances, rights, privileges, interests, tenements, hereditaments and easements in any way now or hereafter belonging or appertaining thereto, together with any interest that the Commission may now or hereafter have in any and all buildings, structures and improvements (including the "Improvements") that may now or hereafter be erected thereon (collectively referred to herein as the "Leased Premises"). The Leased Premises may be enlarged upon Memorial's request to allow construction and use of an elevator and stair tower to permit additions to the Memorial-Leighton Health•Plex.

Section 2.03. Leasehold Title. The leasehold estate created by this Lease and the Commission's rights hereunder are subject to the following:

(a) The lien of all real estate taxes, all general and special assessments and all other governmental dues, charges and impositions not delinquent;

(b) All easements, restrictions, agreements, covenants and other matters of record, including (without limitation), the building and use restrictions in the South Bend Central Development Plan as the same may be amended from time to time;

(c) All rights of the public, the State of Indiana and any political subdivision of the State of Indiana (including without limitation counties and municipalities) in and to that part of the Lease Parcel which has been taken or used for highways, streets, rights-of-way and related purposes;

(d) All applicable zoning, building and land use and other governmental restrictions, laws, ordinances, rules and regulations; and

(e) Bond indentures and related documents.

Section 2.04. Covenant of Quiet Enjoyment. Commission covenants and agrees that Memorial, upon paying the Rent to be paid by it as herein provided and upon keeping, observing and performing all other covenants and agreements to be kept, observed or performed by it hereunder, shall at all times during the Term have the peaceable and quiet enjoyment and possession of the Leased Premises, without hinderance from the Commission or anyone claiming under the Commission, subject to matters to which this Lease is subject as provided in the foregoing Section 2.03. Neither the Commission nor its designee may take any action or make any change to the Parking Garage, as defined in the Development Agreement, or any other portion of the Lease Parcel that compromises the integrity or in any manner affects the structural support provided to the Memorial-Leighton Health•Plex

or any other portion of the Leased Premises or improvements to be constructed thereupon.

ARTICLE III

TERM

The term of this Lease (the "Term") shall commence on November 15, 1997, or the date of substantial completion by the City of the structural slab which will serve as the ground floor of the Health•Plex, whichever is later (the "Commencement Date") and shall end on November 15, 2047, unless sooner terminated as provided in this Lease. The Commission hereby grants Memorial a series of four (4) consecutive irrevocable options to extend the term of this Lease each for an additional fifty (50) years, upon the same terms and conditions, except that the rental shall be for the annual sum of One Dollar (\$1.00). To exercise an option, the Memorial must not then be in default. The option will be deemed exercised with no notice or action required by Memorial unless and until Memorial gives written notice to the Commission not less than ninety (90) days before the end of the original term of this Lease that it does not intend to exercise the option.

ARTICLE IV

RENT

Section 4.01. Basic Rent. Memorial shall pay to the Commission as basic rent for the Leased Premises for the Term, the total sum calculated as the product of the total area, in square feet, of the surface of the Leased Premises and the rental rate of \$4.45 per square foot, the resultant product to be endorsed hereon, payable, in advance, upon the execution of the Lease Agreement (the "Basic Rent"). The Basic Rent shall be paid in full in advance on the Commencement Date. Any additional rent payments, as described in Section 4.02, below, shall be paid as provided in Section 4.02. If the Leased Premises are enlarged, additional rent shall be paid, and the amount of the additional rent shall be calculated in the same manner as the Basic Rent. The amount of the additional rent shall be paid upon the execution of an addendum concerning the increase to the Leased Premises and the amount of the additional rent shall be endorsed thereon.

Total Rental, Initial Term: Ninety-two Thousand Eight Hundred Eighty and 40/100 Dollars (\$92,880.40)

Section 4.02. Rent Payments. The term "Rent" as used herein shall mean and include Basic Rent and all additional sums,

charges or amounts of whatever nature to be paid by Memorial to the Commission in accordance with the provisions of this Lease, including the Common Area Payment, whether or not such sums, charges or amounts are referred to as Rent. All payments of Rent shall be made to the Commission at the address specified in Article XVIII, or at such other place or to such other person, firm or corporation as the Commission shall designate by notice to Memorial. Rent shall be paid (i) without relief from valuation and appraisal laws, (ii) without notice, demand, offset, deduction or counterclaim and (iii) with costs of collection and reasonable attorneys' fees.

Section 4.03. Common Area Payment. Developer shall pay to the Commission on December 1, 1998, and each December 1 thereafter, a Common Area Payment during the term of the Ground Lease, and any extension thereof, as follows:

1998	\$ 7,500
1999	\$ 7,500
2000	\$ 32,500
2001	\$ 55,000
2002	\$ 80,000
2003	\$ 92,000
2004	\$108,000
2005	\$125,000
2006	\$138,000
2007 and thereafter	\$150,000

Provided, however, that the amount of any real property taxes paid by the Developer in any calendar year in respect of the Leased Parcel and/or the improvements thereon shall serve to reduce by a corresponding amount the amount of the Common Area Payment paid by the Developer to the Commission in such calendar year.

Section 4.04. Rent to Be Net to the Commission. It is the intention of the parties that the Rent payable hereunder shall be net to the Commission and that all costs, expenses and obligations of every kind and nature whatsoever relating to the Leased Premises and Improvements shall be paid by Memorial.

Section 4.05. Interest. Any Rent not paid within fifteen (15) days after the same is due shall bear interest from the date payment is due until paid in full at the rate of six percent (6%) per annum.

ARTICLE V

USE OF LEASED PREMISES

Section 5.01. Permitted Uses. Memorial and its subtenants

and assignees shall use and occupy the Leased Premises for purposes consistent with its use and operation of a multi-use facility comprising office and health and fitness facilities available to the public on a membership basis, community education, physical therapy, orthopedic therapy, various clinical related programs and classes, any other similar programs related to the mission of Memorial, and for no other purposes without the prior permission of the Commission, which permission the Commission agrees not to unreasonably withhold or delay.

Section 5.02. Signs. Memorial shall have the right to erect and maintain on the Improvements and the Lease Parcel all signs that it deems appropriate to the conduct of its business, subject, however, to the provisions of the South Bend Municipal Code and to the approval of the Design Development Administrator of the City of South Bend. The Improvements shall be designated and known as the Memorial-Leighton Health•Plex.

Section 5.03. Compliance with Laws, Insurance Policies, Etc. During the Term, Memorial, at its expense, shall observe and comply with all present and future statutes, laws, ordinances, requirements, orders, rules and regulations (including, without limitation, the Americans With Disabilities Act and all Environmental Laws) of all governmental authorities and all orders, rules and regulations of the National Board of Fire Underwriters, the Indiana Board of Fire Underwriters, or any other body or bodies exercising similar functions, affecting the Leased Premises, or any part thereof, or the construction of the Improvements or the use or manner of use of the Lease Parcel and Improvements. If compliance with any such statute, law, ordinance, rule, regulation, order or requirement legally may be delayed pending the prosecution of any such proceeding, Memorial may delay such compliance until a final determination of such proceeding.

Section 5.04. Covenant Against Waste, Nuisance. Memorial shall not (i) commit or permit any waste to, or (ii) cause or permit any nuisance (public or private) to occur or exist in or on the Leased Premises, or any part thereof.

Section 5.05. Non-Discrimination. Memorial shall not discriminate on the basis of race, creed, color, ancestry, national origin, religion, handicap, sex or political affiliation in the leasing, use or occupancy of the Lease Premises and shall comply with all applicable federal, state and local laws and regulations prohibiting such discrimination.

Section 5.06. Hazardous Substances.

(a) Memorial covenants and agrees not to permit any "hazardous material" to be placed, held, located or disposed of upon, or released upon, under or at the Leased Premises, or any

part thereof. For purposes of this Lease, "hazardous material" means and includes any hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any Environmental Law (excluding, however, consumer goods stored or handled in the same form or manner as sold to a consumer). To the extent any substance or material is regulated ("environmentally regulated material") by any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, now or at any time hereafter regulating, relating to or imposing liability or standards of conduct concerning any hazardous material, underground storage tanks or petroleum products placed, held, located or disposed of on the Leased Premises or Improvements, Memorial shall place, hold, locate or dispose of such environmentally regulated material in compliance with such applicable law: Provided, however, that nothing in this Section 5.06 shall prohibit the storage, use and disposal at the Leased Premises of common swimming pool chemicals available for commercial use, provided such storage, use and disposal is conducted in compliance with all federal, state and local laws.

(b) If Memorial has knowledge of or receives any notice of (i) the happening of any event affecting the Leased Premises involving the spill or discharge of any hazardous material which is required to be reported to the Indiana Department of Environmental Management or the United States Environmental Protection Agency (a "Hazardous Discharge") or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental health or safety matter with respect to the Leased Premises (an "Environmental Complaint") from any person or entity, including without limitation the United States Environmental Protection Agency, Memorial shall give immediate notice thereof to the Commission disclosing full details of the Hazardous Discharge or Environmental Complaint, as applicable.

(c) Memorial shall indemnify and hold the Commission harmless from all loss, cost, claims, damages, fines, penalties, liability and/or expense, including but not limited to reasonable attorney's fees, incurred by any such party as a result of (i) any failure to observe the requirements in paragraph (a) above, (ii) an Environmental Complaint arising from any event or circumstance occurring during the Term, or (iii) a Hazardous Discharge occurring during the Term.

ARTICLE VI

ASSIGNMENT AND SUBLETTING

Section 6.01. Lease Termination Does Not Terminate Sublease. In the event of the termination of this Lease from any

cause whatsoever (including the voluntary surrender thereof by Lessee), and while any sublease allowed under this Lease Agreement is in full force and effect, such termination shall not act as a merger, and Memorial's interest as sublessor in each of said subleases shall be deemed automatically assigned, transferred, and conveyed to the Commission; and, from and after such termination, the Commission (as well as any such sublessee) shall be bound by the provisions of each of the subleases, then in full force and effect, on the part of Memorial (as sublessor) to be performed thereunder, and each of the sublessees shall be deemed thereupon (and without further act) to have been turned over or assigned by operation of law to the Commission. It is the intention hereof to provide that the termination of this Lease while any such sublease is in full force and effect shall not in any way, by reason thereof, terminate such sublease or militate against the rights of any such sublessee. The foregoing is further subject to the right of the Commission to terminate any sublease which is in default (notice thereof, if any required, having been given and the time for curing such default having expired), and to any other rights and remedies reserved to Memorial in any such sublease, and any other rights and remedies afforded to a lessor of real property against a defaulting lessee by law or in equity. The Commission will, at the request of Memorial, execute and deliver to any sublessee, or proposed sublessee, a document reciting, in substance, that any default by Memorial under this Lease or any termination of this Lease thereby, or otherwise, before the expiration of the term hereof, shall not, by reason thereof, affect the rights of such sublessee or proposed sublessee while such sublease or proposed sublease is in full force and effect.

Section 6.02. Default by Sublessee. Each such sublease entered into by Memorial covering any portion of the Lease Parcel shall contain a provision therein substantially providing that in the event the sublessee defaults in any of the provisions thereunder on the part of sublessee to be performed, after notice of such default and the failure to cure same by sublessee, Memorial may, after the expiration of the notice period (if notice is applicable), reenter that portion of the Lease Premises subleased by summary proceedings, or otherwise have the right to expel the sublessee; and shall further provide that the notice period for any default shall not exceed thirty (30) days for the nonpayment of any moneys due to Memorial and shall not exceed sixty (60) days for the failure to perform any other provision under such sublease on the part of sublessee to be performed, unless the performance of such other provisions cannot reasonably be accomplished within said sixty (60) day period, in which case sublessee may be permitted the additional time reasonably necessary to complete performance.

ARTICLE VII

TAXES

Section 7.01. Payment of Taxes and Assessments. To the extent the same are imposed, Memorial shall pay and discharge punctually, as and when the same shall become due and payable all Taxes which are due and payable with respect to the Lease Parcel and the Improvements, or any part thereof, or any appurtenances or equipment owned by or leased to Memorial thereon or therein during any calendar year (or part thereof within the Term or in which the Term ends), together with all interest and penalties thereon.

Memorial shall be deemed to have complied with the covenants of Section 7.01 if payment of Taxes shall have been made either within any period allowed by applicable law before the same shall become a lien upon the Lease Parcel or Improvements; or, if the Tax constitute a lien before it is due and payable, then, before any penalty or interest is assessed with respect thereto. Memorial shall send to the Commission satisfactory evidence of payment of Real Estate Taxes and any other payment hereunder if requested to do so by Memorial in writing. Memorial reserves the right to contest the assessment of the Leased Premises, following the procedures set forth for such contests in Indiana law.

Section 7.02. Proration of Real Estate Taxes. Real Estate taxes due and payable during the calendar year in which the Term ends shall be prorated based upon the number of days within such calendar year as shall fall within the last year of the Term. Memorial shall pay on the date of termination of this Lease such pro rata share of Real Estate Taxes due and payable during the calendar year in which the Term ends.

Section 7.03. Separate Assessments. Upon request of Memorial at any time, the Commission will make application individually, or will join in the Commission's application, and will execute such instruments as may be necessary or appropriate to obtain separate tax assessments for the Lease Premises and Improvements.

ARTICLE VIII

CONSTRUCTION OF IMPROVEMENTS

Section 8.01. Nature of Improvements. Pursuant to and in accordance with the terms and conditions of the Development Agreement, Memorial shall construct the Improvements.

Section 8.02. Incorporation of the terms and conditions of the Development Agreement. The terms and conditions of the Development Agreement are incorporated until such time as the Certificate of Completion as defined in the Development

Agreement, is issued. Until such time, any default by Memorial under the Development Agreement shall constitute a default under this Lease and shall entitle the Commission to exercise any and all rights and remedies provided in either the Development Agreement or this Lease or both.

ARTICLE IX

ALTERATIONS, REPLACEMENTS

Maintenance and Repair by Memorial. Memorial shall at all times during the Term, at its expense, keep and maintain or cause to be kept and maintained the Leased Premises and Improvements in good, clean and safe condition and repair including, without limitation, the making of all necessary structural repairs and replacements. The Commission shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Leased Premises or the Improvements during the Term.

ARTICLE X

MECHANICS' LIENS; INDEMNIFICATION; NONLIABILITY

Section 10.01. Mechanics' Liens. Memorial shall promptly after the filing thereof discharge of record, at Memorial's expense, any mechanics' materialmen's or other lien, or notice of intention to file any such lien, filed against the Leased Premises or Improvements or any part thereof or interest therein: Provided, however, that Memorial shall have the right to contest the validity of any such lien in any manner permitted by law so long as Memorial (i) shall provide to the Commission title insurance, an indemnity, bond or other assurance or security reasonably satisfactory to the Commission; and (ii) shall thereafter diligently proceed to cause such lien or notice of intention to file a lien to be removed and discharged. If Memorial shall fail to so discharge, or to seek to discharge, any such lien or notice of intention to file a lien, then the Commission may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or in such other manner as is or may be permitted by law, and Memorial shall reimburse and indemnify the Commission in respect thereto.

Section 10.02. Indemnification by Memorial. Unless allegedly caused or alleged to be caused by the several, joint, concurrent or comparative negligence, or sole negligence, of the Commission Memorial shall, at its sole cost and expense, indemnify and save harmless the Commission, against and from any and all claims, damages, losses, fines, penalties, liability,

costs and/or expenses (including but not limited to reasonable attorneys' fees) arising from Memorial's possession, use or control of the Leased Premises or Improvements or any part thereof; (ii) any condition of the Leased Premises or Improvements or any part thereof, (iii) any breach or default on the part of Memorial in the performance of any covenant or agreement on the part of Memorial to be performed pursuant to the terms of this Lease, (iv) any willful or negligent act or omission of Memorial, or any of its agents, contractors, licensees, subtenants or its or their servants, employees, customers or invitees, or (v) any accident, injury to or death of persons or damage to property whatsoever in or about the Leased Premises or Improvements or any part thereof; and in case any claim, action or proceeding shall be brought against the Commission by reason of any such claim, damage and/or liability, Memorial, upon written notice from such party, shall defend such action or proceeding with counsel acceptable to such party.

Section 10.03. Nonliability. The Commission shall not be responsible or liable to Memorial, or any person, firm or corporation claiming by, through or under Memorial for, or by reason of, (i) any injury or damage occurring during the Term to the Improvements or any equipment or apparatus or appliances in the Improvements, (ii) any failure or defect of water, heat, electric light or power supply, or of any apparatus or appliance in connection therewith, or for any injury or loss or damage to person or property resulting therefrom, or (iii) any injury, loss or damage to any persons or to the Leased Premises or the Improvements, or to any property of Memorial or of any other person, contained in or upon the Leased Premises or the Improvements, caused by or arising or resulting from the electric wiring, or plumbing, water, steam, sewerage, or other pipes, or by or from any machinery or apparatus, or by or from any defect in or leakage, bursting or breaking of any of the foregoing the same, or by or from, any leakage, running or overflow of water or sewerage in any part of said premises, or by or from any other defect or other cause whatsoever, except where the same is caused by the negligence or intentional act of the Commission.

ARTICLE XI

INSURANCE

Section 11.01. Liability Insurance. Memorial shall maintain and keep in force at all time during the Term, with an insurance company or companies licensed to do business in the State of Indiana, selected by Memorial and acceptable to the Commission (i) comprehensive general public liability insurance covering any and all claims for injuries to or death of persons or damage to property occurring in or upon the Leased Premises and Improvements and having initial minimum levels of combined

coverage for bodily injury (including death resulting therefrom) and property damage, including umbrella coverage, of not less than Fifteen Million Dollars (\$15,000,000), for each occurrence and on an annual aggregate basis and (ii) workmen's compensation and employer's liability insurance in such amounts as shall be required by law from time to time, but in no event less than One Hundred Thousand Dollars (\$100,000) per accident. Memorial's comprehensive general public liability insurance shall have extensions of coverage to include blanket contractual liability for written and oral contracts, broad form property damage and premises operations (including explosion, collapse and underground coverage). In addition, Memorial shall maintain or cause its contractor(s) or construction manager to maintain products and completed operations coverage through the period ending two (2) years after completion of the construction of the Improvements. Each policy referred to in this Section 11.01 shall name the Commission as an additional insured. Such liability insurance may be provided by a single policy or combination of underlying policies, with the balance provided by an excess or umbrella liability policy; provided such excess or umbrella insurance complies with all of the other requirements of this Lease with respect to such insurance.

Section 11.02. Property Insurance. During the Term, Memorial shall keep the Improvements insured with an insurance company licensed to do business in the State of Indiana, selected by Memorial and acceptable to the Commission for the benefit of Memorial and the Commission, as their respective interests may appear, against loss or damage by fire or other casualty (including earthquake, to the extent customary and available on reasonable terms) covered by a customary extended coverage endorsement, in an amount equal to one hundred percent (100%) of the replacement cost thereof and providing for and having a deductible in an amount not exceeding Twenty Five Thousand Dollars (\$25,000). The replacement cost of the Improvements shall be certified by a registered architect, registered engineer, or professional appraisal engineer selected by Memorial and employed at the expense of Memorial at the time of completion of the Improvements and on or before each anniversary of such completion date thereafter during the Term: Provided, however, that such certification shall not be required so long as such insurance shall be maintained in an amount at least equal to the amount specified by Memorial or before such completion date and on or before each anniversary date thereof during the Term. Notwithstanding the foregoing, Memorial shall at all times maintain such insurance in an amount sufficient to meet all co-insurance requirements under such insurance policy. The Commission shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Memorial hereunder, if the effect of such separate insurance would be to reduce the protection or the payment to be made under Memorial's insurance.

Section 11.03. Proof of Insurance. Memorial shall deliver copies of the insurance policies showing the coverages required by this Article XI to the Commission on or before the date of execution of this Lease, and thereafter a copy of each replacement policy shall be provided not less than ten (10) days prior to the expiration of the policy being replaced. Each such policy referred to in this Article XI shall contain a provision providing that the policy shall not be canceled, not renewed or materially amended without thirty (30) days prior written notice to the Commission and Memorial.

Section 11.04. Waiver of Subrogation. Memorial and the Commission waive all rights against each other and against those for whom the other is legally liable for all losses covered by insurance provided under this Article XI to the extent the upper limits of such insurance are adequate to cover such losses, and if not adequate, then to the maximum of the policy limits, it being the intent of this provision to allocate all risk of such loss to such insurance: Provided, however, that this waiver shall not be effective if it would preclude or prejudice the right of Memorial or the Commission to recover under such insurance policy. If the policies of insurance provided for under this Article XI require an endorsement to provide for continued coverage where there is a waiver of subrogation, Memorial will request such policies to be so endorsed.

Section 11.05. Insurance Proceeds. The proceeds of any and all policies of insurance upon the Improvements maintained pursuant to Section 11.02 remaining after any required payment to any Mortgagee shall be used as toward the repair, reconstruction, replacement or rebuilding of the Improvements.

The Commission, Memorial, and any Mortgagee shall cooperate fully in collecting such insurance proceeds and will execute and deliver any and all proofs, receipts, releases and other instruments whatsoever as may be necessary or proper for such purpose.

Section 11.06. General Provisions. In the event Memorial shall fail or refuse to obtain any insurance required by this Article XI, the Commission, in addition to any other right the Commission may have under this Lease at law or in equity, shall have the right to obtain such insurance. The cost of such insurance shall constitute a debt payable by Memorial upon demand of the Commission.

ARTICLE XII

DESTRUCTION

Section 12.01. Memorial's Obligation to Repair. If at any

time during the Term the Improvements shall be destroyed or damaged by fire or other cause, Memorial shall cause the same to be repaired, replaced or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable, subject to Unavoidable Delays. In the repair or restoration of any Improvements hereunder, Memorial will repair, replace or rebuild the Improvements so damaged or destroyed to their condition immediately before such damage or destruction, subject to all these applicable laws, ordinances, or regulations of any governmental authority affecting the same. If the insurance proceeds recovered in respect of any such damage or destruction, less any cost of recovery and any amounts required to be paid to any Mortgagee, shall be insufficient to pay the entire cost of such restoration, repair, replacement or rebuilding, Memorial shall provide for the deficiency. In such event, the time within which Memorial shall be required to commence and complete its obligations hereunder shall include a reasonable time to obtain and close the necessary commitments for equity or mortgage financing to cover the deficiency or deficiencies.

Section 12.02. No Rent Rebate. In no event shall Basic Rent or other charges due hereunder be rebated in the event of such damage or destruction.

ARTICLE XIII

CONDEMNATION

Section 13.01. Total Condemnation. If at any time during the Term there shall be a total taking or a Constructive Total Taking of the Leased Premises or any part thereof in condemnation proceedings or by any right of eminent domain or by a conveyance in lieu thereof, this Lease shall terminate on the date of such taking and the Rent payable by the Commission hereunder shall be prorated and paid to the date of such taking.

Section 13.02. Proceeds of Total Condemnation. In the event of any such total taking or Constructive Total Taking and the termination of this Lease, the Condemnation Proceeds shall be paid to Memorial but shall be applied by Memorial in the following order or priority:

(a) First, to the payment of expenses and charges, including without limitation reasonable attorneys' fees, incurred by Memorial in connection with such taking;

(b) Second, to any Mortgagee in the order of priority of such Mortgages to the extent of unpaid principal amount of such Mortgages and all accrued and unpaid interest thereon and all costs, expenses and advances pursuant thereto and all advances

made by such Mortgagee for the benefit of the leased Premises and the continued use and operation thereof;

(c) Third, to Memorial.

Nothing herein contained shall impair the right of Memorial to the full award, compensation or damages payable as an award for loss of business or for moving expenses, as long as such award shall not reduce the amount of the award otherwise recoverable by the Commission from the condemning authority.

Section 13.03. Partial Condemnation. In the event of a taking that is less than a Constructive Total Taking, this Lease shall not terminate or be affected in any way, except as provided in Section 13.04. The Condemnation Proceeds in such event shall be apportioned and paid, to the extent available (following any required payments to Mortgagees), in the following order of priority:

(a) Memorial and the Commission shall first be entitled to their expenses and charges, including without limitation reasonable attorneys' fees, incurred in connection with the taking;

(b) The balance of the Condemnation Proceeds shall be payable to Memorial for application by Memorial to the costs of restoring, repairing, replacing or rebuilding the Improvements in the manner then reasonably feasible as required by Section 13.04;

(c) The Condemnation Proceeds, if any, remaining after restoration, repair, replacement or rebuilding shall be paid to Memorial, except to the extent of an equitable portion of the Condemnation Proceeds allocable by agreement of the Commission and Memorial on account of any taking of title to any portion of the Lease Parcel.

Section 13.04. Restoration. In the event of a taking that is less than a Constructive Total Taking, Memorial shall proceed with due diligence, subject to Unavoidable Delays, to restore, repair, replace or rebuild the remaining portions of the Improvements substantially the same as before the taking. If the Condemnation Proceeds are insufficient to pay the entire cost of such restoration, repair, replacement or rebuilding, Memorial shall pay any such deficiency.

Section 13.05. Temporary Condemnation. If, at any time during the Term, the whole or any part of the Leased Premises or Improvements or the Commission's interest therein under this Lease shall be taken in condemnation proceedings or by any right of eminent domain for temporary use or occupancy, the foregoing provisions of this Article shall not apply, and, except to the

extent that Memorial may be prevented from so doing pursuant to the terms of the order of the condemning authority, Memorial shall perform and observe all of the other terms, covenants, conditions and obligations hereof upon the part of Memorial to be performed and observed, as though such taking had not occurred. In the event of any such taking of the character referred to in this Section 13.05, Memorial shall be entitled to receive the entire amount of the Condemnation Proceeds paid for such taking, whether paid by way of damages, rent, costs of moving or restoration or otherwise. Upon the expiration of any such period of temporary use or occupancy, if it be during the Term, Memorial will, at its sole cost and expense, restore the Improvements, as nearly as may be reasonably possible, to the condition in which the same were immediately prior to such taking.

Section 13.06. Rent Adjustment. In the event of a taking of the character referred to in Section 13.01, this Lease shall terminate as to the portion of the Leased Premises so taken. No such partial taking shall affect the Rent payable hereunder.

Section 13.07. Rights to Appear. Memorial, the Commission and any Mortgagee shall have the right to participate in any condemnation proceeding for the purpose of protecting their rights hereunder, and in this connection, specifically and without limitation, to introduce evidence to establish the value of or damage to the Lease Parcel, the Leased Premises, the Improvements or any part thereof.

ARTICLE XIV

MORTGAGES

Section 14.01. Restriction of the Commission Mortgages. During the Term, the Commission shall not have the right or power to mortgage or otherwise create any security or other liens or encumbrances upon or affecting its leasehold interest in the Lease Parcel or its interest in the Improvements, or any part thereof.

ARTICLE XIV

SPECIFIC PERFORMANCE

In addition to any other rights that Memorial or the Commission may have pursuant to this Lease, if the other fails or refuses to execute, acknowledge and deliver any instrument or instruments or to take any other action (other than an action solely involving the payment of any sum of money) required to effectuate provisions of this Lease within the time period required by this Lease or, if no time period therefor is

specified in this Lease, within any reasonable time period specified in any request from the other party, then from and after the date fifteen (15) days after the date of delivery of a final written demand to the other party requesting such execution, acknowledgment and delivery or other action, the requesting party shall be entitled to specific performance, declaratory relief, or such other remedies at law or equity which may be appropriate to effectuate the provisions of this Lease.

ARTICLE XV

DEFAULTS

Section 15.01. Events of Default. Each of the following events, if not remedied as hereinafter provided, shall be deemed an "Event of Default":

(a) Memorial's failure to pay any installment of Rent within ten (10) days of the date when the same shall be due and payable; or

(b) Memorial's failure to perform any other covenant or agreement herein contained on Memorial's part to be kept or performed and the continuance of such failure for a period of ninety (90) days after notice in writing to Memorial from the Commission specifying the nature of such failure, and provided the Commission shall not cure said failure as provided in Section 15.02.

Upon the occurrence of any Event of Default, the Commission may, at its option, give to Memorial a written notice of election to end the Term of this Lease upon a date specified in such notice, which date shall be not less than ninety (90) days after the date of delivery to Memorial of such notice by the Commission. The notice shall specify, in detail, the nature of the Event of Default claimed by the Commission, shall specify the date on which the Term of this Lease is to be ended, and shall be delivered as provided in Section 18.

Section 15.02. Extensions. If the Commission gives notice at any time of a default of a nature that cannot be cured within the ninety (90) day period provided in Section 15.01(b), then such default shall not be deemed an Event of Default so long as Memorial, following notice from the Commission, proceeds to cure the default as soon as reasonably possible and continues to take all reasonable steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. In addition, no Event of Default shall be deemed to have occurred if and so long as Memorial shall be delayed in or prevented from curing the same within the applicable cure period by Unavoidable Delay.

Section 15.03. Remedies. Upon any Event of Default pursuant to Section 15.01, or at any time thereafter so long as the same is not cured, the Commission may, in addition to and without prejudice to any other rights and remedies the Commission shall have at law or in equity, (i) cure any such Event of Default and collect the cost thereof from Memorial upon demand or (ii) file suit in a St. Joseph County Court for damages and eviction.

During any period of possession hereunder, the Commission, at the Commission's option, may complete such construction, alterations, repairs, replacements and/or decorations in the Leased Premises as the Commission, in the Commission's reasonable judgment, considers advisable and necessary for the purpose of completion, leasing or reletting of the Improvements; and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Memorial from liability hereunder as aforesaid.

ARTICLE XVI

NON-WAIVER

Failure of Memorial or the Commission to complain of any act or omission on the part of the other party, however long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Memorial or the Commission at any time, express or implied, of any breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. No acceptance by the Commission of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

ARTICLE XVII

FORCE MAJEURE

In the event that Memorial or the Commission shall be delayed, hindered in, or prevented from the performance of any act required hereunder by reason of Unavoidable Delay, then performance of such act shall be excused for the period of the Unavoidable Delay and the period for the performance of any such act shall be extended for a period equivalent to the period of the Unavoidable Delay.

ARTICLE XVIII

NOTICES

No notice, approval, consent or other communication authorized or required by this Lease shall be effective unless the same shall be deemed given when either (i) hand delivered, with signed receipt obtained therefor, (ii) sent postage prepaid by United States registered or certified mail, return receipt requested, directed or addressed in each case to the other party at its address set forth below, or such other address as either party may designate by notice given from time to time in accordance with this Article XVIII or (iii) sent by nationally recognized overnight courier service with all charges prepaid or billed to sender.

The address for notices to Memorial is:

615 North Michigan Street
South Bend, IN 46601
Attn: President

with a copy to:

Barnes & Thornburg
100 North Michigan
South Bend, IN 46601

The address for notices to the Commission is:

1200 County-City Building
South Bend, IN 46601
Attention: Director of Redevelopment

with a copy to:

South Bend City Attorney
1400 County-City Building
South Bend, IN 46601

ARTICLE XIX

CERTIFICATES

Section 19.01. Either party shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the other, certify by written instrument duly executed and acknowledged to any mortgagee or purchaser, or proposed mortgagee or proposed purchaser, or any other person, firm or corporation specified in such request:

(a) As to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;

(b) As to the validity and force and effect of this Lease, in accordance with its tenor as then constituted;

(c) As to the existence of any default hereunder;

(d) As to the existence of any offsets, counterclaims or defenses thereto on the part of such other party;

(e) As to the commencement and expiration dates of the Term;

(f) As to whether or not the Plans for the Improvements required by Article VI have been accepted and approved by Memorial; and

(g) As to any other matters as may reasonably be so requested.

Any certificate referred to in this Article XIX may be relied upon by the party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing same.

Section 19.02. Specific Performance. Memorial shall be entitled to specific performance to enforce the provisions of this Article XIX, it being agreed that money damages is not an adequate remedy for any breach thereof.

ARTICLE XX

GENERAL

Section 20.01. Governing Law. This Lease and the performance thereof shall governed, interpreted, construed and regulated by the laws of the State of Indiana.

Section 20.02. Partial Invalidity. If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall at any time or to any extent be held invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term, covenant, condition and provision of this Lease shall continue to be valid, binding and enforceable to the fullest extent permitted by law.

Section 20.03. Memorandum of Lessee. The parties shall, at the request of either of them, promptly execute and deliver

duplicate originals of an instrument, in recordable form which will constitute a memorandum of this Lease, setting forth a description of the Leased Premises, the term of this Lease and any other portions thereof.

Section 20.04. Remote Vesting. This Lease and all rights and interests created hereby are intended to comply in all respects with applicable common or statutory law, including the common law Rule Against Perpetuities or analogous statutory restrictions. Therefore, any provision of this Lease that shall be construed by a final, non-appealable judicial determination to create or permit to arise any interest in the Leased Premises that may vest in the future in any person, shall be deemed to prohibit the creation of such interest from and after the date which is twenty-one (21) years after the death of the survivor of the now living lawful descendants of any of the persons who are attorneys practicing in the Office of the South Bend City Attorney as of the date of this Lease.

Section 20.05. Interpretation. Whenever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings and references to sections used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 20.06. Entire Agreement. No oral statement or prior written matter shall have any force or effect. This agreement shall not be modified or canceled except by a writing signed by the parties.

Section 20.07. Parties. Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Memorial and the Commission and their respective successors and assigns.

Section 20.08. Attorneys' Fees. Memorial shall, subject to all the terms and conditions of this Lease, pay and indemnify the Commission against all reasonable legal costs and charges, including reasonable counsel fees, lawfully and reasonably incurred in obtaining possession of the Leased Premises after default of Memorial or upon the expiration of the Term. Each party shall pay to and indemnify the other against all such reasonable legal costs and charges lawfully and reasonably incurred in successfully enforcing any covenant or agreement of the other party herein contained.

Section 20.09. Authority. Memorial and the Commission each

represent and warrant to the other that they have the power and authority to execute and deliver this lease and to carry out and perform all covenants to be performed by it hereunder.

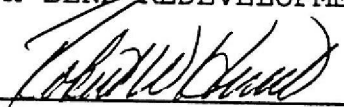
Section 20.10. Survival. The Commission's obligation under this Lease to indemnify and hold Memorial harmless shall survive the expiration of the Term or earlier termination of this Lease.

Section 20.11. Relationship of Parties. Nothing contained herein, including, but not limited to, the method of computing Rent, shall be deemed or construed by the parties thereto or by any third party as creating between the parties hereto the relationship of principal and agent, partnership, joint venturer, or any relationship other than the relationship of lessor and lessee.

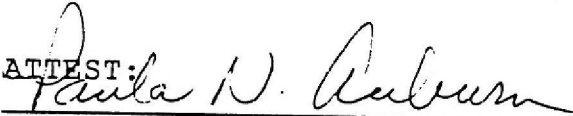
IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT,
acting by and through the
SOUTH BEND REDEVELOPMENT COMMISSION

By: _____


Robert W. Hunt, President

ATTEST:


Paula N. Auburn, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

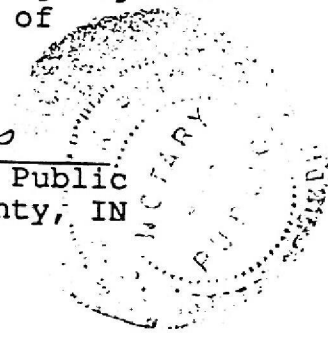
Before me, a Notary Public in and for said County and State personally appeared Robert W. Hunt and Paula N. Auburn, President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Ground Lease as their voluntary act and deed this *23rd* day of *January*, 1998.

Cheryl K Phipps

Notary Public

Residing in St. Joseph County, IN

My Commission Expires: CHERYL K PHIPPS
NOTARY PUBLIC STATE OF INDIANA
ST. JOSEPH COUNTY
MY COMMISSION EXP. JAN. 7, 1999



MEMORIAL HOSPITAL OF SOUTH BEND, INC.

By: *Philip Newbold*
Philip Newbold
Its: President and C.E.O.

ATTEST:

By: _____

Its: _____

STATE OF INDIANA)
)SS:
COUNTY OF ST. JOSEPH)

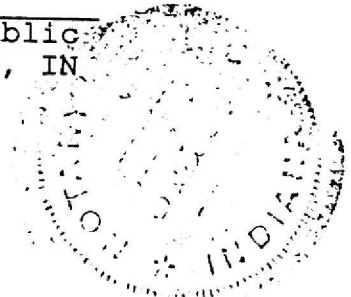
Before me, a Notary Public in and for said County and State personally appeared Memorial Hospital of South Bend, Inc., by its President and C.E.O., Philip Newbold, and acknowledged the execution of the foregoing Ground Lease as his voluntary act and deed this 23 day of JANUARY , 1998.

Bruce R. Bancroft
Notary Public
Residing in St. Joseph County, IN

BRUCE R. BANCROFT

My Commission Expires:

OCTOBER 4, 2001



This document prepared by Anne E. Bruneel, Chief Assistant City Attorney, 1400 County-City Building, South Bend, IN 46617

EXHIBIT B
MEMORIAL LEASED PREMISES

A parcel of land being a part of Lots 29, 30, 31 and 32 in the Original Plat of the Town (now City) of South Bend, Indiana, and adjacent vacated alley as shown in the Office of the Recorder of St. Joseph County, Indiana, and being more particularly described as follows:

Beginning at the Southwest corner of said Lot 31; thence North 0-10'-28" West along the East right-of-way line of Main Street, a distance of 92.99 feet; thence North 89-39'-15" East, a distance of 222.84 feet; thence South 0-20'-45" East, a distance of 94.22 feet to the North right-of-way line of Jefferson Boulevard; thence South 89-58'-12" West along said North right-of-way line, a distance of 223.12 feet to the place of beginning.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A parcel of land being a part of the West Half of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, Indiana, and being more particularly described as follows:

Beginning at the Southwest corner of Lot 31 as the same is shown and designated on the Original Plat of the Town (now City) of South Bend and recorded in the office the Recorder of St. Joseph County, Indiana; thence North $89^{\circ}58'12''$ East (Bearing Assumed for this survey) along the North right-of-way line of Jefferson Boulevard, a distance of 345.54 feet to the Southeast corner of Lot 30 in said Original Plat; thence North $0^{\circ}20'45''$ West, along the West right-of-way line of Michigan Street, a measured distance of 277.24 feet; thence North $89^{\circ}54'06''$ West, a distance of 52.81 feet; thence North $0^{\circ}20'45''$ West, a distance of 12.49 feet; thence South $89^{\circ}39'15''$ West, a distance of 77.22 feet; thence South $0^{\circ}20'45''$ East, a distance of 11.89 feet; thence North $89^{\circ}54'06''$ West, a distance of 214.68 feet to the East right-of-way line of Main Street; thence South $00^{\circ}10'28''$ East along the East right-of-way line of Main Street, a measured distance of 278.01 feet to the place of beginning containing 96,756 square feet.

The above described parcel of land being subject to the legal rights of public highways, if any, and subject to any easements, covenants or restrictions of record.

PROPDES\ENTIRE

EXHIBIT 3

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

**SECOND AMENDMENT TO LEASE BETWEEN
THE SOUTH BEND REDEVELOPMENT COMMISSION AND
J WELDY, LLC dba BRUNO'S PIZZA**

THIS SECOND AMENDMENT is entered into this 13TH day of JANUARY, 2014, by and between The South Bend Redevelopment Commission (Landlord) and J Weldy, LLC, d/b/a Bruno's Pizza (Tenant).

WHEREAS, Landlord and Tenant are parties to a Lease dated August 1, 2010 (Lease) and further amended June 28, 2011 related to premises located at 131 South Michigan Street, South Bend, Indiana consisting of 1,530 square feet; and

WHEREAS, the term of the Lease expires at 12:00 midnight, Eastern Standard Time on November 30, 2013; and

WHEREAS, Landlord and Tenant desire to extend the term of the Lease and to modify the terms of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties make this Second Amendment to the Lease as follows:

1. The following provision is added to and modifies "SECTION 3.1." by inserting at the end of the first paragraph the following:

The Parties agree that the Term of this Lease shall be and hereby is extended for a period of Thirty Six (36) months to commence on December 1, 2013 and expire at 12:00 Midnight, Eastern Standard Time, on November 30, 2016.

2. "SECTION 1.2. MODIFIED GROSS RENT" shall be modified as follows:

Term	Annual Modified Gross Rent	Monthly Modified Gross Rent
12/1/13 - 11/30/14	\$ 16,800.00	\$ 1,400.00
12/1/14 - 11/30/15	\$ 18,144.00	\$ 1,512.00
12/1/15 - 11/30/16	\$ 19,595.52	\$ 1,632.96

3. The Parties acknowledge and agree that except as modified herein, all terms and conditions of the Lease remain in full force and effect.

This Amendment may be executed in counterparts, all of which shall be deemed originals.

The undersigned persons executing and delivering this Amendment on behalf of the Tenant represent and certify that they are the duly elected officers of Tenant and have been fully empowered, to execute and deliver this Amendment and that all necessary corporate action has been taken and done.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to Lease to be executed for and on their behalf on the day and year first written above.

LANDLORD:

TENANT:

**The CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**

J WELDY, LLC dba BRUNO'S PIZZA




Signature



Printed Name and Title

Marcia I. Jones, President and Donald E
1/16/14 Inks. Secretary
Date



Signature

James Weldy

Printed Name and Title

1-16-14

Date

ATTEST:

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Marcia I. Jones & Donald E. Inks, known to me to be the Pres & Secretary, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing First Amendment to Lease.

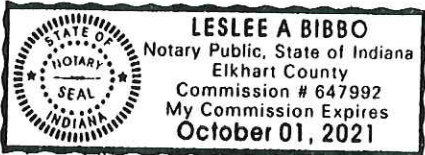
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 16th day of January, 2014

C Cheryl K Phipps
Notary Public

My Commission Expires: Cheryl K. Phipps Residing in St. Joseph County, IN
State of Indiana Notary Public
Resident of St. Joseph County
My Commission Expires 1/7/2015

ATTEST:

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)



Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared JAMES WELDY of J WELDY, LLC dba BRUNO'S PIZZA and acknowledged the execution of the foregoing First Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 13th day of January, 2014.

Leslee A. Bibbo
LESLEE A. BIBBO, Notary Public
Residing in Elkhart, IN
County

My Commission Expires: _____

EXHIBIT F

FORM OF GUARANTY

(EXHIBIT F-1 when executed)

This Guaranty (the "Guaranty"), executed by James Weldy (the "Guarantor") in favor of the City of South Bend, Indiana, Department of Redevelopment, a municipal having its principal office at 1400 County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana, Indiana 46601 (the "Landlord"),

WITNESSETH:

RECITALS

WHEREAS, Landlord has leased to J Weldy, LLC, (the "Tenant"), and Tenant has leased (by Second Amendment to Lease) from Landlord, certain premises within that certain Building commonly known as 131 S. Michigan Street, South Bend, Indiana, which premises (the "Premises") more particularly is described in that certain Lease entered into by and between Landlord and Bruno Cataldo d/b/a Bruno's Pizza and assigned to Tenant and as amended (the "Lease");

WHEREAS, "Obligations" shall mean all obligations, liabilities, and indebtedness of Tenant to Landlord, now or hereafter existing under the Lease or with respect to the Premises (including, without limitation all Rent payable by Tenant to Landlord), together with all: (a) interest accruing thereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in the enforcement or collection thereof; whether such obligations, liabilities, and indebtedness are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several; and

WHEREAS, Landlord, as a condition to the Second Amendment to Lease, has required that Guarantor enter into this Guaranty;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor covenants and agrees as follows:

1. Guaranty. Guarantor absolutely and unconditionally guarantees the full and prompt payment and performance when due of the Obligations. This Guaranty shall continue, in full force and effect throughout the Term and thereafter, until all of the Obligations are paid and performed in full.
2. Waivers. Guarantor expressly waives: (a) presentment for payment, demand, notice of demand and dishonor, protest, and notice of protest and nonpayment or nonperformance of the Obligations; and (b) diligence in: (i) enforcing payment or performance of, or collecting, the Obligations; (ii) exercising the rights or remedies under the Lease; or (iii) bringing suit against Tenant or any other party. Landlord shall be under no obligation: (A) to notify Guarantor of: (i) its acceptance of this Guaranty; or (ii) the failure of Tenant to timely pay or perform any of the Obligations; or (B) to use diligence in: (i) preserving the liability of Tenant or any other party; or (ii) bringing suit to enforce payment or performance of, or to collect, the Obligations. To the full extent allowed by applicable law, Guarantor waives all defenses: (y) given to sureties or guarantors at law or in equity, other than the actual payment and performance of the Obligations; and (z) based upon questions as to the validity, legality, or enforceability of the Obligations. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title, or interest (whether by way of subrogation or otherwise) in and to: (X) any of the Obligations; (Y) any proceeds thereof; or (Z) any security therefor. Guarantor unconditionally waives: (1) any claim or other right now existing or hereafter arising against Tenant or any other party that arises from, or by virtue of, the existence or performance of this Guaranty (including, without limitation, any right of

subrogation, reimbursement, exoneration, contribution, indemnification, or to payment); and (2) any right to participate or share in any right, remedy, or claim of Landlord.

3. Rights. Landlord, without: (a) authorization from, or notice to, Guarantor; and/or (b) impairing or affecting the liability of Guarantor hereunder; from time to time, at its discretion and with or without consideration, may: (i) alter, compromise, accelerate, or extend the time or manner for the payment or performance of any or all of the Obligations; (ii) increase or reduce the rate of interest payable on any or all of the Obligations; (iii) release, discharge, or increase the obligations of Tenant; (iv) add, release, discharge, or increase the obligations of any other endorsers, sureties, guarantors, or other obligors; (v) make changes of any sort whatever in the terms or conditions of: (A) payment or performance of the Obligations, or (B) doing business with Tenant or any other party; (vi) settle or compromise with Tenant or any other party on such terms and conditions as Landlord may determine to be in its best interests; and (vii) apply all moneys received from Tenant or any other party against the payment of the Obligations (regardless of whether then due) as Landlord may determine to be in its best interests, without in any way being required to: (A) marshal securities or assets; or (B) apply all or any part of such moneys against any particular part of the Obligations. Landlord is not required to retain, protect, exercise due care with respect to, perfect security interests in, or otherwise assure or safeguard any collateral or security for the Obligations. No exercise, or failure to exercise, by Landlord of any right or remedy in any way shall: (y) affect: (i) any of the obligations of Guarantor hereunder; or (ii) any collateral or security furnished by Guarantor; or (z) give Guarantor any recourse against Landlord.
4. Continuing Liability. Notwithstanding the incapacity, death, disability, dissolution, or termination of Tenant or any other party, the liability of Guarantor hereunder shall continue. The failure by Landlord to file or enforce a claim against the estate (either in administration, bankruptcy, or other proceeding) of Tenant or any other party shall not affect the liability of Guarantor hereunder. Guarantor shall not be released from liability hereunder if recovery from Tenant or any other party: (a) becomes barred by any statute of limitations; or (b) otherwise is restricted, prevented, or unavailable.
5. Action by Landlord. Landlord shall not be required to pursue any other rights or remedies before invoking the benefits of this Guaranty. Specifically, Landlord shall not be required to exhaust its rights and remedies against Tenant or any other endorser, surety, guarantor, or other obligor. Landlord may maintain an action on this Guaranty, regardless of whether: (a) Tenant is joined in such action; or (b) a separate action is brought against Tenant.
6. Default. Guarantor absolutely and unconditionally covenants and agrees that, if: (a) Tenant defaults for any reason in the payment or performance of all or any part of the Obligations; and (b) Landlord exercises any of its rights or remedies under the Lease; then Guarantor shall pay, upon demand, such amounts as may be due to Landlord as a result of the default by Tenant and the exercise by Landlord of its rights or remedies, without: (i) further notice of default or dishonor; and (ii) any notice with respect to any matter or occurrence having been given to Guarantor previous to such demand.
7. Preference. If: (a) any payment by Tenant to Landlord is held to constitute a preference under any bankruptcy law; or (b) Landlord is required for any reason to refund any such payment, or pay the amount thereof to any party; then: (i) such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability under this Guaranty; (ii) Guarantor shall pay the amount thereof to Landlord upon demand; and (iii) this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment.
8. Subordinated Debt. Guarantor expressly agrees that: (a) all Subordinated Debt (as defined below) shall be subordinated to the Obligations; (b) it shall not receive or accept any payment from Tenant with respect to the Subordinated Debt at any time from and after an Event of Default; and (c) if it receives or accepts any payment from Tenant on the Subordinated Debt in violation of this Section, then Guarantor shall: (i) hold such payment in trust for Landlord; and (ii) immediately turn such payment over to Landlord, in the form received, to be applied to the Obligations. For purposes of this Guaranty, "Subordinated Debt" shall mean all obligations, liabilities, and indebtedness of Tenant to Guarantor, together with all interest accruing thereon, whether such obligations, liabilities, and indebtedness are: (A) direct, indirect, fixed, contingent,

liquidated, unliquidated, joint, several, joint and several, or evidenced by a written instrument; or (B) now due or hereafter to be due, now existing or hereafter owed, or now held or hereafter to be held by Guarantor.

9. Representations. Guarantor hereby represents and warrants to Landlord that: (a) this Guaranty is the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms and conditions; (b) there is no action or proceeding at law or in equity, or by or before any court or governmental instrumentality or agency, now pending against or, to the knowledge of Guarantor, threatened against, Guarantor that may materially and adversely affect the financial condition of Guarantor; (c) all balance sheets, earnings statements, and other financial data that have been or hereafter may be furnished to Landlord in connection with this Guaranty do and shall represent fairly the financial condition of Guarantor as of the dates on which, and for the periods for which, such balance sheets, earning statements, and other data are furnished; (d) all other information, reports, and other papers and data furnished to Landlord shall be: (i) accurate and correct in all respects at the time given; and (ii) complete, such that Landlord is given a true and accurate reporting of the subject matter; and (e) Guarantor is solvent.
10. Statements. Guarantor shall provide to Landlord, within ten (10) days after receipt of a written request from Landlord, financial statements that include such information and certifications with respect to the assets, liabilities, obligations, and income of Guarantor as Landlord reasonably may request from time to time.
11. Miscellaneous. The rights of Landlord are cumulative and shall not be exhausted: (a) by its exercise of any of its rights and remedies against Guarantor under this Guaranty or otherwise; or (b) by any number of successive actions; until and unless each and all of the obligations of Guarantor under this Guaranty have been paid, performed, satisfied, and discharged in full. This Guaranty shall be deemed to have been made under, and shall be governed by, the laws of the State of Indiana in all respects and shall not be modified or amended, except by a writing signed by Landlord and Guarantor. This Guaranty shall bind Guarantor and its successors, assigns, and legal representatives; and inure to the benefit of all transferees, credit participants, endorsees, successors, and assigns of Landlord. If the status of Tenant changes, then this Guaranty shall continue, and cover the Obligations of Tenant in its new status, all according to the terms and conditions hereof. Landlord is relying, and is entitled to rely, upon each and every one of the terms and conditions of this Guaranty. Accordingly, if any term or condition of this Guaranty is held to be invalid or ineffective, then all other terms and conditions shall continue in full force and effect. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the 13 day of Jan., 2014.

Signature: James Weldy

Printed Name: James Weldy

CONSENT TO ASSIGNMENT OF LEASE AND RELEASE

The South Bend Redevelopment Commission, the landlord under that certain Lease Agreement dated the 1st day of August, 2011, by and between Bruno Cataldo d/b/a Bruno's Pizza, as tenant, and the South Bend Redevelopment Commission, as landlord, hereby consents and agrees to the Assignment of the said Lease by Bruno Cataldo d/b/a Bruno's Pizza to J WELDY, LLC.

FURTHER, effective the 28 day of June, 2011, Bruno Cataldo d/b/a Bruno's Pizza, shall be hereby released from all further liability under the Lease.

Dated this 28 day of June, 2011.

**CITY OF SOUTH BEND,
DEPARTMENT OF
REDEVELOPMENT**

Marcia I. Jones
Signature

Marcia I. Jones, President
Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Nancy N. King
Signature

Nancy N. King, Secretary
Printed Name and Title

South Bend Redevelopment Commission

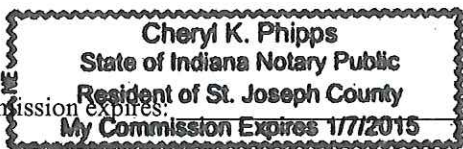
STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 28th day of June, 2011, personally appeared Marcia I. Jones and Nancy N. King, known to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Consent to Assignment of Lease and Release on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Cheryl K. Phipps

_____, Notary Public
Resident of St. Joseph County, Indiana



My commission expires:

**ASSIGNMENT OF LEASE, ASSUMPTION OF LEASE AND
CONSENT TO ASSIGNMENT OF LEASE AND RELEASE**

ASSIGNMENT OF LEASE

For and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bruno Cataldo d/b/a/ Bruno's Pizza, at the store location known generally as 131 South Michigan Street, South Bend, Indiana 46601, does hereby assign, set over and convey to J WELDY, LLC, an Indiana limited liability company, all of his right title and interest in and under that certain Lease Agreement dated the 1st day of August, 2010, which Lease was made by and between Bruno Cataldo d/b/a Bruno's Pizza, as tenant, and the South Bend Redevelopment Commission, as Landlord.

Dated this _____ day of _____, 2011.


Bruno Cataldo

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this _____ day of _____, 2011, personally appeared Bruno Cataldo, known to be the individual who acknowledged execution of the foregoing Assignment of Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____


ASSUMPTION OF LEASE

J WELDY, LLC, an Indiana limited liability company, does hereby accept the foregoing Assignment of Lease and agrees to assume and be bound by the obligations of the tenant under the Lease described therein effective the 27 day of June, 2011.

Dated this 27 day of June, 2011.

J WELDY, LLC

By: James Weldy
James Weldy, Member

STATE OF INDIANA)
) SS: 
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this _____ day of _____, 2011, personally appeared James Weldy, known to be a Member of J WELDY, LLC, Assignee, and acknowledged execution of the foregoing Assumption of Lease on behalf of said Assignee.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____

EXHIBIT F

FORM OF GUARANTY

(EXHIBIT F-1 when executed)

This Guaranty (the "Guaranty"), executed by James Weldy (the "Guarantor") in favor of the City of South Bend, Indiana, Department of Redevelopment, a municipal having its principal office at 1200 County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana, Indiana 46601 (the "Landlord"),

WITNESSETH:

RECITALS

WHEREAS, Landlord has leased (by Consent to Assignment of Lease) to J Weldy, LLC, (the "Tenant"), and Tenant has leased (by Assumption of Lease) from Landlord, certain premises within that certain Building commonly known as 131 S. Michigan Street, South Bend, Indiana, which premises (the "Premises") more particularly is described in that certain Lease entered into by and between Landlord and Bruno Cataldo d/b/a Bruno's Pizza and assigned to Tenant (the "Lease");

WHEREAS, "Obligations" shall mean all obligations, liabilities, and indebtedness of Tenant to Landlord, now or hereafter existing under the Lease or with respect to the Premises (including, without limitation all Rent payable by Tenant to Landlord), together with all: (a) interest accruing thereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in the enforcement or collection thereof; whether such obligations, liabilities, and indebtedness are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several; and

WHEREAS, Landlord, as a condition to consenting to the assignment of the Lease, has required that Guarantor enter into this Guaranty;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor covenants and agrees as follows:

1. Guaranty. Guarantor absolutely and unconditionally guarantees the full and prompt payment and performance when due of the Obligations. This Guaranty shall continue, in full force and effect throughout the Term and thereafter, until all of the Obligations are paid and performed in full.
2. Waivers. Guarantor expressly waives: (a) presentment for payment, demand, notice of demand and dishonor, protest, and notice of protest and nonpayment or nonperformance of the Obligations; and (b) diligence in: (i) enforcing payment or performance of, or collecting, the Obligations; (ii) exercising the rights or remedies under the Lease; or (iii) bringing suit against Tenant or any other party. Landlord shall be under no obligation: (A) to notify Guarantor of: (i) its acceptance of this Guaranty; or (ii) the failure of Tenant to timely pay or perform any of the Obligations; or (B) to use diligence in: (i) preserving the liability of Tenant or any other party; or (ii) bringing suit to enforce payment or performance of, or to collect, the Obligations. To the full extent allowed by applicable law, Guarantor waives all defenses: (y) given to sureties or guarantors at law or in equity, other than the actual payment and performance of the Obligations; and (z) based upon questions as to the validity, legality, or enforceability of the Obligations. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title, or interest (whether by way of subrogation or otherwise) in and to: (X) any of the Obligations; (Y) any proceeds thereof; or (Z) any security therefor. Guarantor unconditionally waives: (1) any claim or other right now existing or hereafter arising against Tenant or any other party that arises from, or by virtue of, the existence or performance of this Guaranty (including, without limitation, any right of

subrogation, reimbursement, exoneration, contribution, indemnification, or to payment); and (2) any right to participate or share in any right, remedy, or claim of Landlord.

3. Rights. Landlord, without: (a) authorization from, or notice to, Guarantor; and/or (b) impairing or affecting the liability of Guarantor hereunder; from time to time, at its discretion and with or without consideration, may: (i) alter, compromise, accelerate, or extend the time or manner for the payment or performance of any or all of the Obligations; (ii) increase or reduce the rate of interest payable on any or all of the Obligations; (iii) release, discharge, or increase the obligations of Tenant; (iv) add, release, discharge, or increase the obligations of any other endorsers, sureties, guarantors, or other obligors; (v) make changes of any sort whatever in the terms or conditions of: (A) payment or performance of the Obligations, or (B) doing business with Tenant or any other party; (vi) settle or compromise with Tenant or any other party on such terms and conditions as Landlord may determine to be in its best interests; and (vii) apply all moneys received from Tenant or any other party against the payment of the Obligations (regardless of whether then due) as Landlord may determine to be in its best interests, without in any way being required to: (A) marshal securities or assets; or (B) apply all or any part of such moneys against any particular part of the Obligations. Landlord is not required to retain, protect, exercise due care with respect to, perfect security interests in, or otherwise assure or safeguard any collateral or security for the Obligations. No exercise, or failure to exercise, by Landlord of any right or remedy in any way shall: (y) affect: (i) any of the obligations of Guarantor hereunder; or (ii) any collateral or security furnished by Guarantor; or (z) give Guarantor any recourse against Landlord.
4. Continuing Liability. Notwithstanding the incapacity, death, disability, dissolution, or termination of Tenant or any other party, the liability of Guarantor hereunder shall continue. The failure by Landlord to file or enforce a claim against the estate (either in administration, bankruptcy, or other proceeding) of Tenant or any other party shall not affect the liability of Guarantor hereunder. Guarantor shall not be released from liability hereunder if recovery from Tenant or any other party: (a) becomes barred by any statute of limitations; or (b) otherwise is restricted, prevented, or unavailable.
5. Action by Landlord. Landlord shall not be required to pursue any other rights or remedies before invoking the benefits of this Guaranty. Specifically, Landlord shall not be required to exhaust its rights and remedies against Tenant or any other endorser, surety, guarantor, or other obligor. Landlord may maintain an action on this Guaranty, regardless of whether: (a) Tenant is joined in such action; or (b) a separate action is brought against Tenant.
6. Default. Guarantor absolutely and unconditionally covenants and agrees that, if: (a) Tenant defaults for any reason in the payment or performance of all or any part of the Obligations; and (b) Landlord exercises any of its rights or remedies under the Lease; then Guarantor shall pay, upon demand, such amounts as may be due to Landlord as a result of the default by Tenant and the exercise by Landlord of its rights or remedies, without: (i) further notice of default or dishonor; and (ii) any notice with respect to any matter or occurrence having been given to Guarantor previous to such demand.
7. Preference. If: (a) any payment by Tenant to Landlord is held to constitute a preference under any bankruptcy law; or (b) Landlord is required for any reason to refund any such payment, or pay the amount thereof to any party; then: (i) such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability under this Guaranty; (ii) Guarantor shall pay the amount thereof to Landlord upon demand; and (iii) this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment.
8. Subordinated Debt. Guarantor expressly agrees that: (a) all Subordinated Debt (as defined below) shall be subordinated to the Obligations; (b) it shall not receive or accept any payment from Tenant with respect to the Subordinated Debt at any time from and after an Event of Default; and (c) if it receives or accepts any payment from Tenant on the Subordinated Debt in violation of this Section, then Guarantor shall: (i) hold such payment in trust for Landlord; and (ii) immediately turn such payment over to Landlord, in the form received, to be applied to the Obligations. For purposes of this Guaranty, "Subordinated Debt" shall mean all obligations, liabilities, and indebtedness of Tenant to Guarantor, together with all interest accruing thereon, whether such obligations, liabilities, and indebtedness are: (A) direct, indirect, fixed, contingent,

liquidated, unliquidated, joint, several, joint and several, or evidenced by a written instrument; or (B) now due or hereafter to be due, now existing or hereafter owed, or now held or hereafter to be held by Guarantor.

9. Representations. Guarantor hereby represents and warrants to Landlord that: (a) this Guaranty is the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms and conditions; (b) there is no action or proceeding at law or in equity, or by or before any court or governmental instrumentality or agency, now pending against or, to the knowledge of Guarantor, threatened against, Guarantor that may materially and adversely affect the financial condition of Guarantor; (c) all balance sheets, earnings statements, and other financial data that have been or hereafter may be furnished to Landlord in connection with this Guaranty do and shall represent fairly the financial condition of Guarantor as of the dates on which, and for the periods for which, such balance sheets, earning statements, and other data are furnished; (d) all other information, reports, and other papers and data furnished to Landlord shall be: (i) accurate and correct in all respects at the time given; and (ii) complete, such that Landlord is given a true and accurate reporting of the subject matter; and (e) Guarantor is solvent.
10. Statements. Guarantor shall provide to Landlord, within ten (10) days after receipt of a written request from Landlord, financial statements that include such information and certifications with respect to the assets, liabilities, obligations, and income of Guarantor as Landlord reasonably may request from time to time.
11. Miscellaneous. The rights of Landlord are cumulative and shall not be exhausted: (a) by its exercise of any of its rights and remedies against Guarantor under this Guaranty or otherwise; or (b) by any number of successive actions; until and unless each and all of the obligations of Guarantor under this Guaranty have been paid, performed, satisfied, and discharged in full. This Guaranty shall be deemed to have been made under, and shall be governed by, the laws of the State of Indiana in all respects and shall not be modified or amended, except by a writing signed by Landlord and Guarantor. This Guaranty shall bind Guarantor and its successors, assigns, and legal representatives; and inure to the benefit of all transferees, credit participants, endorsees, successors, and assigns of Landlord. If the status of Tenant changes, then this Guaranty shall continue, and cover the Obligations of Tenant in its new status, all according to the terms and conditions hereof. Landlord is relying, and is entitled to rely, upon each and every one of the terms and conditions of this Guaranty. Accordingly, if any term or condition of this Guaranty is held to be invalid or ineffective, then all other terms and conditions shall continue in full force and effect. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the 27 day of June, 2011.

Signature: James Weldy

Printed Name: James Weldy

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COPY

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PHILLIP G. DOTSON
ST. JOSEPH COUNTY
RECORDER

REC FEE: \$74.00
PAGES: 32

LEASE

By and Between

THE SOUTH BEND

REDEVELOPMENT COMMISSION

and

BRUNO CATALDO

August 1, 2010

LEASE

THIS LEASE ("Lease") is made by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the "Landlord") and Bruno Cataldo, an Indiana company (the "Tenant") as of the date of last execution hereof by Landlord or Tenant (the "Effective Date").

WITNESSETH:

ARTICLE I.
BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease (the "Basic Lease Provisions") constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the parties. Each reference in this Lease to a Basic Lease Provision shall be construed to incorporate all of the terms provided for under such provisions.

- (a) Leased Premises: Defined in Section 2.1 hereof, consisting of approximately 1,530 square feet of "Floor Area."
- (b) Term: Initial Term of Three (3) Lease Years and Two (2) Months, with One (1) option of Three (3) Years to extend the Initial Term, all as provided for in Sections 3.1 and 3.2 hereof.
- (c) Tenant's Use: Retail Restaurant
- (d) Tenant's Trade Name: Bruno Cataldo (or such other trade name taken by the Tenant)
- (e) Landlord's Address: 1200 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601
- With copy to:
CBRE | Bradley
101 N. Michigan St.
South Bend, IN 46601
- (f) Tenant's Address: 2610 Prairie Ave
South Bend, Indiana _____
Attn: Bruno Cataldo
Facsimile Number: _____
- (g) Lease Year: A "Lease Year" shall mean each period of twelve (12) consecutive full months, beginning on the Commencement Date as defined in Section 3.1 (such that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall begin on the first day of the first calendar month following the Commencement Date, and any partial month in which the Commencement Date occurs will be included within the first Lease Year).

- (h) Security Deposit: An amount equal to the first month's Modified Gross Rent as security deposit shall be due upon signing of lease.
- (i) The Building: **Michigan Street Shops**, commonly referred to as **117 – 131 S. Michigan St**, South Bend, Indiana, as more particularly described in Exhibit A, and depicted in Exhibit B, each attached hereto and made a part hereof.
- (j) Effective Date: The date of last execution hereof by Landlord or Tenant.
- (k) Delivery Date: The date to which possession is delivered to the Tenant as determined in Section 4.1.
- (l) Commencement Date: The date on which the "Initial Term" commences as determined in Section 3.1.

1.2. Modified Gross Rent. Modified Gross Rent ("MGR") includes the Basic Rent plus the estimated Additional Rent charges of \$4.92 per square foot per year:

<u>Lease Year</u>	<u>Annual</u>	<u>Monthly</u>
<u>Initial Term</u>	<u>MGR</u>	<u>MGR</u>
2 Months	N/A	0.00
1	\$14,400.00	\$1,200.00
2	\$15,600.00	\$1,300.00
3	\$16,800.00	\$1,400.00

Modified Gross Rent for any Extended Term shall be subject to negotiation between the parties.

ARTICLE II.

PREMISES.

2.1. Premises. Landlord is the owner of the Building. Landlord, in consideration of the Rent, as hereinafter defined, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain premises located in the Building and depicted on Exhibit C (the "Premises"), subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease: the number, location, dimension, size, and height of buildings and other improvements in the Building; and the identity and type of other tenants. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas, including, without limitation, hallways, stairs, elevators, sidewalks, interior drives, parking areas and green areas (the "Common Areas"), subject to the Rules, as hereinafter defined. Landlord shall operate, maintain and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as Landlord determines to be necessary or appropriate. Tenant understands that Landlord does not control the sidewalks located in the Michigan Street right of way. Tenant will file its request with the South Bend Board of Public Works for use of a portion of the sidewalk area for outdoor seating. Landlord will not oppose such request.

2.3. Quiet Enjoyment. Landlord warrants that it is the owner in fee simple of the Building, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-

of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceable and quiet enjoyment of possession of the Premises, without any manner of hindrance from parties claiming under, by, or through Landlord.

ARTICLE III.

TERM.

3.1. Initial Term. The "Commencement Date" shall commence on the earlier of: (i) that date which is the Delivery Date (as defined in Section 4.1); or (ii) the date on which Tenant opens its business in the Premises to the public, whichever is earlier. The Initial Term shall end on that date which is Three (3) Lease Years and Two (2) Months after the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date"). Tenant hereby covenants that within five (5) days after the Commencement Date, it shall execute the Commencement Certificate attached hereto as Exhibit E and made a part hereof, and deliver it to Landlord.

3.2. Extension Options. Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the exercise of any option to extend the Term hereof or exists at the end of the Initial Term, Tenant may renew this Lease and extend the Initial Term hereof for one (1) additional period of Three (3) years (such Three (3) year period being referred to as an "Extended Term"), on the same terms and provisions as provided in this Lease (except that the Modified Gross Rent due in such Extended Term shall be subject to negotiation), by delivering written notice of the exercise of such option to extend to Landlord not later than one hundred and eighty (180) days before the expiration of the Initial Term of this Lease. If Tenant fails to exercise its option to extend the Term hereof in the time periods set forth in this Section 3.2, all such option to extend shall immediately terminate and have no further force or effect, without further notice from Landlord. Any reference in this Lease to the "Term" shall mean the Initial Term as it may be extended pursuant to this Section 3.2.

3.3. Holding Over. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and twenty-five percent (125%) of the Modified Gross Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus Tenant's Pro Rata Share of all other amounts which Tenant would have been required to pay hereunder had this Lease been in effect (the "Holdover Rent"). If Tenant holds over without Landlord's written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either party may terminate such tenancy from month-to-month upon written notice delivered to the other party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the "State") as a prerequisite to a suit against Tenant for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

ARTICLE IV.

CONSTRUCTION

4.1. Landlord's Work. Landlord shall perform the work described in Exhibit D, attached hereto and made a part hereof (the "Landlord's Work") substantially in accordance with the plans and specifications for Landlord's Work, as such plans and specifications may be modified by Landlord as appropriate to complete Landlord's Work (the "Plans"). The "Delivery Date" shall be the date upon which Landlord's Work is substantially complete in accordance with the Plans, subject to delineated "punch-list" items that do not prevent Tenant from using the Premises for the purpose of: (a) conducting its normal business operations; or (b) completing Tenant's Work, as hereinafter defined. On the Delivery Date, Tenant shall have full occupancy of the Premises, subject to all

of the terms and conditions of this Lease. Landlord shall correct any “punch-list” items within sixty (60) days after the Delivery Date.

4.2. Tenant’s Work.

(a) Plans. Within sixty (60) days after the Effective Date, Tenant shall submit to Landlord two (2) copies of the complete plans and specifications (the “Tenant’s Plans”) for the work Tenant deems necessary to prepare the Premises for occupancy by the Tenant (the “Tenant’s Work”). Within thirty (30) days after Landlord’s receipt of Tenant’s Plans, Landlord shall notify Tenant of any failures of the Tenant’s Plans to meet with Landlord’s approval. Tenant shall, within ten (10) days after receipt of any such notice, cause the Tenant’s Plans to be revised to the extent necessary to obtain Landlord’s approval and to be resubmitted for Landlord’s approval. When Landlord has approved the original or revised Tenant’s Plans, Landlord shall initial and return one (1) set of approved Tenant’s Plans (the “Approved Plans”) to Tenant. Tenant shall not commence Tenant’s Work until Landlord has approved Tenant’s Plans, which approval shall not be unreasonably withheld.

Landlord’s review and approval of Tenant’s Plans shall not be deemed to be an assumption of responsibility by Landlord for the accuracy, sufficiency or propriety of Tenant’s Plans, pursuant to applicable laws, rules, ordinances or regulations. If the Approved Plans are changed as a result of conditions placed on Tenant as a prerequisite to obtaining a permit, Tenant shall submit such changes to Landlord for approval, and Tenant shall not proceed further with the affected portions of Tenant’s Work until Landlord has approved the changes. Such changes as are approved by Landlord shall become part of the Approved Plans.

(b) Performance. Tenant shall, in a manner consistent with the Approved Plans: (i) install its leasehold improvements, trade fixtures and equipment; and (ii) complete all other Tenant’s Work. Prior to performing Tenant’s Work, Tenant shall: (i) obtain all permits, licenses and approvals required for Tenant to perform Tenant’s Work; and (ii) deliver to Landlord: (a) copies of such permits, licenses and approvals; and (b) evidence reasonably satisfactory to Landlord that Tenant has procured workers’ compensation, builder’s risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall: (i) perform Tenant’s Work: (a) in accordance with the Approved Plans and all permits, licenses and approvals; and (b) in a good and workmanlike manner and in compliance with all applicable laws, statutes, and/or ordinances and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (the “Laws”); (ii) ensure that all contractors, subcontractors, laborers and suppliers performing work or supplying materials are paid in full; and (iii) observe and perform all of its obligations under this Lease (except its obligation to pay Rent) at all times after the Delivery Date through the Commencement Date.

(c) Reserved.

ARTICLE V.

RENT.

5.1. Rent. Commencing Sixty (60) days after the Commencement Date, Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Modified Gross Rent, as set forth in Section 1.2, which includes the Basic Rent plus the Additional Rent charges (as herein defined) (collectively, the “Modified Gross Rent”), together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Modified Gross Rent shall be paid in equal monthly installments commencing as provided herein and thereafter during the entire Term or Extended Term on or before the first day of each calendar month, in advance. Tenant’s obligations under this Section 5.1 shall survive the Termination Date.

5.2. Additional Rent. Intentionally Omitted. .

5.3. Late Charge. Any amount of Modified Gross Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid. If any amount of Modified

Gross Rent is paid more than five (5) days after its due date, then Landlord shall be entitled to a late payment fee of One Hundred Dollars (\$100.00) in addition to the interest charge set forth in this Section 5.3.

5.4. Common Expenses. Intentionally Omitted.

5.5. RealEstate Tax Expenses. Intentionally Omitted.

5.6. Insurance Expenses. Intentionally Omitted.

5.7. Estimation. Intentionally Omitted.

5.8. Utilities. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (all of which utilities shall be separately metered to the Premises) (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges.

ARTICLE VI.

ALTERATIONS AND MAINTENANCE OF AND REPAIRS TO THE PREMISES

6.1. Landlord Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the installation and replacement of all heating, ventilating, and cooling equipment and systems serving the Premises (the "HVAC Systems") provided however that the Landlord may bill the Tenant as Additional Rent if the Landlord's consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of the Tenant's misuse of it or the Tenant's failure to notify the Landlord of its malfunctioning. The Landlord may enter into a maintenance contract with a reputable company (the "Maintenance Contract"), pursuant to which Maintenance Contract such company shall institute a regularly scheduled program of preventive maintenance and repair of the HVAC Systems to keep and maintain such items in good order, condition, and repair at all times, and any such expenses incurred by the Landlord as a result of such Maintenance Contract or any routine or otherwise insubstantial repairs shall be considered a Common Expense allocable to this Premises only, unless the HVAC Systems service more than one Tenant. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of Tenant.

6.2. Tenant Repairs. Except for repairs to be performed by Landlord pursuant to Section 6.1, Tenant shall: (a) keep the Premises clean, neat, and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises as may be required by any Law, or by fire underwriters or underwriters' fire prevention engineers; (b) keep all glass in windows, doors, fixtures, skylights, and other locations clean and in good order, repair, and condition, and replace glass that may be damaged or broken with glass of the same quality; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 6.2. The Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises.

6.3. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) the cumulative cost of making such alterations or improvements is less than Three Thousand Dollars (\$3,000.00); (ii) Tenant delivers to Landlord written notice describing the proposed alteration or improvement with particularity, and provides to Landlord copies of any plans and specifications for the alteration or improvement; and (iii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the

date that Tenant accepts the Premises. Tenant shall not, without the prior written consent of Landlord, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant's cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner, and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic's or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic's or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, other than for the performance of Landlord's Work, then Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

6.4. Signs. Tenant shall not affix or maintain upon the exterior of the Premises or make visible from the exterior any sign, advertising placard, name, insignia, trademark, or descriptive material, without the prior written approval of Landlord, which approval shall not be withheld unreasonably. No such materials may be displayed or attached which are against any applicable law or regulation.

ARTICLE VII.

USE.

7.1. Use of the Premises. At all time during the Term, Tenant shall:

(a) Use the Premises solely for Tenant's Use, as defined in Section 1.1(c), doing business under Tenant's Trade Name, as defined in Section 1.1(d), and for no other use or purpose;

(b) Operate the business located on the Premises, without interruption, during at least the hours of 10:00 a.m. through 6:00 p.m., Monday through Saturday, and 12:00 p.m. through 6:00 p.m. Sunday, or such other minimum hours upon which Landlord may agree from time to time, provided that such operation may be interrupted for such reasonable periods approved by Landlord, which approval shall not be unreasonably withheld, as may be necessary to repair, restore, or remodel the Premises, or for purposes of taking inventory;

(c) Remain fully fixtured, fully stocked, and fully staffed at all times.

(d) Conduct the business located on the Premises at all times in a high grade and reputable manner so as to produce the maximum volume of sales and transactions and to help establish and maintain a high reputation for the Building.

During the Term, Tenant will be considered to “Operate” or be “Operating” in the Premises so long as Tenant is open for business in compliance with this Section 7.1.

7.2. Covenant to Open. Tenant covenants that it will open and begin Operating in the Premises by that date which is sixty (60) days after the Delivery Date.

7.3. Compliance with Law. Tenant shall promptly comply with all federal, state and local Laws and ordinances and lawful orders and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall promptly and fully comply with all federal, state and local Laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.4. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Shopping Center, and will remove the same frequently and regularly, all at Tenant’s cost; will not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not distribute advertising matter to, in or upon any portion of the Building; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefor, nor permit any use of vehicles which will interfere with the use of any portion of the Building; will not use the any portion of the Building for promotional activities, to include without limitation rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows; will comply with all Laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act (“OSHA”) and the Americans With Disabilities Act (“ADA”), as the same may be amended from time to time. Tenant covenants and agrees that it will not serve liquor or any other alcoholic beverages in or from the Premises unless Tenant first obtains the written consent of Landlord, which may be granted or withheld in Landlord’s sole and absolute discretion.

7.5. Storage. Tenant shall store in the building on the Premises only merchandise and products which Tenant intends to sell at, in, or from the Premises within a reasonable time after receipt thereof.

7.6. Sales and Use. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local Laws or ordinances. Tenant shall not operate the Premises either in whole or in part as a clearance, outlet, off-price, or discount store, provided that nothing in this Section 7.6 is intended to affect Tenant’s pricing policies.

7.7. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;

iii. transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Building, or which interferes with the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the Premises or the Building;

iv. create, or permit to be created, any ground vibration that is discernible outside the Premises; or

v. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, that are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable Law. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local Law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 *et seq.* ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.* ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.7(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall Indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.7(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.7(b) shall survive the Termination Date.

7.8. Inspections. Tenant shall permit Landlord and its employees, agents and contractors to enter the Premises at reasonable times (or at any time in the event of an emergency) for the purpose of: (a) inspecting the Premises; (b) making repairs, replacements, additions, or alterations to the Premises, or to the building in which the Premises is located; and (c) showing the Premises to prospective purchasers, lenders, and tenants. During the last one hundred and eighty (180) days of the Term, Landlord may put a "For Lease" sign in the storefront window of the Premises.

7.9. Sidewalks. Tenant acknowledges that the use of the sidewalks adjoining the Premises is controlled by the South Bend Board of Public Works (the "BPW"). The Landlord makes no representation concerning the availability of such use for dining or other purposes. Tenant understands that it must make application to the BPW for a permit to use the adjoining sidewalks. Landlord shall not oppose such application.

ARTICLE VIII.

INSURANCE AND INDEMNIFICATION

8.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an

“additional insured” with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$6,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an “additional insured” in an amount sufficient to cover any possible liability Landlord may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

8.2. Hazardous Materials Coverage. Notwithstanding the above mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises or the Building, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no less than \$5,000,000.00 and purchase environmental impairment liability insurance with coverage of not less than \$5,000,000.00 with a deductible of not greater than \$50,000.00 to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and/or the Building, and that the Premises and/or the Building be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

8.3. Dram Shop Coverage. In addition to the insurance required under this Article VIII, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least \$2,000,000 covering “liquor law” liability (sometimes also known as “dram shop” insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

8.4. Tenant’s Additional Insurance. Tenant shall comply with the provisions of the applicable workers’ compensation laws, and shall insure its liability thereunder. Tenant, at its expense, shall maintain plate glass insurance covering all exterior plate glass in the Premises or shall be obligated to promptly replace any damaged exterior glass, to the satisfaction of the Landlord within five (5) days of the occurrence of such damage. In the event that the Tenant neither obtains insurance providing for the immediate repair of the damaged glass nor repairs said damage to the satisfaction of the Landlord within five (5) days of the occurrence of such damage, the Landlord may have the damaged glass repaired at the Tenant’s expense.

8.5. Policies. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance. Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article VIII, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord’s request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article VIII, Landlord may obtain replacement coverage and the cost of same shall be deemed Additional Rent payable by Tenant with the next installment of Rent thereafter becoming due and payable.

8.6. Indemnity.

(a) Definition of “Loss.” The term “Loss,” as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney’s fees and court costs).

(b) Definition of “Indemnify.” The term “Indemnify,” as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord’s option and with attorneys approved in writing

by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant

The Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

8.7. Release of Subrogation. Each party hereto does hereby release and discharge the other party from any liability, which the released party would have had (but for this section) to the releasing party, arising out of or in connection with any accident or occurrence or casualty: (a.) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing party, and (b.) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building, and Tenant hereby expressly waives any claim for such damages.

8.8. The Tenant will not allow said Premises to be used for any purpose that will increase the rate of insurance thereon, nor to be occupied in whole or in part by any other person.

ARTICLE IX.
CASUALTY AND CONDEMNATION.

9.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the “Casualty Damage”), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after: (i) Landlord’s mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (ii) deduction for any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the Premises; (ii) there is Casualty Damage to the building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such building; or (c) there is Casualty Damage to the buildings (taken in the aggregate) in the Building, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such buildings; then Landlord may elect either to: (1) repair or rebuild the Premises, the building of which the Premises is a part, or the aggregate buildings in the Building, as applicable; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Rent. Basic Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises or the Common Areas of which Tenant has knowledge.

9.2. Condemnation. If: (a) all or a substantial part of the Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain; or (b) all or a substantial part of the Premises is conveyed to a public or quasi-public body under threat of condemnation (collectively, the “Condemnation”); and the Condemnation renders the Premises unsuitable for use for Tenant’s Use, then, at the option of either Landlord or Tenant exercised within ninety (90) days after the Condemnation occurs: (i) this Lease shall terminate as of the date possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; (ii) all Modified Gross Rent shall be apportioned as of the date that possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; and (iii) all obligations hereunder, except those due or mature, shall cease and terminate. If there is a Condemnation with respect to: (A) more than twenty-five percent (25%) of the square footage of the building of which the Premises is a part; or (B) more than twenty-five percent (25%) of the aggregate square footage of the Building; then Landlord, at its option, exercised within ninety (90) days after the Condemnation occurs, may elect to terminate this Lease as of the date possession of such square footage is taken by, or conveyed to, the condemning authority, and: (i) all Modified Gross Rent shall be apportioned as of the date that possession of such square footage is taken by, or conveyed to, the condemning authority; and (ii) all obligations hereunder, except those due or mature, shall cease and terminate. All compensation awarded or paid for the Condemnation (the “Condemnation Proceeds”) shall belong to and be the sole property of Landlord; provided that Landlord shall not be entitled to the amount of any Condemnation Proceeds awarded or paid solely to Tenant for loss of business or costs and expenses of relocation and removing improvements and equipment. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, then Landlord shall be responsible for the performance of all work necessary to make the Premises usable by Tenant; provided that Landlord shall not be obligated to incur costs for such work in excess of the Condemnation Proceeds awarded or paid to Landlord and remaining after: (y) Landlord’s mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (z) deduction for any expenses incurred in collecting the Condemnation Proceeds. If neither Landlord nor

Tenant elects to terminate this Lease pursuant to this Section 9.2, or if any Condemnation is temporary in nature, then Basic Rent shall be abated proportionately (based upon the proportion that the that area Premises taken by, or conveyed to, the condemning authority bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of the Condemnation.

ARTICLE X.
SURRENDER.

10.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article X, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

10.2. Removal of Certain Property. All furniture and business equipment furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right to possession hereunder, but only if, and to the extent, that the removal thereof will not cause physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises the condition described in Section 10.1 above, or alternatively, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage with such costs to be considered Additional Rent and shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

10.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord or such Tenant fails to remove such property within such timeframe Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

10.4. Survival of Terms. The terms of this Article X and other terms of this Lease referred to herein shall survive any termination of this Lease.

ARTICLE XI.
DEFAULT.

11.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

(a) Nonpayment. Tenant's failure to pay Basic Rent, Additional Rent, or other sums or charges that Tenant is obligated to pay by any provision of this Lease when due.

(b) Lapse of Insurance. Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease.

(c) All Other Lease Violations. Tenant's failure to perform or observe any other covenant, condition, or agreement of this Lease, which failure is not cured within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as the Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same;

provided, however, if the Tenant shall default in the performance of any such covenant or agreement of this Lease more than one time in any twelve (12) month period notwithstanding that such default shall have been cured by Tenant, the second and further defaults in said twelve (12) month period may be deemed by Landlord, in its sole discretion, an Event of Default without the ability for cure.

(d) Falsification of Information. If Tenant, any guarantor of Tenant's obligations under this Lease, or any agent of Tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease.

(e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Section 13.1(b) of this Lease.

(f) Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations under this Lease; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

(g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing.

(h) Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.

(i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days after its entry.

(j) Inability to Pay. The admission in writing by Tenant or any guarantor of Tenant's obligations under this Lease of its inability to pay its debts when due.

(k) Breach by Guarantor. The breach by any guarantor of any of that guarantor's obligations under its guaranty.

(l) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

11.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be deemed Additional Rent and shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 11.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 11.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in

this Section 11.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Basic Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in connection with making alterations and repairs for the purpose of reletting the Premises; (iv) reasonable attorneys' fees; (v) the unamortized value of the Construction Allowance, if any.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Basic Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Basic Rent and Additional Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Basic Rent and Additional Rent (as reasonably estimated by Landlord) that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between the Basic Rent and Additional Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised, and the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

11.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 11.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

11.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

11.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.6. Counterclaim. If Landlord commences any proceedings for non payment of Rent, Tenant will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent

and other amounts due hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any reason whatsoever, except as may be specifically provided for herein to the contrary, it being understood and acknowledged by Tenant that Tenant's only recourse is to seek an independent action against Landlord.

11.7. Bankruptcy.

(a) Assumption of Lease. In the event that Tenant shall become a Debtor under Chapter 7 of the United States Bankruptcy Code (the "Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 and is transferred to Chapters 11 or 13, the Trustee or Tenant, as Debtor and as Debtor In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has:

i. Cured or provided Landlord "Adequate Assurance," as defined below, that:

A. Within ten (10) days from the date of such assumption the Trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in Section 11.2 of the Lease, and attorneys' fees incurred as a result of the default and/or to enforce the terms hereof;

B. Within thirty (30) days from the date of such assumption the Trustee or Tenant will cure all non-monetary defaults under this Lease; and

C. The assumption will be subject in all respects to all of the provisions of this Lease.

ii. For purposes of this Section 11.7, Landlord and Tenant hereby acknowledge that, in the context of a bankruptcy proceeding of Tenant that this Lease is a lease of real property within a Building and, at a minimum "Adequate Assurance" shall mean:

A. The Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured and priority obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease, and to keep the Leased Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully Operational, actively promoted business in the Leased Premises;

B. The bankruptcy court shall have entered an order segregating sufficient cash payable to Landlord, and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults under this Lease within the time periods set forth above; and

C. The Trustee or Tenant at the very least shall deposit a sum equal to one (1) month's Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

(b) Assignment of Lease. If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 11.7 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of Section 13.1 herein, including, without limitation, those with respect to Additional Rent and the use of the Premises only as permitted in Article VII herein; Landlord and Tenant hereby acknowledging that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of

such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment and assumption in form acceptable to Landlord.

(c) Adequate Protection. Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor in Possession, and any Trustee who may be appointed hereby agree to adequately protect Landlord as follows:

i. To immediately perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court;

ii. To pay all monetary obligations required under this Lease, including, without limitation, the payment of Basic Rent and such Additional Rent charges payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises;

iii. Provide Landlord a minimum thirty (30) days' prior written notice, unless a shorter period is agreed to in writing by Landlord, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and

iv. To perform to and for the benefit of Landlord as otherwise required under the Code.

The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease and the automatic stay under Section 362 of the Code shall automatically be terminated as to Landlord and the Premises.

(d) Accumulative Rights. The rights, remedies and liabilities of Landlord and Tenant set forth in this Section 11.7 shall be in addition to those which may now or hereafter be accorded, or imposed upon, Landlord and Tenant by the Code.

(e) Changes in Code. If the Code is changed or amended such that any references in this Section 11.7 to particular provisions or terms of art lose the meaning that they have as of the Effective Date, such provisions or terms of art of this Lease shall be deemed to be amended to reflect such changes in the Code.

ARTICLE XII.

ESTOPPEL CERTIFICATES, ATTORNMENT, AND SUBORDINATION.

12.1. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after request therefor by the other party, a statement, in writing, certifying to Landlord and/or any party designated by Landlord, or Tenant and/or any party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

12.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

12.3. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then

the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between Tenant and such Mortgage holder. Any holder of any of any such Mortgage is herein referred to as "Landlord's Mortgagee(s)." Notwithstanding the foregoing, a Landlord's Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such Landlord's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

ARTICLE XIII. **ASSIGNMENT AND SUBLETTING**

13.1. Assignment and Subletting.

(a) Tenant shall not sublet, mortgage, encumber or in any manner transfer, in whole or in part, this Lease, the Premises or any estate or interest in said Premises or Lease. Except as expressly permitted herein, Tenant shall not assign this Lease or any estate or interest therein or allow the occupancy thereof by any person or entity other than Tenant, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Consent by Landlord to one or more assignments of this Lease shall not operate to exhaust Landlord's rights under this Article XIII. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or allow the occupancy thereof by any person or entity other than Tenant, Tenant shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Landlord.

(b) If this Lease is assigned or the Premises or any part thereof occupied by any entity other than Tenant, Landlord may collect rent from the assignee or occupant and apply the same to the Rent herein reserved, but no such assignment, occupancy or collection of Rent shall be deemed a waiver of any restrictive covenant contained in this Section 13.1 or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained. Any sublease of the Premises shall be void. Landlord shall have the right, at any time, to immediately remove an occupant or than Tenant from the Premises along with any possession of said occupant, which shall be deemed to have been abandoned if not claimed by occupant within three (3) business days of their removal, and the Landlord's acceptance of rent from the occupant shall in no way waive any rights the Landlord may have against the occupant. The Tenant shall indemnify the Landlord for any actions, claims or demands made by the occupant or its assigns against the Landlord. . Any assignment: (x) as to which Landlord has consented or is deemed to have consented; or (y) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (z) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership, shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

i. Each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Landlord;

ii. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor as a result of said assignment, including, if any, payments for Tenant's improvements, proposed rent (which includes, without

limitation, all monthly charges allocated to common area maintenance, insurance, real property taxes, and utility charges) and any other payments;

iii. Each assignee shall have submitted to Landlord a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of Tenant's obligations hereunder;

iv. Each assignee shall have submitted to Landlord, in writing, evidence satisfactory to Landlord of substantial experience in operating a business similar to that offered by Tenant and permitted under Section 1.1(c) of this Lease or a business otherwise requested by the Landlord and in operating said business in a space or volume comparable to that contemplated under this Lease;

v. The business reputation of each assignee shall meet or exceed generally acceptable commercial standards;

vi. The use of the Premises by each assignee shall not violate, or create any potential violation of, applicable Laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other occupants in the Building; and

vii. Tenant shall pay Landlord the sum of One Thousand Five Hundred Dollars (\$1,500.00) as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment.

(c) In the event that Tenant desires to assign this Lease, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment. Tenant shall advise Landlord of the name of the proposed assignee, shall furnish Landlord with the information required by Landlord with respect to the proposed assignee, and Landlord shall advise Tenant, within sixty (60) business days after receipt of such notice and all required information from Tenant, that Landlord either consents or refuses to consent to an assignment to the proposed assignee.

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV. **MISCELLANEOUS**

14.1. Security Deposit. Contemporaneously with the execution of this Lease, Tenant shall deposit the Security Deposit, as defined in Section 1.1(j), with Landlord. Landlord: (a) shall hold the Security Deposit without liability to Tenant for interest; and (b) may commingle the Security Deposit with its other funds. The Security Deposit, or any portion thereof, may be applied by Landlord to cure any default by Tenant under this Lease, without prejudice to any other remedy or remedies that Landlord may have on account of such application. Upon any such application by Landlord, Tenant shall pay to Landlord on demand the amount applied by Landlord to cure such default so that the Security Deposit is restored to its original amount. If Landlord conveys the Premises during the Term: (A) Landlord may turn the Security Deposit over to Landlord's grantee or successor; and (B) Tenant shall release Landlord from any and all liability with respect to the Security Deposit. If Tenant faithfully performs its obligations under the terms and conditions of this Lease, then Landlord shall return to Tenant the amount of the Security Deposit not applied by Landlord to cure defaults by Tenant, without interest, within thirty (30) days after the latter of: (y) the Termination Date; or (z) the date that Tenant has surrendered possession to Landlord in accordance with the terms and conditions of this Lease.

14.2. Guaranty. This Lease shall not become effective until the execution of a personal guaranty of this Lease in the form attached hereto as Exhibit F (the "Guaranty"). Upon execution of this Lease and the Guaranty, the executed Guaranty shall be attached to this Lease as Exhibit F-1.

14.3. Notices. Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(f) hereof, or at such other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(g) hereof, or at such other address as Tenant may designate by written notice.

14.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant, except as otherwise provided herein.

14.5. Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

14.6. Remedies Cumulative. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

14.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

14.8. Relationship. Nothing contained herein shall be deemed or construed to create between the parties any relationship other than that of landlord and tenant.

14.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant and/or any guarantors of this Lease (which, in the event Tenant or a guarantor is an entity, shall be certified by the highest-ranking financial officer of Tenant or guarantor).

14.10. Construction. The laws of the State in which the Premises is located shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business days are specified. This Lease shall be recorded, but a failure to record shall not affect the effectiveness of this Lease. All Exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

14.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other party; or (b) any other cause that is not within the control of the delayed or prevented party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of

public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

14.12. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

14.13. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

14.14. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

14.15. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

14.16. Equal Opportunity Obligation. Tenant agrees not to discriminate against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Lease. Tenant further agrees execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit G.

14.17. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein. Tenant further agrees to execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit G.

(Signature Page Follows)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date set forth above.

"LANDLORD"

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**
by and through the South Bend Redevelopment Commission




Signature

Marcia I. Jones, President

Printed Name and Title

ATTEST:




Signature
Nancy N. King, Secretary

Printed Name and Title

"TENANT"

BRUNO CATALDO

X By: 

Name: Bruno Cataldo

Title: _____

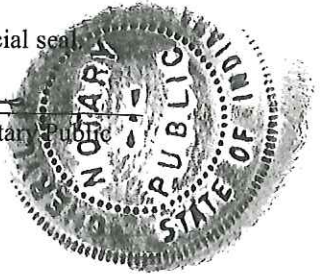
STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 1st day of October, 2009, personally appeared Marcia Jones and Nancy King, known to be to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Cheryl K. Phipps
Cheryl K. Phipps
State of Indiana Notary Public Resident of St. Joseph County, Indiana
Resident of St. Joseph County
My commission expires Commission Expires 1/7/2015

Cheryl K. Phipps



STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 1st day of October, 2009, personally appeared Bruno Cataldo, known to be the tenant of Bruno's Pizza, and acknowledged execution of the foregoing Lease on behalf of said Tenant.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



Regina L. Emberton
Regina L. Emberton, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: 2-6-18

INDEX TO EXHIBITS

Exhibit A	Legal Description of Building
Exhibit B	Site Plan of Building
Exhibit C	Description of Premises
Exhibit D	Landlord's Work
Exhibit E	Form of Commencement Certificate
Exhibit F	Form of Guaranty
Exhibit G	Non-Debarment, Non-Collusion and Non-Discrimination Affidavit

EXHIBIT A

Legal Description of Building

The ground level of the Leighton Center Parking Garage, which is the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

EXHIBIT B

Site Plan of Building and Description of Premises

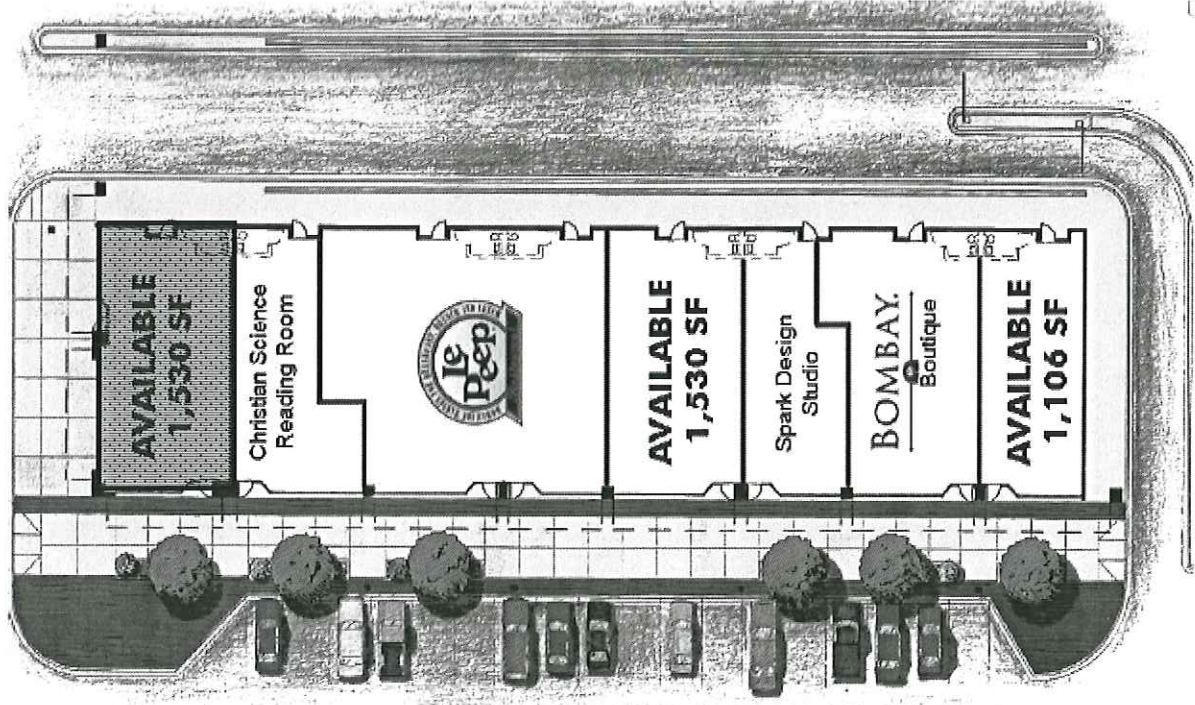


EXHIBIT C

Description of Premises

The Property consists of Retail Area No. 1, commonly referred to as 131 S. Michigan Street, South Bend, Indiana, which is comprised of 1,530 square feet located on the ground level of the Leighton Center Parking Garage, which is a part of the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described at Exhibit A of the Lease to which this Exhibit C is attached.

EXHIBIT D

Landlord's Work

The Landlord shall deliver the premises in a broom clean condition (the "Landlord's Work").

EXHIBIT E

Form of Commencement Certificate

COMMENCEMENT CERTIFICATE

This Commencement Certificate is made this ___ day of _____, 2010, by and between the City of South Bend, Indiana, Department of Redevelopment ("Landlord") and Bruno Cataldo ("Tenant"):

WITNESSETH

Landlord and Tenant are parties to that certain Lease, dated _____, 2010, for certain real estate in South Bend, St. Joseph County, Indiana (the "Lease"). Pursuant to Section 3.1 of the Lease, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. The Commencement Date was the ___ day of _____, 2010.
2. The date upon which the Term shall expire shall be the ___ day of _____, 20__.
3. Tenant is in possession of the Premises and is obligated to pay the Rent.

IN WITNESS WHEREOF, the parties hereto have duly executed this Commencement Certificate as of the dates set forth below.

LANDLORD:

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**

Executed by Landlord the _____
day of _____, 2010.

By: _____

Name: _____

Its: _____

TENANT:

BRUNO CATALDO

X By: Bruno Cataldo

Name: Bruno Cataldo

Title: _____

Executed by Tenant the _____
day of _____, 2010.

EXHIBIT F

FORM OF GUARANTY

(EXHIBIT F-1 when executed)

This Guaranty (the "Guaranty"), executed by BRUNO CATALDO (the "Guarantor") in favor of the City of South Bend, Indiana, Department of Redevelopment, a municipal having its principal office at 1200 County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana, Indiana 46601 (the "Landlord"),

WITNESSES:

RECITALS

WHEREAS, Landlord has leased to BRUNO CATALDO (the "Tenant"), and Tenant has leased from Landlord, certain premises within that certain Building commonly known as 131 S. Michigan Street, South Bend, Indiana, which premises (the "Premises") more particularly is described in that certain Lease entered into by and between Landlord and Tenant of even date herewith (the "Lease");

WHEREAS, "Obligations" shall mean all obligations, liabilities, and indebtedness of Tenant to Landlord, now or hereafter existing under the Lease or with respect to the Premises (including, without limitation all Rent payable by Tenant to Landlord), together with all: (a) interest accruing thereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in the enforcement or collection thereof; whether such obligations, liabilities, and indebtedness are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several; and

WHEREAS, Landlord, as a condition to entering into the Lease, has required that Guarantor enter into this Guaranty;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor covenants and agrees as follows:

1. Guaranty. Guarantor absolutely and unconditionally guarantees the full and prompt payment and performance when due of the Obligations. This Guaranty shall continue, in full force and effect throughout the Term and thereafter, until all of the Obligations are paid and performed in full.
2. Waivers. Guarantor expressly waives: (a) presentment for payment, demand, notice of demand and dishonor, protest, and notice of protest and nonpayment or nonperformance of the Obligations; and (b) diligence in: (i) enforcing payment or performance of, or collecting, the Obligations; (ii) exercising the rights or remedies under the Lease; or (iii) bringing suit against Tenant or any other party. Landlord shall be under no obligation: (A) to notify Guarantor of: (i) its acceptance of this Guaranty; or (ii) the failure of Tenant to timely pay or perform any of the Obligations; or (B) to use diligence in: (i) preserving the liability of Tenant or any other party; or (ii) bringing suit to enforce payment or performance of, or to collect, the Obligations. To the full extent allowed by applicable law, Guarantor waives all defenses: (y) given to sureties or guarantors at law or in equity, other than the actual payment and performance of the Obligations; and (z) based upon questions as to the validity, legality, or enforceability of the Obligations. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title, or interest (whether by way of subrogation or otherwise) in and to: (X) any of the Obligations; (Y) any proceeds thereof; or (Z) any security therefor. Guarantor unconditionally waives: (1) any claim or other right now existing or hereafter arising against Tenant or any other party that arises from, or by virtue of, the existence or performance of this Guaranty (including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or to payment); and (2) any right to participate or share in any right, remedy, or claim of Landlord.

3. Rights. Landlord, without: (a) authorization from, or notice to, Guarantor; and/or (b) impairing or affecting the liability of Guarantor hereunder; from time to time, at its discretion and with or without consideration, may: (i) alter, compromise, accelerate, or extend the time or manner for the payment or performance of any or all of the Obligations; (ii) increase or reduce the rate of interest payable on any or all of the Obligations; (iii) release, discharge, or increase the obligations of Tenant; (iv) add, release, discharge, or increase the obligations of any other endorser, sureties, guarantors, or other obligors; (v) make changes of any sort whatever in the terms or conditions of: (A) payment or performance of the Obligations, or (B) doing business with Tenant or any other party; (vi) settle or compromise with Tenant or any other party on such terms and conditions as Landlord may determine to be in its best interests; and (vii) apply all moneys received from Tenant or any other party against the payment of the Obligations (regardless of whether then due) as Landlord may determine to be in its best interests, without in any way being required to: (A) marshal securities or assets; or (B) apply all or any part of such moneys against any particular part of the Obligations. Landlord is not required to retain, protect, exercise due care with respect to, perfect security interests in, or otherwise assure or safeguard any collateral or security for the Obligations. No exercise, or failure to exercise, by Landlord of any right or remedy in any way shall: (y) affect: (i) any of the obligations of Guarantor hereunder; or (ii) any collateral or security furnished by Guarantor; or (z) give Guarantor any recourse against Landlord.
4. Continuing Liability. Notwithstanding the incapacity, death, disability, dissolution, or termination of Tenant or any other party, the liability of Guarantor hereunder shall continue. The failure by Landlord to file or enforce a claim against the estate (either in administration, bankruptcy, or other proceeding) of Tenant or any other party shall not affect the liability of Guarantor hereunder. Guarantor shall not be released from liability hereunder if recovery from Tenant or any other party: (a) becomes barred by any statute of limitations; or (b) otherwise is restricted, prevented, or unavailable.
5. Action by Landlord. Landlord shall not be required to pursue any other rights or remedies before invoking the benefits of this Guaranty. Specifically, Landlord shall not be required to exhaust its rights and remedies against Tenant or any other endorser, surety, guarantor, or other obligor. Landlord may maintain an action on this Guaranty, regardless of whether: (a) Tenant is joined in such action; or (b) a separate action is brought against Tenant.
6. Default. Guarantor absolutely and unconditionally covenants and agrees that, if: (a) Tenant defaults for any reason in the payment or performance of all or any part of the Obligations; and (b) Landlord exercises any of its rights or remedies under the Lease; then Guarantor shall pay, upon demand, such amounts as may be due to Landlord as a result of the default by Tenant and the exercise by Landlord of its rights or remedies, without: (i) further notice of default or dishonor; and (ii) any notice with respect to any matter or occurrence having been given to Guarantor previous to such demand.
7. Preference. If: (a) any payment by Tenant to Landlord is held to constitute a preference under any bankruptcy law; or (b) Landlord is required for any reason to refund any such payment, or pay the amount thereof to any party; then: (i) such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability under this Guaranty; (ii) Guarantor shall pay the amount thereof to Landlord upon demand; and (iii) this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment.
8. Subordinated Debt. Guarantor expressly agrees that: (a) all Subordinated Debt (as defined below) shall be subordinated to the Obligations; (b) it shall not receive or accept any payment from Tenant with respect to the Subordinated Debt at any time from and after an Event of Default; and (c) if it receives or accepts any payment from Tenant on the Subordinated Debt in violation of this Section, then Guarantor shall: (i) hold such payment in trust for Landlord; and (ii) immediately turn such payment over to Landlord, in the form received, to be applied to the Obligations. For purposes of this Guaranty, "Subordinated Debt" shall mean all obligations, liabilities, and indebtedness of Tenant to Guarantor, together with all interest accruing thereon, whether such obligations, liabilities, and indebtedness are: (A) direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, joint and several, or evidenced by a written instrument; or (B) now

due or hereafter to be due, now existing or hereafter owed, or now held or hereafter to be held by Guarantor.

9. Representations. Guarantor hereby represents and warrants to Landlord that: (a) this Guaranty is the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms and conditions; (b) there is no action or proceeding at law or in equity, or by or before any court or governmental instrumentality or agency, now pending against or, to the knowledge of Guarantor, threatened against, Guarantor that may materially and adversely affect the financial condition of Guarantor; (c) all balance sheets, earnings statements, and other financial data that have been or hereafter may be furnished to Landlord in connection with this Guaranty do and shall represent fairly the financial condition of Guarantor as of the dates on which, and for the periods for which, such balance sheets, earning statements, and other data are furnished; (d) all other information, reports, and other papers and data furnished to Landlord shall be: (i) accurate and correct in all respects at the time given; and (ii) complete, such that Landlord is given a true and accurate reporting of the subject matter; and (e) Guarantor is solvent.

10. Statements. Guarantor shall provide to Landlord, within ten (10) days after receipt of a written request from Landlord, financial statements that include such information and certifications with respect to the assets, liabilities, obligations, and income of Guarantor as Landlord reasonably may request from time to time.

11. Miscellaneous. The rights of Landlord are cumulative and shall not be exhausted: (a) by its exercise of any of its rights and remedies against Guarantor under this Guaranty or otherwise; or (b) by any number of successive actions; until and unless each and all of the obligations of Guarantor under this Guaranty have been paid, performed, satisfied, and discharged in full. This Guaranty shall be deemed to have been made under, and shall be governed by, the laws of the State of Indiana in all respects and shall not be modified or amended, except by a writing signed by Landlord and Guarantor. This Guaranty shall bind Guarantor and its successors, assigns, and legal representatives; and inure to the benefit of all transferees, credit participants, endorsees, successors, and assigns of Landlord. If the status of Tenant changes, then this Guaranty shall continue, and cover the Obligations of Tenant in its new status, all according to the terms and conditions hereof. Landlord is relying, and is entitled to rely, upon each and every one of the terms and conditions of this Guaranty. Accordingly, if any term or condition of this Guaranty is held to be invalid or ineffective, then all other terms and conditions shall continue in full force and effect. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the ___ day of ___, 2010.



Signature: Bruno Cataldo

Printed Name: @BrunoCataldo

EXHIBIT G

**NON-DEBARMENT, NON-COLLUSION AND
NON-DISCRIMINATION AFFIDAVIT**

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

The undersigned, being duly sworn on oath, hereby certifies, on behalf of Bruno Cataldo, ("Tenant"), as follows:

1. That the undersigned is duly authorized and is competent to certify to the statements contained herein on behalf of Tenant.
2. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. That Tenant has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by the firm, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
4. That Tenant hereby agrees to abide by the following nondiscrimination commitment, which shall be made a part of any contract that Tenant may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions:

Tenant agrees not to discriminate against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

Bruno Cataldo
 By: Bruno Cataldo
 Name: Bruno Cataldo
 Title: _____

Subscribed and sworn to before me this _____ day of _____, 2010.

_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____

EXHIBIT 4

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

**FIRST AMENDMENT TO LEASE BETWEEN
The CITY OF SOUTH BEND, INDIANA, DEPARTMENT of REDEVELOPMENT AND
FIRST CHURCH of CHRIST SCIENTIST of SOUTH BEND
DATED AUGUST 16, 2012**

THIS FIRST AMENDMENT TO LEASE is made and entered into this 16th day of August, 2012 by and between the City of South Bend, Indiana, Department of Redevelopment ("Landlord") and First Church of Christ Scientist of South Bend ("Tenant").

WHEREAS, Landlord and Tenant are parties to an agreement entitled "Lease" dated and made effective September 7, 2007, ("the Lease") related to the Premises located at 129 South Michigan Street, South Bend, Indiana consisting of approximately 1,056 square feet as more particularly described in Exhibit A; and

WHEREAS, the term of the Lease expires at 12:00 midnight, Eastern Standard Time on November 30, 2012; and

WHEREAS, Landlord and Tenant desire to extend the term of the Lease and to modify the terms of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties make this First Amendment to the Lease as follows:

1. The following provision is added to and modifies "SECTION 3.1. INITIAL TERM" by inserting at the end of the first paragraph, the following:

The Parties agree that the Term of this Lease shall be and hereby is extended for a period of Sixty (60) months to commence on December 1, 2012 and expire at 12:00 Midnight, Eastern Standard Time, on November 30, 2017.

2. "SECTION 1.2. BASE RENT" shall remain fixed at \$11.50 per square foot per year, equivalent to \$12,144.00 per year, or \$1,012.00 per month.
3. "SECTION 5.2. ADDITIONAL RENT" shall be modified as follows:

The total amount of Additional Rent attributable to the Tenant's CAM Contribution (as defined in 5.4(c)) plus the Tenant's Pro Rata Share of Tax Expenses (as defined in Section 5.5) for a Lease Year shall not exceed the following limitations:

Lease term (year)	PSF	Annually	Monthly
6	\$ 6.25	\$ 6,600.00	\$ 550.00
7	\$ 6.64	\$ 7,011.84	\$ 584.32
8	\$ 7.03	\$ 7,423.68	\$ 618.64
9	\$ 7.42	\$ 7,835.52	\$ 652.96
10	\$ 7.81	\$ 8,247.36	\$ 687.28

4. The Parties acknowledge and agree that except as modified herein, all terms and conditions of the Lease remain in full force and effect.

This Amendment may be executed in counterparts, all of which shall be deemed originals.

The undersigned persons executing and delivering this Amendment on behalf of the Tenant represent and certify that they are the duly elected officers of Tenant and have been fully empowered, to execute and deliver this Amendment and that all necessary corporate action has been taken and done.

IN WITNESS WHEREOF, the parties have caused this First Amendment to Lease to be executed for and on their behalf on the day and year first written above.

LANDLORD:

TENANT:

**The CITY OF SOUTH BEND,
INDIANA, DEPARTMENT
REDEVELOPMENT**

**FIRST CHURCH of CHRIST SCIENTIST of
of SOUTH BEND**

Marcia I. Jones
Signature *Donald Alford*
Printed Name and Title
Marcia I. Jones, President
Donald Alford, Sr., Secretary
Date 9-13-12

Eva S. Patterson
Signature
Printed Name and Title
EVA S. PATTERSON, Librarian
Date 8-16-12
C.S. Reading Room

Jeanine A. Drake
Signature
Printed Name and Title
JEANNINE A. DRAKE
Date 08/16/2012
TREASURER
FIRST CHURCH
of CHRIST
SCIENTIST
SOUTH BEND
IN

ATTEST:

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones & Donald Knowlton to be the Pres & Secretary, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing First Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 13th day of September, 2012

Cheryl K Phipps
_____, Notary Public
Residing in St. Joseph County, IN

My Commission Expires: Cheryl K. Phipps
State of Indiana Notary Public
Resident of St. Joseph County
My Commission Expires 1/7/2015

ATTEST:

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Eva S. Patterson and Jeannine A. Drake of First Church of Christ Scientist of South Bend and acknowledged the execution of the foregoing First Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 16th day of August, 2012

Ellen Jo Santa
_____, Notary Public
Residing in St. Joseph IN

My Commission Expires: July 4, 2016

 **ELLEN JO SANTA, Notary Public**
A Resident of St. Joseph County
My Commission Expires July 4, 2016

LEASE

By and Between

THE SOUTH BEND

REDEVELOPMENT COMMISSION

and

FIRST CHURCH OF CHRIST SCIENTIST
OF SOUTH BEND

SEPTEMBER 7, 2007

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LEASE

THIS LEASE (the "Lease") is made by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the "Landlord") and FIRST CHURCH OF CHRIST SCIENTIST OF SOUTH BEND, a not-for-profit corporation organized and operating under Indiana law (the "Tenant") as of the date of last execution hereof by Landlord or Tenant (the "Effective Date").

WITNESSETH:

ARTICLE I. BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease ("Basic Lease Provisions") constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the parties. Each reference in this Lease to a Basic Lease Provision shall be construed to incorporate all of the terms provided for under such provisions.

- (a) Leased Premises: Defined in Section 2.1 hereof, consisting of approximately 1056 square feet of "Floor Area."
- (b) Term: Initial Term of Sixty (60) Months Lease as provided for in Sections 3.1 and 3.2 hereof.
- (c) Tenant's Use: The Premises will be used for the sale of books, research materials and other items of a primarily religious nature and may include a study or reading area for guests.
- (d) Tenant's Trade Name: Christian Science Reading Room (or such other trade name taken by Tenant).
- (e) Landlord's Address: 1200 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601
- (f) Tenant's Address: Mailing Address
1237 N. Ironwood Drive
South Bend, Indiana 46615
Attn: Board Chairman

Alternate Physical Address
129 S. Michigan Street
South Bend, Indiana 46601
- (g) Lease Year: A "Lease Month" shall mean a calendar month, beginning on the Commencement Date as defined in Section 3.1 (such that if the Commencement Date is not the first day of a calendar month, then, for purposes of the definition of the Initial Term, the first Lease Month shall be deemed to be the first day of the first calendar month following the Commencement Date).
- (h) Security Deposit: An amount equal to the first month's Base Rent and an anticipated monthly payment of Additional Rent.
- (i) The Building: 129 S. Michigan Street, South Bend, Indiana, as more particularly described in Exhibit A, attached hereto and made a part hereof, and depicted in Exhibit B, attached

hereto and made a part hereof.

- (j) Effective Date: The date of last execution hereof by Landlord or Tenant.
- (k) Delivery Date: The date on which possession is delivered, as set forth and defined at Section 4.1.
- (l) Commencement Date: The date on which the "Initial Term" commences as determined in Section 3.1.
- (m) Tenant's Pro Rata Share: The term shall have the meaning determined under Section 5.4(a).

1.2. Base Rent:

<u>Lease Month</u> <u>Initial Term</u>	<u>PSF</u>	<u>Annual Calculation</u>	<u>Monthly</u>
1-60	\$11.50	\$12,144.00	\$1,012.00

The Base Rent for any Lease Month during an Extended Term (or extension of the Initial Term) shall be the greater of \$11.50 per square foot or the prevailing market rate for space similar to the Premises as determined by an independent appraiser.

ARTICLE II.
PREMISES.

2.1. Premises. Landlord is the owner of the Building. Landlord, in consideration of the Rent, as hereinafter defined, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain premises located in the Building and depicted on Exhibit C (the "Premises"), subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease: the number, location, dimension, size, and height of buildings and other improvements in the Building; and the identity and type of other tenants. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas, including, without limitation, hallways, stairs, elevators, sidewalks, interior drives, parking areas, and green areas (the "Common Areas"), subject to the Rules, as hereinafter defined. Landlord shall operate, maintain, and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as it determines to be necessary or appropriate.

2.3. Quiet Enjoyment. Landlord warrants that it is the long-term Lessee of the Building, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceable and quiet enjoyment of possession of the Premises, without any manner of hindrance from parties claiming under, by, or through Landlord.

ARTICLE III.
TERM.

3.1. Initial Term. The "Initial Term" shall: (a) commence on (the "Commencement Date") the earlier of: (i) sixty (60) days from the Delivery Date (as defined in Section 4.1) or (ii) the date on which Tenant opens its business in the Premises to the public; and (b) end on that date which is Sixty (60) Lease Months after the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date"). Tenant hereby covenants that within five (5) days after the Commencement Date, it shall execute the Commencement Certificate attached hereto as Exhibit E and made a part hereof, and deliver it to Landlord.

3.2. Extension Options. Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the exercise of any option to extend the Term hereof or exists at the end of the Initial Term or any Extended Term, Tenant may renew this Lease and extend the Initial Term hereof for up to one (1) additional period of sixty (60) months (each such sixty (60) month period being referred to as an "Extended Term"), with the consent of the Landlord, on the same terms and provisions as provided in this Lease (except that the Base Rent due in such Extended Terms shall be as provided in Section 1.2), by delivering written notice of the exercise of such option to extend to Landlord not later than one hundred and eighty (180) days before the expiration of the then-current Term of this Lease. If Tenant fails to exercise any of its options to extend the Term hereof in the time periods set forth in this Section 3.2, all then-unexercised options to extend shall immediately terminate and have no further force or effect, without further notice from Landlord. Any reference in this Lease to the "Term" shall mean the Initial Term as it may be extended pursuant to this Section 3.2.

3.3. Holding Over. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and twenty-five percent (125%) of the Base Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus Tenant's Pro Rata Share of all other amounts which Tenant would have been required to pay hereunder had this Lease been in effect (the "Holdover Rent"). If Tenant holds over without Landlord's written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either party may terminate such tenancy from month-to-month upon written notice delivered to the other party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the "State") as a prerequisite to a suit against Tenant for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

3.4. Early Termination. Unless otherwise provided for in this Lease, Tenant may only terminate this Lease early if there is a sustained decline in monthly gross revenues (including all income and donations) of the FIRST CHURCH OF CHRIST SCIENTIST OF SOUTH BEND or its successor organization or entity of at least twenty-five percent (25%) from its September 2006 through August 2007 monthly gross revenues. The decline in gross revenues (including all income and donations) qualifies for the termination if the average gross revenues for the preceding four (4) months is at least twenty-five percent (25%) less than the average gross revenues for the same corresponding calendar months in the September 2006 through August 2007 fiscal year. To terminate this Lease, the Tenant shall provide Landlord written notice of the termination along with evidence of the decline in monthly gross revenues and an affidavit of the officers of the governing Board of the FIRST CHURCH OF CHRIST SCIENTIST OF SOUTH BEND or its successor organization or entity certifying the accuracy of the evidence and that the Board does not reasonably anticipate a significant increase in its gross monthly revenues in the immediate future. The termination shall effective upon the later of: (i) that date which is Thirty-Six (36) Lease Months after the Commencement Date or (ii) thirty (30) days after the delivery of written notice of the termination of this Lease to the Landlord.

ARTICLE IV.
CONSTRUCTION

4.1. Landlord's Work. Landlord shall perform the work described in Exhibit D, attached hereto and made a part hereof (the "Landlord's Work") substantially in accordance with the plans and specifications for Landlord's Work, as such plans and specifications may be modified by Landlord as appropriate to complete Landlord's Work (the "Plans"). The "Delivery Date" shall be the date upon which Landlord's Work is substantially complete in accordance with the Plans, subject to delineated "punch-list" items that do not prevent Tenant from using the Premises for the purpose of: (a) conducting its normal business operations; or (b) completing Tenant's Work, as hereinafter defined. On the Delivery Date, Tenant shall have full occupancy of the Premises, subject to all of the terms and conditions of this Lease. Landlord shall correct any "punch-list" items within sixty (60) days after the Delivery Date.

4.2. Tenant's Work.

(a) Plans. Within twenty business (20) days after the Delivery Date, Tenant shall submit to Landlord two (2) copies of the complete plans and specifications (the "Tenant's Plans") for the work Tenant deems necessary to prepare the Premises for occupancy by the Tenant (the "Tenant's Work"). Within ten business (10) days after Landlord's receipt of Tenant's Plans, Landlord shall notify Tenant of any failures of the Tenant's Plans to meet with Landlord's approval. Tenant shall, within ten (10) days after receipt of any such notice, cause the Tenant's Plans to be revised to the extent necessary to obtain Landlord's approval and to be resubmitted for Landlord's approval. When Landlord has approved the original or revised Tenant's Plans, Landlord shall initial and return one (1) set of approved Tenant's Plans (the "Approved Plans") to Tenant. Tenant shall not commence Tenant's Work until Landlord has approved Tenant's Plans, which approval shall not be unreasonably withheld.

Landlord's review and approval of Tenant's Plans shall not be deemed to be an assumption of responsibility by Landlord for the accuracy, sufficiency, or propriety of Tenant's Plans, pursuant to applicable laws, rules, ordinances, or regulations. If the Approved Plans are changed as a result of conditions placed on Tenant as a prerequisite to obtaining a permit, Tenant shall submit such changes to Landlord for approval, and Tenant shall not proceed further with the affected portions of Tenant's Work until Landlord has approved the changes. Such changes as are approved by Landlord shall become part of the Approved Plans.

(b) Performance. Tenant shall, in a manner consistent with the Approved Plans: (i) install its leasehold improvements, trade fixtures, and equipment; and (ii) complete all other Tenant's Work. Prior to performing Tenant's Work, Tenant shall: (i) obtain all permits, licenses, and approvals required for Tenant to perform Tenant's Work; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall: (i) perform Tenant's Work: (A) in accordance with the Approved Plans and all permits, licenses and approvals; and (B) in a good and workmanlike manner and in compliance with all applicable laws, statutes, and/or ordinances, and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (the "Laws"); (ii) ensure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full; and (iii) observe and perform all of its obligations under this Lease (except its obligation to pay Rent) at all times after the Delivery Date through the Commencement Date.

(c) Abatement for Construction. Landlord shall abate the Base Rent for the period beginning with the Delivery Date through and including the projected completion date, the Commencement Date, to allow Tenant an opportunity to improve the Premises and commence its business operations (the "Construction Abatement"), subject to the terms and conditions of this Section 4.2(c), effective only upon satisfaction of the last to occur of the following conditions: (i) Tenant opens its business in the Premises to the public; (ii) Landlord has inspected the Premises and confirmed that Tenant has completed Tenant's Work substantially in accordance with the Approved Plans, subject to identified "punch-list" items that do not prevent Tenant from safely operating the Premises for the purpose of conducting its normal business operations; and (iii) Tenant has delivered to Landlord final lien waivers and copies of paid invoices with respect to all work performed by Tenant. The Base Rent abated shall be valued the

same as the Base Rent for the Initial Term, and notwithstanding any other provision of this Lease, shall, if not abated pursuant to this Section 4.2(c), be due and payable one hundred twenty (120) days from the Delivery Date. If there are "punch-list" items at the time of effectiveness of the Construction Abatement, then: (i) Landlord may continue to retain a right to the payment of the Base Rent in an amount equal to one hundred twenty-five percent (125%) of the cost to complete such "punch-list" items (the "Holdback"); and (ii) upon satisfactory completion of the "punch list" items, as reasonably determined by Landlord, Landlord shall deliver the Holdback to Tenant.

ARTICLE V.
RENT.

5.1. Rent. Commencing on the Commencement Date, Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Base Rent, as set forth in Section 1.2, and the Additional Rent (as hereinafter defined) (collectively, the "Rent"), together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Base Rent and Additional Rent shall be paid in equal monthly installments commencing on the Commencement Date and thereafter during the entire Term on or before the first day of each calendar month, in advance. Tenant's obligations under this Section 5.1 shall survive the Termination Date.

5.2. Additional Rent. Commencing on the Delivery Date, Tenant shall pay to Landlord, as additional rent (the "Additional Rent"), all other sums, charges, and payments required to be paid by Tenant to Landlord under this Lease, whether or not the same are designated as Additional Rent including, but not limited to, Tenant's Pro Rata Share of the Center Expenses, as defined in Section 5.7(a). If any sum or charge is not paid at the time provided in this Lease, then it shall be collectible as Additional Rent with the next monthly installment of Base Rent (and initially all amounts due from the Delivery Date shall be paid by the Commencement Date); provided that nothing contained herein shall be deemed to suspend or delay the payment of such sum or charge, or to limit any right or remedy of Landlord with respect to its nonpayment. Notwithstanding the foregoing, the total amount of Additional Rent attributable to the Tenant's CAM Contribution (as defined in 5.4(b)) plus the Tenant's Pro Rata Share of Tax Expenses (as defined in Section 5.5) for a Lease Year shall not exceed the following limitations:

<u>Lease Month</u> <u>Initial Term</u>	<u>PSF</u>	<u>Annual Calculation</u>	<u>Monthly</u>
1-12	\$4.30	\$4,540.80	\$378.40
13-24	\$4.69	\$4,952.64	\$412.72
25-36	\$5.08	\$5,364.48	\$447.04
37-48	\$5.47	\$5,776.32	\$481.36
49-60	\$5.86	\$6,188.16	\$515.68

5.3. Late Charge. Rent shall be deemed to be overdue if it remains unpaid more six (6) days after its due date. If Rent is overdue, Landlord shall be entitled to a late payment fee of One Hundred Dollars (\$100.00). Any amount of Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid.

5.4. Common Expenses.

(a) Pro Rata Share. Tenant's "Pro Rata Share" shall be a fraction: (a) the numerator of which is the Floor Area, as defined in Section 1.1; and (b) the denominator of which is the square footage all areas leasable to tenants in the Building, if the expense is allocable to the entire Building, or to the tenants of the portion of the Building to which the expense is allocable. As of the Effective Date, Tenant's Pro Rata Share with respect to expenses allocable to the entire Building is 1,056/11,526 or nine and two-tenths percent (9.2%). Tenant's Pro Rata Share shall be recalculated from time to time if either the numerator or the denominator change.

(b) Payment. Tenant shall pay to Landlord as Additional Rent its Pro Rata Share of the Common Expenses, as hereinafter defined (the "CAM Contribution"), which share shall equal the amount of all Common Expenses, multiplied by Tenant's Pro Rata Share. The obligations of Tenant under this Section 5.4 shall survive the Termination Date.

(c) Common Expenses. "Common Expenses" shall mean all costs and expenses of every kind or nature paid or incurred by Landlord during the Term in operating, managing, and servicing the Building, including, without limitation: (i) management fees; (ii) wages, salaries, and benefits of maintenance personnel (not to exceed the amount fairly and equitably allocated to the Building); (iii) charges under maintenance contracts; (iv) costs and expenses to perform or provide maintenance or repairs and to satisfy Landlord's obligation to operate, maintain, and insure the Common Areas under this Lease; (v) sewer, water, trash disposal and storm water drainage charges attributable to the Common Areas, and the costs to maintain any retention and detention ponds and other storm water drainage facilities; (vi) premiums for customary insurance incurred by the Landowner including insurance, if any, obtained by the Landlord to satisfy an obligation under this Lease; (vii) costs for signage located in the Common Areas, including, without limitation, costs for light bulbs and electricity, and costs incurred with respect to the pylon sign for the Building; (viii) costs and expenses to provide light, heat, air conditioning, and ventilation for the Common Areas; and (ix) depreciation or amortization of capital assets, improvements, repairs, or replacements (the "Amortized Capital Costs"). Tenant shall be responsible for its Pro Rata Share of the Amortized Capital Costs, together with interest, notwithstanding that the capital asset, improvement, repair, or replacement may have been acquired or made before the Commencement Date. Common Expenses shall not include: (1) any leasing or rental commissions; (2) any legal fees in connection with financings or refinancings, preparation or negotiation of leases, or exercising or enforcing Landlord's rights and remedies under leases; (3) any costs of tenant finishes or buildouts; (4) any penalties or interest assessed against Landlord for late payment of its indebtedness; or (5) payments of principal or interest required by any financing or refinancing. Notwithstanding anything to the contrary set forth herein, amounts separately billed to, and paid directly by, a tenant of the Building shall be deducted in calculating Common Expenses from the costs and expenses that Landlord incurs to operate the Building.

5.5. Real Estate Tax Expenses. Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of (collectively, the "Tax Expenses"): (a) all real estate taxes and assessments of any nature levied during the Term on, against, or with respect to the Building (the "Real Estate Taxes"); (b) any and all costs and expenses incurred by Landlord in connection with an appeal of the Real Estate Taxes; and (c) all Real Estate Taxes levied during the Term on, against, or with respect to Tenant's leasehold interest in the Premises. The obligations of Tenant hereunder with respect to the payment of Real Estate Taxes levied during the final year of the Term shall survive the Termination Date. It is the intent that the Tenant shall be responsible for any taxes levied against the Premises as a direct result of the Tenant's use of the Premises and nothing in this foregoing paragraph shall be construed so as to alleviate any portion of that obligation of the Tenant. The Tenant hereby covenants not to seek an exemption from real estate taxes by virtue of its nonprofit status.

5.6. Insurance Expenses. Tenant shall pay to Landlord, as Additional Rent, its Pro Rata Share of any and all costs incurred by Landlord in connection with the Casualty Insurance, as defined in Section 8.1, and the Liability Insurance, as defined in Section 8.1, including, but not limited to, all premiums and deductibles paid by Landlord (collectively, the "Insurance Expenses"). It is the intent that the Tenant shall be responsible for any insurance costs incurred by the Landlord as a direct result of the Tenant's use of the Premises and nothing in this foregoing paragraph shall be construed so as to alleviate any portion of that obligation of the Tenant.

5.7. Estimation.

(a) Estimation. From time to time, Landlord may estimate (or re-estimate) the amount of the Tax Expenses, Insurance Expenses, and/or CAM Contributions (collectively, the "Center Expenses") payable by Tenant for any whole or partial calendar year during the Term. Tenant shall pay, as Additional Rent, equal monthly installments of its Pro Rata Share of the estimated Center Expenses during such whole or partial calendar year.

(b) Statement. Within ninety (90) days after the end of each whole or partial calendar year during the Term, Landlord shall deliver to Tenant a written statement that shows the computation of the actual Center Expenses

payable by Tenant with respect to such whole or partial calendar year. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is more than the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Landlord shall credit the excess: first, against any outstanding Rent due from Tenant; and second, against future Center Expenses, to be paid by Tenant; provided that, if there are no future Center Expenses to be paid by Tenant, then Landlord shall refund the excess to Tenant within thirty (30) days. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is less than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Tenant shall pay the amount of such deficiency with the next regular installment of Base Rent unless the Termination Date has occurred, in which case Tenant shall pay any deficiency within thirty (30) days after Landlord delivers Landlord's written statement.

5.8. Utilities. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (all of which utilities shall be separately metered to the Premises) (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges (or if paid by Landlord such charges shall be paid by Tenant to Landlord as Additional Rent).

ARTICLE VI. **ALTERATIONS AND MAINTENANCE OF AND REPAIRS TO THE PREMISES**

6.1. Landlord Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees, or licensees. Landlord shall be responsible for the installation and replacement of all heating, ventilating, and cooling equipment and systems serving the Premises (the "HVAC Systems") provided however that the Landlord may bill the Tenant as Additional Rent if the Landlord's consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of the Tenant's misuse of it or the Tenant's failure to notify the Landlord of its malfunctioning. The Landlord may enter into a maintenance contract with a reputable company (the "Maintenance Contract"), pursuant to which Maintenance Contract such company shall institute a regularly scheduled program of preventive maintenance and repair of the HVAC Systems to keep and maintain such items in good order, condition, and repair at all times, and any such expenses incurred by the Landlord as a result of such Maintenance Contract or any routine or otherwise insubstantial repairs shall be considered a Common Expense allocable to this Premises only, unless the HVAC Systems service more than on Tenant. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements, or improvements shall be the responsibility of Tenant.

6.2. Tenant Repairs. Except for repairs to be performed by Landlord pursuant to Section 6.1, Tenant shall: (a) keep the Premises clean, neat, and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises as may be required by any Law, or by fire underwriters or underwriters' fire prevention engineers; (b) keep all glass in windows, doors, fixtures, skylights, and other locations clean and in good order, repair, and condition, and replace glass that may be damaged or broken with glass of the same quality; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 6.2. The Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises.

6.3. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) the cumulative cost of making such alterations or improvements is less than Three Thousand Dollars (\$3,000.00); (ii) Tenant delivers to Landlord written notice describing the proposed alteration or improvement with particularity, and

provides to Landlord copies of any plans and specifications for the alteration or improvement; and (iii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the date that Tenant accepts the Premises. Tenant shall not, without the prior written consent of Landlord, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant's cost and expense: (1) complete the construction of any alterations, improvements, or additions in a good and workmanlike manner, and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic's or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic's or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, other than for the performance of Landlord's Work, then Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

6.4. Signs. Tenant shall not affix or maintain upon the exterior of the Premises or make visible from the exterior any sign, advertising placard, name, insignia, trademark, or descriptive material, without the prior written approval of Landlord, which approval shall not be withheld unreasonably. No such materials may be displayed or attached which are against any applicable law or regulation.

ARTICLE VII.

USE.

7.1. Use of the Premises. At all time during the Term, Tenant shall:

(a) Use the Premises solely for Tenant's Use, as defined in Section 1.1(c), doing business under Tenant's Trade Name, as defined in Section 1.1(d), and for no other use or purpose;

(b) Operate the business located on the Premises, without interruption, during at least the hours of 10:30 a.m. through 5:00 p.m., Monday through Saturday or such other minimum hours as Landlord may agree to from time to time, provided that such operation may be interrupted for such reasonable periods approved by Landlord, which approval shall not be unreasonably withheld, as may be necessary to repair, restore, or remodel the Premises, or for purposes of taking inventory;

(c) Remain fully fixtured, fully stocked, and fully staffed at all times.

(d) Conduct the business located on the Premises at all times in a high grade and reputable manner so as to produce the maximum volume of sales and transactions and to help establish and maintain a high reputation for the Building.

During the Term, Tenant will be considered to "Operate" or be "Operating" in the Premises so long as Tenant is open for business in compliance with this Section 7.1.

7.2. Covenant to Open. Tenant covenants that it will open and begin Operating in the Premises by that date which is ninety (90) days after the Delivery Date.

7.3. Compliance with Law. Tenant shall promptly comply with all federal, state and local Laws and ordinances and lawful orders and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall promptly and fully comply with all federal, state and local Laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.4. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Building, and will remove the same frequently and regularly, all at Tenant's cost; will not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not distribute advertising matter to, in or upon any portion of the Building; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefor, nor permit any use of vehicles which will interfere with the use of any portion of the Building; will not use the any portion of the Building for promotional activities, to include without limitation rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows; will comply with all Laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act ("OSHA") and the Americans With Disabilities Act ("ADA"), as the same may be amended from time to time. Tenant covenants and agrees that it will not serve liquor or any other alcoholic beverages in or from the Premises unless Tenant first obtains the written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion. Tenant will further not operate the Premises in a manner which cause the Landlord or the owner of the Building to violate any financing restrictions on the Building, including any financing restriction imposed by the Federal Tax Code as long as tax-exempt bonds used to financing or refinance the Building remain outstanding. Any such restrictions imposed are hereby incorporated herein by reference.

7.5. Storage. Tenant shall store in the building on the Premises only merchandise and products which Tenant intends to sell at, in, or from the Premises within a reasonable time after receipt thereof.

7.6. Sales and Use. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local Laws or ordinances. Tenant shall not operate the Premises either in whole or in part as a clearance, outlet, off-price, or discount store, provided that nothing in this Section 7.6 is intended to affect Tenant's pricing policies.

7.7. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;

iii. transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Building, or which interferes with the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the Premises or the Building;

iv. create, or permit to be created, any ground vibration that is discernible outside the Premises; or

v. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, that are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable Law. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local Law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 *et seq.* ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.* ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.7(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall Indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.7(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.7(b) shall survive the Termination Date.

7.8. Inspections. Tenant shall permit Landlord and its employees, agents and contractors to enter the Premises at reasonable times (or at any time in the event of an emergency) for the purpose of: (a) inspecting the Premises; (b) making repairs, replacements, additions, or alterations to the Premises, or to the building in which the Premises is located; and (c) showing the Premises to prospective purchasers, lenders, and tenants. During the last one hundred and eighty (180) days of the Term, Landlord may put a "For Lease" sign in the storefront window of the Premises.

ARTICLE VIII.
INSURANCE AND INDEMNIFICATION

8.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$6,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an "additional insured" in an amount sufficient to cover any additional liability Landlord may have pursuant the changes in amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

8.2. Hazardous Materials Coverage. Notwithstanding the above mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises or the Building, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no less than \$5,000,000.00 and purchase environmental impairment liability insurance with coverage of not less than \$5,000,000.00 with a deductible of not greater than \$50,000.00 to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and/or the Building, and that the Premises and/or the Building be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

8.3. Dram Shop Coverage. In addition to the insurance required under this Article VIII, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

8.4. Tenant's Additional Insurance. Tenant shall comply with the provisions of the applicable worker's compensation laws, and shall insure its liability thereunder. Tenant, at its expense, shall maintain plate glass insurance covering all exterior plate glass in the Premises or shall be obligated to promptly replace any damaged exterior glass, to the satisfaction of the Landlord within five (5) days of the occurrence of such damage. In the event that the Tenant neither obtains insurance providing for the immediate repair of the damaged glass nor repairs said damage to the satisfaction of the Landlord within five (5) days of the occurrence of such damage, the Landlord may have the damaged glass repaired at the Tenant's expense.

8.5. Policies. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance. Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article VIII, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article VIII, Landlord may obtain replacement coverage and the cost of same shall be deemed Additional Rent payable by Tenant with the next installment of Rent thereafter becoming due and payable.

8.6. Indemnity.

(a) Definition of "Loss." The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).

(b) Definition of "Indemnify." The term "Indemnify," as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant

The Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

8.7. Release of Subrogation. Each party hereto does hereby release and discharge the other party from any liability, which the released party would have had (but for this section) to the releasing party, arising out of or in connection with any accident or occurrence or casualty: (a.) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing party, and (b.) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building, and Tenant hereby expressly waives any claim for such damages.

8.8. The Tenant will not allow said Premises to be used for any purpose that will increase the rate of insurance thereon, nor to be occupied in whole or in part by any other person.

ARTICLE IX.
CASUALTY AND CONDEMNATION.

9.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than twenty-five percent (25%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after: (i) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (ii) deduction for any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the estimated cost to replace the Premises; (ii) there is Casualty Damage to the building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than fifteen percent (15%) of the cost to replace such building; or (c) there is Casualty Damage to the buildings (taken in the aggregate) in the Building, and the cost to repair such Casualty Damage is equal to or greater than fifteen percent (15%) of the cost to replace such buildings; then Landlord may elect either to: (1) repair or rebuild the Premises, the building of which the Premises is a part, or the aggregate buildings in the Building, as applicable; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Rent. Base Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises or the Common Areas of which Tenant has knowledge.

9.2. Condemnation. If: (a) all or a substantial part of the Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain; or (b) all or a substantial part of the Premises is conveyed to a public or quasi-public body under threat of condemnation (collectively, the "Condemnation"); and the Condemnation renders the Premises unsuitable for use for Tenant's Use, then, at the option of either Landlord or Tenant exercised within ninety (90) days after the Condemnation occurs: (i) this Lease shall terminate as of the date possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; (ii) all Base Rent shall be apportioned as of the date that possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; and (iii) all obligations hereunder, except those due or mature, shall cease and terminate. If there is a Condemnation with respect to: (A) more than twenty-five percent (25%) of the square footage of the building of which the Premises is a part; or (B) more than twenty-five percent (25%) of the aggregate square footage of the Building; then Landlord, at its option, exercised within ninety (90) days after the Condemnation occurs, may elect to terminate this Lease as of the date possession of such square footage is taken by, or conveyed to, the condemning authority, and: (i) all Base Rent shall be apportioned as of the date that possession of such square footage is taken by, or conveyed to, the condemning authority; and (ii) all obligations hereunder,

except those due or mature, shall cease and terminate. All compensation awarded or paid for the Condemnation (the "Condemnation Proceeds") shall belong to and be the sole property of Landlord; provided that Landlord shall not be entitled to the amount of any Condemnation Proceeds awarded or paid solely to Tenant for loss of business or costs and expenses of relocation and removing improvements and equipment. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, then Landlord shall be responsible for the performance of all work necessary to make the Premises usable by Tenant; provided that Landlord shall not be obligated to incur costs for such work in excess of the Condemnation Proceeds awarded or paid to Landlord and remaining after: (y) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (z) deduction for any expenses incurred in collecting the Condemnation Proceeds. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, or if any Condemnation is temporary in nature, then Base Rent shall be abated proportionately (based upon the proportion that the that area Premises taken by, or conveyed to, the condemning authority bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of the Condemnation.

ARTICLE X. SURRENDER.

10.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article X, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

10.2. Removal of Certain Property. All furniture and business equipment furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right to possession hereunder, but only if, and to the extent, that the removal thereof will not cause physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises the condition described in Section 10.1 above, or alternatively, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage with such costs to be considered Additional Rent and shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

10.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord or such Tenant fails to remove such property within such timeframe Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

10.4. Survival of Terms. The terms of this Article X and other terms of this Lease referred to herein shall survive any termination of this Lease.

ARTICLE XI. DEFAULT.

11.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

- (a) Nonpayment. Tenant's failure to pay Base Rent, Additional Rent, or other sums or charges that Tenant is obligated to pay by any provision of this Lease.
- (b) Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease.
- (c) All Other Lease Violations. Tenant's failure to perform or observe any other covenant, condition, or agreement of this Lease, which failure is not cured within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as the Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same; provided, however, if the Tenant shall default in the performance of any such covenant or agreement of this Lease more than one time in any twelve (12) month period notwithstanding that such default shall have been cured by Tenant, the second and further defaults in said twelve (12) month period may be deemed by Landlord, in its sole discretion, an Event of Default without the ability for cure.
- (d) Falsification of Information. If Tenant, any guarantor of Tenant's obligations under this Lease, or any agent of Tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease.
- (e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Section 13.1(b) of this Lease.
- (f) Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations under this Lease; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.
- (g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing.
- (h) Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.
- (i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days after its entry.
- (j) Inability to Pay. The admission in writing by Tenant or any guarantor of Tenant's obligations under this Lease of its inability to pay its debts when due.
- (k) Breach by Guarantor. The breach by any guarantor of any of that guarantor's obligations under its guaranty.
- (l) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

11.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be deemed Additional Rent and shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 11.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 11.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this Section 11.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in connection with making alterations and repairs for the purpose of reletting the Premises; (iv) reasonable attorneys' fees; (v) the greater of \$5,000.00 or the unamortized value of the cost incurred by the Landlord to divide the retail space to create the Premises to lease to the Tenant, which was to be accomplished around the execution of the Lease.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Base Rent and Additional Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Base Rent and Additional Rent (as reasonably estimated by Landlord) that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between the Base Rent and Additional Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised, and the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

11.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 11.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

11.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

11.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.6. Counterclaim. If Landlord commences any proceedings for non payment of Rent, Tenant will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts due hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any reason whatsoever, except as may be specifically provided for herein to the contrary, it being understood and acknowledged by Tenant that Tenant's only recourse is to seek an independent action against Landlord.

11.7. Bankruptcy.

(a) Assumption of Lease. In the event that Tenant shall become a Debtor under Chapter 7 of the United States Bankruptcy Code (the "Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 and is transferred to Chapters 11 or 13, the Trustee or Tenant, as Debtor and as Debtor In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has:

i. Cured or provided Landlord "Adequate Assurance," as defined below, that:

A. Within ten (10) days from the date of such assumption the Trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in Section 11.2 of the Lease, and attorneys' fees incurred as a result of the default and/or to enforce the terms hereof;

B. Within thirty (30) days from the date of such assumption the Trustee or Tenant will cure all non-monetary defaults under this Lease; and

C. The assumption will be subject in all respects to all of the provisions of this Lease.

ii. For purposes of this Section 11.7, Landlord and Tenant hereby acknowledge that, in the context of a bankruptcy proceeding of Tenant that this Lease is a lease of real property within a Building and, at a minimum "Adequate Assurance" shall mean:

A. The Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured and priority obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease, and to keep the Leased Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully Operational, actively promoted business in the Leased Premises;

B. The bankruptcy court shall have entered an order segregating sufficient cash payable to Landlord, and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Trustee or Tenant acceptable as to value and kind

to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults under this Lease within the time periods set forth above; and

C. The Trustee or Tenant at the very least shall deposit a sum equal to one (1) month's Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

(b) Assignment of Lease. If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 11.7 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of Section 13.1 herein, including, without limitation, those with respect to Additional Rent and the use of the Premises only as permitted in Article VII herein; Landlord and Tenant hereby acknowledging that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment and assumption in form acceptable to Landlord.

(c) Adequate Protection. Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor in Possession, and any Trustee who may be appointed hereby agree to adequately protect Landlord as follows:

i. To immediately perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court;

ii. To pay all monetary obligations required under this Lease, including, without limitation, the payment of Base Rent and such Additional Rent charges payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises;

iii. Provide Landlord a minimum thirty (30) days' prior written notice, unless a shorter period is agreed to in writing by Landlord, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and

iv. To perform to and for the benefit of Landlord as otherwise required under the Code.

The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease and the automatic stay under Section 362 of the Code shall automatically be terminated as to Landlord and the Premises.

(d) Accumulative Rights. The rights, remedies and liabilities of Landlord and Tenant set forth in this Section 11.7 shall be in addition to those which may now or hereafter be accorded, or imposed upon, Landlord and Tenant by the Code.

(e) Changes in Code. If the Code is changed or amended such that any references in this Section 11.7 to particular provisions or terms of art lose the meaning that they have as of the Effective Date, such provisions or terms of art of this Lease shall be deemed to be amended to reflect such changes in the Code.

ARTICLE XII.

ESTOPPEL CERTIFICATES, ATTORNMENT, AND SUBORDINATION.

12.1. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after request therefor by the other party, a statement, in writing, certifying to Landlord and/or any party designated by Landlord, or Tenant and/or any party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or

stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

12.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

12.3. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between Tenant and such Mortgage holder. Any holder of any of any such Mortgage is herein referred to as "Landlord's Mortgagee(s)." Notwithstanding the foregoing, a Landlord's Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such Landlord's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

ARTICLE XIII.
ASSIGNMENT AND SUBLETTING

13.1. Assignment and Subletting.

(a) Tenant shall not sublet, mortgage, encumber or in any manner transfer, in whole or in part, this Lease, the Premises or any estate or interest in said Premises or Lease. Except as expressly permitted herein, Tenant shall not assign this Lease or any estate or interest therein or allow the occupancy thereof by any person or entity other than Tenant, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Consent by Landlord to one or more assignments of this Lease shall not operate to exhaust Landlord's rights under this Article XIII. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or allow the occupancy thereof by any person or entity other than Tenant, Tenant shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Landlord.

(b) If this Lease is assigned or the Premises or any part thereof occupied by any entity other than Tenant, Landlord may collect rent from the assignee or occupant and apply the same to the Rent herein reserved, but no such assignment, occupancy or collection of Rent shall be deemed a waiver of any restrictive covenant contained in this Section 13.1 or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained. Any sublease of the Premises shall be void. Landlord shall have the right, at any time, to immediately remove an occupant or than Tenant from the

Premises along with any possession of said occupant, which shall be deemed to have been abandoned if not claimed by occupant within three (3) business days of their removal, and the Landlord's acceptance of rent from the occupant shall in no way waive any rights the Landlord may have against the occupant. The Tenant shall indemnify the Landlord for any actions, claims or demands made by the occupant or its assigns against the Landlord. . Any assignment: (x) as to which Landlord has consented or is deemed to have consented; or (y) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (z) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership, shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

- i. Each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Landlord;
- ii. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor as a result of said assignment, including, if any, payments for Tenant's improvements, proposed rent (which includes, without limitation, all monthly charges allocated to common area maintenance, insurance, real property taxes, and utility charges) and any other payments;
- iii. Each assignee shall have submitted to Landlord a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of Tenant's obligations hereunder;
- iv. Each assignee shall have submitted to Landlord, in writing, evidence satisfactory to Landlord of substantial experience in operating a business similar to that offered by Tenant and permitted under Section 1.1(c) of this Lease or a business otherwise requested by the Landlord and in operating said business in a space or volume comparable to that contemplated under this Lease;
- v. The business reputation of each assignee shall meet or exceed generally acceptable commercial standards;
- vi. The use of the Premises by each assignee shall not violate, or create any potential violation of, applicable Laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other occupants in the Building; and
- vii. Tenant shall pay Landlord the sum of \$1,500.00 as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment.

(c) In the event that Tenant desires to assign this Lease, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment. Tenant shall advise Landlord of the name of the proposed assignee, shall furnish Landlord with the information required by Landlord with respect to the proposed assignee, and Landlord shall advise Tenant, within sixty (60) business days after receipt of such notice and all required information from Tenant, that Landlord either consents or refuses to consent to an assignment to the proposed assignee.

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV.
MISCELLANEOUS

14.1. Security Deposit. Prior to the Delivery Date, Tenant shall deposit the Security Deposit, as defined in Section 1.1(j), with Landlord. Landlord: (a) shall hold the Security Deposit without liability to Tenant for interest; and (b) may commingle the Security Deposit with its other funds. The Security Deposit, or any portion thereof, may be applied by Landlord to cure any default by Tenant under this Lease, without prejudice to any other remedy or remedies that Landlord may have on account of such application. Upon any such application by Landlord, Tenant shall pay to Landlord on demand the amount applied by Landlord to cure such default so that the Security Deposit is restored to its original amount. If Landlord conveys the Premises during the Term: (A) Landlord may turn the Security Deposit over to Landlord's grantee or successor; and (B) Tenant shall release Landlord from any and all liability with respect to the Security Deposit. If Tenant faithfully performs its obligations under the terms and conditions of this Lease, then Landlord shall return to Tenant the amount of the Security Deposit not applied by Landlord to cure defaults by Tenant, without interest, within thirty (30) days after the latter of: (y) the Termination Date; or (z) the date that Tenant has surrendered possession to Landlord in accordance with the terms and conditions of this Lease.

14.2. Guaranty. [Reserved].

14.3. Notices. Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(f) hereof, or at such other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(g) hereof, or at such other address as Tenant may designate by written notice.

14.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant, except as otherwise provided herein.

14.5. Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

14.6. Remedies Cumulative. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

14.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

14.8. Relationship. Nothing contained herein shall be deemed or construed to create between the parties any relationship other than that of landlord and tenant.

14.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant and/or any guarantors of this Lease (which, in the event Tenant or a guarantor is an entity, shall be certified by the highest-ranking financial officer of Tenant or guarantor).

14.10. Construction. The laws of the State in which the Premises is located shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business days are specified. This Lease shall be recorded, but a failure to record shall not affect the effectiveness of this Lease. All Exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

14.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other party; or (b) any other cause that is not within the control of the delayed or prevented party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

14.12. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

14.13. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

14.14. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

14.15. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

14.16. Equal Opportunity Obligation. Tenant agrees not to discriminate in violation of any law against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry in violation of any law. Breach of this covenant may be regarded as a material breach of the Lease. Tenant further agrees execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit F.

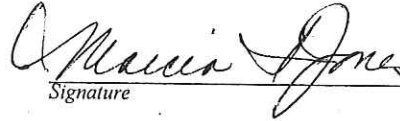
14.17. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein. Tenant further agrees to execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit F.

(Signature Pages of Lease Attached)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date set forth above.

"LANDLORD"

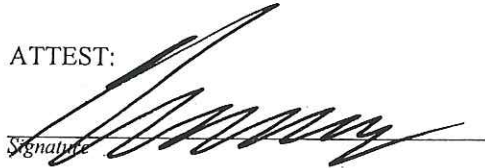
CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT by and
through the South Bend Redevelopment Commission



Signature

Marcia I. Jones, President
Printed Name and Title


ATTEST:



Gregory S. Downes, Secretary
Printed Name and Title

"TENANT"

FIRST CHURCH OF CHRIST SCIENTIST
OF SOUTH BEND

By: 
Lee B. Woodward, Board Chairman

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 7th day of September 2007, personally appeared Marcia L. Jones and Gregory S. Downes, known to be to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

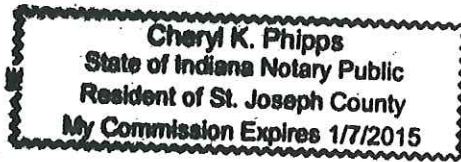
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Cheryl K Phipps

Notary Public

Resident of the _____ County, Indiana

My commission expires: _____



(Notary Page of Lease)

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 4th day of Sept., 2007, personally appeared Lee B. Woodward, known to be to be the Chairman of the Board of First Church of Christ Scientist of South Bend, located in South Bend, Indiana, and acknowledged execution of the foregoing Lease on behalf of said organization.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

(SEAL)

Merdy Ann Cook
Merdy Ann Cook, Notary Public

Resident of the Elkhart County, Indiana

My commission expires: 6-7-2008

INDEX TO EXHIBITS

Exhibit A	Legal Description of Building
Exhibit B	Site Plan of Building
Exhibit C	Description of Premises
Exhibit D	Landlord's Work
Exhibit E	Form of Commencement Certificate
Exhibit F	Non-Debarment, Non-Collusion and Non-Discrimination Affidavit

EXHIBIT A

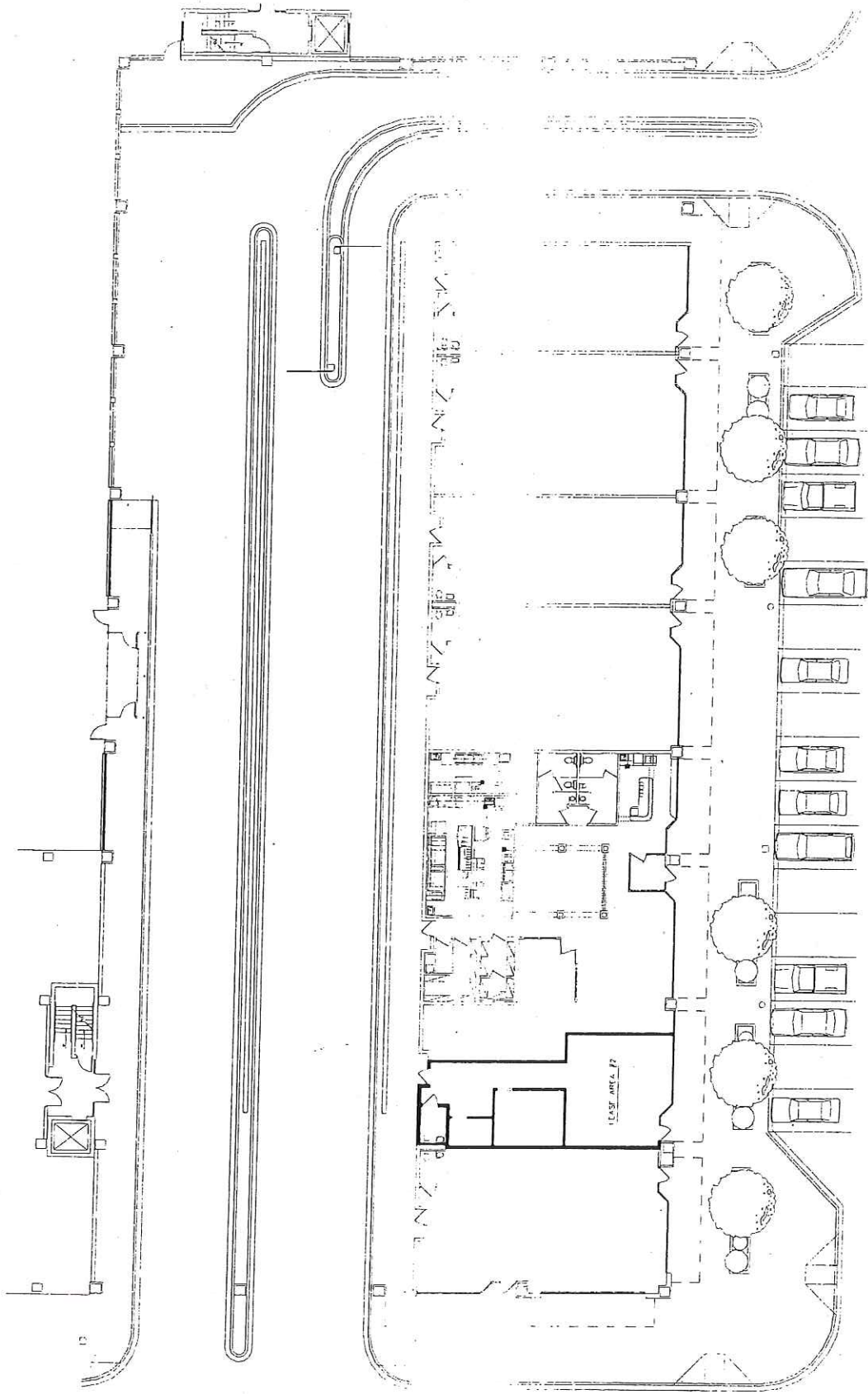
Legal Description of Building

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

EXHIBIT B

Site Plan of Building and Description of Premises



LEASE AREA #2

SCALE 1/32" = 1'-0"

EXHIBIT C

Description of Premises

The Premises consists of Retail Area No. 2, commonly referred to as 129 S. Michigan Street, South Bend, Indiana, which comprises of 1,056 square feet located on the ground level of the Leighton Center Parking Garage, commonly referred to as the Michigan Street Shops, South Bend, Indiana and more particularly described at Exhibit A of the Lease to which this Exhibit is attached.

EXHIBIT D

Landlord's Work

Landlord shall deliver the space in clean condition, with four (4) walls and ready for Tenant's finish (including removal of wallpaper and other wall-coverings, securely patching all holes in walls and prepping walls for Tenant's paint), the carpet removed, an HVAC, electrical and plumbing in good order, the water line hookup professionally capped (and related hole in wall repaired), the current sink remaining in the back room and storage area, and the former Tenant's adhesive window signs removed.

EXHIBIT E

Form of Commencement Certificate

COMMENCEMENT CERTIFICATE

This Commencement Certificate is made this ___ day of _____, 2007, by and between the City of South Bend, Indiana, Department of Redevelopment ("Landlord") and First Church of Christ Scientist of South Bend ("Tenant"):

WITNESSETH

Landlord and Tenant are parties to that certain Lease, dated July ___, 2007, for certain real estate in South Bend, St. Joseph County, Indiana (the "Lease"). Pursuant to Section 3.1 of the Lease, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. The Commencement Date was the ___ day of _____, 2007.
2. The date upon which the Term shall expire shall be the ___ day of _____, 20__.
3. Tenant is in possession of the Premises and is obligated to pay the Rent.

IN WITNESS WHEREOF, the parties hereto have duly executed this Commencement Certificate as of the dates set forth below.

LANDLORD:

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**

Executed by Landlord the _____
day of _____, 2007.

By: _____

Name: _____

Its: _____

TENANT:

**FIRST CHURCH OF CHRIST SCIENTIST
OF SOUTH BEND**

Executed by Tenant the _____
day of _____, 2007.

By: _____

Name: _____

Title: _____

EXHIBIT F

**NON-DEBARMENT, NON-COLLUSION AND
NON-DISCRIMINATION AFFIDAVIT**

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

The undersigned, being duly sworn on oath, hereby certifies, on behalf of First Christ of Christ Scientist of South Bend ("Tenant"), as follows:

1. That the undersigned is duly authorized and is competent to certify to the statements contained herein on behalf of Tenant.
2. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. That Tenant has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by the firm, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
4. That Tenant hereby agrees to abide by the following nondiscrimination commitment, which shall be made a part of any contract that Tenant may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions:

Tenant agrees not to discriminate in violation of any law against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

FIRST CHURCH OF CHRIST SCIENTIST
OF SOUTH BEND,
as Tenant

By: Lee B. Woodward

Printed: Lee B. Woodward

Its: Board Chairman

Subscribed and sworn to before me this 4th day of Sept, 2007.

My Commission Expires: _____

County of Residence: _____

Pamela A. Paluszewski
Notary Public

(SEAL)

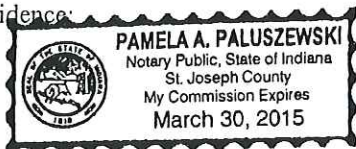


EXHIBIT 5

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

City copy

**FOURTH AMENDMENT TO LEASE BETWEEN
The SOUTH BEND REDEVELOPMENT COMMISSION AND
LE PEEP OF SOUTH BEND, INC.
DATED MAY 10, 2011**

THIS FOURTH AMENDMENT TO LEASE is made and entered into this 10th day of May, 2011 by and between the South Bend Redevelopment Commission ("Landlord") and Le Peep of South Bend, Inc. ("Tenant").

WHEREAS, Landlord and Tenant are parties to an agreement entitled "Lease" dated and made effective October 20, 2000, as amended by the First Amendment to the Lease between the Landlord and Tenant dated February 13, 2003, and by the Second Amendment dated November 7, 2007, and the Third Amendment dated November 1, 2008 (collectively "the Lease") related to the Premises located at 127 South Michigan Street, South Bend, Indiana as more particularly described in Exhibit A; and

WHEREAS, the term of the Lease expires at 12:00 midnight, Eastern Standard Time on October 31, 2012; and

WHEREAS, Landlord and Tenant desire to extend the term of the Lease and to modify the terms of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties make this Fourth Amendment to the Lease as follows:

1. The following provision is added to and modifies "SECTION 3.1. THE TERM" by inserting at the end of the first paragraph, the following:

The Parties agree that the Term of this Lease shall be and hereby is extended for a period of Sixty (60) months to commence on November 1, 2012 and expire at 12:00 Midnight, Eastern Standard Time, on October 31, 2017.

2. The following provision is added to and modifies "SECTION 4.2. RENTAL" by inserting at the end of the first paragraph, the following:

Notwithstanding the foregoing, effective June 1, 2011, Tenant's Base Rental shall be as follows:

<u>Date range</u>	<u>PSF</u>	<u>Annually</u>	<u>Monthly</u>
Jun 1, 2011 - Oct 31, 2012	\$ 7.49	\$24,000.00	\$ 2,000.00
Nov 1, 2012 - Oct 31, 2013	\$ 8.24	\$26,400.00	\$ 2,200.00
Nov 1, 2013 - Oct 31, 2014	\$ 8.99	\$28,800.00	\$ 2,400.00
Nov 1, 2014 - Oct 31, 2015	\$ 9.74	\$31,200.00	\$ 2,600.00
Nov 1, 2015 - Oct 31, 2016	\$ 10.49	\$33,600.00	\$ 2,800.00
Nov 1, 2016 - Oct 31, 2017	\$ 11.24	\$36,000.00	\$ 3,000.00

In addition to the foregoing, effective November 1, 2007, Tenant hereby agrees to pay to Landlord an amount equal to six percent (6.00%) of Gross Sales in excess of Six Hundred Thousand and 00/100 Dollars (\$600,000) [hereinafter "Percentage Rent"] during each Lease Year, as further defined herein.

Tenant will be liable to Landlord for Percentage Rent in addition to the Base Rental and Minimum Rental, without previous demand. On or before the fifteenth (15th) day of each month during the Term, Tenant will furnish Landlord a statement signed by Tenant showing the amount of gross sales for the preceding month. For the purpose of calculating Percentage Rent, annual gross sales shall be taken from January 1 to December 31, with Percentage Rent calculated there from and due on or before forty-five (45) days after the end of the Lease year. In the event the Lease is terminated prior to the end of the Lease year, the foregoing Percentage Rent due shall be prorated by dividing the annual gross revenue threshold based upon a three hundred sixty (360) day year.

3. "SECTION 6.2. MAINTENANCE OF MECHANICAL EQUIPMENT AND PLUMBING" is deleted in its entirety and replaced with the following:

Within a reasonable period after receipt of written notice from Tenant, Landlord, at Landlord's cost and expense, will make necessary repairs to electrical and plumbing systems, and utility supply lines (i.e. gas, electric, water) to the Building which do not exclusively serve the Premises. Tenant is prohibited from performing any maintenance services to any of the aforesaid systems itself or from hiring any contractors or persons to repair the same. If, in Landlord's reasonable discretion, such repairs are due to the actions or negligence of Tenant, its subtenants, concessionaires, employees, agents, invitees, licensees, visitors or contractors, Landlord shall promptly send to Tenant an invoice for the expense of such repair, which shall be paid by Tenant within thirty (30) days after mailing or delivery of such notice to Tenant.

Landlord shall also maintain the heating and air conditioning systems which serve Tenant's Premises which costs shall be paid by Tenant as part of its Common Expenses.

Tenant will, at Tenant's sole cost, maintain, repair, replace and keep in good condition and operating order the plumbing and electrical systems and fixtures, and all equipment located inside the Premises or exclusively serving the Premises. All repairs made by Tenant will be made by contractors or installers previously

approved by Landlord and in accordance with governmental codes. Maintenance, repair and replacement of mechanical equipment and plumbing exclusive to the Premises will be Tenant's sole responsibility throughout the entire Term of this Lease.

4. The Parties acknowledge and agree that except as modified herein, all terms and conditions of the Lease remain in full force and effect.

This Amendment may be executed in counterparts, all of which shall be deemed originals.

The undersigned persons executing and delivering this Amendment on behalf of the Tenant represent and certify that they are the duly elected officers of Tenant and have been fully empowered, to execute and deliver this Amendment and that all necessary corporate action has been taken and done.

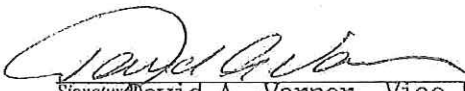
IN WITNESS WHEREOF, the parties have caused this Fourth Amendment to Lease to be executed for and on their behalf on the day and year first written above.

LANDLORD:

TENANT:

**SOUTH BEND REDEVELOPMENT
COMMISSION**

LE PEEP OF SOUTH BEND, INC.



Signature David A. Varner, Vice President



Signature

Printed Name and Title Nancy N. King, Secretary

Printed Name and Title Rex Dalton President

Date

Date

5/24/11

ATTEST:

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

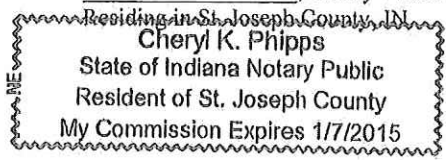
Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared David A. Varner & Nancy N. King, known to me to be the V Pres & Secretary of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Fourth Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 10th day of April, 2011.

Cheryl K Phipps

Notary Public

My Commission Expires: _____



ATTEST:

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared _____ of Le Peep of South Bend, Inc. and acknowledged the execution of the foregoing Fourth Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 24 day of May, 2011.

Derrilyn Williams

Notary Public

My Commission Expires: 1-2-2015

Residing in SOUTH BEND IN

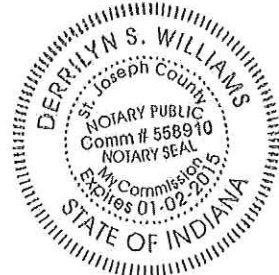


EXHIBIT A

The Premises consists of Retail Area Nos. 3 and 4, commonly referred to as 127 S. Michigan Street, South Bend, Indiana, which comprises of 3,203 square feet located on the ground level of the Leighton Center Parking Garage, commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

THIRD AMENDMENT TO LEASE BETWEEN
THE SOUTH BEND REDEVELOPMENT COMMISSION
AND
LE PEEP OF SOUTH BEND, INC.

THIS THIRD AMENDMENT TO LEASE is made and entered into this 1st day of November, 2008, by and between the South Bend Redevelopment Commission (the "Landlord") and Le Peep of South Bend, Inc., (the "Tenant").

WHEREAS, the Landlord and the Tenant are parties to an agreement entitled "Lease" dated and made effective October 20, 2000, as amended by the First Amendment to Lease between the Landlord and the Tenant dated February 13, 2003, and as further amended by the Second Amendment to Lease between the Landlord and the Tenant dated November 2, 2007, (collectively the ALease@) related to premises located at 127 South Michigan Street, South Bend, Indiana, consisting of approximately 3,203 square feet, as more particularly described in the Lease; and

WHEREAS, the term of the original lease expired at 12:00 midnight, Eastern Standard Time on October 31, 2007; and

WHEREAS, the Landlord and the Tenant extended the term of the Lease through October 31, 2012, and modified the Base Rental and other charges due during said extended term; and

WHEREAS, the Landlord and the Tenant desire to further modify the Base Rental to be charged during the extended term of the Lease; and

WHEREAS, this agreement is entered into as the "Third Amendment to Lease" to modify the terms and conditions in the Lease;

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties make this Third Amendment to Lease as follows:

1. The following provision modifies "SECTION 4.2. BASE RENTAL" as amended by the Second Amendment by replacing the last two paragraphs with the following:

“Notwithstanding the foregoing, effective November 1, 2007, Tenant=s Base Rent shall be Four and 68/100 Dollars (\$4.68) per square foot per year or One Thousand Two Hundred Fifty and 00/100 Dollars (\$1,250.00) per month until October 31, 2008. Effective November 1, 2008, Tenant=s Base Rent shall be Seven and 49/100 Dollars (\$7.49) per square foot per year or Two Thousand Dollars (\$2,000.00) per month until October 31, 2009. Effective November 1, 2009, the Tenant’s Base Rent shall be Nine and 37/100 Dollars (\$9.37) per square foot per year or Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per month until the expiration of the Lease Term, as extended, on October 31, 2012.

“In addition to the foregoing, effective November 1, 2007, the Base Rent shall further include six percent (6.00%) of the Tenant’s annual gross revenues that exceed Six Hundred Thousand and 00/100 Dollars (\$600,000.00) calculated from November 1 to October 31, which portion of the Base Rent for that fiscal year ending October 31 shall be due on the earlier of: (i) forty-five days after the termination of this Lease or (ii) forty-five (45) days after the end of each said fiscal year ending October 31. In the event that the Lease is terminated prior to the end of the October 31 fiscal year, the foregoing additional Base Rent due shall be prorated by dividing the annual gross revenue threshold based upon a three hundred sixty (360) day year.”

6. The Parties acknowledge and agree that this Third Amendment shall relate back to the date of the execution of the Lease and that all remaining terms and conditions of the Lease not in conflict herewith, shall remain in full force and effect.

7. This Amendment may be executed in counterparts, all of which shall be deemed originals.

8. The undersigned persons executing and delivering this Third Amendment on behalf of the Tenant represent and certify that they are the duly elected officers of the Tenant and have been fully empowered, by proper resolution of the Board of Directors to execute and deliver this Third Amendment and that all necessary corporate action has been taken and done.

IN WITNESS WHEREOF, the parties have caused this Third Amendment to Lease to be executed, for and on their behalf, on the day and year first written above.

LANDLORD:

TENANT:

SOUTH BEND REDEVELOPMENT
COMMISSION

LE PEEP OF SOUTH BEND, INC.

David A. Varner
Signature

David A. Varner, Vice President
Printed Name and Title

Peg Dalton
Signature

Peg Dalton Vice President
Printed Name and Title

ATTEST:

Nancy N. King
Signature

Nancy N. King, Secretary
Printed Name and Title

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

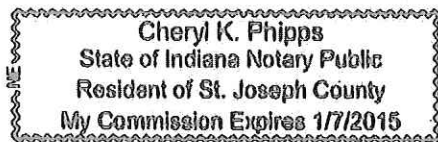
Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Nancy N. King and David A. Varner, known to me to be Vice President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Third Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 3rd day of April, 2009.

Cheryl K. Phipps
Notary Public

Residing in St. Joseph County, IN

My Commission Expires:



**SECOND AMENDMENT TO LEASE BETWEEN
SOUTH BEND REDEVELOPMENT COMMISSION AND
LE PEEP OF SOUTH BEND, INC.
DATED OCTOBER 20, 2000**

THIS SECOND AMENDMENT TO LEASE is made and entered into this 2nd day of November, 2007 by and between the South Bend Redevelopment Commission ("Landlord") and Le Peep of South Bend, Inc. ("Tenant").

WHEREAS, Landlord and Tenant are parties to an agreement entitled "Lease" dated and made effective October 20, 2000, as amended by the First Amendment to Lease between the Landlord and Tenant dated February 13, 2003 (collectively the ALease@) related to premises located at 127 South Michigan Street, South Bend, Indiana as more particularly described at Exhibit A; and

WHEREAS, the term of the expires on at 12:00 midnight, Eastern Standard Time on October 31, 2007; and

WHEREAS, Landlord and Tenant desire to extend the term of the Lease and to modify the Base Rental and other charges due during said extended term; and

WHEREAS, this agreement is entered into as the ASecond Amendment to Lease@ to modify the terms and conditions in the Lease.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties make this First Amendment to Lease as follows:

1. The following provision is added to and modifies "SECTION 3.1. THE TERM" by inserting at the end of the first paragraph, the following:

The Parties agree that the Term of this Lease shall be and hereby is extended extend for a period of Sixty (60) months to commence on November 1, 2007 and expire at 12:00 Midnight, Eastern Standard Time, on October 31, 2012.

2. The following provision is added to and modifies "SECTION 4.2. BASE RENTAL" by inserting at the end of the first paragraph, the following:

Notwithstanding the foregoing, effective November 1, 2007, Tenant's Base Rent shall be Four and 68/100 Dollars (\$4.68) per square foot per year or One Thousand Eighty-six and 00/100 Dollars (\$1,250.00) per month until October 31, 2008. Effective November 1, 2008, Tenant's Base Rent shall be Nine and 37/100 Dollars (\$9.37) per square foot per year or Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) per month until the expiration of the Lease Term, as extended, on October 31, 2012.

In addition to the foregoing, effective November 1, 2007, the Base Rent shall further include six percent (6.00%) of the Tenant's annual gross revenues that exceed Six Hundred Thousand and 00/100 Dollars (\$600,000.00) calculated from November 1 to October 31, which portion of the Base Rent for that fiscal year ending October 31 shall be due on the earlier of: (i) forty-five days after the termination of this Lease or (ii) forty-five (45) days after the end of each said fiscal year ending October 31. In the event that the Lease is terminated prior to the end of the October 31 fiscal year, the foregoing additional Base Rent due shall be prorated by dividing the annual gross revenue threshold based upon a three hundred sixty (360) day year.

3. The following provision is added to and modifies "SECTION 4.4 COMMON EXPENSE" by inserting at the end of the first paragraph, the following:

Notwithstanding the foregoing, effective November 1, 2007, Tenant's pro-rata share for purposes for this section is Twenty-Seven and Seventy-Nine Hundredths percent (27.79%) of the Common Expenses and represents the percentage of the Premises comprising of the total 11,526 rentable square feet in the Building.

If the real estate taxes are assessed or billed against the leased Premises separately from Building or the common areas, it is understood that the Tenant is responsible as additional rent any real estate taxes assessed against the leased Premises as well as the Tenant's pro-rata share of any real estate taxes assessed against common areas.

4. The parties hereby agree and recognize that the Tenant has incurred, has been

billed for, and owes the following charges and, to the extent that they remain unpaid, the Landlord hereby waives such charges, including any additional interest and penalties due on such charges not yet billed or reflect below.

2005 CAM Reconciliation Charges	\$6,184.22
Prior Maintenance Charges:	72.76
Prior Plumbing Charges:	278.59
Past Rent and CAM charges	<u>6,623.08</u>
TOTAL PAST DUE	\$13,158.65

5. The parties hereby agree and recognize that the Tenant has incurred the following charges and, the Landlord hereby agrees to provide a credit toward such charges (and only such charges) in the amount of Seven Thousand Seven Hundred Forty-Nine and 11/100 Dollars (\$7,749.11).

Plumbing Charges Incurred to Date:	\$3,775.27
Est. 2006 CAM Recon.(excluding taxes)*	<u>3,973.84</u>
TOTAL PAST DUE	\$7,749.11

Tenant hereby acknowledges that it is responsible for all other expenses and charges due under the Lease, as amended, not specifically referenced herein and that the aforementioned credit applies only to the above-listed charges and is capped at Seven Thousand Seven Hundred Forty-nine and 11/100 Dollars (\$7,749.11). *(The estimated 2006 CAM Reconciliation charges excludes the 2006 pay 2007 real estate taxes for which Tenant may be responsible for under the terms of the Lease, as amended.)

6. The Parties acknowledge and agree that this Amendment shall relate back to the date of the execution of the Lease and that all remaining terms and conditions, as set forth in the Lease shall remain in full force and effect.

7. This Amendment may be executed in counterparts, all of which shall be deemed originals.

8. The undersigned persons executing and delivering this Amendment on behalf of the Tenant represent and certify that they are the duly elected officers of Tenant and have been fully empowered, by proper resolution of the Board of Directors to execute and deliver this

Amendment and that all necessary corporate action has been taken and done.


IN WITNESS WHEREOF, the parties have caused this Second Amendment to Lease to be executed for and on their behalf on the day and year first written above.

LANDLORD:

TENANT:

SOUTH BEND REDEVELOPMENT COMMISSION

LE PEEP OF SOUTH BEND, INC.


Signature

Marcia I. Jones, President
Printed Name and Title


Signature

Richard F. Carlton Vice President
Printed Name and Title

ATTEST:


Signature

Karl G. King, Vice-President
Printed Name and Title

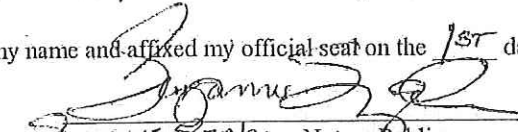
STATE OF INDIANA)

) SS:

ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared RICHARD CARLTON and _____, known to me to be the VICE PRESIDENT and _____, respectively, of the ~~South Bend Redevelopment Commission~~ and acknowledged the execution of the foregoing Second Amendment to Lease. Le Peep of South Bend, Inc

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 1ST day of NOVEMBER, 2007.


SUZANNE SZABO, Notary Public
Residing in St. Joseph County, IN

My Commission Expires: July 4, 2009

STATE OF INDIANA)

) SS:

ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Karl G. King of Le Peep of South Bend, Inc. and acknowledged the execution of the foregoing Second Amendment to Lease. the South Bend Redevelopment Commission

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 2nd day of November, 2007.

Cheryl K Phipps

Notary Public
Residing in _____, IN

My Commission Expires:

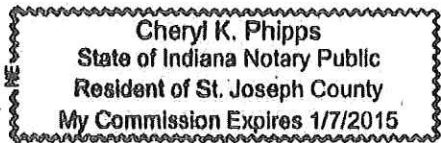


EXHIBIT A

The Premises consists of Retail Area Nos. 3 and 4, commonly referred to as 127 S. Michigan Street, South Bend, Indiana, which comprises of 3,203 square feet located on the ground level of the Leighton Center Parking Garage, commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

**FIRST AMENDMENT TO LEASE BETWEEN
SOUTH BEND REDEVELOPMENT COMMISSION AND
LEPEEP OF SOUTH BEND, INC.
DATED OCTOBER 20, 2000**

This agreement is entered into this 13th day of Feb, 2003 by and between the South Bend Redevelopment Commission ("Landlord") and LePeep of South Bend, Inc., ("Tenant").

WHEREAS, Landlord and Tenant are parties to a Lease dated October 20, 2000 ("Lease") related to premises located at 127 South Michigan Street, South Bend, Indiana; and

WHEREAS, this agreement is entered into as the "First Amendment to Lease" to modify the terms and conditions in the Lease;

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties make this First Amendment to Lease as follows:

1. Revised Exhibit "A" is attached hereto and made part hereof, describing the area to be leased.

2. Section 1.2 is revised and replaced as follows:

Section 1.2. The Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and subject to the terms and provisions of the Lease and Addendum thereto, the space described on Revised *Exhibit "A"*, which is the northernmost retail space, 127 South Michigan Street, the first floor of the Leighton Plaza parking garage and containing 2,703 square feet as identified in the October 20, 2000 Lease currently being leased by Tenant plus an additional 500 square feet identified herein as the "Expansion Space". The 2,703 square feet and the Expansion Space together shall be referenced hereinafter as the "Premises". The Premises is located entirely within the Building, and is included in the term "Building" in this lease. *Exhibit "A"* shows only the approximate shape of the Premises. Minor variations in square footage and space leased may occur and the parties to this Lease agree that such minor variations are not material or important.

3. Section 2.1 is amended by adding the following paragraph:

The Expansion Space shall be delivered in "as-is" condition excepting that the following shall be performed by the Landlord, which is subject to change after the physical walk-

through; Re-demising of the contemplated portion of the suite as per above with walls to the underside of the deck, any adjustment to grid, tile, sprinkler system and mechanicals in order to demise the space, existing carpet removed with floor ready to receive new flooring. Tenant shall be responsible for its own interior finishes in the Expansion Space excepting those improvements that shall be provided for by Landlord as outlined herein and further described in revised Exhibit "A".

Landlord shall reserve the right to review and approve all plans.

4. Section 4.2 is amended by adding the following sentence:

Section 4.2. Base Rental. Upon delivery and completion of Landlord's work, Tenant's Base Rent for Expansion Space shall be Ten Dollars and Fifty Cents (\$10.50) per square foot per year or Four Hundred Thirty-Seven Dollars and Fifty Cents (\$437.50) per month in addition to the Base Rental of Two Thousand Three Hundred Sixty-Five and 12/100 (\$2,365.12) until expiration of the Lease Term.

\$2802.12/mo
Total

5.. Tenant and Commission acknowledge and agree that this Amendment shall relate back to the date of the execution of the Lease and that all remaining terms and conditions, as set forth in the Lease shall remain in full force and effect.

6.. This Amendment may be executed in counterparts, all of which shall be deemed originals.

IN WITNESS WHEREOF, the parties have caused this Amendment to Lease to be executed for and on their behalf on the day and year first written above.

[SIGNATURE PAGES ATTACHED]

SOUTH BEND REDEVELOPMENT COMMISSION

ATTEST:

Philip J. Havens

Robert W. Hunt
Robert W. Hunt, President.

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Robert W. Hunt and Philip Faccenda, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 21st day of February, 2003.

Pamela D. Morris

Notary Public
Residing in St. Joseph County, IN

My Commission Expires:

PAMELA SMORRIS
NOTARY PUBLIC STATE OF INDIANA
ST. JOSEPH COUNTY
MY COMMISSION EXP SEPT 24, 2010

LEPEEP OF SOUTH BEND, INC.

By: P. Dalton
Name: Peg Dalton
Its: Owner / Vice Pres

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Peg Dalton known to me to be the owner / VP of LePeep of South Bend, Inc. and acknowledged the execution of the foregoing Amendment to Lease.

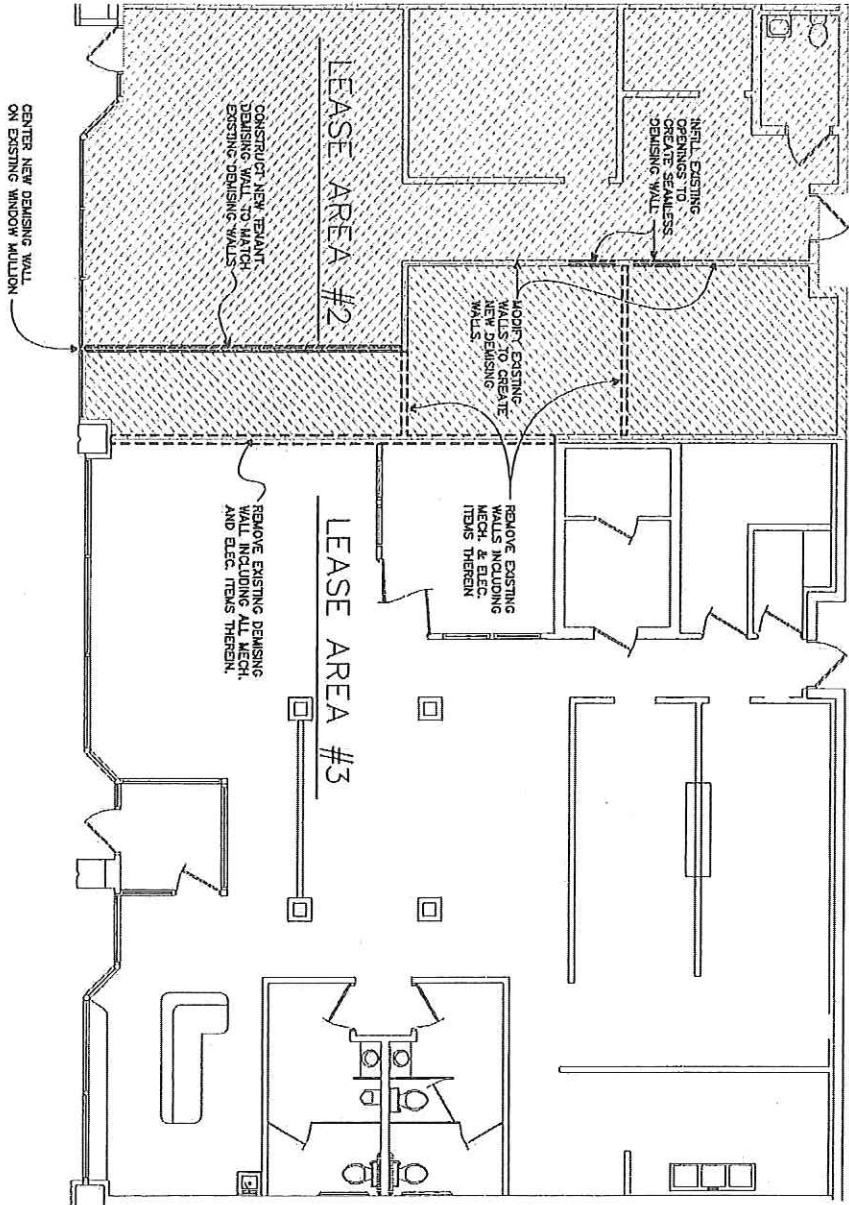
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 12 day of February, 2003.

Peggy Dalton

Notary Public
Residing in St. Joseph County, IN

My Commission Expires: 2/10

REVISIONS TO LEASE AREAS 2 & 3
 SCALE: 1/8" = 1'-0"



AREA RECALCULATIONS:

- ORIGINAL LEASE AREA 2: 1,570 sq. ft.
- LESS REMOVED AREA: 514 sq. ft.
- REMOVED LEASE AREA 2: 1,056 sq. ft.
- AREA ADDED TO LEASE AREA #3 (LePEEP): 514 sq. ft.

M P A
 ARCHITECTS
**MATHEWS
 PURUCKER
 ANELLA, INC.**
 250 SOUTH PARKWAY STREET
 2ND FLOOR
 SOUTH BEND, INDIANA 46810

PROJECT NAME/
 SHEET TITLE

REVISIONS TO LEASE AREAS 2 AND 3
CB RICHARD ELLIS
 SB PARKING GARAGE
 SOUTH BEND, INDIANA

PROJECT NUMBER
 20021356.10
 DATE
 JANUARY 9, 2003
 DRAWN BY
 W. COLEMAN
 REVISIONS

SHEET NUMBER
A-1
 OF 1 SHEETS

LEASE

THIS AGREEMENT, made and entered into this 20th day of October, 2000, by and between THE SOUTH BEND REDEVELOPMENT COMMISSION, 1200 County-City Building, South Bend, IN 46601, hereinafter referred to as "Landlord", and LE PEEP OF SOUTH BEND, INC., an Indiana corporation, hereinafter referred to as "Tenant", and in consideration of their mutual undertakings agree as follows:

ARTICLE I - LEASE OF THE PREMISES

SECTION 1.1. BUILDING. Landlord owns a parcel of real estate in St. Joseph County, Indiana, located at the northwest corner of Michigan Street and Jefferson Boulevard, in South Bend, Indiana, commonly known as the Leighton Plaza Building, which building is referred to in this Lease as the "Building".

SECTION 1.2. THE PREMISES. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, upon and subject to the terms and provisions of this Lease, the space outlined on Exhibit A, which is the southernmost retail space/bay, first floor of the Leighton Plaza parking garage containing approximately 2,703 square feet which shall for purposes of this Lease be the number of square feet contained within the Premises, which space will be referred to hereinafter as the "Premises". The Premises is located entirely within the Building, and is included in the term "Building" in this lease. Exhibit A shows only the approximate shape of the Premises. Minor variations in square footage and space leased may occur and the parties to this Lease agree that such minor variations are not material or important.

ARTICLE II - IMPROVEMENTS

SECTION 2.1. INSTALLATIONS. Landlord shall perform or cause to be performed at no additional expense to Tenant those leasehold improvements set forth in Exhibit "B". Tenant shall pay for all other leasehold improvements to be installed in the Premises and shall be responsible to contract for installation of those leasehold improvements. Plans and specifications and the contractors for Tenant's leasehold improvements must be approved in advance, in writing, by Landlord before construction begins, and Landlord agrees to respond to Tenant's request for approval within seven (7) working days. If Landlord fails to respond in writing to Tenant's request for approval within fifteen (15) days, then approval shall be deemed given. Construction may not begin on any of Tenant's leasehold improvements until Landlord has approved the Plans and specifications. Approval by Landlord does not constitute Landlord's agreement to pay for improvements beyond those set forth in Exhibit "B", nor does it constitute consent by Landlord to any contractor or supplier to perform work or deliver materials in behalf of Landlord.

SECTION 2.2. TENANT IMPROVEMENTS. Tenant shall be responsible for its own interior

finishes excepting those improvements that shall be provided by Landlord as outlined herein and as set forth in Exhibit "B". Landlord reserves the right to review and approve all plans and such approval shall not be unreasonably withheld.

SECTION 2.3 OWNERSHIP OF IMPROVEMENTS. Except for moveable equipment and furniture, including items that Tenant has installed and which Tenant can remove without causing damage to the Premises, any other alterations, additions, improvements and fixtures, including without limitation floor covering, lighting fixtures, ducts, controls, diffusers, filters or other equipment for distribution of heating or cooling, which are presently installed or which may be made or installed by either of the parties hereto upon the Premises or the Basement, and which in any manner are attached to the floors, walls or ceilings, is a fixture which is the property of Landlord and shall remain upon and be surrendered with the Premises as a part thereof, without disturbance, molestation or injury. During the term of this Lease, the Tenant shall not remove or damage the above described improvements and fixtures without the written consent of the Landlord. No improvements, alterations or changes in the Premises or the Basement may be made by Tenant without the prior written approval of Landlord which shall not be unreasonably withheld.

ARTICLE III - TERM

SECTION 3.1. THE TERM. The term of this Lease shall be **six (6) years and six (6) months**, hereinafter referred to as the "Term". Upon substantial completion of the Improvements undertaken by Landlord under Article II Section 2.1 of the Lease (Exhibit B), Landlord shall notify Tenant in writing, and the Lease Term shall commence the earlier of (1) the date of Tenant's completion of its portion of leasehold improvements, (2) the date on which Tenant begins actual commercial use of the Premises, or (3) sixty (60) days from the date of completion of Landlord's work as required under Exhibit B of this Lease ("Commencement Date"). The Lease Term shall end at 12:00 midnight, Eastern Standard Time on the date which is six (6) years and six (6) months after the Commencement Date. Possession of the Premises shall be delivered to Tenant on the date the Lease term begins.

The extended Lease Term is in consideration of Tenant's business and Landlord's additional improvements to the Premises as described in Exhibit B.

SECTION 3.2. SHORT FORM LEASE. The parties agree that this Lease shall not be recorded, but upon the request of either party, a Short Form Lease, prepared by Landlord, describing the Premises, the Building, the terms and the names and addresses of Tenant and Landlord, shall be promptly executed, acknowledged and delivered. The Short Form Lease may be recorded.

ARTICLE IV - RENT

SECTION 4.1. COVENANT. Tenant agrees that it will pay, without relief from valuation or appraisal laws, a rental for the Premises to the Landlord, at 1200 County-City Building, South Bend, Indiana 46601, or such other place as the Landlord may from time to time specify in writing, all as hereinafter provided.

SECTION 4.2. RENTAL. Tenant agrees to pay to Landlord rental in the monthly amount of Two Thousand Three Hundred Sixty-Five and 12/100 Dollars (\$2,365.12), in advance, beginning on the commencement date of this Lease as defined in Article III, Section 3.1, or a pro rata portion of that rental if the Term commencement date is not the first day of the month. Full payments shall be made thereafter on the on the first day of each successive, consecutive month during the Term of the Lease. Rent shall be delinquent unless it is received by Landlord or by Landlord's duly authorized Property Management Agent on the first day of each month or within ten (10) days thereafter.

SECTION 4.3. BASE RENTAL ABATEMENT. Landlord shall provide Tenant with three (3) months of Base Rental Abatement for the six (6) year six (6) month Lease Term as defined hereinafter. Said Base Rental Abatement shall be considered an allowance for additional Tenant Improvements as set forth herein.

SECTION 4.4. COMMON EXPENSE. Except as otherwise provided by Section 7.1 herein, in addition to Minimum Rental, Tenant shall pay to Landlord its prorata share of the common expenses of the Building which include real estate taxes, assessments, maintenance expenses (excepting and excluding, however, all expense of roofing and structural repairs, heating, all plumbing and electrical maintenance and repair expenses which are not directly attributable to the installation and maintenance of plumbing, electrical, and lighting fixtures in the Premises and the bathroom facilities utilized and exclusively serving Tenant, which plumbing and electrical fixture maintenance costs shall be the responsibility of Tenant), management expense of an independent management company at a fee which is not a higher percentage of rents than Landlord is presently paying, insurance expense, and public utility expense for the common areas, snow and ice shoveling expense, painting, window washing, awning maintenance and other exterior building maintenance which is not of a structural or roof repair nature, sidewalk cleaning, security expense if requested by Tenant, which prorata share is hereinafter referred to as "Common Expense". Tenant's "prorata share" for purposes of this paragraph is Twenty Three and Forty Five One Hundredths percent (23.45%) of those expenses and represents the percentage the Premises comprises of the total 11,526 rentable square feet in the Building. The amount of each monthly installment of Common Expense shall be based upon an estimate made by Landlord of those expenses which comprise additional rental and shall be adjusted as of January 1 of each calendar year within the Lease Term. Landlord shall notify Tenant on or about December 1 of the Common Expense amount which shall be payable by Tenant during the next calendar year. In the event such notice is not given, Tenant shall pay the same monthly Common Expense until notified. The initial monthly Common Expense for the period from the commencement date to December 31, 2001, is Four Hundred and Sixteen and 00/100 Dollars (\$416.00) and is payable beginning on the date the first payment of minimum rental is due and on the first day of each month thereafter until modified. The estimate of Common Expense shall be based upon the actual expenses for items included in Common Expense for the preceding calendar year, adjusted to reflect reasonably anticipated increases or decreases. On or before March 1 of each calendar year, Lessor shall provide Tenant with a statement showing in reasonable detail the actual expenses of those items paid or incurred by Landlord during the preceding calendar year, which statement shall include either a deficiency amount owed by Tenant which shall be paid within ten (10) days by Tenant to Landlord or a statement of overpayment of Tenant's proportionate share of such expenses, which sum shall be credited against the rental due from Tenant to Landlord during the year or refunded to Tenant within thirty (30) days, at Tenant's election. Landlord's statement of

Common Expense shall be conclusive subject to correction of mathematical errors, adjustment upon resolution of any pending appeals relating to real property taxes and may be based on reasonable estimates of those sums if actual amounts are not known. Establishment of Common Expense by Landlord shall be done on a calendar year basis, effective January 1 of each lease year. Tenant shall pay the Common Expense due with Tenant's payments of Minimum Rental in monthly payments in an amount equal to one-twelfth (1/12) of the Annual Common Expense due as set forth in Landlord's statement of Common Expense. When the actual amount of Common Expense due for the current calendar year is determined, (if the additional rent was based on estimates) Tenant shall receive credit for the amounts paid to Landlord hereunder and the balance, if any, shall be due and payable to Landlord within thirty (30) days of the date of the statement for said balance delivered by Landlord to Tenant or mailed to Tenant's address in the Premises.

SECTION 4.5. PAST DUE RENT. If Tenant shall fail to pay, when the same is due and payable, any rent or additional rent, such unpaid amounts shall bear interest if not paid in full within ten (10) days from the due date thereof at the rate of eighteen percent (18%) per annum or Twenty Dollars (\$20.00) per day, whichever is the larger amount.

SECTION 4.6. SECURITY DEPOSIT. A security deposit in the amount of one-month Base Rental shall be required.

ARTICLE V - USE OF BUILDING

SECTION 5.1. USE. Tenant shall operate the Premises for purposes of an eat-in/take-out restaurant with a breakfast and lunch-type menu and other ancillary purposes associated therewith. Tenant may make nonstructural alterations and improvements to the interior of the Premises of \$10,000 or less per alteration with Landlord's prior consent, provided the work is performed in a good and workmanlike manner. Tenant may close its business once every 5 years for up to thirty (30) days to refurbish and redecorate the Premises. Rent may be abated by fifty percent (50%) per day during such closures.

SECTION 5.2. EXCLUSIVE USE. Throughout the Term, as it may be extended under the terms of this Lease, Tenant shall have the exclusive right in the Building to engage in the operation of an eat-in/take-out restaurant with a breakfast and lunch-type menu. Landlord shall not allow any other party in the Building to violate the terms of this exclusivity agreement as to the operation of a similar restaurant without the express written consent of Tenant which such consent Tenant shall not unreasonably withhold. If a violation occurs, Landlord shall take prompt and appropriate action to cease the violating use.

SECTION 5.3. NO ALTERATION OF COMMON AREAS. Landlord further warrants that it shall not change or alter the common areas in any manner which would alter the dimensions or location of the Premises or adversely affect the use, operation or conduct of Tenant's business being conducted in the Premises, or adversely affect the accessibility or visibility of the Premises.

SECTION 5.4. CARE OF BUILDING. (a) Tenant shall not perform any acts or carry on any practices which may injure the Building or be a nuisance or menace to other tenants in the Building,

and shall keep the Premises free and clean from rubbish and trash at all times, shall provide routine maintenance and janitorial services for the Premises and shall store all trash and garbage within the Premises at locations designated by Landlord and at no other location, and shall arrange for regular pick-up of such trash and garbage included in Tenant's Common Expense under Section 4.3. Tenant shall not burn any trash or garbage of any kind within the Building. Landlord will provide facilities for pick-up of trash or garbage, then Tenant shall be obligated to use the same and shall pay a proportionate share of the cost.

(b) Except for structural changes outside the Premises which shall be Landlord's responsibility, Tenant shall comply with and obey all applicable laws, regulations and orders of any governmental authority or agency and all reasonable directions of Landlord, including such building rules and regulations as may be adopted from time to time by Landlord, as changed or modified from time to time by Landlord on reasonable notice to Tenant, all of which shall be deemed part of this Lease. Tenant shall not do or permit anything to be done in and about the Building or Premises which will obstruct or interfere with the rights or other tenants or occupants of the Building or injure or annoy them or which will increase the rate of fire insurance on the Building. Landlord shall not be responsible to Tenant for the failure of any other tenant or occupant of the Building to comply with any of the rules and regulations adopted by Landlord, but shall take reasonable measures to assure such Tenant's compliance. In the event any portion of the Premises is determined to be in violation of any building code, health law or ordinance or other law, local ordinance or rule during the term of this Lease, Tenant shall be solely responsible to bring the Premises into compliance with such ordinance, rule or law at Tenant's expense. In the event Tenant is prevented from using the Premises until such violations of code, ordinance or law are corrected, these circumstances shall not impair, terminate or have any other effect on this Lease and Tenant's obligations to pay rent and additional rent hereunder shall continue notwithstanding these events.

SECTION 5.5. RIGHTS RESERVED TO LANDLORD. Landlord shall have the following rights exercisable upon reasonable prior notice, but without liability to Tenant for damage or injury to property, person or business (all claims or damage being hereby released), and without effecting an eviction or disturbance of Tenant's use or possession or giving rise to any claim for offsets or abatement of rent:

(a) To change the name or street address of the Building;

(b) To install and maintain signs on the exterior and interior of the Building which signs will not affect the access to or visibility of the Premises or Tenant's signs;

(c) To designate and/or approve, prior to installation, all types of window coverings, awnings, covered entrances and signs and lettering on windows and building exteriors and elsewhere visible from the sidewalk on the Building, and to control all internal lighting that may be visible from outside the Building. Tenant shall comply with the specifications set forth in Exhibit "C" pertaining to exterior signs and window and door graphics, the terms of which are incorporated herein. Signage inconsistent with the terms of Exhibit "C" is prohibited;

(d) To have pass keys to the Building, Premises and all portions thereof;

(e) To grant to anyone the exclusive right to conduct any business or render any service in the Building if such exclusive right shall not operate to exclude Tenant from the use expressly permitted by Section 5.1;

(f) To decorate, remodel, repair, alter or otherwise prepare the Building for reoccupancy during the last six (6) months of the term hereof, but only if during or prior to such time Tenant vacates the Building, or at any time after Tenant abandons the Building;

(g) To enter the Building to make inspections, repairs, alterations, or additions in or to the building, or during the final 6 months of the Term to exhibit the Building to prospective tenants, purchasers or others, at reasonable hours and at any time in the event of an emergency, and to perform any acts related to the safety, protection, preservation, reletting, sale or improvement of the Building;

(h) To require all persons entering or leaving the Building during such hours as Landlord may from time to time reasonably determine to identify themselves to a watchman by registration or otherwise and to establish their right to enter and to exclude or expel any peddler, solicitor or unruly or loud person at any time from the Building;

(i) To close the Building during times of emergency and, subject to Tenant's right to admittance under such regulations as shall be prescribed from time to time by Landlord, after regular business hours;

(j) To approve the weight, size and location of safes and other heavy equipment and articles in and about the Building and to require all such items to be moved in and out of the Building only at such times and in such manner as Landlord shall direct and in all events at Tenant's sole risk and responsibility;

(k) With prior written Notice to Tenant and without the interruption of Tenant's business, to decorate, alter, repair or improve the Building at any time, and Landlord and its representatives for that purpose may enter on and about the Building with such materials as Landlord may deem necessary, may erect scaffolding and all other necessary structures on or about the Building and may close or temporarily suspend operations of entrances, doors, corridors, elevators and other facilities. Tenant waives any claim for damages including the loss of business resulting therefrom unless specifically caused by the intentional, willful acts or gross negligence of Landlord or Landlord's agent. In the exercise of its rights under this subparagraph, Landlord shall not unreasonably interfere with the conduct of Tenant's business and shall provide access to the Premises for Tenant's customers and staff during business hours; and

(l) To do or permit to be done any work in or about the Building or any adjacent or nearby building, land, street or alley.

ARTICLE VI - PUBLIC UTILITIES

SECTION 6.1. UTILITY SERVICES. Landlord shall provide the necessary mains, meters, and

conduits for water and sewer facilities and electric service to the Premises. Tenant shall promptly pay all bills for any utility service to the Premises.

SECTION 6.2. MAINTENANCE OF MECHANICAL EQUIPMENT AND PLUMBING. As set forth more specifically in Section 4.3 herein, the expenses of maintaining the electrical and plumbing systems supply to the Premises which are not directly attributable to the installation and maintenance of plumbing and light fixtures in the Premises, and the bathroom facilities utilized by the Tenant shall be the responsibility of Landlord. Tenant is prohibited from performing any maintenance services to any of the aforesaid equipment itself or from hiring any contractors or persons to repair the same. Landlord agrees to arrange for repair and maintenance to the plumbing and electrical fixtures utilized by the Tenant in the Premises, and Landlord shall promptly send to Tenant an invoice for the expense of such repair, which shall be paid by Tenant within ten (10) days after mailing or delivery of such statement of expense by Landlord to Tenant, unless such repairs are considered replacement or major repair of utility supply lines (i.e. gas, electric, water) or HVAC to the extent the replacement or repair is not due to the actions of Tenant. Provided, however, Landlord shall be responsible for the cost of repairs which are considered replacement. Landlord shall also maintain the heating and air conditioning which serve Tenant's Premises which costs shall be paid by Tenant as part of its Common Expenses.

SECTION 6.3. LANDLORD'S RESERVED RIGHTS. With prior written notice to Tenant, Landlord reserves the right to suspend or reduce the services of heating, elevators, plumbing, electrical, air conditioning or other mechanical systems in the Building when necessary by reason of governmental regulations, civil commotion, or riot accident or emergency or riot, accident or emergency, or for repairs, alterations or improvements which are in the reasonable judgment of Landlord desirable or necessary, or for any other reason beyond the power or control of Landlord (including without limitation, the unavailability of fuel or energy or compliance by Landlord with any applicable laws, rules or regulations relating thereto), without liability in damages therefor and without any reduction in rental payable by Tenant. The exercise of such right by Landlord of such right by Landlord shall not constitute an actual or constructive eviction in whole or in part or entitle Tenant to any abatement or diminution of rent or relieve Tenant from any Tenant's obligations under the Lease or impose any liability upon Landlord or its agents by reason of inconvenience or annoyance to Tenant or injury to or interruption of Tenant's business or otherwise. Landlord shall not in any way be liable or responsible to Tenant for any loss, damage or expense which Tenant may sustain or incur if, during the Lease Term and for reasons beyond the control of Landlord, either the quality or character of electric current is changed or is no longer available or suitable for Tenant's requirements.

ARTICLE VII - MAINTENANCE AND REPAIRS

SECTION 7.1. MAINTENANCE OF BUILDING AND PREMISES. Landlord shall at its expense keep the foundation, outer walls and other similar structural components, including the roof of the Building (excluding glass) in good repair. All Landlord work shall be performed in a workmanlike manner in compliance with all laws, codes, and all regulations. If Landlord's work is not performed as herein required, or if such work or the building is not in compliance with all laws, codes or other regulations, Landlord shall perform the necessary remedial work at its sole cost and expense.

Tenant shall maintain the Premises in a good neat and clean condition. Landlord shall not be required to make any other improvements or repairs except as provided in this Lease. Tenant shall maintain the Premises in a good, neat and clean condition, providing routine janitorial services at Tenant's expense (the Common Expense charge under Section 4.3) and shall further replace all burned out light bulbs, window glass, glass in entrance doors and store fronts and fluorescent tubes as needed and Tenant shall comply with all requirements of law, ordinance, health officer, fire marshal and building inspector regarding its use of the Premises. Tenant shall permit no waste, damage or injury to the Premises and Building and shall at its own cost and expense replace any glass which may become broken in the Premises. At the expiration of the tenancy created hereunder, Tenant shall surrender the Premises in good condition, reasonable wear and tear, loss by fire or other unavoidable casualty excepted, and shall repair any damage caused by removal of any fixtures which it is permitted hereunder to remove and shall remove all property from the Premises except that property owned by Landlord, removing all trash, rubbish and similar items, leaving the same in a clean, neat condition.

ARTICLE VIII - INDEMNITY AND INSURANCE

SECTION 8.1 COVENANT TO HOLD HARMLESS. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the wilful act of Landlord, including but not limited to, the person and property of Tenant, and its officers, agents, employees and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation, attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant.

SECTION 8.2. MECHANIC'S LIENS. Tenant shall indemnify and save Landlord harmless from all mechanic's, materialmen's or other liens against the Premises or Building in respect of any labor, services, materials, supplies or equipment furnished to or upon the request of Tenant, including without limitation, all expenses related to such liens such as attorney fees and interest: Provided, however, that this Tenant obligation shall not apply with respect for the improvements contracted for and caused to be made by Landlord under Section 2.2., hereunder. In the event a notice of intention to file mechanic's lien is filed against the Premises or Building in violation of preceding sentence, Tenant shall upon demand made in writing by Landlord, cause the same to be removed at no expense of Landlord within ten (10) days of the date of said notice.

SECTION 8.3. TENANT'S OBLIGATION TO CARRY PUBLIC LIABILITY INSURANCE. Tenant shall, during the entire term hereof, keep in full force and effect a policy of public liability insurance with respect to the Premises listing Landlord as an additional insured thereunder and the Business operated by Tenant and in the Premises in which the limits of liability shall be not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) for each accident or occurrence for bodily injury and One Hundred Thousand Dollars (\$100,000.00) for property damage. Tenant shall furnish Landlord with a certificate or certificates of Insurance or other acceptable evidence that such insurance is in force at all times during the term hereof, and that the same cannot be canceled without 20 days prior written notice to Landlord.

SECTION 8.4. RELEASE FROM SUBROGATION. Each party hereto releases the other party from any liability which the released party would have had, but for this section, to the releasing party arising out of or in connection with any accident or occurrence or casualty (a) which is or would be covered by a fire and extended coverage policy, with vandalism and malicious mischief endorsement, or by a sprinkler leakage or water damage policy regardless of whether or not such coverage is being carried by the releasing party, and (b) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission of any other tenant or occupant of the Building, and Tenant hereby expressly waives any claim for such damages.

ARTICLE IX - DESTRUCTION OR DAMAGE TO PREMISES

SECTION 9.1. PARTIAL OR TOTAL DESTRUCTION OF BUILDING. In the event the building comprising the Premises shall be partially or totally destroyed by fire, explosion or other casualty, insurable under standard fire and extended coverage insurance, so as to become partially or totally untenable, the same shall be repaired as speedily as possible at the expense of Landlord, unless Landlord shall elect not to rebuild as hereinafter provided, and a proportionate part of the Rent in proportion to the portion of the Premises which are rendered untenable shall be abated until so repaired. If the damage is substantial Landlord shall have a period of thirty (30) days after the occurrence of any such casualty to decide whether or not the Building and Premises shall be repaired. In the event Landlord elects not to rebuild and repair, this Lease shall terminate effective as of the date of the casualty. In the event Landlord decides to rebuild and repair, it shall proceed as rapidly as possible to begin and complete those repairs; Provided, however, that such repairs shall be completed within sixty (60) days of award of construction contract, and the rental shall continue to be proportionately abated until the repair is completed, at which time regular rental payments shall be due and payable.

SECTION 9.2. RIGHTS ON TERMINATION. In the event of the termination of this Lease under the provisions in this Article contained, all rent shall be adjusted to the date of such damage or destruction and all liabilities and obligations under this Lease shall be immediately terminated.

ARTICLE X - EMINENT DOMAIN

SECTION 10.1. CONDEMNATION. If twenty percent (20%) or more of the Premises shall be taken by public authority, under the power of eminent domain, Tenant may cancel this Lease by written notice of such termination and, thereupon, this Lease and the term herein demised shall cease and terminate.

SECTION 10.2. DAMAGES. All damages awarded for such taking under the power of eminent domain, whether for the whole or a part of the Premises, shall be the property of Landlord; provided, however, that Landlord shall not be entitled to any award made to Tenant for diminution in value

or loss of the leasehold, loss of business, and depreciation to and cost of removal of stock and fixtures.

SECTION 10.3. PUBLIC AUTHORITY AND EMINENT DOMAIN DEFINED. The term “public authority” as used in this Article shall include any corporation, firm or association, whether publicly or privately owned, having the power of eminent domain. The term “eminent domain” shall include the exercise of any similar governmental power and any purchase or other acquisition in lieu of condemnation.

SECTION 10.4. RIGHTS ON TERMINATION. In the event of the termination of this Lease under the provisions in this Article contained, all rents shall be adjusted to the date of such termination and all liabilities and obligations under this Lease shall be immediately terminated.

ARTICLE XI - REMEDIES

SECTION 11.1. DEFAULT. The occurrence of any one or more of the following events constitutes a default (“Default”) by Tenant under this Lease:

- (a) After ten (10) days, failure by Tenant to pay when due any rent or additional rent as provided in this Lease;
- (b) Failure by Tenant to pay on the date the same is due any other monies due and payable from Tenant to Landlord under this Lease if such failure continues for more than ten (10) days after invoice from Landlord.
- (c) Failure by Tenant to cure forthwith, within a reasonable time prescribed by Landlord after receipt of notice from Landlord, any hazardous condition which Tenant has created in violation of law or of this Lease;
- (d) Failure by Tenant to observe or perform any other covenant, agreement, condition or provision of this Lease to be observed or performed by Tenant if such failure continues for five (5) days after notice to Tenant by Landlord, unless the nonobservance or performance is of a nature that it cannot be corrected in five (5) days and Tenant has commenced observance or performance and is pursuing it with diligence;
- (e) The levy under an order of execution, or the attachment by legal process of the leasehold interest of Tenant, or the filing or creation of a lien in respect of such leasehold interest which Tenant does not discharge in ten (10) days;
- (f) Failure by Tenant to observe or perform any of the covenants in respect to assignment and subletting set forth in Section 12.1;
- (g) Tenant vacates or abandons the Premises (the transfer of a substantial part of the operations, business and personnel of Tenant to some other location being deemed, without limiting the meaning of the term “vacates or abandons”, to be a vacation or abandonment within the meaning

of this clause (g), notwithstanding that Tenant shall thereafter continue to pay the rent due under this Lease);

(h) Tenant becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for Tenant or for the major part of its property;

(i) A trustee or receiver is appointed for Tenant or for the major part of its property and is not discharged within thirty (30) days after such appointment; or

(j) Any proceedings for relief under any bankruptcy law, or similar law for the relief of debtors, are instituted by or against Tenant, and, if instituted against tenant, are allowed against it or are consented to by it, or are not dismissed within twenty (20) days after such institution.

SECTION 11.2. LANDLORD'S REMEDIES UPON DEFAULT. If a default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it by law:

(a) Landlord may terminate this Lease by giving to Tenant notice of Landlord's intention so to do, in which event the Lease Term shall end, and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;

(b) If Tenant voluntarily vacates the premises prior to expiration of Lease, Landlord may terminate the right of Tenant to possession of the Building without terminating this Lease by giving notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Building or any part thereof shall cease on the date stated in such notice; and

(c) Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease.

SECTION 11.2.1. SURRENDER. If Landlord exercises either of the remedies provided for in subparagraphs (a) and (b) of Section 11.2, Tenant shall surrender possession and vacate the Premises immediately and deliver possession thereof to Landlord and Landlord may then or at any time thereafter re-enter and take complete and peaceful possession of the Premises, with or without process of law, full and complete license so to do being hereby granted to Landlord, and Landlord may remove all occupants and property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without relinquishing Landlord's right to rental or any other right given to Landlord hereunder or by operation of law. ◦

SECTION 11.2.2. TERMINATION OF POSSESSION. If Landlord terminates the right of Tenant to possession of the Premises pursuant to and under those conditions set forth in Section 11.2(b), above, without terminating this Lease, such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the rental hereunder for the full Lease Term, and the aggregate amount of the Minimum Rental for the period from the date stated in the notice terminating possession to the end of the Lease Term shall at once mature and be immediately due and payable by Tenant to Landlord, together with any and all other moneys due hereunder, and Landlord shall have the right to immediate recovery of all such amounts, subject to reduction for all sums received by Landlord as a consequence of its reasonable mitigation efforts. In addition, Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for, all Additional Rental and any other sums thereafter accruing as they become due under this Lease during the period from the date of such notice of termination of possession to the stated end of the Lease Term. In any such case, Landlord may relet the Premises or parts thereof to the account of Tenant for such rental, for such time (which may be for a term extending beyond the Lease Term) and upon such terms as Landlord in its reasonable discretion shall determine. Also in any such case Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord reasonably necessary or desirable and in connection therewith change the locks to the Premises, and Tenant shall upon demand pay the cost thereof together with Landlord's reasonable and necessary expenses of reletting. Landlord may collect the rents from any such reletting and apply the same first to the payment of the expenses of re-entry, repairs, the costs associated with return of the Premises to the basic shell condition as initially provided by Landlord and described in Exhibit B, and the expenses of reletting, and second to the payment of rental herein provided to be paid by Tenant and any excess or residue shall operate only as an offsetting credit against the amount of rental as the same thereafter becomes due and payable hereunder, but the use of such offsetting credit to reduce the amount of rental due Tenant, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue and any such excess or residue shall belong to Landlord solely; provided that in no event shall Tenant be entitled to a credit on its indebtedness to Landlord, in excess of the aggregate sum (including Minimum Rental and Additional Rental) which would have been paid by Tenant for the period for which the credit to Tenant is being determined, had no Default occurred. No such re-entry or repossession, repairs, alterations and additions, or reletting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease unless a written notice of such intention be given to Tenant or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder; and Landlord may, at any time and from time to time, sue and recover judgment for any deficiencies from time to time remaining after the application, from time to time, of the proceeds of any such reletting.

SECTION 11.2.3. TERMINATION OF LEASE. If this Lease is terminated by Landlord as provided for by subparagraph (a) of Section 11.2, Landlord shall be entitled to recover from tenant all the fixed dollar amounts of rentals accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant, or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease, which may be then owing and unpaid, and all costs and expenses, including court costs and attorneys' fees incurred by Landlord in the enforcement of its rights and remedies hereunder, and in addition Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty

(a) the aggregate sum which at the time of such termination represents the excess, if any of the present value of the aggregate rentals at the same annual rate for the remainder of the Lease Term as then in effect pursuant to the applicable provisions of Lease, over the then present value of the then aggregate fair rental value for the building for the balance of the Lease Term, such present worth to be computed in which case on the basis of a three percent (3%) per annum discount from the respective dates upon which such rentals have been payable hereunder had this Lease not been terminated; and (b) any damages in addition thereto, including reasonable attorneys' fees and court costs, which Landlord shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of rent.

SECTION 11.2.4. PROPERTY. All property removed from the Premises by Landlord pursuant to any provisions of this Lease or of law may be handled, removed or stored by Landlord at the cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation, or safekeeping thereof. Tenant shall pay Landlord for all expenses incurred by Landlord's control. All property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after the end of the Lease Term, however terminated, shall be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant, and Landlord may dispose of the same in its discretion by selling or discarding the same or using the same for its own purposes, and Tenant hereby releases all claim whatsoever to such property. However, Landlord may agree in writing to extend the thirty (30) day period to permit Tenant to remove Tenant's property from the Premises for a period not to exceed thirty (30) additional days.

SECTION 11.2.5. EXPENSES. Tenant shall pay all of the costs, charges and expenses, including court costs and reasonable attorneys' fees, incurred by Landlord in enforcing its rights under this Lease or incurred by Landlord in any litigation, negotiation or transactions relating to, or arising out of, this Lease in which Landlord, without fault, becomes involved or concerned. Landlord shall pay all of the costs, charges and expenses, including court costs and reasonable attorneys' fees, incurred by Tenant in enforcing its rights under this Lease or incurred by Tenant in any litigation, negotiation or transactions relating to, or arising out of, this Lease in which Tenant, without fault, becomes involved or concerned.

ARTICLE XII - ASSIGNMENT AND SUBLETTING

SECTION 12.1. TENANT MAY NOT ASSIGN OR SUBLET. Tenant may not assign or transfer this Lease or sublet the Premises, or any part or parts thereof, to any person or party, including Tenant's member organizations, either by Tenant's act, involuntarily or by operation of law, without the previous written consent of Landlord, which consent Landlord may not unreasonably withhold providing Tenant has demonstrated the credit worthiness and reliability of the assignee or subtenant, and the appropriateness of the assignee or subtenant's proposed use of the Premises; provided, however that no such assignment or subletting shall release Tenant of any of its obligations under this Lease or be construed or taken as a waiver of any of Landlord's rights or remedies hereunder. Landlord may assign this Lease without any consent or permission by Tenant.

ARTICLE XIII - MISCELLANEOUS

SECTION 13.1. NOTICES. Whenever under this Lease a provision is made for notice of any kind, such notice shall be in writing and signed by or on behalf of the party giving or making the same, and it shall be deemed sufficient notice and service thereof if such notice is to Tenant and sent by certified mail, return receipt requested, postage prepaid, to the Premises or to the last post office address of Tenant furnished to Landlord for such purpose; and if to Landlord, sent by certified mail, postage prepaid, to 1200 County-City Building, South Bend, Indiana 46601, or such other address as Tenant shall be notified to send notices.

SECTION 13.2. HOLDING OVER. In the event Tenant remains in possession of the Premises with the consent of Landlord after the expiration of the tenancy created hereunder, and without the execution of a new lease or an extension of this Lease, it shall be deemed to be occupying said Building as a Tenant from month-to-month at one and one-half times the monthly rent due and payable at the end of the Lease Term and subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

SECTION 13.3. REMEDIES CUMULATIVE - NO-WAIVER. The various rights and remedies herein contained and reserved to each of the parties shall not be considered as exclusive of any other right or remedy of such party, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute, and said rights and remedies may be exercised and enforced concurrently and whenever and as often as occasion therefore arises. No delay or omission of the right to exercise any power by either party shall impair any such right or power, or shall be construed as a waiver of any default or as acquiescence therein. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent or continuing breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act. Tenant waives the application of valuation and appraisal laws.

SECTION 13.4. GOVERNING LAW. The laws of the State of Indiana shall govern the validity, performance and enforcement of this Lease. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision.

SECTION 13.5. COMPLETE AGREEMENT. The headings of the several Articles and Sections contained herein are for convenience only and do not define, limit or construe the contents of such Articles and Sections. All negotiations, considerations, representations and understandings between the parties are incorporated herein, and may be modified or altered only by agreement in writing signed by the party to be bound. This agreement is signed in multiple counterparts, each of which shall be considered an original.

SECTION 13.6. ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated 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 shall accept such check or payment without prejudice to Landlord's right to recover the

balance of such rent or pursue any other remedy in this Lease provided.

SECTION 13.7. BINDING EFFECT. This Lease and all of the covenants, terms and conditions thereof and herein contained shall inure to the benefit of and be binding upon the personal representatives, successors and assigns of the parties hereto, provided, however, that no assignment by, from or through Tenant in violation of this Lease shall vest in the assigns any right, title or interest.

SECTION 13.8. LIMITATION OF LANDLORD'S LIABILITY. The term "Landlord" as used in this Lease, as far as covenants or agreements on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of Landlord's interest in this Lease at the time in question, and in the event of any transfer or transfers of such interest, except a transfer by way of security, Landlord herein named (and in the case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all liability as respects the performance of any covenants or agreements on the part of Landlord contained in this Lease thereafter to be performed, provided that any funds in the hands of such Landlord or the then transferor at the time of such transfer, in which Tenant has an interest, shall be turned over to the transferee and any amount then due and payable to Tenant by Landlord or the then transferor under any provisions of this Lease, shall be paid to Tenant, and provided further that upon any such transfer, the transferee shall be deemed to have assumed, subject to the limitations of this Section, all the covenants, agreements and conditions in this Lease contained to be performed on the part of Landlord, it being intended hereby that the covenants and agreements contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership. In any event and notwithstanding any other provisions of this Lease, no officer, director, agent, partner, beneficiary, trustee or employee of Landlord or any subsequent owner of the Premises shall be responsible or liable in his individual or personal capacity for the performance or non-performance of any agreement, covenant or obligation of Landlord in this Lease contained, and Tenant shall look solely to the Premises as the sole asset for the payment and satisfaction of all obligations and liabilities hereunder of Landlord or any subsequent owner of the Premises.

SECTION 13.8.1. LIMITATION OF TENANT'S LIABILITY. The term "Tenant" as used in this Lease, as far as covenants or agreements on the part of Tenant are concerned, shall be limited to mean and include only the owner or owners of Tenant's interest in this Lease at the time in question, and in the event of any transfer or transfers of such interest, except a transfer by way of security, Tenant herein named (and in the case of any subsequent transfer, the then transferor) shall be automatically freed and relieved from and after the date of such transfer of all liability as respects the performance of any covenants or agreements on the part of Tenant contained in this Lease thereafter to be performed, provided that any funds in the hands of such Tenant or the then transferor at the time of such transfer, in which Landlord has an interest, shall be turned over to the transferee and any amount then due and payable to Landlord by Tenant or the then transferor under any provisions of this Lease, shall be paid to Landlord, and provided further that upon any such transfer, the transferee shall be deemed to have assumed, subject to the limitations of this Section, all the covenants, agreements and conditions in this Lease contained to be performed on the part of Tenant, it being intended hereby that the covenants and agreements contained in this Lease on the part of

Tenant shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership. In any event and notwithstanding any other provisions of this Lease, no officer, director, agent, partner, beneficiary, trustee or employee of Tenant or any subsequent tenant of the Premises shall be responsible or liable in his individual or personal capacity for the performance or non-performance of any agreement, covenant or obligation of Tenant in this Lease contained, and Landlord shall look solely to the Premises as the sole asset for the payment and satisfaction of all obligations and liabilities hereunder of Tenant or any subsequent tenant of the Premises, with the exception of satisfaction of Tenant's obligations under Section 2.2, above.

SECTION 13.9. SUBORDINATION TO MORTGAGES. This Lease, and the rights of Tenant hereunder, shall be subject and subordinate to the lien or liens of any mortgage or mortgages, now or at any time hereafter in force against the title of Landlord, or any successor to Landlord, in the Building, and to all advances made or hereafter to be made upon the security thereof. If requested by the holder of any such mortgage or mortgages, Tenant shall execute and deliver to such holder an instrument, in form and substance satisfactory to the holder, specifically subordinating this Lease to the lien of such mortgage or mortgages.

SECTION 13.10. ATTORNMENT. If by reason of any default on the part of Landlord as mortgagor under any mortgage or mortgages to which this Lease is subordinated, any such mortgage is foreclosed by legal proceedings or extinguished by conveyance in lieu of foreclosure or otherwise, Tenant, upon the election of the holder of any such mortgage, but not otherwise, will attorn to and recognize such mortgage holder and its successors and assigns, including any purchaser in foreclosure or grantee of a deed in lieu thereof, as Landlord under this Lease. Tenant shall execute and deliver at any time upon request of Landlord or any holder of a mortgage to which this Lease is subordinate, an instrument (or clause) to evidence such attornment and containing the agreement of Tenant that no action taken to enforce any such mortgage by reason of any default thereunder shall terminate this Lease or invalidate or constitute a breach of any of the terms hereof. The attornment provisions of this Section are entirely independent of and not contingent upon the subordination provisions of this Lease. If several requests by mortgagees having security interests with different priorities are made of Tenant, Tenant shall attorn to the mortgagees in the order of their priority.

SECTION 13.11. PARKING. It is expressly understood by Landlord and Tenant that no parking spaces are provided to or designated for use by Tenant under this Lease. Parking for Tenant's employees may be leased from the City of South Bend within the parking garage at the current advertised rate.

SECTION 13.12. MITIGATION/REASONABLENESS . Landlord shall use reasonable efforts to mitigate its damages in the event of a Tenant default. Wherever either party to the Lease is required or requested to give its consent, such consent shall not be unreasonably withheld.

SECTION 13.13. HAZARDOUS MATERIALS. Landlord represents and warrants to the best of Landlord's knowledge the Premises are free of all asbestos, asbestos containing materials, and other hazardous or toxic materials (collectively, "Hazardous Materials"). Tenant shall have no obligation

to make any repairs, alterations or improvements to the Premises or incur any costs or expenses whatsoever as a result of Hazardous Materials in or about the Building or the Premises, other than those Hazardous Materials brought onto such areas by Tenant. Landlord shall be solely responsible for any changes to the Premises relating to Hazardous Materials (at Landlord's expense and not as a charge to Tenant's build out allowance), unless those Hazardous Materials were brought onto the Premises by Tenant. Landlord shall indemnify and hold Tenant harmless from and against all liabilities, costs, damages and expenses which Tenant may incur (including reasonable attorneys' fees) as the result of a breach of Landlord's representation and warranty set forth in this paragraph or the presence of Hazardous Materials in or about the Shopping Center, Building or the Premises, unless those Hazardous Materials were brought onto such areas by Tenant.

SECTION 13.14. OPTION TO RENEW. Landlord hereby grants Tenant the option to renew this Lease for two (2) additional Terms of five (5) years per Term at a rental rate to be negotiated at the time of the renewal option. This option shall be exercised, if at all, in writing, by January 1 of the year in which this Lease or any five year Term of extension expires.

IN WITNESS WHEREOF, the undersigned executed and delivered this Lease on the date set forth below.

[SIGNATURE PAGES ATTACHED]

0049944

RECORDED ON

10-25-2000 9:20:53

TERRI J. RETHLAKE
ST. JOSEPH COUNTY
RECORDER

REC. FEE: 55.00
PAGES: 24

LANDLORD:

SOUTH BEND REDEVELOPMENT
COMMISSION

By *Robert Hunt*

Its *President*

ATTEST: *Marcia Jones*

STATE OF INDIANA)
)SS:
COUNTY OF ST. JOSEPH)

Before me, a Notary Public in and for said County and State, personally appeared *Robert Hunt* and *Marcia Jones* *President* and *Vice-President* respectively, of South Bend Redevelopment Commission, and acknowledged the execution of the foregoing Lease this *20th* day of *October*, 2000.

Deborah Perkins
Notary Public
Residing in St. Joseph County, Ind.

My Commission Expires:
DEBORAH PERKINS
NOTARY PUBLIC STATE OF INDIANA
ST. JOSEPH COUNTY
~~MY COMMISSION EXP. JULY 31, 2000~~

TENANT:

LE PEEP OF SOUTH BEND, INC.

Date: 10/18/00

By [Signature]

Its President

Mr Brian Coulter

Printed Name

ATTEST:

[Signature]

Date: 10/18/00

STATE OF INDIANA)
)SS:
COUNTY OF ST. JOSEPH)

Before me, a Notary Public in and for said County and State, personally appeared Wm Brian Coulter, and _____, _____ and _____ and _____, respectively, of Le Peep of South Bend, Inc., and acknowledged the execution of the foregoing Lease this _____ day of _____, 2000.

Kathleen M. Marshall

Notary Public

Residing in St. Joseph County, Ind.

My Commission Expires:

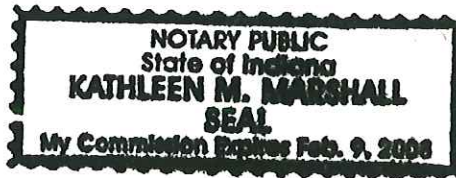


EXHIBIT A

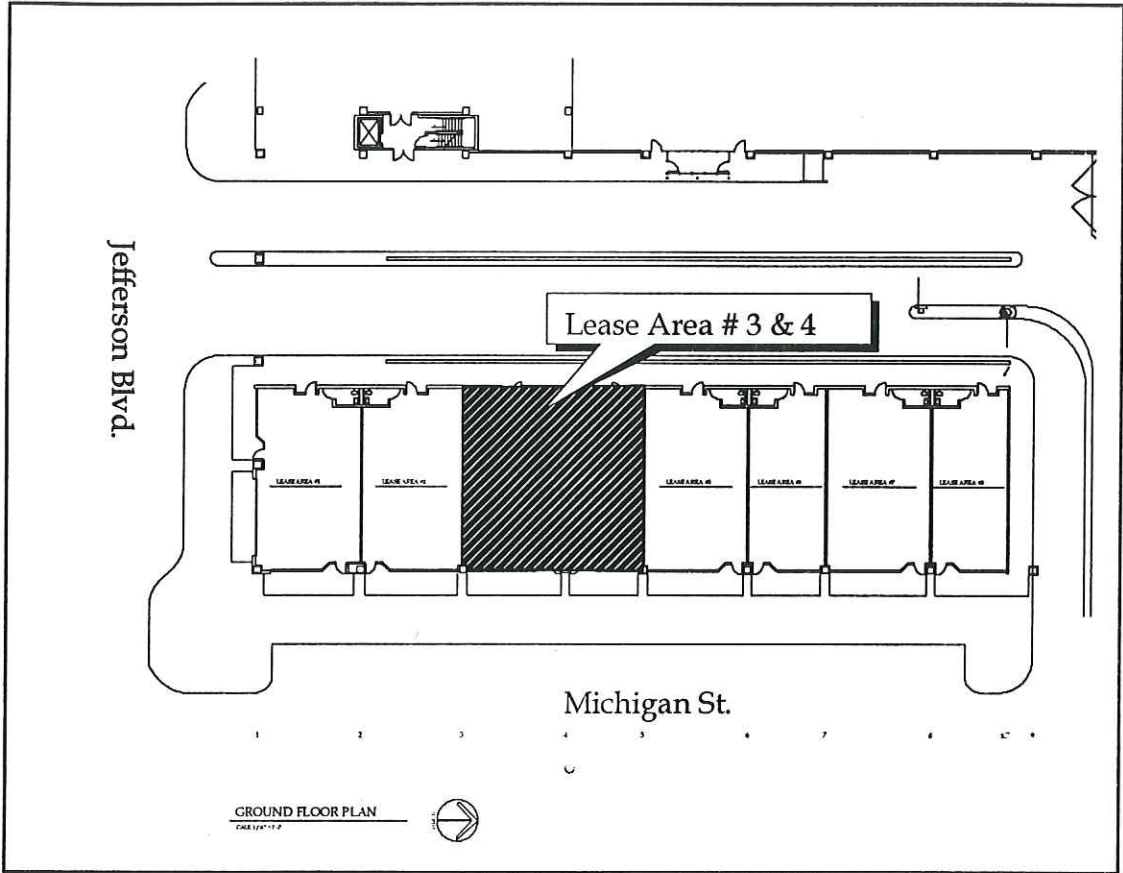


EXHIBIT B

Tenant Improvements By Landlord

The following construction work on behalf of Tenant will be provided for at the expense of Landlord except where noted.

Walls & Doorways Construction of a demising walls (that separates Tenant's space from adjacent spaces). These demising walls and the Western exterior wall include 6" metal stud framing, insulation and 5/8" fire code drywall up to the precast deck, taped, sanded and ready for paint.

One front entry doorway will be removed and replaced with a glass panel to match existing front window facade.

Restrooms Construction of two ADA conforming restrooms. This includes metal stud framing, 5/8" drywall taped and finished – ready for paint, and at the opening of each restroom a 3/0 x 6/8 hollow metal door frame and a flush solid core birch door with finish hardware consisting of hinges, privacy lockset and door stop. Tenant to provide material for floor and wall finish in restroom.

The plumbing for the restrooms will be provided. Water and vented sanitary sewer will be brought to the restrooms. All above slab water piping, all plumbing fixtures and trim, and an electric 6 gallon water heater to service each restroom as required by code will be provided.

Sprinkler System Landlord will install sprinkler system as required by code.

HVAC HVAC will include a total of 11 tons of supply service for the 2703 sq. ft. suite, along with necessary insulated refrigeration piping. Interior ductwork, grilles, diffusers, etc., necessary for basic heating and cooling of the space will also be performed by the Landlord.

Electricity Electricity will be brought to the service panel and duplex outlets will be provided around the perimeter of the Premises. Tenant will be responsible for all Electrical work past the service panel and the perimeter duplex outlets. Landlord will provide two 400 amp, 120/208v, 3-phase 4 wire service, each with a maximum 400 amp 42 circuit distribution panel.

Gas Landlord will install a two (2.0) inch natural gas supply line.

Ceiling A 2' X 4' grid frame for a acoustical suspended ceiling system and all standard acoustical till will be provided. Tenant will be responsible for any modification or upgrade of acoustical tile. Ceiling will be a 10 feet, except

restrooms which^o will be at 8 feet. Any additional modifications will be at Tenant's expense.

Floor

Landlord will provide a concrete floor with a trowled finish suitable for tile. Tenant will provide the floor covering and base.

Lighting

Landlord will provide one^o(1) 2' X 4' concealed standard fluorescent light fixture for each 100 square feet of leased premises.

EXHIBIT C

A. Specifications for Parking Garage Retail Space Exterior Signs.

1. All signs shall be internally neon-illuminated individual channel letters mounted to a raceway. These letters shall not exceed 18" in height and shall be positioned on a single line. The raceway mounted letters shall be positioned on the exterior fascia so that the graphic is centered on the fascia both horizontally and vertically. A logo, underline or other graphic accompaniment may be included as part of the overall display so long as they do not exceed height and length restrictions as specified in paragraphs 1 and 4.
2. The raceway, to which the channel letters are affixed, should not exceed 7" in height and 6" in depth and shall be fabricated of extruded aluminum. The overall length of the raceway should not exceed the length necessary to support the channel letters. The raceway shall contain all the transformers and wiring necessary for the channel letters. Only one "punch through" shall be allowed per tenant fascia for 120V power leads to the raceway and should be centered on the fascia behind the raceway.
3. The tenant may select his choice of letter style and color, plastic face and jewel trim colors and neon colors in conformity with downtown redevelopment guidelines. The raceway shall be painted with acrylic enamel to match, as closely as possible, the color of brick or precast fascia to which it is affixed. The channel letters themselves shall be constructed of aluminum and the finish can be either baked enamel factory applied or high quality acrylic enamel painted finish.
4. The overall length of the sign shall not exceed 80% of the length of the storefront fascia as measured between the end columns and shall not include the width of the columns. For example: If the fascia between the columns is 20' in length, the sign shall not exceed 16' overall length. The overall height of the sign shall not exceed 24" in total vertical height from lowest to highest point.
5. A tenant may elect to install non-illuminated channel letters but no external lighting, i.e. floods, spots, etc. shall be allowed. These letters must still be raceway mounted and conform to all other specifications above.
6. The landlord shall have final approval of signage. Tenant shall submit drawing of proposed lettering and graphics and shall not proceed until landlord has given written permission for the signage. The landlord shall retain a copy of the drawings for their records.

B. Window and Door Graphics for Individual Tenant Spaces.

1. Transom glass shall not be used for graphic display. Only address numbers shall be on the glass centered on the glass above the transom bar (by Owner).
2. Each tenant shall be allowed to identify their business name on the door glass in an area not to exceed two square feet. An additional two square feet may be used for the display of hours of operation. Submit drawing showing location and wording and get prior written approval from landlord.
3. No hanging signs, banners, show-cards, etc., shall be displayed in the windows.
4. Unbacked hanging neon signs proposed for display in windows shall be considered, subject to same approval as exterior signs (see #A-6).

EXHIBIT 6

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

LEASE

By and Between

**THE SOUTH BEND
REDEVELOPMENT COMMISSION**

and

**Gordon Ventures, LLC
dba Edible Arrangements**

October 11, 2012

LEASE

THIS LEASE ("Lease") is made by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the "Landlord") and Gordon Ventures LLC d/b/a Edible Arrangements, (the "Tenant") as of the date of last execution hereof by Landlord or Tenant (the "Effective Date").

WITNESSETH:

ARTICLE I. BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease (the "Basic Lease Provisions") constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the parties. Each reference in this Lease to a Basic Lease Provision shall be construed to incorporate all of the terms provided for under such provisions.

- (a) Leased Premises: 123 S. Michigan Street and as further defined in Section 2.1 hereof, consisting of approximately 1,530 square feet of "Floor Area."
- (b) Term: Initial Term of Five (5) Lease Years, as provided for in Sections 3.1 and 3.2 hereof.
- (c) Tenant's Use: The production, retail and delivery of floral shaped and sculpted fruit arrangements, fruit dipped in assorted flavors with assorted toppings, fruit smoothies, and other uses set forth in the Addendum, Exhibit F hereto.
- (d) Tenant's Trade Name: Edible Arrangements (or such other trade name taken by the Tenant)
- (e) Landlord's Address: 1200 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601

With copy to:
CBRE | Bradley
101 N. Michigan St., Ste 300
South Bend, IN 46601
- (f) Tenant's Address: Gordon Ventures, LLC
50844 Hawthorne Meadow Drive
South Bend, Indiana 46628
- (g) Lease Year: A "Lease Year" shall mean each period of twelve (12) consecutive full months, beginning on the Commencement Date as defined in Section 3.1 (such that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall begin on the first day of the first calendar month following the Commencement Date, and any partial month in which the Commencement Date occurs will be included within the first Lease Year).

- (h) Security Deposit: An amount equal to the first month's Modified Gross Rent as security deposit shall be due upon signing of lease.
- (i) The Building: **Michigan Street Shops**, commonly referred to as 117 – 131 S. Michigan St, South Bend, Indiana, as more particularly described in Exhibit A, and depicted in Exhibit B, each attached hereto and made a part hereof.
- (j) Effective Date: The date of last execution hereof by Landlord or Tenant.
- (k) Delivery Date: The date to which possession is delivered to the Tenant.
- (l) Commencement Date: The date on which the "Initial Term" commences as determined in Section 3.1.

1.2. Base Rent.

Year 1	\$7.50
Year 2	\$7.72
Year 3	\$7.96
Year 4	\$8.20
Year 5	\$8.44

Rent shall increase 3% annually

The Base Rent for any Lease Month during an Extended Term (or extension of the Initial Term) shall be the greater of \$9.00 per square foot or 90% of the then average Lease Rates in Michigan Street Shops.

ARTICLE II.
PREMISES.

2.1. Premises. Landlord is the owner of the Building. Landlord, in consideration of the Rent, as hereinafter defined, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain premises located in the Building and depicted on Exhibit C (the "Premises"), subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease; the number, location, dimension, size, and height of buildings and other improvements in the Building; and the identity and type of other tenants. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas, including, without limitation, hallways, stairs, elevators, sidewalks, interior drives, parking areas and green areas (the "Common Areas"), subject to the Rules, as hereinafter defined. Landlord shall operate, maintain and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as Landlord determines to be necessary or appropriate. Tenant understands that Landlord does not control the sidewalks located in the Michigan Street right of way. Tenant will file its request with the South Bend Board of Public Works for use of a portion of the sidewalk area for outdoor seating. Landlord will not oppose such request.

2.3. Quiet Enjoyment. Landlord warrants that it is the owner in fee simple of the Building, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and

performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceable and quiet enjoyment of possession of the Premises, without any manner of hindrance from parties claiming under, by, or through Landlord.

ARTICLE III. TERM.

3.1. Initial Term. The "Commencement Date" shall be the earlier of: (a) that date which is forty-five (45) days after the Delivery Date; or (b) the date that Tenant opens for business. The Initial Term shall end on that date which is Five (5) Lease Years after the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date"). Tenant hereby covenants that within five (5) days after the Commencement Date, it shall execute the Commencement Certificate attached hereto as Exhibit E and made a part hereof, and deliver it to Landlord.

3.2. Extension Options. Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the exercise of any option to extend the Term hereof or exists at the end of the Initial Term, Tenant may renew this Lease and extend the Initial Term hereof for three (3) additional period of five(5) years ("Extended Term"), on the same terms and provisions as provided in this Lease, except that the Rent due in such Extended Term shall be the greater of 90% of the then average Lease Rates in Michigan Street Shops or Nine dollars and 00/100 (\$9.00) dollars per square foot, with delivery of written notice of the exercise of such option not later than one hundred and eighty (180) days before the expiration of the Initial Term of this Lease. If Tenant fails to exercise its option to extend the Term hereof in the time periods set forth in this Section 3.2, all such option to extend shall immediately terminate and have no further force or effect, without further notice from Landlord. Any reference in this Lease to the "Term" shall mean the Initial Term as it may be extended pursuant to this Section 3.2.

3.3. Holding Over. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and twenty-five percent (125%) of the Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus Tenant's Pro Rata Share of all other amounts which Tenant would have been required to pay hereunder had this Lease been in effect (the "Holdover Rent"). If Tenant holds over without Landlord's written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either party may terminate such tenancy from month-to-month upon written notice delivered to the other party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the "State") as a prerequisite to a suit against Tenant for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

ARTICLE IV. CONSTRUCTION

4.1. Landlord's Work. Landlord shall perform the work described in Exhibit D, attached hereto and made a part hereof (the "Landlord's Work") substantially in accordance with the plans and specifications for Landlord's Work, as such plans and specifications may be modified by Landlord as appropriate to complete Landlord's Work (the "Plans"). The "Delivery Date" shall be the date upon which Landlord's Work is substantially complete in accordance with the Plans, subject to delineated "punch-list" items that do not prevent Tenant from using the Premises for the purpose of: (a) conducting its normal business operations; or (b) completing Tenant's Work, as hereinafter defined. On the Delivery Date, Tenant shall have full occupancy of the Premises, subject to all of the terms and conditions of this Lease. Landlord shall correct any "punch-list" items within sixty (60) days after the Delivery Date.

4.2. Tenant's Work. Landlord shall deliver the Premises "as-is". All work required for Tenant to open and operate in the Premises under the Tenant's Use as outlined in Section 1.1(c) shall be at Tenant's sole cost and expense.

(a) Plans. Within sixty (60) days after the Effective Date, Tenant shall submit to Landlord two (2) copies of the complete plans and specifications (the "Tenant's Plans") for the work Tenant deems necessary to prepare the Premises for occupancy by the Tenant (the "Tenant's Work"). Within thirty (30) days after Landlord's receipt of Tenant's Plans, Landlord shall notify Tenant of any failures of the Tenant's Plans to meet with Landlord's approval. Tenant shall, within ten (10) days after receipt of any such notice, cause the Tenant's Plans to be revised to the extent necessary to obtain Landlord's approval and to be resubmitted for Landlord's approval. When Landlord has approved the original or revised Tenant's Plans, Landlord shall initial and return one (1) set of approved Tenant's Plans (the "Approved Plans") to Tenant. Tenant shall not commence Tenant's Work until Landlord has approved Tenant's Plans, which approval shall not be unreasonably withheld.

Landlord's review and approval of Tenant's Plans shall not be deemed to be an assumption of responsibility by Landlord for the accuracy, sufficiency or propriety of Tenant's Plans, pursuant to applicable laws, rules, ordinances or regulations. If the Approved Plans are changed as a result of conditions placed on Tenant as a prerequisite to obtaining a permit, Tenant shall submit such changes to Landlord for approval, and Tenant shall not proceed further with the affected portions of Tenant's Work until Landlord has approved the changes. Such changes as are approved by Landlord shall become part of the Approved Plans.

(b) Performance. Tenant shall, in a manner consistent with the Approved Plans: (i) install its leasehold improvements, trade fixtures and equipment; and (ii) complete all other Tenant's Work. Prior to performing Tenant's Work, Tenant shall: (i) obtain all permits, licenses and approvals required for Tenant to perform Tenant's Work; and (ii) deliver to Landlord: (a) copies of such permits, licenses and approvals; and (b) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall: (i) perform Tenant's Work: (a) in accordance with the Approved Plans and all permits, licenses and approvals; and (b) in a good and workmanlike manner and in compliance with all applicable laws, statutes, and/or ordinances and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (the "Laws"); (ii) ensure that all contractors, subcontractors, laborers and suppliers performing work or supplying materials are paid in full; and (iii) observe and perform all of its obligations under this Lease (except its obligation to pay Rent) at all times after the Delivery Date through the Commencement Date.

(c) Reserved.

ARTICLE V. RENT.

5.1. Rent. Commencing on the Effective Date, Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Rent, as set forth in Section 1.2, including Base Rent plus the Additional Rent charges plus ~~Percentage Rent (as herein defined)~~ (collectively, the "Rent"), together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Rent shall be paid in monthly installments commencing as provided herein and thereafter during the entire Term or Extended Term on or before the fifteenth (15th) day of each calendar month, in advance. Tenant's obligations under this Section 5.1 shall survive the Termination Date.

5.2. Additional Rent. Commencing as provided in Section 5.1, Tenant shall pay to Landlord, as part of Rent, Additional Rent (the "Additional Rent"), all other sums, charges, and payments required to be paid by Tenant to Landlord under this Lease, whether or not the same are designated as Additional Rent including, but not limited to, Tenant's Pro Rata Share of the Center Expenses, as defined in Section 5.7(a). If any sum or charge is not paid at the time provided in this Lease, then it shall be collectible as Additional Rent with the next monthly installment of Rent; provided that nothing contained herein shall be deemed to suspend or delay the payment of such sum or charge, or to limit any right or remedy of Landlord with respect to its nonpayment.

5.3. Late Charge. Any amount of Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid. If any amount of Rent is paid more than five (5) days after its due date, then Landlord shall be entitled to a late payment fee of One Hundred Dollars (\$100.00) in addition to the interest charge set forth in this Section 5.3.

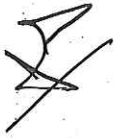
5.4. Common Expenses.


- a. Pro Rata Share. Tenant's "Pro Rata Share" shall be a fraction: (a) the numerator of which is the Floor Area, as defined in Section 1.1; and (b) the denominator of which is the square footage of all areas leasable to tenants in the Building. As of the Effective Date, Tenant's Pro Rata Share is 1,530/11,057 or ten percent (10.87%). Tenant's Pro Rata Share shall be re-calculated from time to time if either the numerator or the denominator change.
- b. Payment. Tenant shall pay to Landlord its Pro Rata Share of the Common Expenses, as hereinafter defined (the "CAM Contribution"), which share shall equal the amount of all Common Expenses, multiplied by Tenant's Pro Rata Share. The obligations of Tenant under this Section 5.4 to make payment for expenses incurred prior to the Termination Date shall survive the Termination Date.
- c. Common Expenses. "Common Expenses" shall mean all costs and expenses of every kind or nature paid or incurred by Landlord during the Term in operating, managing and servicing the Building, including, without limitation: (i) reasonable and customary management fees; (ii) wages, salaries and benefits of maintenance personnel (not to exceed the amount fairly and equitably allocated to the Building); (iii) charges under maintenance contracts; (iv) costs and expenses to perform or provide maintenance or repairs and to satisfy Landlord's obligation to operate, maintain and insure the Common Areas under this Lease; (v) sewer, water and storm water drainage charges attributable to the Common Areas, and the costs to maintain any retention and detention ponds and other storm water drainage facilities; (vi) premiums for customary insurance incurred by the Landowner including insurance, if any, obtained by the Landlord to satisfy an obligation under this Lease; (vii) costs for signage located in the Common Areas, including, without limitation, costs for light bulbs and electricity, and costs incurred with respect to any exterior sign for the Building; (viii) costs and expenses to provide light, heat, air conditioning and ventilation for the Common Areas; and (ix) depreciation or amortization of capital assets, improvements, repairs or replacements (the "Amortized Capital Costs"). Tenant shall be responsible for its Pro Rata Share of the Amortized Capital Costs, together with interest if not paid when due, notwithstanding that the capital asset, improvement, repair or replacement may have been acquired or made before the Commencement Date. Common Expenses shall not include: (1) any leasing or rental commissions; (2) any legal fees in connection with financings or refinancings, preparation or negotiation of leases, or exercising or enforcing Landlord's rights and remedies under leases; (3) any costs of tenant improvements or build-outs; (4) any penalties or interest assessed against Landlord for late payment of its indebtedness; or (5) payments of principal or interest required by any financing or refinancing. Notwithstanding anything to the contrary set forth herein, amounts separately billed to, and paid directly by, a tenant of the Building shall be deducted in calculating Common Expenses from the costs and expenses that Landlord incurs to operate the Building. Common Expenses, including Real Estate Tax Expenses and Insurance Expenses are currently estimated to be five dollars and 61/100 (\$5.61) per square foot per year.

5.5. Real Estate Tax Expenses. Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of (collectively, the "Tax Expenses"): (a) all real estate taxes and assessments of any nature levied during the Term on, against, or with respect to the Building (the "Real Estate Taxes"); (b) any and all costs and expenses incurred by Landlord in connection with an appeal of the Real Estate Taxes; and (c) all Real Estate Taxes levied during the Term on, against, or with respect to Tenant's leasehold interest in the Premises. The obligations of Tenant hereunder with respect to the payment of Real Estate Taxes levied during the final year of the Term shall survive the Termination Date.

5.6. Insurance Expenses. Tenant shall pay to Landlord, as Additional Rent, its Pro Rata Share of any and all costs incurred by Landlord in connection with the Casualty Insurance, as defined in Section 8.1, and the Liability Insurance, as defined in Section 8.1, including, but not limited to, all premiums and deductibles paid by Landlord (collectively, the "Insurance Expenses").

5.7. Percentage Rent. Intentionally Omitted. ~~Beginning on the Effective Date, Tenant will be liable to Landlord for the Percentage Rent provided herein, in addition to the Rent, and Additional Rent without previous demand therefore and without any abatement, diminution, set-off, or deduction.~~

 (a) Definition of Gross Sales. Intentionally Omitted. ~~For purposes of calculating Percentage Rent, the term "Gross Sales" means the selling price of all merchandise sold in, at, on, or from any part of the Premises and the charges for and services of any sort sold or performed in, at, or from any portion of the Premises, including sales made by Tenant or any subtenant, licensee, assignee or concessionaire and including sales from orders accepted in, on or from the Premises for delivery from places other than the Premises, or orders filled from the Premises even though accepted from places other than the Premises, including orders via electronic, telephonic, video, computer or other technology-based systems now existing or developed in the future. Gross Sales includes all sales and charges, for cash or credit, regardless of collections in the case of the latter. The parties acknowledge that Tenant's successful operation of its business is of prime importance to both parties, and Tenant hereby agrees to use its best efforts to maximize Gross Sales in the Premises for the benefit of Landlord and Tenant.~~

 ~~On or before the fifteenth (15th) day of each month during the Term, Tenant will furnish Landlord a statement signed by Tenant showing the amount of Gross Sales for the preceding month. Gross Sales shall be taken from the first day to last day of each calendar month including weekends and holidays, with Percentage Rent calculated there from and due along with such statement on or before the fifteenth (15th) day of each month in advance.~~

5.8 Estimation.

- a. Estimation. From time to time, Landlord may estimate (or re-estimate) the amount of the Tax Expenses, Insurance Expenses, and/or CAM Contributions (collectively, the "Center Expenses") payable by Tenant for any whole or partial calendar year during the Term. Tenant shall pay, as Additional Rent, equal monthly installments of its Pro Rata Share of the estimated Center Expenses during such whole or partial calendar year.
- b. Statement. Within ninety (90) days after the end of each whole or partial calendar year during the Term, Landlord shall deliver to Tenant a written statement that shows the computation of the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is more than the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Landlord shall credit the excess: first, against any outstanding Rent due from Tenant; and second, against future Center Expenses, to be paid by Tenant; provided that, if there are no future Center Expenses to be paid by Tenant, then Landlord shall refund the excess to Tenant within thirty (30) days. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is less than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Tenant shall pay the amount of such deficiency with the next regular installment of Modified Gross Rent unless the Termination Date has occurred, in which case Tenant shall pay any deficiency within thirty (30) days after Landlord delivers Landlord's written statement.

5.9 Utilities. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (all of which utilities shall be separately metered to the Premises) (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges.

ARTICLE VI.
ALTERATIONS AND MAINTENANCE OF AND REPAIRS TO THE PREMISES

6.1. Landlord Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the installation and replacement of all heating, ventilating, and cooling equipment and systems serving the Premises (the "HVAC Systems") provided however that the Landlord may bill the Tenant as Additional Rent if the Landlord's consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of the Tenant's misuse of it or the Tenant's failure to notify the Landlord of its malfunctioning. The Landlord may enter into a maintenance contract with a reputable company (the "Maintenance Contract"), pursuant to which Maintenance Contract such company shall institute a regularly scheduled program of preventive maintenance and repair of the HVAC Systems to keep and maintain such items in good order, condition, and repair at all times, and any such expenses incurred by the Landlord as a result of such Maintenance Contract or any routine or otherwise insubstantial repairs shall be considered a Common Expense allocable to this Premises only, unless the HVAC Systems service more than one Tenant. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of Tenant.

6.2. Tenant Repairs. Except for repairs to be performed by Landlord pursuant to Section 6.1, Tenant shall: (a) keep the Premises clean, neat, and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises as may be required by any Law, or by fire underwriters or underwriters' fire prevention engineers; (b) keep all glass in windows, doors, fixtures, skylights, and other locations clean and in good order, repair, and condition, and replace glass that may be damaged or broken with glass of the same quality; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 6.2. The Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises.

6.3. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) the cumulative cost of making such alterations or improvements is less than Five Thousand Dollars (\$5,000.00); (ii) Tenant delivers to Landlord written notice describing the proposed alteration or improvement with particularity, and provides to Landlord copies of any plans and specifications for the alteration or improvement; and (iii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the date that Tenant accepts the Premises. Tenant shall not, without the prior written consent of Landlord, which shall not be withheld unreasonably, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant's cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner, and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic's or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic's or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, other than for the performance of Landlord's Work, then

Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

6.4. Signs. Other than exterior signage consistent with the specifications and depictions set forth on Exhibit G hereto, which has been reviewed and approved by Landlord, and periodic window clings regarding sales and special promotions, Tenant shall not affix or maintain upon the exterior of the Premises or make visible from the exterior any sign, advertising placard, name, insignia, trademark, or descriptive material, without the prior written approval of Landlord, which approval shall not be withheld unreasonably. No such materials may be displayed or attached which are against any applicable law or regulation.

ARTICLE VII. USE.

7.1. Use of the Premises. At all time during the Term, Tenant shall:

(a) Use the Premises solely for Tenant's Use, as defined in Section 1.1(c), doing business under Tenant's Trade Name, as defined in Section 1.1(d), and for no other use or purpose;

(b) Tenant will open the Premises for business on the Commencement Date and operate one hundred percent (100%) of the Premises during the entire Term, without interruption, during at least the hours of 10:00 a.m. through 6:00 p.m., Monday through Saturday, or such other minimum hours upon which Landlord may agree from time to time with prior written consent, provided that such operation may be interrupted for such reasonable periods as may be necessary to repair, restore, or remodel the Premises, or for purposes of taking inventory, Tenant shall obtain the prior written consent of Landlord, which approval shall not be unreasonably withheld for such time periods. Tenant will keep its sign and the interior of the Premises lighted at least one (1) hour past such closing time. Tenant agrees that Tenant will open and close at the times set forth above. If Tenant either (i) opens for business more than thirty (30) minutes late; or (ii) closes for business more than thirty (30) minutes early on more than two (2) occasions in any Lease Year, Tenant will pay to Landlord as a further item of Additional Rent, the sum of Two Hundred Fifty Dollars (\$250.00) per occurrence thereafter. Notwithstanding anything in this Section, Tenant shall not be required to be open on any of the following holidays: New Years Day, Easter, Memorial Day, Fourth of July, Thanksgiving Day, and Christmas Day.

(c) Remain fully fixtured, fully stocked, and fully staffed at all times.

(d) Conduct the business located on the Premises at all times in a high grade and reputable manner so as to produce the maximum volume of sales and transactions and to help establish and maintain a high reputation for the Building.

During the Term, Tenant will be considered to "Operate" or be "Operating" in the Premises so long as Tenant is open for business in compliance with this Section 7.1.

7.2. Covenant to Open. Tenant covenants that it will open and begin Operating in the Premises as of the Commencement Date.

7.3. Compliance with Law. Tenant shall promptly comply with all federal, state and local Laws and ordinances and lawful orders and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall promptly and fully comply with all federal,

state and local Laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.4. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Shopping Center, and will remove the same frequently and regularly, all at Tenant's cost; will not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not distribute advertising matter to, in or upon any portion of the Building; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles which will interfere with the use of any portion of the Building; will not use the any portion of the Building for promotional activities, to include without limitation rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows; will comply with all Laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act ("OSHA") and the Americans With Disabilities Act ("ADA"), as the same may be amended from time to time. Tenant covenants and agrees that it will not serve liquor or any other alcoholic beverages in or from the Premises unless Tenant first obtains the written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion.

7.5. Storage. Tenant shall store in the building on the Premises only merchandise and products which Tenant intends to sell at, in, or from the Premises within a reasonable time after receipt thereof.

7.6. Sales and Use. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local Laws or ordinances. Tenant shall not operate the Premises either in whole or in part as a clearance, outlet, off-price, or discount store, provided that nothing in this Section 7.6 is intended to affect Tenant's pricing policies.

7.7. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;

iii. transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Building, or which interferes with the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the Premises or the Building;

iv. create, or permit to be created, any ground vibration that is discernible outside the Premises; or

v. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, that are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable Law. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local Law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 *et seq.* ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.* ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.7(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall Indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.7(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.7(b) shall survive the Termination Date.

7.8. Inspections. Tenant shall permit Landlord and its employees, agents and contractors to enter the Premises at reasonable times, upon reasonable notice (or at any time in the event of an emergency) for the purpose of: (a) inspecting the Premises; (b) making repairs, replacements, additions, or alterations to the Premises, or to the building in which the Premises is located; and (c) showing the Premises to prospective purchasers, lenders, and tenants. During the last one hundred and eighty (180) days of the Term, Landlord may put a "For Lease" sign in the storefront window of the Premises.

7.9. Sidewalks. Tenant acknowledges that the use of the sidewalks adjoining the Premises is controlled by the South Bend Board of Public Works (the "BPW"). The Landlord makes no representation concerning the availability of such use for dining or other purposes. Tenant understands that it must make application to the BPW for a permit to use the adjoining sidewalks. Landlord shall not oppose such application.

ARTICLE VIII. INSURANCE AND INDEMNIFICATION

8.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$3,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an "additional insured" in an amount sufficient to cover any possible liability Landlord may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

8.2. Hazardous Materials Coverage. Notwithstanding the above mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises or the Building, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no

less than \$3,000,000.00 and purchase environmental impairment liability insurance with coverage of not less than \$3,000,000.00 with a deductible of not greater than \$50,000.00 to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and/or the Building, and that the Premises and/or the Building be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

8.3. Dram Shop Coverage. In addition to the insurance required under this Article VIII, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

8.4. Tenant's Additional Insurance. Tenant shall comply with the provisions of the applicable workers' compensation laws, and shall insure its liability thereunder. Tenant, at its expense, shall maintain plate glass insurance covering all exterior plate glass in the Premises or shall be obligated to promptly replace any damaged exterior glass, to the satisfaction of the Landlord within five (5) days of the occurrence of such damage. In the event that the Tenant neither obtains insurance providing for the immediate repair of the damaged glass nor repairs said damage to the satisfaction of the Landlord within five (5) days of the occurrence of such damage, the Landlord may have the damaged glass repaired at the Tenant's expense.

8.5. Policies. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance. Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article VIII, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article VIII, Landlord may obtain replacement coverage and the cost of same shall be deemed Additional Rent payable by Tenant with the next installment of Rent thereafter becoming due and payable.

8.6. Indemnity.

(a) Definition of "Loss." The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).

(b) Definition of "Indemnify." The term "Indemnify," as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable

attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant

Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of Landlord, its employees, contractors, or agents, the Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

8.7. Release of Subrogation. Each party hereto does hereby release and discharge the other party from any liability, which the released party would have had (but for this section) to the releasing party, arising out of or in connection with any accident or occurrence or casualty: (a.) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing party, and (b.) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building, and Tenant hereby expressly waives any claim for such damages.

8.8. The Tenant will not allow said Premises to be used for any purpose that will increase the rate of insurance thereon, nor to be occupied in whole or in part by any other person.

ARTICLE IX. CASUALTY AND CONDEMNATION.

9.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after: (i) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (ii) deduction for any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the Premises; (ii) there is Casualty Damage to the building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such building; or (c) there is Casualty Damage to the buildings (taken in the aggregate) in the Building, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such buildings; then Landlord may elect either to: (1) repair or rebuild the Premises, the building of which the Premises is a part, or the aggregate buildings in the Building, as applicable; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Rent. Base Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises or the Common Areas of which Tenant has knowledge.

9.2. Condemnation. If: (a) all or a substantial part of the Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain; or (b) all or a substantial part of the Premises is conveyed to a public or quasi-public body under threat of condemnation (collectively, the "Condemnation"); and the Condemnation renders the Premises unsuitable for use for Tenant's Use, then, at the option of either Landlord or Tenant exercised within ninety (90) days after the Condemnation occurs: (i) this Lease shall terminate as of the date possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; (ii) all Rent shall be apportioned as of the date that possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; and (iii) all obligations hereunder, except those due or mature, shall cease and terminate. If there is a Condemnation with respect to: (A) more than twenty-five percent (25%) of the square footage of the building of which the Premises is a part; or (B) more than twenty-five percent (25%) of the aggregate square footage of the Building; then Landlord, at its option, exercised within ninety (90) days after the Condemnation occurs, may elect to terminate this Lease as of the date possession of such square footage is taken by, or conveyed to, the condemning authority, and: (i) all Modified Gross Rent shall be apportioned as of the date that possession of such square footage is taken by, or conveyed to, the condemning authority; and (ii) all obligations hereunder, except those due or mature, shall cease and terminate. All compensation awarded or paid for the Condemnation (the "Condemnation Proceeds") shall belong to and be the sole property of Landlord; provided that Landlord shall not be entitled to the amount of any Condemnation Proceeds awarded or paid solely to Tenant for loss of business or costs and expenses of relocation and removing improvements and equipment. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, then Landlord shall be responsible for the performance of all work necessary to make the Premises usable by Tenant; provided that Landlord shall not be obligated to incur costs for such work in excess of the Condemnation Proceeds awarded or paid to Landlord and remaining after: (y) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (z) deduction for any expenses incurred in collecting the Condemnation Proceeds. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, or if any Condemnation is temporary in nature, then Base Rent shall be abated proportionately (based upon the proportion that the that area Premises taken by, or conveyed to, the condemning authority bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of the Condemnation.

ARTICLE X. SURRENDER.

10.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article X, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement,

or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

10.2. Removal of Certain Property. All furniture and business equipment furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right of possession hereunder, but only if, and to the extent, that the removal thereof will not cause physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises the condition described in Section 10.1 above, or alternatively, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage with such costs to be considered Additional Rent and shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

10.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord or such Tenant fails to remove such property within such timeframe Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

10.4. Survival of Terms. The terms of this Article X and other terms of this Lease referred to herein shall survive any termination of this Lease.

ARTICLE XI. DEFAULT.

11.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

(a) Nonpayment. Tenant's failure to pay Base Rent, Additional Rent, or other sums or charges that Tenant is obligated to pay by any provision of this Lease when due.

(b) Lapse of Insurance. Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease.

(c) Other Material Lease Violations. Tenant's failure to perform or observe any other material covenant, condition, or agreement of this Lease, which failure is not cured within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as the Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same; provided, however, if the Tenant shall default in the performance of any such covenant or agreement of this Lease more than one time in any twelve (12) month period notwithstanding that such default shall have been cured by Tenant, the second and further defaults in said twelve (12) month period may be deemed by Landlord, in its sole discretion, an Event of Default without the ability for cure.

(d) Falsification of Information. If Tenant, any guarantor of Tenant's obligations under this Lease, or any agent of Tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease.

(e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Section 13.1(b) of this Lease.

(f) Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations under this Lease; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

(g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing.

(h) Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law; including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.

(i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days after its entry.

(j) Inability to Pay. The admission in writing by Tenant or any guarantor of Tenant's obligations under this Lease of its inability to pay its debts when due.

(k) Breach by Guarantor. The breach by any guarantor of any of that guarantor's obligations under its guaranty.

(l) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

11.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be deemed Additional Rent and shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 11.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 11.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this Section 11.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in

connection with making alterations and repairs for the purpose of reletting the Premises; (iv) reasonable attorneys' fees; (v) the unamortized value of the Construction Allowance, if any.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Base Rent and Additional Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Base Rent and Additional Rent (as reasonably estimated by Landlord) that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between the Base Rent and Additional Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised, and the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

11.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 11.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

11.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

11.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.6. Counterclaim. If Landlord commences any proceedings for non-payment of Rent, Tenant will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts due hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any reason whatsoever, except as may be specifically provided for herein to the contrary, it being understood and acknowledged by Tenant that Tenant's only recourse is to seek an independent action against Landlord.

11.7. Bankruptcy.

(a) Assumption of Lease. In the event that Tenant shall become a Debtor under Chapter 7 of the United States Bankruptcy Code (the "Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 and is transferred

to Chapters 11 or 13, the Trustee or Tenant, as Debtor and as Debtor In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has:

i. Cured or provided Landlord "Adequate Assurance," as defined below, that:

A. Within ten (10) days from the date of such assumption the Trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in Section 11.2 of the Lease, and attorneys' fees incurred as a result of the default and/or to enforce the terms hereof;

B. Within thirty (30) days from the date of such assumption the Trustee or Tenant will cure all non-monetary defaults under this Lease; and

C. The assumption will be subject in all respects to all of the provisions of this Lease.

ii. For purposes of this Section 11.7, Landlord and Tenant hereby acknowledge that, in the context of a bankruptcy proceeding of Tenant that this Lease is a lease of real property within a Building and, at a minimum "Adequate Assurance" shall mean:

A. The Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured and priority obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease, and to keep the Leased Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully Operational, actively promoted business in the Leased Premises;

B. The bankruptcy court shall have entered an order segregating sufficient cash payable to Landlord, and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults under this Lease within the time periods set forth above; and

C. The Trustee or Tenant at the very least shall deposit a sum equal to one (1) month's Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

(b) Assignment of Lease. If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 11.7 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of Section 13.1 herein, including, without limitation, those with respect to Additional Rent and the use of the Premises only as permitted in Article VII herein; Landlord and Tenant hereby acknowledging that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment and assumption in form acceptable to Landlord.

(c) Adequate Protection. Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor in Possession, and any Trustee who may be appointed hereby agree to adequately protect Landlord as follows:

i. To immediately perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court;

ii. To pay all monetary obligations required under this Lease, including, without limitation, the payment of Base Rent and such Additional Rent charges payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises;

iii. Provide Landlord a minimum thirty (30) days' prior written notice, unless a shorter period is agreed to in writing by Landlord, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and

iv. To perform to and for the benefit of Landlord as otherwise required under the Code.

The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease and the automatic stay under Section 362 of the Code shall automatically be terminated as to Landlord and the Premises.

(d) Accumulative Rights. The rights, remedies and liabilities of Landlord and Tenant set forth in this Section 11.7 shall be in addition to those which may now or hereafter be accorded, or imposed upon, Landlord and Tenant by the Code.

(e) Changes in Code. If the Code is changed or amended such that any references in this Section 11.7 to particular provisions or terms of art lose the meaning that they have as of the Effective Date, such provisions or terms of art of this Lease shall be deemed to be amended to reflect such changes in the Code.

ARTICLE XII.

ESTOPPEL CERTIFICATES, ATTORNMENT, AND SUBORDINATION.

12.1. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after request therefor by the other party, a statement, in writing, certifying to Landlord and/or any party designated by Landlord, or Tenant and/or any party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

12.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

12.3. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between Tenant and such Mortgage holder. Any holder of any of any such Mortgage is herein referred to as "Landlord's Mortgagee(s)." Notwithstanding the foregoing, a Landlord's Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and,

in that event, such Landlord's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

ARTICLE XIII.
ASSIGNMENT AND SUBLETTING

13.1. Assignment and Subletting.

(a) Tenant shall not sublet, mortgage, encumber or in any manner transfer, in whole or in part, this Lease, the Premises or any estate or interest in said Premises or Lease. Except as expressly permitted herein, Tenant shall not assign this Lease or any estate or interest therein or allow the occupancy thereof by any person or entity other than Tenant, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Tenant may assign the Lease to a licensed Edible Arrangements franchisee upon Landlord's consent and review of assignee's financial strength, which consent shall not be unreasonably withheld nor delayed. Consent by Landlord to one or more assignments of this Lease shall not operate to exhaust Landlord's rights under this Article XIII. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or allow the occupancy thereof by any person or entity other than Tenant, Tenant shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Landlord.

(b) If this Lease is assigned or the Premises or any part thereof occupied by any entity other than Tenant, Landlord may collect rent from the assignee or occupant and apply the same to the Rent herein reserved, but no such assignment, occupancy or collection of Rent shall be deemed a waiver of any restrictive covenant contained in this Section 13.1 or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained. Any sublease of the Premises shall be void. Landlord shall have the right, at any time, to immediately remove an occupant or than Tenant from the Premises along with any possession of said occupant, which shall be deemed to have been abandoned if not claimed by occupant within three (3) business days of their removal, and the Landlord's acceptance of rent from the occupant shall in no way waive any rights the Landlord may have against the occupant. The Tenant shall indemnify the Landlord for any actions, claims or demands made by the occupant or its assigns against the Landlord. . Any assignment: (x) as to which Landlord has consented or is deemed to have consented; or (y) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (z) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership, shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

i. Each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Landlord;

ii. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor as a result of said assignment, including, if any, payments for Tenant's improvements, proposed rent (which includes, without limitation, all monthly charges allocated to common area maintenance, insurance, real property taxes, and utility charges) and any other payments;

iii. Each assignee shall have submitted to Landlord a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of Tenant's obligations hereunder;

iv. Each assignee shall have submitted to Landlord, in writing, evidence satisfactory to Landlord of substantial experience in operating a business similar to that offered by Tenant and permitted under Section 1.1(c) of this Lease or a business otherwise requested by the Landlord and in operating said business in a space or volume comparable to that contemplated under this Lease;

v. The business reputation of each assignee shall meet or exceed generally acceptable commercial standards;

vi. The use of the Premises by each assignee shall not violate, or create any potential violation of, applicable Laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other occupants in the Building; and

vii. Tenant shall pay Landlord the sum of One Thousand Five Hundred Dollars (\$1,500.00) as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment.

(c) In the event that Tenant desires to assign this Lease, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment. Tenant shall advise Landlord of the name of the proposed assignee, shall furnish Landlord with the information required by Landlord with respect to the proposed assignee, and Landlord shall advise Tenant, within sixty (60) business days after receipt of such notice and all required information from Tenant, that Landlord either consents or refuses to consent to an assignment to the proposed assignee.

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV. MISCELLANEOUS

14.1. Security Deposit. Contemporaneously with the execution of this Lease, Tenant shall deposit the Security Deposit, as defined in Section 1.1(j), with Landlord. Landlord: (a) shall hold the Security Deposit without liability to Tenant for interest; and (b) may commingle the Security Deposit with its other funds. The Security Deposit, or any portion thereof, may be applied by Landlord to cure any default by Tenant under this Lease, without prejudice to any other remedy or remedies that Landlord may have on account of such application. Upon any such application by Landlord, Tenant shall pay to Landlord on demand the amount applied by Landlord to cure such default so that the Security Deposit is restored to its original amount. If Landlord conveys the Premises during the Term: (A) Landlord may turn the Security Deposit over to Landlord's grantee or successor; and (B) Tenant shall release Landlord from any and all liability with respect to the Security Deposit. If Tenant faithfully performs its obligations under the terms and conditions of this Lease, then Landlord shall return to Tenant the amount of the Security Deposit not applied by Landlord to cure defaults by Tenant, without interest, within thirty (30) days after the latter of: (y) the Termination Date; or (z) the date that Tenant has surrendered possession to Landlord in accordance with the terms and conditions of this Lease.

14.2. Guaranty. Intentionally Omitted.

14.3. Notices. Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(e) hereof, or at such

other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(f) hereof, or at such other address as Tenant may designate by written notice.

14.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant, except as otherwise provided herein.

14.5. Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

14.6. Remedies Cumulative. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

14.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

14.8. Relationship. Nothing contained herein shall be deemed or construed to create between the parties any relationship other than that of landlord and tenant.

14.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant and/or any guarantors of this Lease (which, in the event Tenant or a guarantor is an entity, shall be certified by the highest-ranking financial officer of Tenant or guarantor).

14.10. Construction. The laws of the State in which the Premises is located shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business days are specified. This Lease shall be recorded, but a failure to record shall not affect the effectiveness of this Lease. All Exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

14.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other party; or (b) any other cause that is not within the control of the delayed or prevented party (including, without limitation, inclement weather, the unavailability of materials, equipment; services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

14.12. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

14.13. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors,

administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

14.14. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

14.15. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

14.16. Equal Opportunity Obligation. Tenant agrees not to discriminate against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Lease. Tenant further agrees execute and deliver an affidavit attesting to the terms of this provision in the form set forth in Exhibit E.

14.17. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein. Tenant further agrees to execute and deliver an affidavit attesting to the terms of this provision in the form set forth in Exhibit E.

14.18. Relocation. Landlord shall also have the independent right to relocate Tenant for any reason ("Relocation Right") with ninety (90) days prior written notice to Tenant ("Relocation Notice"), so long as (i) Landlord substitutes for the Premises described herein other space located in the Building which new location shall have approximately the same square footage and frontage on Michigan Street as the original Premises ["Substitute Space"]; (ii) the Substitute Space shall be ready for occupancy at a condition comparable to the current premise at the time immediately prior to the move; and (iii) Landlord shall solely pay all reasonable expenses for moving tenant's furniture, fixtures and equipment and improving the space to a condition comparable to the current premise at the time immediately prior to the move. Upon any such relocation, this Lease shall be appropriately amended to reflect any resulting proportional adjustment in the Minimum Annual Rent and Additional Rent under the Lease based upon any change in size of the Premises. If Tenant receives the Relocation Notice prior to the time that Tenant has commenced Tenant's construction in the Premises, then Landlord will reimburse Tenant for Tenant's reasonable incremental cost, if any, incurred by Tenant to revise Tenant's plans to conform to the Substitute Space. If Tenant receives the Relocation Notice after Tenant has commenced Tenant's Work in the Premises, then, in addition to reimbursement for any necessary plan revision, the Substitute Space will be improved by Landlord, at its expense, with improvements at least equal in extent, quantity and quality to those improvements, if any, existing in the Premises on the date of Landlord's Relocation Notice to Tenant. If Tenant receives the Relocation Notice after Tenant has opened for business in the Premises, then, in addition to reimbursement for any necessary plan revision and improvement of the Premises in accordance with the preceding sentences, Landlord will reimburse Tenant for reasonable expenses actually incurred by Tenant in connection with such relocation, including but not limited to costs of moving, door lettering, telephone relocation and reasonable quantities of new stationery. Upon completion of the relocation, Landlord and Tenant will amend this Lease to change the description of the Premises and any other matters pertinent thereto

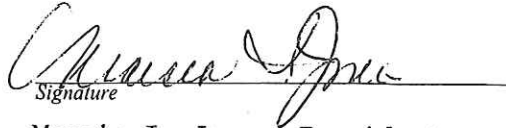
14.19. Parking. Landlord shall provide six (6) permits for the Leighton Parking Garage at a discount of \$15 per month from the current monthly parking rates. Initially, the discounted rate will be \$30.00 per month, which is a discount of \$15.00 from the current rate of \$45.00 for unreserved spaces.

14.20. Franchisor's Addendum. This Lease is amended by the Addendum attached hereto as Exhibit F. In the event of any conflict between the provisions of this Lease and those set forth in the Addendum, the terms set forth in the Addendum shall control.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date set forth above.

"LANDLORD"

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**
by and through the South Bend Redevelopment Commission


Signature

Marcia I. Jones, President
Printed Name and Title

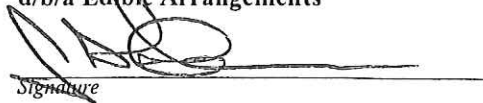
ATTEST:


Signature

Donald Alford, Sr., Secretary
Printed Name and Title

"TENANT"

**GORDON VENTURES, LLC,
d/b/a Edible Arrangements**


Signature

John D. Gordon, President
Printed Name and Title

ATTEST:


Signature

Tamara Lower
Printed Name and Title

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

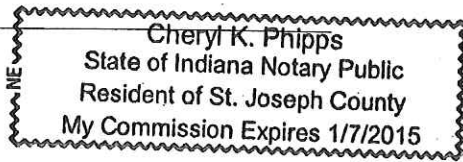
Before me, the undersigned, a Notary Public for and in said County and State this 11th day of October, 2012, personally appeared ^{Marcia L. Jones} Donald L. Alford, known to be to be the President & Secretary of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Cheryl K Phipps

Notary Public
Resident of St. Joseph County, Indiana

My commission expires:



STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

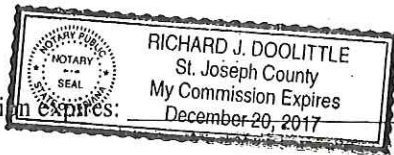
Before me, the undersigned, a Notary Public for and in said County and State this _____ day of _____, 2012, personally appeared John D. Gordon, known to be the PRESIDENT of Gordon Ventures, LLC., and acknowledged execution of the foregoing Lease on behalf of said Tenant.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

RJ Doolittle

Notary Public
Resident of St. Joseph County, Indiana

My commission expires:



INDEX TO EXHIBITS

Exhibit A	Legal Description of Building
Exhibit B	Site Plan of Building
Exhibit C	Description of Premises
Exhibit D	Landlord's Work
Exhibit E	Non-Debarment, Non-Collusion and Non-Discrimination Affidavit
Exhibit F	Franchisor's Addendum
Exhibit G	Exterior Signage

EXHIBIT A

Legal Description of Building

The ground level of the Leighton Center Parking Garage, which is the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

EXHIBIT B

Site Plan of Building and Description of Premises

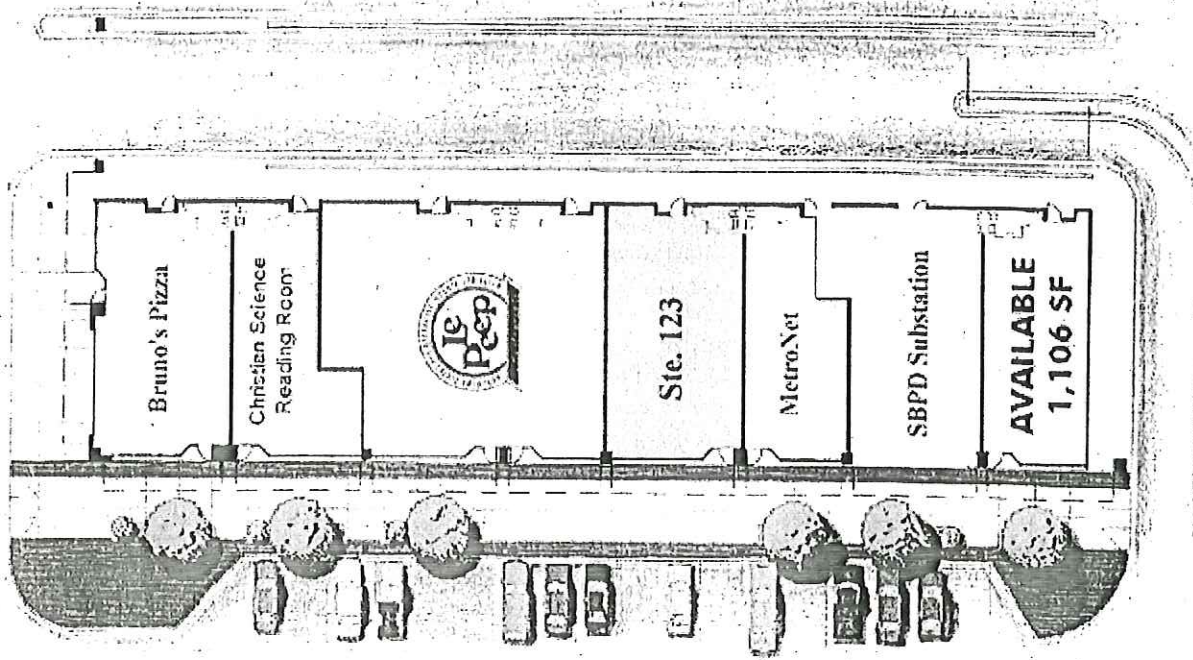


EXHIBIT C

Description of Premises

The Premises commonly referred to as 123 S. Michigan Street, South Bend, Indiana, which is comprised of 1,530 square feet located on the ground level of the Leighton Center Parking Garage, which is a part of the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described at Exhibit A of the Lease to which this Exhibit C is attached.

EXHIBIT D

Landlord's Work

The Landlord shall deliver the premises in "as-is" condition (the "Landlord's Work").

EXHIBIT E

**NON-DEBARMENT, NON-COLLUSION AND
NON-DISCRIMINATION AFFIDAVIT**

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

The undersigned, being duly sworn on oath, hereby certifies, on behalf of Gordon Ventures, LLC, ("Tenant"), as follows:

1. That the undersigned is duly authorized and is competent to certify to the statements contained herein on behalf of Tenant.
2. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. That Tenant has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by the firm, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
4. That Tenant hereby agrees to abide by the following nondiscrimination commitment, which shall be made a part of any contract that Tenant may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions:

Tenant agrees not to discriminate against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

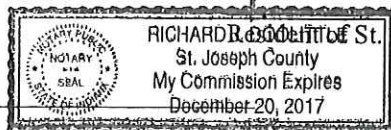
Gordon Ventures, LLC
By: [Signature]

Name: John D. Gordon

Title: President

Subscribed and sworn to before me this 1ST day of OCTOBER, 2012.

[Signature]
_____, Notary Public



My commission expires: _____

_____, Notary Public

EXHIBIT F
ADDENDUM TO LEASE AGREEMENT

The provisions of this Addendum are hereby incorporated into and made a part of the lease dated as of September __, 2012, relating to certain real property known as 123 South Michigan Street, South Bend, Indiana (the "Premises") between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the "Landlord") and Gordon Ventures LLC d/b/a Edible Arrangements, (the "Tenant"), to which this Addendum is annexed.

In the event of a conflict between the terms and conditions stated in this Addendum and those stated in the Lease Agreement and previous Addenda, if any, the terms and conditions stated in this Addendum shall remain in full force and effect and are paramount to any other agreements.

1. SIGNS AND INDICIA. Notwithstanding the provisions of any part of this Lease, including Section 6.4:

Landlord hereby approves Tenant's (a) logos, (b) colors, and (c) exterior signage specifications annexed to the Lease as Exhibit G. Landlord hereby consents to the installation by Tenant of such designs, interior decorations and trade fixtures as are customary in connection with the operation of an Edible Arrangements location. In addition, Landlord agrees that it shall not unreasonably withhold consent to changes to (a), (b) and (c) during the term of this lease.

2. COOPERATION.

If Landlord's consent or approval is required or is otherwise requested by Tenant, Landlord covenants that it will not unreasonably withhold, delay, or condition any such consent or approval.

3. INFORMATION.

Landlord represents and warrants that to the best of its knowledge as of the date of execution hereof (a) pursuant to all applicable laws, rules and regulations promulgated by any governmental agency having jurisdiction, as well as any exclusive use agreements, if any, granted by Landlord to any tenant operating in the Shopping Center as of the date of this Lease, the Leased Premises may be operated as an Edible Arrangements location for the production, retail and delivery of Edible Arrangements authorized products, (b) Landlord is the fee owner of the property containing the Leased Premises and the building or Shopping Center of which the Leased Premises are a part, (c) Landlord has the right to make this Lease upon the terms and for the term as set forth herein, and (d) Landlord has granted no exclusive right to sell products that resemble those sold by Edible Arrangements to any other tenant of the Shopping Center.

4. USE. Notwithstanding the provisions of any part of this Lease, including Section 1.1 C:

- a) Tenant shall use the Premises for the production, retail and delivery of floral shaped and sculpted fruit arrangements, fruit dipped in assorted flavors with assorted toppings, fruit salads and related products as required by the Edible Arrangements franchisor, which may include fruit drinks and frozen yogurt. Tenant shall be permitted to operate under the Edible Arrangements® and related Trade Names.
- b) Landlord agrees that throughout the term of this Lease, and any renewals and extensions of the term of this Lease that, Tenant shall have the exclusive right within the shopping center to sell floral shaped and sculpted fruit arrangements and fruit dipped in assorted flavors with assorted toppings (the "Exclusive Use"). Therefore, Landlord shall not lease, permit any assignment or sublet of any lease in the Shopping Center, or otherwise permit any tenant to sell floral shaped and sculpted fruit arrangements and fruit dipped in assorted flavors with assorted toppings in any portion of the Shopping Center.
- c) In the event of a violation of subsection (b) above, after any applicable notice and cure period, Tenant shall have the right terminate the Lease if the Exclusive Use continues to be violated by such other tenant for a period of three (3) consecutive months, provided that Tenant provides Landlord with notice of such violation and intent to vacate the Leased Premises. During any period of such violation of Tenant's Exclusive Use, so long as Tenant is operating its business in the Leased Premises, Tenant's fixed minimum annual rent shall be reduced by fifty percent (50%) commencing with the first day of the month after

such notice of violation of Tenant's Exclusive Use and such abatement shall continue until the earlier of the following: (i) the effective date this Lease is terminated; (ii) the effective date the violating tenant's lease is terminated; or (iii) the date such tenant ceases to violate Tenant's Exclusive Use.

5. **RENOVATIONS.** Notwithstanding the provisions of any part of this Lease, including Section 6.3:
Tenant may make all non-structural, cosmetic renovations under \$10,000.00 without Landlord's consent.
6. **INTERFERENCE.** Notwithstanding the provisions of any part of this Lease, including Article 2 and Section 7.8:
Landlord shall not (a) unreasonably interfere with the visibility, ingress or egress of the Leased Premises, (b) unreasonably disrupt Tenant's business, (c) reduce the usable area of the Leased Premises, (d) unreasonably reduce the number of parking spaces that currently serve the Leased Premises, or (e) permanently expose any pipes, conduits, utility lines or wires in the Leased Premises.
7. **NOTICES.** Notwithstanding the provisions of any part of this Lease, including Section 1.1 F:
Copies of any material notices and/or communications sent by Landlord to Tenant, including but not limited to any notices of default shall simultaneously be delivered to:
Edible Arrangements International, LLC
95 Barnes Road
Wallingford, CT 06492
Attention: Real Estate Department
8. **RIGHT OF FIRST REFUSAL.**
In the event that this Lease is terminated prior to the expiration of the initial term or any renewal term, Landlord agrees to offer to Edible Arrangements International, LLC, or a designated bona fide Edible Arrangements franchisee or affiliated company, an opportunity to enter into a new lease on mutually agreeable terms and conditions.
9. **LANDLORD'S RESPONSIBILITIES.** Notwithstanding the provisions of any part of this Lease, including Article 4 and Article 6:
Landlord represents and warrants that upon delivery of vacant possession of the Leased Premises to Tenant that all systems serving the Leased Premises, including but not limited to the HVAC, plumbing, sewer, sprinkler and electrical systems, will be in good working order and condition, in compliance with all applicable laws and building codes and that the Landlord will be solely responsible for repair or replacement of the roof for the term of the lease and any extensions thereof. Any work to be performed by Landlord to the Leased Premises and/or the building or Shopping Center of which the Leased Premises are a part, shall be timely completed in a good and workmanlike manner in accordance with all applicable laws, rules, regulations and requirements of any governmental or municipal department having jurisdiction thereunder. Landlord represents that the HVAC, plumbing, sewer, sprinkler and electrical systems will be in good working order and condition for a period of twelve (12) months after the commencement of the term of the Lease. If any default by Landlord has not been cured within a reasonable period of time, Tenant may, following reasonable written notice and along with any other remedies available at law or in equity, terminate the Lease as a result of Landlord's default.
10. **TERMINATION.**
If at any time during the Term of this Lease, less than seventy percent (70%) of the gross leasable space (excluding the Leased Premises) in the Shopping Center or building of which the Leased Premises is a part is fully occupied and open for business Tenant shall have the right to terminate this Lease anytime thereafter upon thirty (30) days written notice to Landlord.
11. **DAMAGE/DESTRUCTION.** Notwithstanding the provisions of any part of this Lease, including Article 9:
 - a) In the event (i) all or any part of the Leased Premises are damaged or destroyed by fire or other casualty, and as a result, the Leased Premises or any part thereof are rendered unusable for Tenant's business, or

(ii) if the damage or destruction occurs in the last three years of the then existing Term of the Lease, Tenant may terminate the Lease upon sixty (60) days notice of termination to Landlord given within ninety (90) days after the date of such damage or destruction, and on such date provided in the notice, this Lease shall terminate and all rent and additional rent and other charges shall be paid up to the date of such damage or destruction.

b) In the event all or any part of the Leased Premises are damaged or destroyed by fire or other casualty and the Lease is not terminated as provided in (a) above or if the Leased Premises or any part thereof is not rendered unusable for Tenant's business, this Lease shall continue in full force and effect and Landlord shall promptly repair, restore and rebuild the Leased Premises to its condition at the time immediately prior to the occurrence of the loss, and all rent and additional rent and other sums shall abate in proportion and to the extent that the Leased Premises or any part thereof is so rendered unusable for Tenant's business. Any such abatement shall continue until ninety (90) days after Tenant receives notice from Landlord that the Leased Premises or that part thereof is ready for re-occupancy.

12. CONDEMNATION. Notwithstanding the provisions of any part of this Lease, including Article 9:

If the entire Leased Premises or a portion of the Leased Premises is condemned and the remainder of the Leased Premises is not reasonably usable by Tenant for Tenant's purposes pursuant to the terms of this Lease, then this Lease shall terminate as of the date of such taking. If a portion of the Leased Premises is condemned and the remainder of the Leased Premises is still reasonably usable by Tenant for Tenant's purposes pursuant to the terms of this Lease, then this Lease shall continue in full force and effect except that Landlord shall restore the Leased Premises to a single architectural unit and all rent and additional rent shall be adjusted pro rata as to that portion condemned.

13. OPERATING HOURS. Notwithstanding the provisions of any part of this Lease, including Section 7.1:

Tenant shall be permitted to operate during its normal business hours which are Monday through Friday 8 AM to 7 PM; Saturday, 8 AM to 5 PM; and Sunday, five consecutive hours between the hours of 9:00 AM and 5:00 PM ("Tenant's normal business hours"). Tenant may additionally operate during other hours as mutually agreed upon by Landlord and Tenant. Landlord shall provide all services during Tenant's normal business hours.

14. TRADE FIXTURES. Notwithstanding the provisions of any part of this Lease, including Article 10:

Landlord agrees that Tenant shall be permitted, at any time, to remove Edible Arrangements or related trademarked items and proprietary equipment including but not limited to those items identified below. Landlord shall not, in any circumstances, be entitled to a lien on trademarked items and proprietary equipment and documents.

i. Trademarked Items

1. exterior and interior signs,
2. wall logos and window and wall banners,
3. brochures and utensils,
4. business cards,
5. hang tags,
6. arrangement wraps and boxes,
7. picks and containers,
8. jars of chocolate sauce, and
9. van, door, and cooler graphics.

ii. Proprietary Equipment and Documents

1. fruit cutting machines and blades,
2. fruit shape cutters,
3. fruit skewers,
4. Step-by-Step Guides,
5. production posters,

- 6. training manuals, customer service binders and manuals and logs, and
- 7. SMS and extranet guides.

15. ACCESS TO THE PREMISE. Notwithstanding the provisions of any part of this Lease, including Article 10: Upon abandonment of the premise, lease expiration, lease termination or recovery of possession of the premise by Landlord, Landlord shall grant the Franchisor, Edible Arrangements International LLC, or its representative(s), access to the premise, within 3 days following written request:

- a) to remove trademarked items and proprietary equipment and documents;
- b) to take an inventory of items that remain in the store;
- c) to back up electronic data and properly shut down any computers that remain in the premise;
- d) to affix a temporary sign on the entry door to the premise notifying customers that the store is temporarily closed for remodeling and directing them to an alternate store; and
- e) to dispose of any perishable food items that remains in the premise.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Addendum to Lease as of the _____ day of _____, 2012.

Signed, sealed and delivered in the presence of or attested by:

WITNESSES TO LANDLORD:

By: Ronald L. Alford

Print name: Donald Alford, Sr., Secretary

LANDLORD:

By: Marcia I. Jones

Print name: Marcia I. Jones, President

Title: _____

WITNESSES TO TENANT:

By: Mark Mc Cormick

Print name: Mark Mc Cormick

TENANT:

By: John D. Gordon

Print name: John D. Gordon

Title: President



Exterior Signage

Mandatory Vendor:

Sign Pro, Inc.
Megan Maslar
168 Stanley Street
New Britain, CT 06051
860-229-1812
megan@signpro-usa.com

Sign Pro, Inc. is our required vendor for exterior sign manufacturing. The available signs can be found in Supply Chain Management. Sign Pro is available to have the sign installed or they can supply the sign to a local installer who can make those arrangements.

Street Side Pylon/Monument Sign

- File can be found in New Store Management/Related Documents

All exterior signs must be approved per Edible Arrangements before it can be purchased. The sign vendor should create a mock-up file of your exterior sign, according to the guidelines below. Once you receive this mock-up, forward to your coordinator for review.

Mock-Up Should Include:

- Exterior sign superimposed on a picture of the store front, which the dimensions of the store front and the sign labeled.
- Color key indicating which colors are used in the sign.

Note: You will need a sign permit. Discuss with the sign vendor who will be responsible for this.

Date Ordered: _____

Date Received: _____

Notes: _____

Exterior Signage - sample



EXHIBIT 7

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

LEASE

By and Between

**THE SOUTH BEND
REDEVELOPMENT COMMISSION**

and

TIMES FIVE, LLC d/b/a LINDEN GRILL

April 27, 2016

LEASE

THIS LEASE (“Lease”) is made by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the “Landlord”) and Times Five, LLC d/b/a Linden Grill, an Indiana limited liability company, (the “Tenant”) as of the date of last execution hereof by Landlord or Tenant (the “Effective Date”).

WITNESSETH:

ARTICLE I.
BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease (the “Basic Lease Provisions”) constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the parties. Each reference in this Lease to a Basic Lease Provision shall be construed to incorporate all of the terms provided for under such provisions.

- (a) Leased Premises: 119 and 121 S. Michigan Street and as further defined in Section 2.1 hereof, consisting of approximately 2,632 square feet of “Floor Area.”
- (b) Term: Initial Term of Ten (10) Lease Years, as provided for in Sections 3.1 and 3.2 hereof with Two (2), Five (5) year renewal options.
- (c) Tenant’s Use: The premises shall be used solely for the operation of the Linden Grill restaurant and bar.
- (d) Tenant’s Trade Name: Linden Grill
- (e) Landlord’s Address: 1400 S. County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601
- (f) Tenant’s Address: Attn: Mr. Alfonso Mack
4729 Long Iron Dr.
Indianapolis, Indiana 46235
- (g) Lease Year: A “Lease Year” shall mean each period of twelve (12) consecutive full months, beginning on the Commencement Date as defined in Section 3.1 (such that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall begin on the first day of the first calendar month following the Commencement Date, and any partial month in which the Commencement Date occurs will be included within the first Lease Year).
- (h) RESERVED.
- (i) The Building: Michigan Street Shops, commonly referred to as 117 – 131 S. Michigan St., South Bend, Indiana, as more particularly described in attached Exhibit A.

(j) Effective Date: The date of last execution hereof by Landlord or Tenant.

(k) RESERVED.

(l) Commencement Date: The date on which the "Initial Term" commences as determined in Section 3.1.

1.2. Base Rent.

Lease Years 1 - 3	\$7.00 per sq. ft.
Lease Years 4 - 5	\$8.50 per sq. ft.
Lease Years 6 - 7	\$9.00 per sq. ft.
Lease Years 8 - 10	\$11.00 per sq. ft.
Lease Years 11 - 15	\$13.00 per sq. ft.
Lease Years 16 - 20	\$15.00 per sq. ft.

ARTICLE II.
PREMISES.

2.1. Premises. Landlord, in consideration of the Rent, as hereinafter defined, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain premises located in the Building and depicted on Exhibit B (the "Premises"), subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease the number, location, dimension, size, and height of other premises within the Building and other improvements in the Building; and the identity and type of other tenants of the Building. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas, including, without limitation, hallways, stairs, elevators, sidewalks, interior drives, parking areas and green areas (the "Common Areas"), as hereinafter defined. Landlord shall operate, maintain and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as Landlord determines to be necessary or appropriate. Tenant understands that Landlord does not control the sidewalks located in the Michigan Street right of way. Tenant shall be required to file any request for use of a portion of the sidewalk area for outdoor seating with the South Bend Board of Public Works.

2.3. Quiet Enjoyment. Landlord warrants that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceful and quiet enjoyment of possession of the Premises, without any manner of hindrance from parties claiming under, by, or through Landlord.

ARTICLE III.
TERM.

3.1. Initial Term. The "Commencement Date" shall be May 1, 2016. The Initial Term shall end on that date which is Ten (10) Lease Years after the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date").

3.2. Extension Options. Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the

exercise of any option to extend the Term hereof or exists at the end of the Initial Term, Tenant may renew this Lease and extend the Initial Term hereof for two (2) additional periods of five (5) years each ("Extended Term"), on the same terms and provisions as provided in this Lease, except that the Rent due in each Extended Term shall be the amount set forth in Section 1.2, with delivery of written notice of the exercise of such option not later than one hundred and eighty (180) days before the expiration of the Initial Term or Extended Term of this Lease. If Tenant fails to exercise its option to extend the Term hereof in the time periods set forth in this Section 3.2, all such options to extend shall immediately terminate and have no further force or effect, without further notice from Landlord. Any reference in this Lease to the "Term" shall mean the Initial Term and as it may be extended pursuant to this Section 3.2.

3.3. Holding Over. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and twenty-five percent (125%) of the Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus Tenant's Pro Rata Share of all other amounts which Tenant would have been required to pay hereunder had this Lease been in effect (the "Holdover Rent"). If Tenant holds over without Landlord's written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either party may terminate such tenancy from month-to-month upon written notice delivered to the other party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the "State") as a prerequisite to a suit against Tenant for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

ARTICLE IV. CONSTRUCTION

4.1. Landlord's Work. Landlord shall perform the work described in Exhibit C, attached hereto and made a part hereof (the "Landlord's Work").

4.2. Tenant's Work. Landlord shall deliver the Premises "as-is." All work required for Tenant to open and operate in the Premises under the Tenant's Use as outlined in Section 1.1(c) shall be at Tenant's sole cost and expense.

(a) Plans. Within thirty (30) days after the Effective Date, Tenant shall submit to Landlord two (2) copies of the complete plans and specifications (the "Tenant's Plans") for the work Tenant deems necessary to prepare the Premises for occupancy by the Tenant (the "Tenant's Work"). Within thirty (30) days after Landlord's receipt of Tenant's Plans, Landlord shall notify Tenant of any failures of the Tenant's Plans to meet with Landlord's approval. Tenant shall, within ten (10) days after receipt of any such notice, cause the Tenant's Plans to be revised to the extent necessary to obtain Landlord's approval and to be resubmitted for Landlord's approval. When Landlord has approved the original or revised Tenant's Plans, Landlord shall initial and return one (1) set of approved Tenant's Plans (the "Approved Plans") to Tenant. Tenant shall not commence Tenant's Work until Landlord has approved Tenant's Plans, which approval shall not be unreasonably withheld.

Landlord's review and approval of Tenant's Plans shall not be deemed to be an assumption of responsibility by Landlord for the accuracy, sufficiency or propriety of Tenant's Plans, pursuant to applicable laws, rules, ordinances or regulations. If the Approved Plans are changed as a result of conditions placed on Tenant as a prerequisite to obtaining a permit, Tenant shall submit such changes to Landlord for approval, and Tenant shall not proceed further with the affected portions of Tenant's Work until Landlord has approved the changes. Such changes as are approved by Landlord shall become part of the Approved Plans.

(b) Performance. Tenant shall, in a manner consistent with the Approved Plans: (i) install its leasehold improvements, trade fixtures and equipment; and (ii) complete all other Tenant's Work. Prior to performing Tenant's Work, Tenant shall: (i) obtain all permits, licenses and approvals required for Tenant to perform Tenant's Work; and (ii) deliver to Landlord: (a) copies of such permits, licenses and approvals; and (b)

evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall: (i) perform Tenant's Work: (a) in accordance with the Approved Plans and all permits, licenses and approvals; and (b) in a good and workmanlike manner and in compliance with all applicable laws, statutes, and/or ordinances and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (the "Laws"); (ii) ensure that all contractors, subcontractors, laborers and suppliers performing work or supplying materials are paid in full; and (iii) observe and perform all of its obligations under this Lease at all times after the Commencement Date.

ARTICLE V. RENT.

5.1. Rent. Commencing on the Commencement Date, Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Rent, as set forth in Section 1.2, including Base Rent plus the Additional Rent charges (collectively, the "Rent"), together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Notwithstanding the foregoing sentence, Tenant will not be required to pay Base Rent for the first six (6) months of the Initial Term. Rent shall be paid in monthly installments commencing as provided herein and thereafter during the entire Term or Extended Term on or before the fifteenth (15th) day of each calendar month, in advance. Tenant's obligations under this Section 5.1 shall survive the Termination Date.

5.2. Additional Rent. Commencing on the Commencement Date, Tenant shall pay to Landlord, as part of Rent, Additional Rent (the "Additional Rent"), all other sums, charges, and payments required to be paid by Tenant to Landlord under this Lease, whether or not the same are designated as Additional Rent including, but not limited to, Tenant's Pro Rata Share of the Center Expenses, as defined in Section 5.8(a). If any sum or charge is not paid at the time provided in this Lease, then it shall be collectible as Additional Rent with the next monthly installment of Rent; provided that nothing contained herein shall be deemed to suspend or delay the payment of such sum or charge, or to limit any right or remedy of Landlord with respect to its nonpayment.

5.3. Late Charge. Any amount of Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid. If any amount of Rent is paid more than five (5) days after its due date, then Landlord shall be entitled to a late payment fee of One Hundred Dollars (\$100.00) in addition to the interest charge set forth in this Section 5.3.

5.4. Common Expenses.

- a. Pro Rata Share. Tenant's "Pro Rata Share" shall be a fraction: (a) the numerator of which is the Floor Area, as defined in Section 1.1; and (b) the denominator of which is the square footage of all areas leasable to tenants in the Building. As of the Effective Date, Tenant's Pro Rata Share is 2,632/11,057 or 23.80%. Tenant's Pro Rata Share shall be re-calculated from time to time if either the numerator or the denominator changes.
- b. Payment. Tenant shall pay to Landlord its Pro Rata Share of the Common Expenses, as hereinafter defined (the "CAM Contribution"), which share shall equal the amount of all Common Expenses, multiplied by Tenant's Pro Rata Share. The obligations of Tenant under this Section 5.4 to make payment for expenses incurred prior to the Termination Date shall survive the Termination Date.
- c. Common Expenses. "Common Expenses" shall mean all costs and expenses of every kind or nature paid or incurred by Landlord during the Term in operating, managing and servicing the Building, including, without limitation: (i) reasonable and customary management fees; (ii) wages, salaries and benefits of maintenance personnel (not to exceed the amount fairly and equitably allocated to the Building); (iii) charges under maintenance contracts; (iv) costs and expenses to perform or provide maintenance or repairs and to satisfy Landlord's obligation to operate, maintain and insure the Common Areas under this Lease; (v) sewer, water and storm water drainage charges attributable to the Common Areas, and the costs to maintain any retention and detention ponds and other storm water drainage facilities; (vi) premiums for customary insurance incurred by the Landowner including

insurance, if any, obtained by the Landlord to satisfy an obligation under this Lease; (vii) costs for signage located in the Common Areas, including, without limitation, costs for light bulbs and electricity, and costs incurred with respect to any exterior sign for the Building; (viii) costs and expenses to provide light, heat, air conditioning and ventilation for the Common Areas; and (ix) depreciation or amortization of capital assets, improvements, repairs or replacements (the "Amortized Capital Costs"). Tenant shall be responsible for its Pro Rata Share of the Amortized Capital Costs, together with interest if not paid when due, notwithstanding that the capital asset, improvement, repair or replacement may have been acquired or made before the Commencement Date. Common Expenses shall not include: (1) any leasing or rental commissions; (2) any legal fees in connection with financings or refinancings, preparation or negotiation of leases, or exercising or enforcing Landlord's rights and remedies under leases; (3) any costs of tenant improvements or build-outs; (4) any penalties or interest assessed against Landlord for late payment of its indebtedness; or (5) payments of principal or interest required by any financing or refinancing. Notwithstanding anything to the contrary set forth herein, amounts separately billed to, and paid directly by, a tenant of the Building shall be deducted in calculating Common Expenses from the costs and expenses that Landlord incurs to operate the Building. Common Expenses, including Real Estate Tax Expenses and Insurance Expenses are currently estimated to be Five Dollars and 53/100 (\$5.53) per square foot per year. Any increase in the Tenant's Pro Rata Share of CAM expenses shall be based on the actual increase incurred by Landlord, not to exceed five percent (5%) of the CAM expenses for the prior year.

5.5. Real Estate Tax Expenses. Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of real estate tax expenses (collectively, the "Real Estate Tax Expenses"): (a) all real estate taxes and assessments of any nature levied during the Term on, against, or with respect to the Building (the "Real Estate Taxes"); (b) any and all costs and expenses incurred by Landlord in connection with an appeal of the Real Estate Taxes; and (c) all Real Estate Taxes levied during the Term on, against, or with respect to Tenant's leasehold interest in the Premises. The obligations of Tenant hereunder with respect to the payment of Real Estate Taxes levied during the final year of the Term shall survive the Termination Date.

5.6. Insurance Expenses. Tenant shall pay to Landlord, as Additional Rent, its Pro Rata Share of any and all costs incurred by Landlord in connection with the Casualty Insurance, as defined in Section 8.1, and the Liability Insurance, as defined in Section 8.1, including, but not limited to, all premiums and deductibles paid by Landlord (collectively, the "Insurance Expenses").

5.7. Percentage Rent. Intentionally Omitted.

(a) Definition of Gross Sales. Intentionally Omitted.

5.8. Estimation.

a. Estimation. From time to time, Landlord may estimate (or re-estimate) the amount of the Tax Expenses, Insurance Expenses, and/or CAM Contributions (collectively, the "Center Expenses") payable by Tenant for any whole or partial calendar year during the Term. Tenant shall pay, as Additional Rent, equal monthly installments of its Pro Rata Share of the estimated Center Expenses during such whole or partial calendar year, subject to the limitation set forth in Section 5.4(c).

b. Statement. Within ninety (90) days after the end of each whole or partial calendar year during the Term, Landlord shall deliver to Tenant a written statement that shows the computation of the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is more than the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Landlord shall credit the excess: first, against any outstanding Rent due from Tenant; and second, against future Center Expenses, to be paid by Tenant; provided that, if there are no future Center Expenses to be paid by Tenant, then Landlord shall refund the excess to Tenant within thirty (30) days. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is less than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Tenant shall pay the amount of such deficiency with the next regular installment of Rent unless the

Termination Date has occurred, in which case Tenant shall pay any deficiency within thirty (30) days after Landlord delivers Landlord's written statement.

5.9 Utilities. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (all of which utilities shall be separately metered to the Premises) (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges.

ARTICLE VI.

ALTERATIONS AND MAINTENANCE OF AND REPAIRS TO THE PREMISES

6.1. Landlord Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the installation and replacement of all heating, ventilating, and cooling equipment and systems serving the Premises (the "HVAC Systems") provided however that the Landlord may bill the Tenant as Additional Rent if the Landlord's consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of the Tenant's misuse of it or the Tenant's failure to notify the Landlord of its malfunctioning. The Landlord may enter into a maintenance contract with a reputable company (the "Maintenance Contract"), pursuant to which Maintenance Contract such company shall institute a regularly scheduled program of preventive maintenance and repair of the HVAC Systems to keep and maintain such items in good order, condition, and repair at all times, and any such expenses incurred by the Landlord as a result of such Maintenance Contract or any routine or otherwise insubstantial repairs shall be considered a Common Expense allocable to this Premises only, unless the HVAC Systems service more than on Tenant. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of Tenant.

6.2. Tenant Repairs. Except for repairs to be performed by Landlord pursuant to Section 6.1, Tenant shall: (a) keep the Premises clean, neat, and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises as may be required by any Law, or by fire underwriters or underwriters' fire prevention engineers; (b) keep all glass in windows, doors, fixtures, skylights, and other locations clean and in good order, repair, and condition, and replace glass that may be damaged or broken with glass of the same quality; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 6.2. Notwithstanding any provision to the contrary, including Section 6.1, the Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises, and the Tenant will be responsible for all maintenance and repair of the HVAC Systems up to Five Hundred Dollars (\$500.00) per year.

6.3. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) the cumulative cost of making such alterations or improvements is less than Five Thousand Dollars (\$5,000.00); (ii) Tenant delivers to Landlord written notice describing the proposed alteration or improvement with particularity, and provides to Landlord copies of any plans and specifications for the alteration or improvement; and (iii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the Commencement Date. Tenant shall not, without the prior written consent of Landlord, which shall not be withheld unreasonably, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant's cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic's or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic's or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, other than for the performance of Landlord's Work, then Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

6.4. Signs. Other than a sign on the façade Building above the store front of the Premises, Tenant shall not affix or maintain upon the exterior of the Premises or make visible from the exterior any sign, advertising placard, name, insignia, trademark, or descriptive material, without the prior written approval of Landlord, which approval shall not be withheld unreasonably. No such materials may be displayed or attached which are against any applicable law or regulation.

ARTICLE VII.

USE.

7.1. Use of the Premises. At all time during the Term, Tenant shall:

(a) Use the Premises solely for Tenant's Use, as defined in Section 1.1(c), doing business under Tenant's Trade Name, as defined in Section 1.1(d), and for no other use or purpose;

(b) Tenant will open the Premises for business and operate one hundred percent (100%) of the Premises during the entire Term, without interruption, during at least the hours of 10:00 a.m. through 6:00 p.m., Monday through Saturday, or such other minimum hours upon which Landlord may agree from time to time with prior written consent, provided that such operation may be interrupted for such reasonable periods as may be necessary to repair, restore, or remodel the Premises, or for purposes of taking inventory, Tenant shall obtain the prior written consent of Landlord, which approval shall not be unreasonably withheld for such time periods. Tenant will keep its sign and the interior of the Premises lighted at least one (1) hour past such closing time. Tenant agrees that Tenant will open and close at the times set forth above. If Tenant either (i) opens for business more than thirty (30) minutes late; or (ii) closes for business more than thirty (30) minutes early on more than two (2) occasions in any Lease Year, Tenant will pay to Landlord as a further item of Additional Rent, the sum of Two Hundred Fifty Dollars (\$250.00) per occurrence thereafter. Notwithstanding anything in this Section, Tenant shall not be required to be open on any of the following holidays: New Years Day, Easter, Memorial Day, Fourth of July, Thanksgiving Day, and Christmas Day.

(c) Remain fully fixtured, fully stocked, and fully staffed at all times.

(d) Conduct the business located on the Premises at all times in a high grade and reputable manner so as to produce the maximum volume of sales and transactions and to help establish and maintain a high reputation for the Building.

During the Term, Tenant will be considered to “Operate” or be “Operating” in the Premises so long as Tenant is open for business in compliance with this Section 7.1.

7.2. Covenant to Open. Tenant covenants that it will open and begin Operating in the Premises as of sixty (60) days after the Commencement Date.

7.3. Compliance with Law. Tenant shall promptly comply with all federal, state and local Laws and ordinances and lawful orders and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall promptly and fully comply with all federal, state and local Laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.4. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Shopping Center, and will remove the same frequently and regularly, all at Tenant’s cost; will not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not distribute advertising matter to, in or upon any portion of the Building; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles which will interfere with the use of any portion of the Building; will not use the any portion of the Building for promotional activities, to include without limitation rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows; will comply with all Laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act (“OSHA”) and the Americans With Disabilities Act (“ADA”), as the same may be amended from time to time. Tenant covenants and agrees that it will not serve liquor or any other alcoholic beverages in or from the Premises unless Tenant first obtains the written consent of Landlord, which may be granted or withheld in Landlord’s sole and absolute discretion.

7.5. Storage. Tenant shall store in the building on the Premises only merchandise and products which Tenant intends to sell at, in, or from the Premises within a reasonable time after receipt thereof.

7.6. Sales and Use. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local Laws or ordinances. Tenant shall not operate the Premises either in whole or in part as a clearance, outlet, off-price, or discount store, provided that nothing in this Section 7.6 is intended to affect Tenant’s pricing policies.

7.7. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

- ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;
- iii. transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Building, or which interferes with the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the Premises or the Building;
- iv. create, or permit to be created, any ground vibration that is discernible outside the Premises; or
- v. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, which are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable Law. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local Law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 *et seq.* ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et seq.* ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.7(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.7(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.7(b) shall survive the Termination Date.

7.8. Inspections. Tenant shall permit Landlord and its employees, agents and contractors to enter the Premises at reasonable times, upon reasonable notice (or at any time in the event of an emergency) for the purpose of: (a) inspecting the Premises; (b) making repairs, replacements, additions, or alterations to the Premises, or to the building in which the Premises is located; and (c) showing the Premises to prospective purchasers, lenders, and tenants. During the last one hundred and eighty (180) days of the Term, Landlord may put a "For Lease" sign in the storefront window of the Premises.

7.9. Sidewalks. Tenant acknowledges that the use of the sidewalks adjoining the Premises is controlled by the South Bend Board of Public Works (the "BPW"). The Landlord makes no representation concerning the availability of such use for dining or other purposes. Tenant understands that it must make application to the BPW for a permit to use the adjoining sidewalks. Landlord shall not oppose such application.

ARTICLE VIII. INSURANCE AND INDEMNIFICATION

8.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$5,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an "additional insured" in an amount sufficient to cover any possible liability Landlord may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

8.2. Hazardous Materials Coverage. Notwithstanding the above mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises or the Building, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no less than \$3,000,000.00 and purchase environmental impairment liability insurance with coverage of not less than \$3,000,000.00 with a deductible of not greater than \$50,000.00 to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and/or the Building, and that the Premises and/or the Building be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

8.3. Dram Shop Coverage. In addition to the insurance required under this Article VIII, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

8.4. Tenant's Additional Insurance. Tenant shall comply with the provisions of the applicable workers' compensation laws, and shall insure its liability thereunder. Tenant, at its expense, shall maintain plate glass insurance covering all exterior plate glass in the Premises or shall be obligated to promptly replace any damaged exterior glass, to the satisfaction of the Landlord within five (5) days of the occurrence of such damage. In the event that the Tenant neither obtains insurance providing for the immediate repair of the damaged glass nor repairs said damage to the satisfaction of the Landlord within five (5) days of the occurrence of such damage, the Landlord may have the damaged glass repaired at the Tenant's expense.

8.5. Policies. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance. Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article VIII, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article VIII, Landlord may obtain replacement coverage and the cost of same shall be deemed Additional Rent payable by Tenant with the next installment of Rent thereafter becoming due and payable.

8.6. Indemnity.

(a) Definition of "Loss." The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).

(b) Definition of "Indemnify." The term "Indemnify," as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant

Except for loss, injury or damage caused solely by the willful misconduct or gross negligence of Landlord, its employees, contractors, or agents, the Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

8.7. Release of Subrogation. Each party hereto does hereby release and discharge the other party from any liability, which the released party would have had (but for this section) to the releasing party, arising out of or in connection with any accident or occurrence or casualty: (a.) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing party, and (b.) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building and Tenant hereby expressly waives any claim for such damages.

8.8. The Tenant will not allow said Premises to be used for any purpose that will increase the rate of insurance thereon, nor to be occupied in whole or in part by any other person.

8.9. The terms of this Article VIII will survive any termination or expiration of this Lease.

ARTICLE IX.
CASUALTY AND CONDEMNATION.

9.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after: (i) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (ii) deduction for any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the Premises; (ii) there is Casualty Damage to the building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such building; or (c) there is Casualty Damage to the buildings (taken in the aggregate) in the Building, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such buildings; then Landlord may elect either to: (1) repair or rebuild the Premises, the building of which the Premises is a part, or the aggregate buildings in the Building, as applicable; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Rent. Base Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises or the Common Areas of which Tenant has knowledge.

9.2. Condemnation. If: (a) all or a substantial part of the Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain; or (b) all or a substantial part of the Premises is conveyed to a public or quasi-public body under threat of condemnation (collectively, the "Condemnation"); and the Condemnation renders the Premises unsuitable for use for Tenant's Use, then, at the option of either Landlord or Tenant exercised within ninety (90) days after the Condemnation occurs: (i) this Lease shall terminate as of the date possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; (ii) all Rent shall be apportioned as of the date that possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; and (iii) all obligations hereunder, except those due or mature, shall cease and terminate. If there is a Condemnation with respect to: (A) more than twenty-five percent (25%) of the square footage of the building of which the Premises is a part; or (B) more than twenty-five percent (25%) of the aggregate square footage of the Building; then Landlord, at its option, exercised within ninety (90) days after the Condemnation occurs, may elect to terminate this Lease as of the date possession of such square footage is taken by, or conveyed to, the condemning authority, and: (i) all Rent shall be apportioned as of the date that possession of such square footage is taken by, or conveyed to, the condemning authority; and (ii) all obligations hereunder, except those due or mature, shall cease and terminate. All compensation awarded or paid for the Condemnation (the "Condemnation Proceeds") shall belong to and be the sole property of Landlord; provided that Landlord shall not be entitled to the amount of any Condemnation Proceeds awarded or paid solely to Tenant for loss of business or costs and expenses of relocation and removing improvements and equipment. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, then Landlord shall be responsible for the performance of all work necessary to make the Premises usable by Tenant; provided that Landlord shall not be obligated to incur costs for such work in excess of the Condemnation Proceeds awarded or paid to Landlord and remaining after: (y) Landlord's mortgagee has

withheld any amount of the proceeds to which it is entitled, if any; and (z) deduction for any expenses incurred in collecting the Condemnation Proceeds. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, or if any Condemnation is temporary in nature, then Base Rent shall be abated proportionately (based upon the proportion that the that area Premises taken by, or conveyed to, the condemning authority bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of the Condemnation.

ARTICLE X. SURRENDER.

10.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article X, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

10.2. Removal of Certain Property. All furniture and business equipment furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right to possession hereunder, but only if, and to the extent, that the removal thereof will not cause physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises the condition described in Section 10.1 above, or alternatively, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage with such costs to be considered Additional Rent and shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

10.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord or such Tenant fails to remove such property within such timeframe Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

10.4. Survival of Terms. The terms of this Article X and other terms of this Lease referred to herein shall survive any termination of this Lease.

ARTICLE XI. DEFAULT.

11.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

(a) Nonpayment. Tenant's failure to pay Base Rent, Additional Rent, or other sums or charges that Tenant is obligated to pay by any provision of this Lease when due and that is not paid within 7 days of notice from Landlord.

(b) Lapse of Insurance. Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease that is not cured within 14 days of notice from Landlord.

(c) Other Material Lease Violations. Tenant's failure to perform or observe any other material covenant, condition, or agreement of this Lease, which failure is not cured within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default unless such default is of such nature that it cannot be

cured within such thirty (30) day period, in which case no Event of Default shall occur so long as the Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same; provided, however, if the Tenant shall default in the performance of any such covenant or agreement of this Lease more than one time in any twelve (12) month period notwithstanding that such default shall have been cured by Tenant, the second and further defaults in said twelve (12) month period may be deemed by Landlord, in its sole discretion, an Event of Default without the ability for cure.

(d) Falsification of Information. If Tenant, any guarantor of Tenant's obligations under this Lease, or any agent of Tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease:

(e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Section 13.1(b) of this Lease.

(f) Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations under this Lease; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

(g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing.

(h) Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.

(i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days after its entry.

(j) Inability to Pay. The admission in writing by Tenant or any guarantor of Tenant's obligations under this Lease of its inability to pay its debts when due.

(k) Breach by Guarantor. The breach by any guarantor of any of that guarantor's obligations under its guaranty.

(l) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

11.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be deemed Additional Rent and shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 11.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of

Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 11.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this Section 11.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in connection with making alterations and repairs for the purpose of reletting the Premises; (iv) reasonable attorneys' fees; (v) the unamortized value of the Construction Allowance, if any.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Base Rent and Additional Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Base Rent and Additional Rent (as reasonably estimated by Landlord) that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between the Base Rent and Additional Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised, and the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

11.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 11.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

11.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

11.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.6. Counterclaim. If Landlord commences any proceedings for non-payment of Rent, Tenant will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts due hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any reason whatsoever, except as may be specifically provided for herein to the contrary, it being understood and acknowledged by Tenant that Tenant's only recourse is to seek an independent action against Landlord.

11.7. Bankruptcy.

(a) Assumption of Lease. In the event that Tenant shall become a Debtor under Chapter 7 of the United States Bankruptcy Code (the "Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 and is transferred to Chapters 11 or 13, the Trustee or Tenant, as Debtor and as Debtor In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has:

i. Cured or provided Landlord "Adequate Assurance," as defined below, that:

A. Within ten (10) days from the date of such assumption the Trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in Section 11.2 of the Lease, and attorneys' fees incurred as a result of the default and/or to enforce the terms hereof;

B. Within thirty (30) days from the date of such assumption the Trustee or Tenant will cure all non-monetary defaults under this Lease; and

C. The assumption will be subject in all respects to all of the provisions of this Lease.

ii. For purposes of this Section 11.7, Landlord and Tenant hereby acknowledge that, in the context of a bankruptcy proceeding of Tenant that this Lease is a lease of real property within a Building and, at a minimum "Adequate Assurance" shall mean:

A. The Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured and priority obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease, and to keep the Leased Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully Operational, actively promoted business in the Leased Premises;

B. The bankruptcy court shall have entered an order segregating sufficient cash payable to Landlord, and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults under this Lease within the time periods set forth above; and

C. The Trustee or Tenant at the very least shall deposit a sum equal to one (1) month's Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

(b) Assignment of Lease. If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 11.7 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of Section 13.1 herein, including, without limitation, those with respect to Additional Rent and the use of the Premises only as permitted in Article VII herein; Landlord and Tenant hereby acknowledging that

such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment and assumption in form acceptable to Landlord.

(c) Adequate Protection. Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor in Possession, and any Trustee who may be appointed hereby agree to adequately protect Landlord as follows:

i. To immediately perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court;

ii. To pay all monetary obligations required under this Lease, including, without limitation, the payment of Base Rent and such Additional Rent charges payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises;

iii. Provide Landlord a minimum thirty (30) days' prior written notice, unless a shorter period is agreed to in writing by Landlord, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and

iv. To perform to and for the benefit of Landlord as otherwise required under the Code.

The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease and the automatic stay under Section 362 of the Code shall automatically be terminated as to Landlord and the Premises.

(d) Accumulative Rights. The rights, remedies and liabilities of Landlord and Tenant set forth in this Section 11.7 shall be in addition to those which may now or hereafter be accorded, or imposed upon, Landlord and Tenant by the Code.

(e) Changes in Code. If the Code is changed or amended such that any references in this Section 11.7 to particular provisions or terms of art lose the meaning that they have as of the Effective Date, such provisions or terms of art of this Lease shall be deemed to be amended to reflect such changes in the Code.

ARTICLE XII.

ESTOPPEL CERTIFICATES, ATTORNMENT, AND SUBORDINATION.

12.1. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after request therefor by the other party, a statement, in writing, certifying to Landlord and/or any party designated by Landlord, or Tenant and/or any party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

12.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

12.3. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's

fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between Tenant and such Mortgage holder. Any holder of any of any such Mortgage is herein referred to as "Landlord's Mortgagee(s)." Notwithstanding the foregoing, a Landlord's Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such Landlord's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

ARTICLE XIII. **ASSIGNMENT AND SUBLETTING**

13.1. Assignment and Subletting.

(a) Tenant shall not sublet, mortgage, encumber or in any manner transfer, in whole or in part, this Lease, the Premises or any estate or interest in said Premises or Lease. Except as expressly permitted herein, Tenant shall not assign this Lease or any estate or interest therein or allow the occupancy thereof by any person or entity other than Tenant, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Consent by Landlord to one or more assignments of this Lease shall not operate to exhaust Landlord's rights under this Article XIII. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or allow the occupancy thereof by any person or entity other than Tenant, Tenant shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Landlord.

(b) If this Lease is assigned or the Premises or any part thereof occupied by any entity other than Tenant, Landlord may collect rent from the assignee or occupant and apply the same to the Rent herein reserved, but no such assignment, occupancy or collection of Rent shall be deemed a waiver of any restrictive covenant contained in this Section 13.1 or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained. Any sublease of the Premises shall be void. Landlord shall have the right, at any time, to immediately remove an occupant or than Tenant from the Premises along with any possession of said occupant, which shall be deemed to have been abandoned if not claimed by occupant within three (3) business days of their removal, and the Landlord's acceptance of rent from the occupant shall in no way waive any rights the Landlord may have against the occupant. The Tenant shall indemnify the Landlord for any actions, claims or demands made by the occupant or its assigns against the Landlord. . Any assignment: (x) as to which Landlord has consented or is deemed to have consented; or (y) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (z) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership, shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

i. Each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Landlord;

ii. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor as a result of said assignment, including, if any, payments for Tenant's improvements, proposed rent (which includes, without limitation, all monthly charges allocated to common area maintenance, insurance, real property taxes, and utility charges) and any other payments;

iii. Each assignee shall have submitted to Landlord a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of Tenant's obligations hereunder;

iv. Each assignee shall have submitted to Landlord, in writing, evidence satisfactory to Landlord of substantial experience in operating a business similar to that offered by Tenant and permitted under Section 1.1(c) of this Lease or a business otherwise requested by the Landlord and in operating said business in a space or volume comparable to that contemplated under this Lease;

v. The business reputation of each assignee shall meet or exceed generally acceptable commercial standards;

vi. The use of the Premises by each assignee shall not violate, or create any potential violation of, applicable Laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other occupants in the Building; and

vii. Tenant shall pay Landlord the sum of One Thousand Five Hundred Dollars (\$1,500.00) as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment.

(c) In the event that Tenant desires to assign this Lease, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment. Tenant shall advise Landlord of the name of the proposed assignee, shall furnish Landlord with the information required by Landlord with respect to the proposed assignee, and Landlord shall advise Tenant, within sixty (60) business days after receipt of such notice and all required information from Tenant, that Landlord either consents or refuses to consent to an assignment to the proposed assignee.

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV. MISCELLANEOUS

14.1. Security Deposit. RESERVED.

14.2. Guaranty. RESERVED.

14.3. Notices. Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(e) hereof, or at such other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(f) hereof, or at such other address as Tenant may designate by written notice.

14.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant, except as otherwise provided herein.

14.5. Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

14.6. Remedies Cumulative. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

14.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

14.8. Relationship. Nothing contained herein shall be deemed or construed to create between the parties any relationship other than that of landlord and tenant.

14.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant and/or any guarantors of this Lease (which, in the event Tenant or a guarantor is an entity, shall be certified by the highest-ranking financial officer of Tenant or guarantor).

14.10. Construction. The laws of the State in which the Premises are located shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business days are specified. All Exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

14.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other party; or (b) any other cause that is not within the control of the delayed or prevented party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

14.12. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

14.13. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

14.14. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

14.15. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

14.16. Equal Opportunity Obligation. Tenant agrees not to discriminate against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry.

14.17. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein. Tenant further agrees to execute and deliver an affidavit attesting to the terms of this provision in the form set forth in Exhibit D.

14.18. Relocation. Landlord shall also have the independent right to relocate Tenant for any reason ("Relocation Right") with ninety (90) days prior written notice to Tenant ("Relocation Notice"), so long as (i) Landlord substitutes for the Premises described herein other space located in the Building which new location shall have approximately the same square footage and frontage on Michigan Street as the original Premises ("Substitute Space"); (ii) the Substitute Space shall be ready for occupancy at a condition comparable to the current premise at the time immediately prior to the move; and (iii) Landlord shall solely pay all reasonable expenses for moving tenant's furniture, fixtures and equipment and improving the space to a condition comparable to the current premise at the time immediately prior to the move. Upon any such relocation, this Lease shall be appropriately amended to reflect any resulting proportional adjustment in the Minimum Annual Rent and Additional Rent under the Lease based upon any change in size of the Premises. If Tenant receives the Relocation Notice prior to the time that Tenant has commenced Tenant's construction in the Premises, then Landlord will reimburse Tenant for Tenant's reasonable incremental cost, if any, incurred by Tenant to revise Tenant's plans to conform to the Substitute Space. If Tenant receives the Relocation Notice after Tenant has commenced Tenant's Work in the Premises, then, in addition to reimbursement for any necessary plan revision, the Substitute Space will be improved by Landlord, at its expense, with improvements at least equal in extent, quantity and quality to those improvements, if any, existing in the Premises on the date of Landlord's Relocation Notice to Tenant. If Tenant receives the Relocation Notice after Tenant has opened for business in the Premises, then, in addition to reimbursement for any necessary plan revision and improvement of the Premises in accordance with the preceding sentences, Landlord will reimburse Tenant for reasonable expenses actually incurred by Tenant in connection with such relocation, including but not limited to costs of moving, door lettering, telephone relocation and reasonable quantities of new stationery. Upon completion of the relocation, Landlord and Tenant will amend this Lease to change the description of the Premises and any other matters pertinent thereto.


14.19. Parking. During the term of this Lease, the Landlord will not be required to provide any parking spaces to the Tenant.

14.20. Recordation. The parties shall execute and record in the Office of the Recorder of St. Joseph County a memorandum of this Lease in the form attached hereto as Exhibit E, but a failure to record shall not affect the validity or effectiveness of this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the Effective Date stated above.

"LANDLORD"

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**
by and through the South Bend Redevelopment Commission



Marcia I. Jones, President

ATTEST:



Donald E. Inks, Secretary

Date: April 28, 2016

"TENANT"

**TIMES FIVE, LLC, d/b/a LINDEN GRILL, an Indiana
limited liability company**


Signature
Alfonso C. Mack Owner
Printed Name and Title

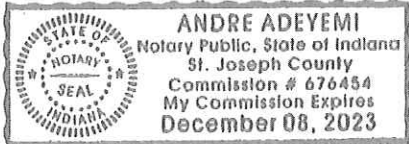
Date: 4/27/16

STATE OF INDIANA)

) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 28 day of April, 2016, personally appeared Marcia Jones and Donald Inks, known to be to be the President and Secretary, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____

STATE OF INDIANA)

) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 07 day of April, 2016, personally appeared _____, member of Times Five, LLC d/b/a Linden Grill and acknowledged execution of the foregoing Lease on behalf of said company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Stacy M. Graf

Stacy M. Graf, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: 9/12/21

4000.0000038 54014023.002



EXHIBIT A

Legal Description of Building

The ground level of the Leighton Center Parking Garage, which is the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

EXHIBIT B

Description of Premises

The Premises commonly referred to as 119 and 121 S. Michigan Street, South Bend, Indiana, which is comprised of approximately 2,632 square feet located on the ground level of the Leighton Center Parking Garage, which is a part of the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described at Exhibit A of the Lease to which this Exhibit B is attached.

EXHIBIT C

Landlord's Work

The Landlord shall deliver the premises in "as-is" condition.

EXHIBIT D

Non-Collusion Affidavit

[See attached.]

When the prospective Contractor is unable to certify to any of the statements below, it shall attach an explanation to this Affidavit.

**CONTRACTOR'S NON-COLLUSION AND NON-DEBARMENT AFFIDAVIT,
CERTIFICATION REGARDING INVESTMENT WITH IRAN, EMPLOYMENT ELIGIBILITY
VERIFICATION, NON-DISCRIMINATION COMMITMENT AND CERTIFICATION OF USE
OF UNITED STATES STEEL PRODUCTS OR FOUNDRY PRODUCTS**

(Must be completed for all quotes and bids. Please type or print)

STATE OF Indiana)
St. Joseph COUNTY) SS:

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to induce anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding. Contractor further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale; and
2. Contractor certifies by submission of this proposal that neither contractor nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and
3. Contractor has not, nor has any successor to, nor an affiliate of, Contractor, engaged in investment activities in Iran.
 - a. For purposes of this Certification, "Iran" means the government of Iran and any agency or instrumentality of Iran, or as otherwise defined at Ind. Code § 5-22-16.5-5, as amended from time-to-time.
 - b. As provided by Ind. Code § 5-22-16.5-8, as amended from time-to-time, a Contractor is engaged in investment activities in Iran if either:
 - i. Contractor, its successor or its affiliate, provides goods or services of twenty million dollars (\$20,000,000) or more in value in the energy sector of Iran; or
 - ii. Contractor, its successor or its affiliate, is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person for forty-five (45) days or more, if that person will (i) use the credit to provides goods and services in

the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.

4. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program is included and attached as part of this bid/quote; and

5. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of South Bend, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

6. Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law, the City, its agencies, boards, or commissions may consider the Contractor's good faith efforts to obtain participation by those Contractors certified by the State of Indiana as a Minority Business ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

In no event shall persons or entities seeking the award of a City contract be required to award a subcontract to an MBE/WBE; however, it may not unlawfully discriminate against said WBE/MBE. A finding of a discriminatory practice by the City's MBE/WBE Utilization Board shall prohibit that person or entity from being awarded a City contract for a period of one (1) year from the date of such determination, and such determination may also be grounds for terminating the contract for which the discriminatory practice or noncompliance pertains.

7. The undersigned contractor agrees that the following nondiscrimination commitment shall be made a part of any contract which it may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions.

Contractor agrees not to discriminate against or intimidate any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex handicap, national origin or ancestry. Breach of this provision may be regarded as material breach of contract.

I, the undersigned bidder or agent as contractor on a public works project, understand my statutory obligations to the use of steel products or foundry products made in the United States (I.C. 5-16-8-1). I hereby certify that I and all subcontractors employed by me for this project will use steel products or foundry products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing bid for public works are true and correct.

Dated this _____ day of _____, 20__

Contractor/Bidder (Firm)

Signature of Contractor/Bidder or Its Agent

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, 20__

My Commission Expires _____

Notary Public

County of Residence _____

EXHIBIT E

Memorandum of Lease

MEMORANDUM OF LEASE

This Memorandum of Lease (this "Memorandum") is dated as of April __, 2016, by and between the South Bend Redevelopment Commission, governing body of the Department of Redevelopment of the City of South Bend, Indiana ("Landlord"), and Times Five, LLC d/b/a Linden Grill, an Indiana limited liability company ("Tenant"). Landlord and Tenant are each referred to herein as a "party" and collectively as the "parties."

WITNESSETH:

WHEREAS, as of the date hereof, Landlord and Tenant entered into a Lease (the "Lease") for the following real estate situated in the City of South Bend, County of St. Joseph and State of Indiana (the "Premises"):

The real property commonly known as 119 and 121 S. Michigan Street, South Bend, Indiana, which is situated in the ground level of the Leighton Center Parking Garage, more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows: Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

WHEREAS, the parties desire to place their interests in the Premises as a matter of record.

NOW, THEREFORE, the parties state as follows:

1. The Lease was executed to commence on May 1, 2016 (the "Commencement Date"), and the initial term of the Lease shall end ten (10) years after the Commencement Date. At Tenant's option, Tenant may extend the term of the Lease for no more than two (2) consecutive renewal terms of five (5) years each, subject to any rights of termination contained in the Lease.

2. This Memorandum may be executed in any number of counterparts, each of which counterpart, when so executed and delivered, shall be an original, but all such counterparts when taken together shall constitute but one and the same Memorandum.
3. The recitals set forth above are true and correct and are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the day and year first above written.

LESSOR:

SOUTH BEND REDEVELOPMENT COMMISSION,
governing body of the South Bend Department of
Redevelopment of the City of South Bend, Indiana

By: *Marcia I. Jones*
Marcia I. Jones, President

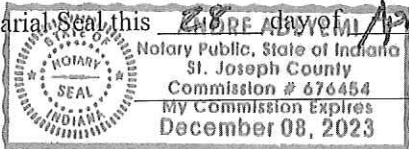
ATTEST:

By: *Donald E. Inks*
Donald E. Inks, Secretary

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said State, personally appeared Marcia I. Jones and Donald E. Inks, known by me to be the President and Secretary, respectively, of Lessor in the foregoing Memorandum of Lease, and who, in such capacity, acknowledged the execution of the same as Lessor's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this 28th day of April, 2016.



Donald E. Inks, Notary Public
Residing in _____ County, IN

My Commission Expires: December 08 2023

LESSEE:

TIMES FIVE, LLC d/b/a LINDEN GRILL, an Indiana limited liability company

By: Thomas C. Mack

Printed: Thomas C. Mack

Title: OWNER

STATE OF INDIANA)
COUNTY OF St. Joseph) SS:

Before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me known to be the _____ of Lessee in the foregoing Memorandum of Lease, and acknowledged the execution of the same as the Lessee's free and voluntary act and deed.



WITNESSES my hand and Notarial Seal this 07 day of April, 2016.
Stacy M. Graf
Stacy M. Graf, Notary Public
Residing in St. Joseph County, IN

My Commission Expires 9/12/2021

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.



EXHIBIT 8

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

FIRST AMENDMENT TO LEASE

This First Amendment to Lease (this “First Amendment”) is made on June 13, 2016 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Landlord”), and Michiana Brewer’s Supply LLC, an Indiana limited liability company with its registered office at 117 S. Michigan St., South Bend, Indiana 46601 (the “Tenant”) (each a “Party,” and collectively the “Parties”).

RECITALS

A. Landlord and Tenant entered into that certain Lease dated June 1, 2014 (the “Lease”), under which Landlord leased to Tenant the Leased Premises, comprised of approximately 1,106 square feet of retail space at 117 S. Michigan Street in the City of South Bend, Indiana.

B. Tenant has requested to modify certain terms of the Lease. Specifically, Tenant desires to shorten the term of the Lease, eliminate its option to extend the Lease, and reduce its Basic Rent obligation during the remainder of the shortened term.

C. Landlord agrees to Tenant’s proposed modifications, and, therefore, the Parties now amend the Lease as stated in this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this First Amendment and the Lease, the adequacy of which consideration is hereby acknowledged, the Parties agree as follows:

1. Section 1.1(b) of the Lease is deleted in its entirety and replaced by the following: “Two (2) Lease Years and Six (6) months beginning on the Commencement Date, as provided in Section 3.1.”

2. The last sentence in Section 1.2 of the Lease is deleted and replaced by the following: “Notwithstanding anything in this Section 1.2 to the contrary, annual Basic Rent for the period beginning on June 1, 2016, and ending on the Termination Date (the “Rent Abatement Period”) will be \$2.07 per square foot. Accordingly, monthly Modified Gross Rent during the Rent Abatement Period will be \$700.47.”

3. Section 3.1 of the Lease is deleted in its entirety and replaced by the following: “The “Commencement Date” of this Lease is November 1, 2014. The “Initial Term” of this Lease will begin on the Commencement Date and end on May 31, 2017, or such earlier date on which this Lease is terminated in accordance with its terms (the “Termination Date”). Any reference in this Lease to the “Term” will mean the Initial Term stated in this Section 3.1.”

4. Section 3.2 of the Lease is deleted in its entirety and replaced by the following:

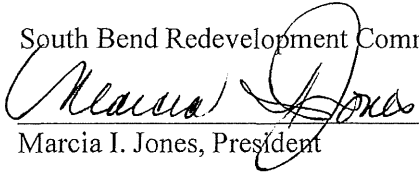
Tenant will have no option to extend this Lease for any period of time after the Termination Date and will be subject to the terms of Section 3.3 for any hold-over period after the Termination Date. Any reference in this Lease to “Extended Term” will be deemed to refer only to the Initial Term stated in Section 3.1.

5. Capitalized terms used in this First Amendment will have the meanings set forth in the Lease unless otherwise stated herein.

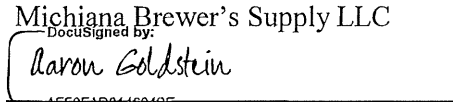
6. Unless expressly modified by this First Amendment, the terms and provisions of the Lease remain in full force and effect.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Lease to be effective on the Effective Date stated above.

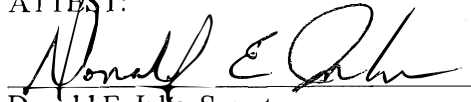
South Bend Redevelopment Commission


Marcia I. Jones, President

Michiana Brewer's Supply LLC
DocuSigned by:


AFF0FA00140048E...
Aaron Goldstein, Sole Member
Date:

ATTEST:



Donald E. Inks, Secretary

4000.0000038 40607350.002

LEASE

By and Between

THE SOUTH BEND

REDEVELOPMENT COMMISSION

and

MICHIANA BREWER'S SUPPLY, LLC

June 1, 2014

LEASE

THIS LEASE (the or this "Lease") is made by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the "Landlord") and Michiana Brewer's Supply, LLC, an Indiana limited liability company (the "Tenant") as of the date of last execution hereof by Landlord or Tenant (the "Effective Date").

WITNESSETH:

ARTICLE I. BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease (the "Basic Lease Provisions") constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the parties. Each reference in this Lease to a Basic Lease Provision shall be construed to incorporate all of the terms provided for under such provisions.

- | | |
|---------------------------------|---|
| (a) <u>Leased Premises:</u> | Defined in <u>Section 2.1</u> hereof, consisting of approximately 1,106 square feet of " <u>Floor Area.</u> " |
| (b) <u>Term:</u> | Initial Term of Three (3) Lease Years and Six (6) Months, with One (1) option of Three (3) Lease Years to extend the Initial Term, all as provided for in <u>Sections 3.1</u> and <u>3.2</u> hereof. |
| (c) <u>Tenant's Use:</u> | Retail Sales of Equipment and Ingredients for Brewing Beer. |
| (d) <u>Tenant's Trade Name:</u> | Michiana Brewer's Supply (or such other trade name taken by the Tenant) |
| (e) <u>Landlord's Address:</u> | 1400 S County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601 |
| (f) <u>Tenant's Address:</u> | Aaron Goldstein
657 Ostemo Pl.
South Bend, Indiana 46617
Facsimile Number: _____ |
| (g) <u>Lease Year:</u> | A " <u>Lease Year</u> " shall mean each period of twelve (12) consecutive full months, beginning on the Commencement Date as defined in <u>Section 3.1</u> (such that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall begin on the first day of the first calendar month following the Commencement Date, and any partial month in which the Commencement Date occurs will be included within the first Lease Year). |
| (h) <u>Security Deposit:</u> | An amount equal to the first month's Initial Term Modified Gross Rent as security deposit shall be due upon signing of lease. |

- (i) The Building: **Michigan Street Shops**, commonly referred to as **117 – 131 S. Michigan St**, South Bend, Indiana, as more particularly described in Exhibit A, and depicted in Exhibit B, each attached hereto and made a part hereof.
- (j) Effective Date: The date of last execution hereof by Landlord or Tenant.
- (k) Delivery Date: The date to which possession is delivered to the Tenant as determined in Section 4.1.
- (l) Commencement Date: The date on which the “Initial Term” commences as determined in Section 3.1.

1.2. Modified Gross Rent. Modified Gross Rent (“MGR”) includes the Basic Rent plus the estimated Additional Rent charges of \$5.53 per square foot per year:

<u>Initial Term</u> <u>Lease Year</u>	<u>Per Sq. Foot</u> <u>Basic Rent – MGR</u>	<u>Annual</u> <u>MGR</u>	<u>Monthly</u> <u>MGR</u>
6 Months	\$ 0.00 - \$ 5.53	\$6,116.00	\$510.00
1	\$ 9.00 - \$ 14.53	\$16,070.00	\$1,339.00
2	\$ 9.00 - \$ 14.53	\$16,070.00	\$1,339.00
3	\$ 9.00 - \$ 14.53	\$16,070.00	\$1,339.00

Modified Gross Rent for any Extended Term shall be five percent (5%) over the previous lease term.

ARTICLE II.

PREMISES.

2.1. Premises. Landlord is the owner of the Building. Landlord, in consideration of the Rent, as hereinafter defined, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain premises located in the Building and depicted on Exhibit C (the “Premises”), subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease the number, location, dimension, size, and height of buildings and other improvements in the Building; and the identity and type of other tenants. Tenant’s interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas, including, without limitation, hallways, stairs, elevators, sidewalks, interior drives, parking areas and green areas (the “Common Areas”), subject to the Rules, as hereinafter defined. Landlord shall operate, maintain and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as Landlord determines to be necessary or appropriate. Tenant understands that Landlord does not control the sidewalks located in the Michigan Street right of way. Tenant will file its request with the South Bend Board of Public Works for use of a portion of the sidewalk area for outdoor seating. Landlord will not oppose such request.

2.3. Quiet Enjoyment. Landlord warrants that it is the owner in fee simple of the Building, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceable and quiet enjoyment of possession of the Premises, without any manner of hindrance from parties claiming under, by, or through Landlord.

ARTICLE III.
TERM.

3.1. **Initial Term.** The “Commencement Date” shall commence on the earlier of: (i) that date which is six (6) months after the Delivery Date (as defined in Section 4.1); or (ii) the date on which Tenant opens its business in the Premises to the public, whichever is earlier. The Initial Term shall end on that date which is Three (3) Lease Years after the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease (the “Termination Date”). Tenant hereby covenants that within five (5) days after the Commencement Date, it shall execute the Commencement Certificate attached hereto as Exhibit E and made a part hereof, and deliver it to Landlord.

3.2. **Extension Options.** Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the exercise of any option to extend the Term hereof or exists at the end of the Initial Term, Tenant may renew this Lease and extend the Initial Term hereof for one (1) additional period of Three (3) years (such Three (3) year period being referred to as an “Extended Term”), on the same terms and provisions as provided in this Lease (except that the Modified Gross Rent due in such Extended Term shall be subject to negotiation), by delivering written notice of the exercise of such option to extend to Landlord not later than one hundred and eighty (180) days before the expiration of the Initial Term of this Lease. If Tenant fails to exercise its option to extend the Term hereof in the time periods set forth in this Section 3.2, all such option to extend shall immediately terminate and have no further force or effect, without further notice from Landlord. Any reference in this Lease to the “Term” shall mean the Initial Term as it may be extended pursuant to this Section 3.2.

3.3. **Holding Over.** If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord’s written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and twenty-five percent (125%) of the Modified Gross Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus Tenant’s Pro Rata Share of all other amounts which Tenant would have been required to pay hereunder had this Lease been in effect (the “Holdover Rent”). If Tenant holds over without Landlord’s written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either party may terminate such tenancy from month-to-month upon written notice delivered to the other party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the “State”) as a prerequisite to a suit against Tenant for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

ARTICLE IV.
CONSTRUCTION

4.1. **Landlord’s Work.** Landlord shall perform the work described in Exhibit D, attached hereto and made a part hereof (the “Landlord’s Work”) substantially in accordance with the plans and specifications for Landlord’s Work, as such plans and specifications may be modified by Landlord as appropriate to complete Landlord’s Work (the “Plans”). The “Delivery Date” shall be the date upon which Landlord’s Work is substantially complete in accordance with the Plans, subject to delineated “punch-list” items that do not prevent Tenant from using the Premises for the purpose of: (a) conducting its normal business operations; or (b) completing Tenant’s Work, as hereinafter defined. On the Delivery Date, Tenant shall have full occupancy of the Premises, subject to all of the terms and conditions of this Lease. Landlord shall correct any “punch-list” items within sixty (60) days after the Delivery Date.

4.2. **Tenant’s Work.**

(a) Plans. Within sixty (60) days after the Effective Date, Tenant shall submit to Landlord two (2) copies of the complete plans and specifications (the "Tenant's Plans") for the work Tenant deems necessary to prepare the Premises for occupancy by the Tenant (the "Tenant's Work"). Within thirty (30) days after Landlord's receipt of Tenant's Plans, Landlord shall notify Tenant of any failures of the Tenant's Plans to meet with Landlord's approval. Tenant shall, within ten (10) days after receipt of any such notice, cause the Tenant's Plans to be revised to the extent necessary to obtain Landlord's approval and to be resubmitted for Landlord's approval. When Landlord has approved the original or revised Tenant's Plans, Landlord shall initial and return one (1) set of approved Tenant's Plans (the "Approved Plans") to Tenant. Tenant shall not commence Tenant's Work until Landlord has approved Tenant's Plans, which approval shall not be unreasonably withheld.

Landlord's review and approval of Tenant's Plans shall not be deemed to be an assumption of responsibility by Landlord for the accuracy, sufficiency or propriety of Tenant's Plans, pursuant to applicable laws, rules, ordinances or regulations. If the Approved Plans are changed as a result of conditions placed on Tenant as a prerequisite to obtaining a permit, Tenant shall submit such changes to Landlord for approval, and Tenant shall not proceed further with the affected portions of Tenant's Work until Landlord has approved the changes. Such changes as are approved by Landlord shall become part of the Approved Plans.

(b) Performance. Tenant shall, in a manner consistent with the Approved Plans: (i) install its leasehold improvements, trade fixtures and equipment; and (ii) complete all other Tenant's Work. Prior to performing Tenant's Work, Tenant shall: (i) obtain all permits, licenses and approvals required for Tenant to perform Tenant's Work; and (ii) deliver to Landlord: (a) copies of such permits, licenses and approvals; and (b) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall: (i) perform Tenant's Work: (a) in accordance with the Approved Plans and all permits, licenses and approvals; and (b) in a good and workmanlike manner and in compliance with all applicable laws, statutes, and/or ordinances and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (the "Laws"); (ii) ensure that all contractors, subcontractors, laborers and suppliers performing work or supplying materials are paid in full; and (iii) observe and perform all of its obligations under this Lease (except its obligation to pay Rent) at all times after the Delivery Date through the Commencement Date.

(c) Reserved.

ARTICLE V.

RENT.

5.1. Rent. Commencing on the Delivery Date, the Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Additional Rent, as set forth in Section 1.2, together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Commencing Six (6) Months after the Delivery Date, Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Modified Gross Rent, as set forth in Section 1.2, which includes the Basic Rent plus the Additional Rent charges (as herein defined) (collectively, the "Modified Gross Rent"), together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Modified Gross Rent shall be paid in equal monthly installments commencing as provided herein and thereafter during the entire Term or Extended Term on or before the first day of each calendar month, in advance. Tenant's obligations under this Section 5.1 shall survive the Termination Date.

5.2. Additional Rent. Commencing as provided in Section 5.1, Tenant shall pay to Landlord, as additional rent (the "Additional Rent"), all other sums, charges, and payments required to be paid by Tenant to Landlord under this Lease, whether or not the same are designated as Additional Rent including, but not limited to, Tenant's Pro Rata Share of the Center Expenses, as defined in Section 5.7(a). If any sum or charge is not paid at the time provided in this Lease, then it shall be collectible as Additional Rent with the next monthly installment of Basic Rent; provided that nothing contained herein shall be deemed to suspend or delay the payment of such sum or charge, or to limit any right or remedy of Landlord with respect to its nonpayment.

5.3. Late Charge. Any amount of Modified Gross Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date when such amount is due and payable under this Lease until the date paid. If any amount of Modified Gross Rent is paid more than five (5) days after its due date, then Landlord shall be entitled to a late payment fee of One Hundred Dollars (\$100.00) in addition to the interest charge set forth in this Section 5.3.

5.4. Common Expenses.

(a) Pro Rata Share. Tenant's "Pro Rata Share" shall be a fraction: (a) the numerator of which is the Floor Area, as defined in Section 1.1.1; and (b) the denominator of which is the square footage of all areas leasable to tenants in the Building. As of the Effective Date, Tenant's Pro Rata Share is 1,106/11,057 or 10.00 percent (10.00%). Tenant's Pro Rata Share shall be re-calculated from time to time if either the numerator or the denominator changes.

(b) Payment. Tenant shall pay to Landlord as a portion of the Modified Gross Rent its Pro Rata Share of the Common Expenses, as hereinafter defined (the "CAM Contribution"), which share shall equal the amount of all Common Expenses, multiplied by Tenant's Pro Rata Share. The obligations of Tenant under this Section 5.4 shall survive the Termination Date.

(c) Common Expenses. "Common Expenses" shall mean all costs and expenses of every kind or nature paid or incurred by Landlord during the Term in operating, managing and servicing the Building, including, without limitation: (i) management fees; (ii) wages, salaries and benefits of maintenance personnel (not to exceed the amount fairly and equitably allocated to the Building); (iii) charges under maintenance contracts; (iv) costs and expenses to perform or provide maintenance or repairs and to satisfy Landlord's obligation to operate, maintain and insure the Common Areas under this Lease; (v) sewer, water and storm water drainage charges attributable to the Common Areas, and the costs to maintain any retention and detention ponds and other storm water drainage facilities; (vi) premiums for customary insurance incurred by the Landowner including insurance, if any, obtained by the Landlord to satisfy an obligation under this Lease; (vii) costs for signage located in the Common Areas, including, without limitation, costs for light bulbs and electricity, and costs incurred with respect to any exterior sign for the Building; (viii) costs and expenses to provide light, heat, air conditioning and ventilation for the Common Areas; and (ix) depreciation or amortization of capital assets, improvements, repairs or replacements (the "Amortized Capital Costs"). Tenant shall be responsible for its Pro Rata Share of the Amortized Capital Costs, together with interest if not paid when due, notwithstanding that the capital asset, improvement, repair or replacement may have been acquired or made before the Commencement Date. Common Expenses shall not include: (1) any leasing or rental commissions; (2) any legal fees in connection with financings or refinancings, preparation or negotiation of leases, or exercising or enforcing Landlord's rights and remedies under leases; (3) any costs of tenant improvements or build-outs; (4) any penalties or interest assessed against Landlord for late payment of its indebtedness; or (5) payments of principal or interest required by any financing or refinancing. Notwithstanding anything to the contrary set forth herein, amounts separately billed to, and paid directly by, a tenant of the Building shall be deducted in calculating Common Expenses from the costs and expenses that Landlord incurs to operate the Building.

5.5. Real Estate Tax Expenses. Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of (collectively, the "Tax Expenses"): (a) all real estate taxes and assessments of any nature levied during the Term on, against, or with respect to the Building (the "Real Estate Taxes"); (b) any and all costs and expenses incurred by Landlord in connection with an appeal of the Real Estate Taxes; and (c) all Real Estate Taxes levied during the Term on, against, or with respect to Tenant's leasehold interest in the Premises. The obligations of Tenant hereunder with respect to the payment of Real Estate Taxes levied during the final year of the Term shall survive the Termination Date.

5.6. Insurance Expenses. Tenant shall pay to Landlord, as Additional Rent, its Pro Rata Share of any and all costs incurred by Landlord in connection with the Casualty Insurance, as defined in Section 8.1, and the Liability Insurance, as defined in Section 8.1, including, but not limited to, all premiums and deductibles paid by Landlord (collectively, the "Insurance Expenses").

5.7. Estimation.

(a) Estimation. From time to time, Landlord may estimate (or re-estimate) the amount of the Tax Expenses, Insurance Expenses, and/or CAM Contributions (collectively, the "Center Expenses") payable by Tenant for any whole or partial calendar year during the Term. Tenant shall pay, as Additional Rent, equal monthly installments of its Pro Rata Share of the estimated Center Expenses during such whole or partial calendar year.

(b) Statement. Upon the prior written request of the Tenant, within ninety (90) days after the end of each whole or partial calendar year during the Term, Landlord shall deliver to Tenant a written statement that shows the computation of the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is more than the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Landlord shall credit the excess: first, against any outstanding Rent due from Tenant; and second, against future Center Expenses, to be paid by Tenant; provided that, if there are no future Center Expenses to be paid by Tenant, then Landlord shall refund the excess to Tenant within thirty (30) days. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is less than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Tenant shall pay the amount of such deficiency with the next regular installment of Modified Gross Rent unless the Termination Date has occurred, in which case Tenant shall pay any deficiency within thirty (30) days after Landlord delivers Landlord's written statement.

5.8. Utilities. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (all of which utilities shall be separately metered to the Premises) (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges.

ARTICLE VI.

ALTERATIONS AND MAINTENANCE OF AND REPAIRS TO THE PREMISES

6.1. Landlord Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the installation and replacement of all heating, ventilating, and cooling equipment and systems serving the Premises (the "HVAC Systems") provided however that the Landlord may bill the Tenant as Additional Rent if the Landlord's consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of the Tenant's misuse of it or the Tenant's failure to notify the Landlord of its malfunctioning. The Landlord may enter into a maintenance contract with a reputable company (the "Maintenance Contract"), pursuant to which Maintenance Contract such company shall institute a regularly scheduled program of preventive maintenance and repair of the HVAC Systems to keep and maintain such items in good order, condition, and repair at all times, and any such expenses incurred by the Landlord as a result of such Maintenance Contract or any routine or otherwise insubstantial repairs shall be considered a Common Expense allocable to this Premises only, unless the HVAC Systems service more than on Tenant. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of Tenant.

6.2. Tenant Repairs. Except for repairs to be performed by Landlord pursuant to Section 6.1, Tenant shall: (a) keep the Premises clean, neat, and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises as may be required by any Law, or by fire underwriters or underwriters' fire prevention engineers; (b) keep all glass in windows, doors, fixtures, skylights, and other locations clean and in good order, repair, and condition, and replace glass that may be damaged or broken with glass of the same quality; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 6.2. The Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises.

6.3. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) the cumulative cost of making such alterations or improvements is less than Three Thousand Dollars (\$3,000.00); (ii) Tenant delivers to Landlord written notice describing the proposed alteration or improvement with particularity, and provides to Landlord copies of any plans and specifications for the alteration or improvement; and (iii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the date that Tenant accepts the Premises. Tenant shall not, without the prior written consent of Landlord, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant's cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner, and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic's or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic's or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, other than for the performance of Landlord's Work, then Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

6.4. Signs. Tenant shall not affix or maintain upon the exterior of the Premises or make visible from the exterior any sign, advertising placard, name, insignia, trademark, or descriptive material, without the prior written approval of Landlord. No such materials may be displayed or attached which are against any applicable law or regulation.

ARTICLE VII.

USE.

7.1. Use of the Premises. At all time during the Term, Tenant shall:

(a) Use the Premises solely for Tenant's Use, as defined in Section 1.1(c), doing business under Tenant's Trade Name, as defined in Section 1.1(d), and for no other use or purpose;

(b) Operate the business located on the Premises, without interruption, during at least the hours of 12:00 p.m. through 7:00 p.m., Tuesday through Friday, and 10:00 a.m. through 3:00 p.m. Saturday, or such other minimum hours upon which Landlord may agree from time to time (the "Hours of Operation"), provided that such

operation may be interrupted for such reasonable periods approved by Landlord, which approval shall not be unreasonably withheld, as may be necessary to repair, restore, or remodel the Premises, or for purposes of taking inventory;

(c) Remain fully fixtured, fully stocked, and fully staffed during all Hours of Operation.

(d) Conduct the business located on the Premises at all times in a high grade and reputable manner so as to produce the maximum volume of sales and transactions and to help establish and maintain a high reputation for the Building.

During the Term, Tenant will be considered to "Operate" or be "Operating" in the Premises so long as Tenant is open for business in compliance with this Section 7.1.

7.2. Covenant to Open. Tenant covenants that it will open and begin Operating in the Premises by that date which is sixty (60) days after the Delivery Date.

7.3. Compliance with Law. Tenant shall promptly comply with all federal, state and local Laws and ordinances and lawful orders and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall promptly and fully comply with all federal, state and local Laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.4. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Shopping Center, and will remove the same frequently and regularly, all at Tenant's cost; will not permit any sound system to be audible or objectionable advertising medium to be visible outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not distribute advertising matter to, in or upon any portion of the Building; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefor, nor permit any use of vehicles which will interfere with the use of any portion of the Building; will not use the any portion of the Building for promotional activities, to include without limitation rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows; will comply with all Laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act ("OSHA") and the Americans With Disabilities Act ("ADA"), as the same may be amended from time to time. Tenant covenants and agrees that it will not serve liquor or any other alcoholic beverages in or from the Premises unless Tenant first obtains the written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion.

7.5. Storage. Tenant shall store in the building on the Premises only merchandise and products which Tenant intends to sell at, in, or from the Premises within a reasonable time after receipt thereof.

7.6. Sales and Use. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local Laws or ordinances. Tenant shall not operate the Premises either in whole or in part as a clearance, outlet, off-price, or discount store, provided that nothing in this Section 7.6 is intended to affect Tenant's pricing policies.

7.7. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;

iii. transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Building, or which interferes with the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the Premises or the Building;

iv. create, or permit to be created, any ground vibration that is discernible outside the Premises; or

v. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, which are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable Law. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local Law, ordinance, order, rule, regulation, code or any other governmental restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 et seq. ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.7(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall Indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.7(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.7(b) shall survive the Termination Date.

7.8. Inspections. Tenant shall permit Landlord and its employees, agents and contractors to enter the Premises at reasonable times (or at any time in the event of an emergency) for the purpose of: (a) inspecting the Premises; (b) making repairs, replacements, additions, or alterations to the Premises, or to the building in which the Premises is located; and (c) showing the Premises to prospective purchasers, lenders, and tenants. During the last one hundred and eighty (180) days of the Term, Landlord may put a "For Lease" sign in the storefront window of the Premises.

7.9. Sidewalks. Tenant acknowledges that the use of the sidewalks adjoining the Premises is controlled by the South Bend Board of Public Works (the "BPW"). The Landlord makes no representation concerning the availability of such use for dining or other purposes. Tenant understands that it must make application to the BPW for a permit to use the adjoining sidewalks. Landlord shall not oppose such application.

ARTICLE VIII. **INSURANCE AND INDEMNIFICATION**

8.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$6,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an "additional insured" in an amount sufficient to cover any possible liability Landlord may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

8.2. Hazardous Materials Coverage. Notwithstanding the above mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises or the Building, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no less than \$5,000,000.00 and purchase environmental impairment liability insurance with coverage of not less than \$5,000,000.00 with a deductible of not greater than \$50,000.00 to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and/or the Building, and that the Premises and/or the Building be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

8.3. Dram Shop Coverage. In addition to the insurance required under this Article VIII, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

8.4. Tenant's Additional Insurance. Tenant shall comply with the provisions of the applicable workers' compensation laws, and shall insure its liability thereunder. Tenant, at its expense, shall maintain plate glass insurance covering all exterior plate glass in the Premises or shall be obligated to promptly replace any damaged exterior glass, to the satisfaction of the Landlord within five (5) days of the occurrence of such damage. In the event that the Tenant neither obtains insurance providing for the immediate repair of the damaged glass nor repairs said damage to the satisfaction of the Landlord within five (5) days of the occurrence of such damage, the Landlord may have the damaged glass repaired at the Tenant's expense.

8.5. Policies. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance. Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article VIII, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article VIII, Landlord may obtain replacement coverage and the cost of same shall be deemed Additional Rent payable by Tenant with the next installment of Rent thereafter becoming due and payable.

8.6. Indemnity.

(a) Definition of "Loss." The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).

(b) Definition of "Indemnify." The term "Indemnify," as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant

The Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

8.7. Release of Subrogation. Each party hereto does hereby release and discharge the other party from any liability, which the released party would have had (but for this section) to the releasing party, arising out of or in connection with any accident or occurrence or casualty: (a.) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing party, and (b.) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building, and Tenant hereby expressly waives any claim for such damages.

8.8. The Tenant will not allow said Premises to be used for any purpose that will increase the rate of insurance thereon, nor to be occupied in whole or in part by any other person.

ARTICLE IX.
CASUALTY AND CONDEMNATION.

9.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after: (i) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (ii) deduction for any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the Premises; (ii) there is Casualty Damage to the building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such building; or (c) there is Casualty Damage to the buildings (taken in the aggregate) in the Building, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such buildings; then Landlord may elect either to: (1) repair or rebuild the Premises, the building of which the Premises is a part, or the aggregate buildings in the Building, as applicable; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Rent. Basic Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises or the Common Areas of which Tenant has knowledge.

9.2. Condemnation. If: (a) all or a substantial part of the Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain; or (b) all or a substantial part of the Premises is conveyed to a public or quasi-public body under threat of condemnation (collectively, the "Condemnation"); and the Condemnation renders the Premises unsuitable for use for Tenant's Use, then, at the option of either Landlord or Tenant exercised within ninety (90) days after the Condemnation occurs: (i) this Lease shall terminate as of the date possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; (ii) all Modified Gross Rent shall be apportioned as of the date that possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; and (iii) all obligations hereunder, except those due or mature, shall cease and terminate. If there is a Condemnation with respect to: (A) more than twenty-five percent (25%) of the square footage of the building of which the Premises is a part; or (B) more than twenty-five percent (25%) of the aggregate square footage of the Building; then Landlord, at its option, exercised within ninety (90) days after the Condemnation occurs, may elect to terminate this Lease as of the date possession of such square footage is taken by, or conveyed to, the condemning authority, and: (i) all Modified Gross Rent shall be apportioned as of the date that possession of such square footage is taken by, or conveyed to, the condemning authority; and (ii) all obligations hereunder, except those due or mature, shall cease and terminate. All compensation awarded or paid for the

Condemnation (the "Condemnation Proceeds") shall belong to and be the sole property of Landlord; provided that Landlord shall not be entitled to the amount of any Condemnation Proceeds awarded or paid solely to Tenant for loss of business or costs and expenses of relocation and removing improvements and equipment. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, then Landlord shall be responsible for the performance of all work necessary to make the Premises usable by Tenant; provided that Landlord shall not be obligated to incur costs for such work in excess of the Condemnation Proceeds awarded or paid to Landlord and remaining after: (y) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (z) deduction for any expenses incurred in collecting the Condemnation Proceeds. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, or if any Condemnation is temporary in nature, then Basic Rent shall be abated proportionately (based upon the proportion that the that area Premises taken by, or conveyed to, the condemning authority bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of the Condemnation.

ARTICLE X. **SURRENDER.**

10.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article X, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

10.2. Removal of Certain Property. All furniture and business equipment furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right to possession hereunder, but only if, and to the extent, that the removal thereof will not cause physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises the condition described in Section 10.1 above, or alternatively, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage with such costs to be considered Additional Rent and shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

10.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord or such Tenant fails to remove such property within such timeframe Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

10.4. Survival of Terms. The terms of this Article X and other terms of this Lease referred to herein shall survive any termination of this Lease.

ARTICLE XI. **DEFAULT.**

11.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

(a) Nonpayment. Tenant's failure to pay Basic Rent, Additional Rent, or other sums or charges that Tenant is obligated to pay by any provision of this Lease when due.

(b) Lapse of Insurance. Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease.

(c) All Other Lease Violations. Tenant's failure to perform or observe any other covenant, condition, or agreement of this Lease, which failure is not cured within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as the Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same; provided, however, if the Tenant shall default in the performance of any such covenant or agreement of this Lease more than one time in any twelve (12) month period notwithstanding that such default shall have been cured by Tenant, the second and further defaults in said twelve (12) month period may be deemed by Landlord, in its sole discretion, an Event of Default without the ability for cure.

(d) Falsification of Information. If Tenant, any guarantor of Tenant's obligations under this Lease, or any agent of Tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease.

(e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Section 13.1(b) of this Lease.

(f) Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations under this Lease; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

(g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing.

(h) Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.

(i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days after its entry.

(j) Inability to Pay. The admission in writing by Tenant or any guarantor of Tenant's obligations under this Lease of its inability to pay its debts when due.

(k) Breach by Guarantor. The breach by any guarantor of any of that guarantor's obligations under its guaranty.

(l) As Otherwise Provided. The occurrence of any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

11.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant

notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be deemed Additional Rent and shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 11.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 11.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this Section 11.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Basic Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in connection with making alterations and repairs for the purpose of reletting the Premises; (iv) reasonable attorneys' fees; (v) the unamortized value of the Construction Allowance, if any.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Basic Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Basic Rent and Additional Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Basic Rent and Additional Rent (as reasonably estimated by Landlord) that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between the Basic Rent and Additional Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised, and the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

11.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 11.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

11.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

11.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.6. Counterclaim. If Landlord commences any proceedings for non payment of Rent, Tenant will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts due hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any reason whatsoever, except as may be specifically provided for herein to the contrary, it being understood and acknowledged by Tenant that Tenant's only recourse is to seek an independent action against Landlord.

11.7. Bankruptcy.

(a) Assumption of Lease. In the event that Tenant shall become a Debtor under Chapter 7 of the United States Bankruptcy Code (the "Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 and is transferred to Chapters 11 or 13, the Trustee or Tenant, as Debtor and as Debtor In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has:

i. Cured or provided Landlord "Adequate Assurance," as defined below, that:

A. Within ten (10) days from the date of such assumption the Trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in Section 11.2 of the Lease, and attorneys' fees incurred as a result of the default and/or to enforce the terms hereof;

B. Within thirty (30) days from the date of such assumption the Trustee or Tenant will cure all non-monetary defaults under this Lease; and

C. The assumption will be subject in all respects to all of the provisions of this Lease.

ii. For purposes of this Section 11.7, Landlord and Tenant hereby acknowledge that, in the context of a bankruptcy proceeding of Tenant that this Lease is a lease of real property within a Building and, at a minimum "Adequate Assurance" shall mean:

A. The Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured and priority obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease, and to keep the Leased Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully Operational, actively promoted business in the Leased Premises;

B. The bankruptcy court shall have entered an order segregating sufficient cash payable to Landlord, and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults under this Lease within the time periods set forth above; and

C. The Trustee or Tenant at the very least shall deposit a sum equal to one (1) month's Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

(b) Assignment of Lease. If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 11.7 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of Section 13.1 herein, including, without limitation, those with respect to Additional Rent and the use of the Premises only as permitted in Article VII herein; Landlord and Tenant hereby acknowledging that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment and assumption in form acceptable to Landlord.

(c) Adequate Protection. Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor in Possession, and any Trustee who may be appointed hereby agree to adequately protect Landlord as follows:

i. To immediately perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court;

ii. To pay all monetary obligations required under this Lease, including, without limitation, the payment of Basic Rent and such Additional Rent charges payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises;

iii. Provide Landlord a minimum thirty (30) days' prior written notice, unless a shorter period is agreed to in writing by Landlord, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and

iv. To perform to and for the benefit of Landlord as otherwise required under the Code.

The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease and the automatic stay under Section 362 of the Code shall automatically be terminated as to Landlord and the Premises.

(d) Accumulative Rights. The rights, remedies and liabilities of Landlord and Tenant set forth in this Section 11.7 shall be in addition to those which may now or hereafter be accorded, or imposed upon, Landlord and Tenant by the Code.

(e) Changes in Code. If the Code is changed or amended such that any references in this Section 11.7 to particular provisions or terms of art lose the meaning that they have as of the Effective Date, such provisions or terms of art of this Lease shall be deemed to be amended to reflect such changes in the Code.

ARTICLE XII.

ESTOPPEL CERTIFICATES, ATTORNMENT, AND SUBORDINATION.

12.1. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after request therefor by the other party, a statement, in writing, certifying to Landlord and/or any party designated by Landlord, or Tenant and/or any party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

12.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

12.3. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between Tenant and such Mortgage holder. Any holder of any of any such Mortgage is herein referred to as "Landlord's Mortgagee(s)." Notwithstanding the foregoing, a Landlord's Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such Landlord's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

ARTICLE XIII.
ASSIGNMENT AND SUBLETTING

13.1. Assignment and Subletting.

(a) Tenant shall not sublet, mortgage, encumber or in any manner transfer, in whole or in part, this Lease, the Premises or any estate or interest in said Premises or Lease. Except as expressly permitted herein, Tenant shall not assign this Lease or any estate or interest therein or allow the occupancy thereof by any person or entity other than Tenant, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Consent by Landlord to one or more assignments of this Lease shall not operate to exhaust Landlord's rights under this Article XIII. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or allow the occupancy thereof by any person or entity other than Tenant, Tenant shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Landlord.

(b) If this Lease is assigned or the Premises or any part thereof occupied by any entity other than Tenant, Landlord may collect rent from the assignee or occupant and apply the same to the Rent herein reserved, but no such assignment, occupancy or collection of Rent shall be deemed a waiver of any restrictive covenant contained in this Section 13.1 or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained. Any sublease of the Premises shall be void. Landlord shall have the right, at any time, to immediately remove an occupant or than Tenant from the Premises along with any possession of said occupant, which shall be deemed to have been abandoned if not claimed by occupant within three (3) business days of their removal, and the Landlord's acceptance of rent from the occupant shall in no way waive any rights the Landlord may have against the occupant. The Tenant shall indemnify the Landlord for any actions, claims or demands made by the occupant or its assigns against the Landlord. . Any assignment: (x) as to which Landlord has consented or is deemed to have consented; or (y) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (z) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership, shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

i. Each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Landlord;

ii. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor as a result of said assignment, including, if any, payments for Tenant's improvements, proposed rent (which includes, without limitation, all monthly charges allocated to common area maintenance, insurance, real property taxes, and utility charges) and any other payments;

iii. Each assignee shall have submitted to Landlord a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of Tenant's obligations hereunder;

iv. Each assignee shall have submitted to Landlord, in writing, evidence satisfactory to Landlord of substantial experience in operating a business similar to that offered by Tenant and permitted under Section 1.1(c) of this Lease or a business otherwise requested by the Landlord and in operating said business in a space or volume comparable to that contemplated under this Lease;

v. The business reputation of each assignee shall meet or exceed generally acceptable commercial standards;

vi. The use of the Premises by each assignee shall not violate, or create any potential violation of, applicable Laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other occupants in the Building; and

vii. Tenant shall pay Landlord the sum of One Thousand Five Hundred Dollars (\$1,500.00) as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment.

(c) In the event that Tenant desires to assign this Lease, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment. Tenant shall advise Landlord of the name of the proposed assignee, shall furnish Landlord with the information required by Landlord with respect to the proposed assignee, and Landlord shall advise Tenant, within sixty (60) business days after receipt of such notice and all required information from Tenant, that Landlord either consents or refuses to consent to an assignment to the proposed assignee.

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV. **MISCELLANEOUS**

14.1. Security Deposit. Contemporaneously with the execution of this Lease, Tenant shall deposit the Security Deposit, as defined in Section 1.1(h), with Landlord. Landlord: (a) shall hold the Security Deposit without liability to Tenant for interest; and (b) may commingle the Security Deposit with its other funds. The Security Deposit, or any portion thereof, may be applied by Landlord to cure any default by Tenant under this Lease, without prejudice to any other remedy or remedies that Landlord may have on account of such application. Upon any such application by Landlord, Tenant shall pay to Landlord on demand the amount applied by Landlord to cure such default so that the Security Deposit is restored to its original amount. If Landlord conveys the Premises during the Term: (A) Landlord may turn the Security Deposit over to Landlord's grantee or successor; and (B) Tenant shall release Landlord from any and all liability with respect to the Security Deposit. If Tenant faithfully performs its obligations under the terms and conditions of this Lease, then Landlord shall return to Tenant the amount of the

Security Deposit not applied by Landlord to cure defaults by Tenant, without interest, within thirty (30) days after the latter of: (i) the Termination Date; or (ii) the date that Tenant has surrendered possession to Landlord in accordance with the terms and conditions of this Lease.

14.2. Guaranty. This Lease shall not become effective until the execution of a personal guaranty of this Lease in the form attached hereto as Exhibit F (the "Guaranty"). Upon execution of this Lease and the Guaranty, the executed Guaranty shall be attached to this Lease as Exhibit F-1.

14.3. Notices. Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(e) hereof, or at such other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(f) hereof, or at such other address as Tenant may designate by written notice.

14.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant, except as otherwise provided herein.

14.5. Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

14.6. Remedies Cumulative. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

14.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

14.8. Relationship. Nothing contained herein shall be deemed or construed to create between the parties any relationship other than that of landlord and tenant.

14.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant and/or any guarantors of this Lease (which, in the event Tenant or a guarantor is an entity, shall be certified by the highest-ranking financial officer of Tenant or guarantor).

14.10. Construction. The laws of the State in which the Premises is located shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business

days are specified. This Lease shall be recorded, but a failure to record shall not affect the effectiveness of this Lease. All Exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

14.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other party; or (b) any other cause that is not within the control of the delayed or prevented party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

14.12. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

14.13. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

14.14. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

14.15. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

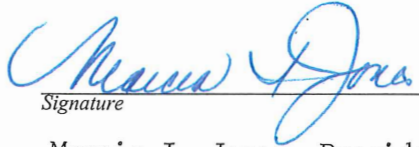
14.16. Equal Opportunity Obligation. Tenant agrees not to discriminate against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Lease. Tenant further agrees execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit G.

14.17. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein. Tenant further agrees to execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit G.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date set forth above.

"LANDLORD"

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**
by and through the South Bend Redevelopment Commission



Signature

Marcia I. Jones, President
Printed Name and Title

ATTEST:




Signature

Donald E. Inks, Secretary
Printed Name and Title

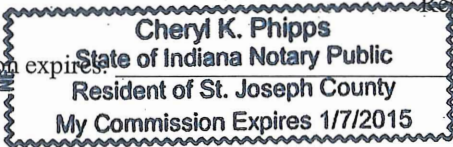
STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 29th day of May, 2014, personally appeared Marcia I. Jones and Donald E. Inks, known to be to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.



_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires _____

Cheryl K. Phipps
State of Indiana Notary Public
Resident of St. Joseph County
My Commission Expires 1/7/2015

"TENANT"

MICHIANA BREWER'S SUPPLY, LLC

By: Aaron Goldstein

Name: [Signature]

Title: Sole Member

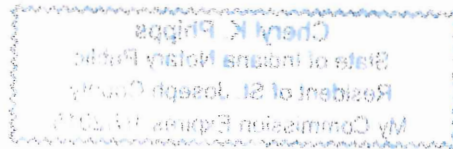
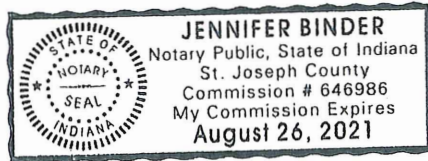
STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this 27th day of May , 2014, personally appeared Aaron Goldstein , known to be the Member of Michiana Brewer's Supply, LLC , and acknowledged execution of the foregoing Lease on behalf of said Tenant.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

 Jennifer Binder
 Jennifer Binder , Notary Public
Resident of St. Joseph County, Indiana

My commission expires: 8/26/21



INDEX TO EXHIBITS

Exhibit A	Legal Description of Building
Exhibit B	Site Plan of Building
Exhibit C	Description of Premises
Exhibit D	Landlord's Work
Exhibit E	Form of Commencement Certificate
Exhibit F	Form of Guaranty
Exhibit G	Non-Debarment, Non-Collusion and Non-Discrimination Affidavit

EXHIBIT A

Legal Description of Building

The ground level of the Leighton Center Parking Garage, which is the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana, which shops are more particularly described as follows:

A parcel of land located in the Original Plat of the Town of South Bend, Leighton Plaza Replat, and a part of the Northwest Quarter of Section 12, Township 37 North, Range 2 East, Portage Township, City of South Bend, St. Joseph County, and described as follows:

Beginning at the intersection of the North right of way line of Jefferson Blvd and the West right of way line of Michigan Street; thence North along said West right of way line of Michigan Street a distance of 220 feet, more or less; thence West parallel with said North line of Jefferson Blvd, a distance of 53 feet, more or less; thence South parallel with said West line of Michigan Street to the North line of said Jefferson Blvd; thence East along said North line of Jefferson Blvd to the place of beginning. Containing 0.268 acres, more or less, subject to all legal easements and rights of way. Said description is the land occupied by the existing store fronts in the Leighton Plaza Building fronting on Michigan Street in downtown South Bend.

EXHIBIT B

Site Plan of Building and Description of Premises

EXHIBIT C

Description of Premises

1,106 square feet of retail space located at 117 S. Michigan Street, South Bend, Indiana, and commonly known as the Michigan Street Shops, 117-131 S. Michigan Street, South Bend, Indiana.

The Premises consists of Retail Area No. 8, commonly referred to as 117 S. Michigan Street, South Bend, Indiana, which comprises 1,106 square feet located on the ground level of the Leighton Center Parking Garage, which is a part of the retail shops commonly referred to as the Michigan Street Shops, South Bend, Indiana and more particularly described at Exhibit A of the Lease to which this Exhibit C is attached.

EXHIBIT D

Landlord's Work

The Landlord shall deliver the premises in a broom clean condition (the "Landlord's Work").

EXHIBIT E

Form of Commencement Certificate

COMMENCEMENT CERTIFICATE

This Commencement Certificate is made this ___ day of _____, 20___, by and between the City of South Bend, Indiana, Department of Redevelopment (“Landlord”) and _____ (“Tenant”):

WITNESSETH

Landlord and Tenant are parties to that certain Lease, dated _____, 20___, for certain real estate in South Bend, St. Joseph County, Indiana (the “Lease”). Pursuant to Section 3.1 of the Lease, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. The Commencement Date was the ___ day of _____, 20___.
2. The date upon which the Term shall expire shall be the ___ day of _____, 20___.
3. Tenant is in possession of the Premises and is obligated to pay the Rent.

IN WITNESS WHEREOF, the parties hereto have duly executed this Commencement Certificate as of the dates set forth below.

LANDLORD:

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**

Executed by Landlord the _____
day of _____, 20___.

By: _____

Name: _____

Its: _____

TENANT:

Executed by Tenant the _____
day of _____, 20___.

By: _____

Name: _____

Title: _____

EXHIBIT F

FORM OF GUARANTY

(EXHIBIT F-1 when executed)

This Guaranty (the "Guaranty"), executed by _____ (the "Guarantor") in favor of the City of South Bend, Indiana, Department of Redevelopment, a municipal having its principal office at 1400 S County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana, Indiana 46601 (the "Landlord"),

WITNESSES:

RECITALS

WHEREAS, Landlord has leased to _____, (the "Tenant"), and Tenant has leased from Landlord, certain premises within that certain Building commonly known as 117-131 S. Michigan Street, South Bend, Indiana, which premises (the "Premises") more particularly is described in that certain Lease entered into by and between Landlord and Tenant of even date herewith (the "Lease");

WHEREAS, "Obligations" shall mean all obligations, liabilities, and indebtedness of Tenant to Landlord, now or hereafter existing under the Lease or with respect to the Premises (including, without limitation all Rent payable by Tenant to Landlord), together with all: (a) interest accruing thereon; and (b) costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Landlord in the enforcement or collection thereof; whether such obligations, liabilities, and indebtedness are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several; and

WHEREAS, Landlord, as a condition to entering into the Lease, has required that Guarantor enter into this Guaranty;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Guarantor covenants and agrees as follows:

1. Guaranty. Guarantor absolutely and unconditionally guarantees the full and prompt payment and performance when due of the Obligations. This Guaranty shall continue, in full force and effect throughout the Term and thereafter, until all of the Obligations are paid and performed in full.
2. Waivers. Guarantor expressly waives: (a) presentment for payment, demand, notice of demand and dishonor, protest, and notice of protest and nonpayment or nonperformance of the Obligations; and (b) diligence in: (i) enforcing payment or performance of, or collecting, the Obligations; (ii) exercising the rights or remedies under the Lease; or (iii) bringing suit against Tenant or any other party. Landlord shall be under no obligation: (A) to notify Guarantor of: (i) its acceptance of this Guaranty; or (ii) the failure of Tenant to timely pay or perform any of the Obligations; or (B) to use diligence in: (i) preserving the liability of Tenant or any other party; or (ii) bringing suit to enforce payment or performance of, or to collect, the Obligations. To the full extent allowed by applicable law, Guarantor waives all defenses: (y) given to sureties or guarantors at law or in equity, other than the actual payment and performance of the Obligations; and (z) based upon questions as to the validity, legality, or enforceability of the Obligations. The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title, or interest (whether by way of subrogation or otherwise) in and to: (X) any of the Obligations; (Y) any proceeds thereof; or (Z) any security therefor. Guarantor unconditionally waives: (1) any claim or other right now existing or hereafter arising against Tenant or any other party that arises from, or by virtue of, the existence or performance of this Guaranty (including, without limitation, any right of subrogation, reimbursement, exoneration, contribution, indemnification, or to payment); and (2) any right to participate or share in any right, remedy, or claim of Landlord.

3. Rights. Landlord, without: (a) authorization from, or notice to, Guarantor; and/or (b) impairing or affecting the liability of Guarantor hereunder; from time to time, at its discretion and with or without consideration, may: (i) alter, compromise, accelerate, or extend the time or manner for the payment or performance of any or all of the Obligations; (ii) increase or reduce the rate of interest payable on any or all of the Obligations; (iii) release, discharge, or increase the obligations of Tenant; (iv) add, release, discharge, or increase the obligations of any other endorsers, sureties, guarantors, or other obligors; (v) make changes of any sort whatever in the terms or conditions of: (A) payment or performance of the Obligations, or (B) doing business with Tenant or any other party; (vi) settle or compromise with Tenant or any other party on such terms and conditions as Landlord may determine to be in its best interests; and (vii) apply all moneys received from Tenant or any other party against the payment of the Obligations (regardless of whether then due) as Landlord may determine to be in its best interests, without in any way being required to: (A) marshal securities or assets; or (B) apply all or any part of such moneys against any particular part of the Obligations. Landlord is not required to retain, protect, exercise due care with respect to, perfect security interests in, or otherwise assure or safeguard any collateral or security for the Obligations. No exercise, or failure to exercise, by Landlord of any right or remedy in any way shall: (y) affect: (i) any of the obligations of Guarantor hereunder; or (ii) any collateral or security furnished by Guarantor; or (z) give Guarantor any recourse against Landlord.
4. Continuing Liability. Notwithstanding the incapacity, death, disability, dissolution, or termination of Tenant or any other party, the liability of Guarantor hereunder shall continue. The failure by Landlord to file or enforce a claim against the estate (either in administration, bankruptcy, or other proceeding) of Tenant or any other party shall not affect the liability of Guarantor hereunder. Guarantor shall not be released from liability hereunder if recovery from Tenant or any other party: (a) becomes barred by any statute of limitations; or (b) otherwise is restricted, prevented, or unavailable.
5. Action by Landlord. Landlord shall not be required to pursue any other rights or remedies before invoking the benefits of this Guaranty. Specifically, Landlord shall not be required to exhaust its rights and remedies against Tenant or any other endorser, surety, guarantor, or other obligor. Landlord may maintain an action on this Guaranty, regardless of whether: (a) Tenant is joined in such action; or (b) a separate action is brought against Tenant.
6. Default. Guarantor absolutely and unconditionally covenants and agrees that, if: (a) Tenant defaults for any reason in the payment or performance of all or any part of the Obligations; and (b) Landlord exercises any of its rights or remedies under the Lease; then Guarantor shall pay, upon demand, such amounts as may be due to Landlord as a result of the default by Tenant and the exercise by Landlord of its rights or remedies, without: (i) further notice of default or dishonor; and (ii) any notice with respect to any matter or occurrence having been given to Guarantor previous to such demand.
7. Preference. If: (a) any payment by Tenant to Landlord is held to constitute a preference under any bankruptcy law; or (b) Landlord is required for any reason to refund any such payment, or pay the amount thereof to any party; then: (i) such payment by Tenant to Landlord shall not constitute a release of Guarantor from any liability under this Guaranty; (ii) Guarantor shall pay the amount thereof to Landlord upon demand; and (iii) this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment.
8. Subordinated Debt. Guarantor expressly agrees that: (a) all Subordinated Debt (as defined below) shall be subordinated to the Obligations; (b) it shall not receive or accept any payment from Tenant with respect to the Subordinated Debt at any time from and after an Event of Default; and (c) if it receives or accepts any payment from Tenant on the Subordinated Debt in violation of this Section, then Guarantor shall: (i) hold such payment in trust for Landlord; and (ii) immediately turn such payment over to Landlord, in the form received, to be applied to the Obligations. For purposes of this Guaranty, "Subordinated Debt" shall mean all obligations, liabilities, and indebtedness of Tenant to Guarantor, together with all interest accruing thereon, whether such obligations, liabilities, and indebtedness are: (A) direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, joint and several, or evidenced by a written instrument; or (B) now

due or hereafter to be due, now existing or hereafter owed, or now held or hereafter to be held by Guarantor.

9. Representations. Guarantor hereby represents and warrants to Landlord that: (a) this Guaranty is the legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms and conditions; (b) there is no action or proceeding at law or in equity, or by or before any court or governmental instrumentality or agency, now pending against or, to the knowledge of Guarantor, threatened against, Guarantor that may materially and adversely affect the financial condition of Guarantor; (c) all balance sheets, earnings statements, and other financial data that have been or hereafter may be furnished to Landlord in connection with this Guaranty do and shall represent fairly the financial condition of Guarantor as of the dates on which, and for the periods for which, such balance sheets, earning statements, and other data are furnished; (d) all other information, reports, and other papers and data furnished to Landlord shall be: (i) accurate and correct in all respects at the time given; and (ii) complete, such that Landlord is given a true and accurate reporting of the subject matter; and (e) Guarantor is solvent.
10. Statements. Guarantor shall provide to Landlord, within ten (10) days after receipt of a written request from Landlord, financial statements that include such information and certifications with respect to the assets, liabilities, obligations, and income of Guarantor as Landlord reasonably may request from time to time.
11. Miscellaneous. The rights of Landlord are cumulative and shall not be exhausted: (a) by its exercise of any of its rights and remedies against Guarantor under this Guaranty or otherwise; or (b) by any number of successive actions; until and unless each and all of the obligations of Guarantor under this Guaranty have been paid, performed, satisfied, and discharged in full. This Guaranty shall be deemed to have been made under, and shall be governed by, the laws of the State of Indiana in all respects and shall not be modified or amended, except by a writing signed by Landlord and Guarantor. This Guaranty shall bind Guarantor and its successors, assigns, and legal representatives; and inure to the benefit of all transferees, credit participants, endorsees, successors, and assigns of Landlord. If the status of Tenant changes, then this Guaranty shall continue, and cover the Obligations of Tenant in its new status, all according to the terms and conditions hereof. Landlord is relying, and is entitled to rely, upon each and every one of the terms and conditions of this Guaranty. Accordingly, if any term or condition of this Guaranty is held to be invalid or ineffective, then all other terms and conditions shall continue in full force and effect. All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the ___ day of _____, 20__.

Signature: _____

Printed Name: _____

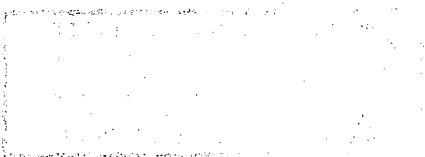


EXHIBIT G

NON-DEBARMENT, NON-COLLUSION AND
NON-DISCRIMINATION AFFIDAVIT

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

The undersigned, being duly sworn on oath, hereby certifies, on behalf of Michiana Brewers Supply LLC ("Tenant"), as follows:

1. That the undersigned is duly authorized and is competent to certify to the statements contained herein on behalf of Tenant.
2. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. That Tenant has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by the firm, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
4. That Tenant hereby agrees to abide by the following nondiscrimination commitment, which shall be made a part of any contract that Tenant may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions:

Tenant agrees not to discriminate against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

Michiana Brewers Supply LLC
By: Aaron Goldstein
Name: Aaron Goldstein
Title: Sole Member

Subscribed and sworn to before me this 27th day of May, 2014.

Jennifer Binder
Jennifer Binder, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: 8/26/21



EXHIBIT 9

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "First Amendment") is made and entered into this 22ND day of December, 2014, by and between the City of South Bend, Indiana, by and through the South Bend Redevelopment Commission, governing body of the South Bend Department of Redevelopment ("Landlord"), Sonja Young d/b/a Vesuvio's Pizza ("Tenant"), and Girbaud Hines ("Hines") (together referred to as the "Parties").

WHEREAS, Landlord, Tenant, and Hines are Parties to a lease dated and made effective July 26, 2011 ("the Lease"), related to the premises located at 117 East Wayne Street, South Bend, Indiana, consisting of approximately 2,844 square feet, as more particularly described in the Lease; and

WHEREAS, the Parties desire to enlarge the Initial Term of the Lease and to amend the terms of the Lease as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the Parties agree as follows:

1. Section 3.1 of the Lease shall be deleted in its entirety, and the following shall be inserted in its place:

3.1. Initial Term. The "Commencement Date" of this Lease is August 25, 2011. The Initial Term shall end at 12:00 Midnight, Eastern Standard Time, on August 24, 2017, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date").

2. The following table shall be inserted at the end of Section 1.2:

<u>Term</u>	<u>Base Rent/ square foot</u>	<u>Base Rent (annually)</u>	<u>Rent (monthly)</u>
Year 4	\$ 8.44	\$ 24,000.00	\$ 2,000.00
Year 5	\$ 9.49	\$ 27,000.00	\$ 2,250.00
Year 6	\$ 10.55	\$ 30,000.00	\$ 2,500.00

3. The Parties hereby acknowledge and agree that Hines shall have no rights, duties, interest, or obligations under the Lease, effective August 25, 2014. Accordingly, effective August 25, 2014, "Tenant" shall be defined only as "Sonja Young d/b/a Vesuvio's Pizza" for all purposes under the Lease and this First Amendment. Tenant agrees to keep, perform, and fulfill all the obligations and duties under the Lease and this First Amendment.
4. The Parties acknowledge and agree that, except as modified herein, all terms and conditions of the Lease shall remain in full force and effect.

5. This First Amendment may be executed in counterparts, all of which shall be deemed originals.
6. The undersigned person executing and delivering this First Amendment on behalf of Tenant represents and warrants that she is duly authorized to execute and deliver this First Amendment on behalf of Tenant and that any and all necessary corporate action has been taken.
7. Landlord and Tenant agree to execute and deliver the Memorandum of Lease in the form attached hereto as Exhibit A. The Memorandum of Lease shall be recorded in the office of the St. Joseph County Recorder immediately subsequent to its execution.

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment as of the first written above.

(SIGNATURE PAGES FOLLOW)

"TENANT":

SONYA YOUNG D/B/A VESUVIO'S PIZZA

Sony Young

Sonya Young

JB

SONJA

my

STATE OF INDIANA)

)

SS:

COUNTY OF ST. JOSEPH)

)

Before me, the undersigned, a Notary Public in and for said County and State, this 17th day of ~~DECEMBER~~ 2014, personally appeared Sonya Young, personally known to me, and acknowledged the execution of the foregoing First Amendment to Lease.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

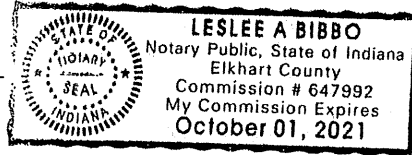
(SEAL)

Leslee A. Bibbo

LESLEE A. BIBBO, Notary Public

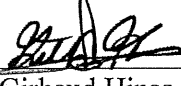
Resident of _____ County, _____

My commission Expires:



"HINES":

GIRBAUD HINES



 Girbaud Hines


STATE OF INDIANA)
)
 COUNTY OF ST. JOSEPH)

SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 17th day of ~~DECEMBER~~, 2014, personally appeared Girbaud Hines, personally known to me, and acknowledged the execution of the foregoing First Amendment to Lease.

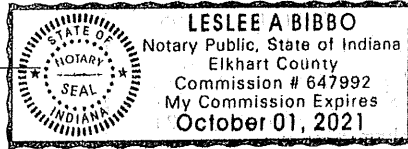
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

(SEAL)



 LESLEE A. BIBBO, Notary Public
 Resident of _____ County, _____

My commission Expires:



"LANDLORD":

**SOUTH BEND REDEVELOPMENT
COMMISSION**, for and on behalf of the
City of South Bend, Indiana, Department of
Redevelopment

By: *Marcia I. Jones*
Marcia I. Jones, President

ATTEST:

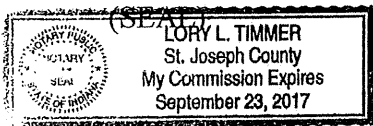
Donald E. Inks
Donald E. Inks, Secretary

STATE OF INDIANA)
)
COUNTY OF ST. JOSEPH)

SS:

Before me, the undersigned, a Notary Public in and for said County and State, this 22nd day of December, 2014, personally appeared Marcia I. Jones and Donald E. Inks, personally known to me as the President and Secretary, respectively, of the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment, and acknowledged the execution of the foregoing First Amendment to Lease for and on behalf of the South Bend Redevelopment Commission for the use and purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.



Lory L. Timmer
Lory L. Timmer, Notary Public
Resident of St. Joseph County, IN

My commission Expires:

September 23, 2017

EXHIBIT A

MEMORANDUM OF LEASE

MAIL TO:

City of South Bend, Indiana
Dept. of Community Investment
227 W. Jefferson Blvd.
1400 S. County-City Building
South Bend, Indiana 46601

MEMORANDUM OF LEASE

This Memorandum of Lease is to evidence that certain lease dated July 26, 2011, as amended by that certain First Amendment to Lease dated December __, 2014 (the "Lease"), by and between the South Bend Redevelopment Commission, the governing body of the Department of Redevelopment of the City of South Bend, Indiana, as Lessor, and Sonja Young d/b/a Vesuvio's Pizza, as Lessee, for the following real estate located in the City of South Bend, St. Joseph County, Indiana:

The retail space in the Wayne Street Parking Garage, 117 E. Wayne St., South Bend, IN 46601, commonly referred to as the Wayne Street Retail, South Bend, Indiana, which is more particularly described as follows: RETAIL AREA I & II OF WAYNE & ST. JOSEPH PARKING GARAGE; PARCEL ID: 71-08-12-158-014.000-026.

The initial term of the Lease, as amended, is for six (6) years, commencing on August 25, 2011, with an option to extend the lease for one (1) additional term of three (3) years at the end of the initial term, unless sooner terminated in accordance with the terms of the Lease.

(SIGNATURE PAGES FOLLOW)

LESSEE:

SONYA YOUNG D/B/A VESUVIO'S PIZZA

[Handwritten Signature]

Sonya Young

Sonyja AY

STATE OF INDIANA)

) SS:

COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said County and State, this 11th day of DECEMBER 2014, personally appeared Sonya Young, personally known to me, and acknowledged the execution of the foregoing Memorandum of Lease.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

(SEAL)

[Handwritten Signature]

LESLEE A. BIBBO, Notary Public
Resident of _____ County, _____

My commission Expires:



LESSOR:

**SOUTH BEND REDEVELOPMENT
COMMISSION**, for and on behalf of the
City of South Bend, Indiana, Department of
Redevelopment

By:

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

STATE OF INDIANA)

) SS:

COUNTY OF ST. JOSEPH)

Before me, the undersigned, a Notary Public in and for said County and State, this ____ day of December, 2014, personally appeared Marcia I. Jones and Donald E. Inks, personally known to me as the President and Secretary, respectively, of the South Bend Redevelopment Commission, the governing body of the City of South Bend, Indiana, Department of Redevelopment, and acknowledged the execution of the foregoing Memorandum of Lease for and on behalf of the South Bend Redevelopment Commission for the use and purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal.

(SEAL)

_____, Notary Public
Resident of _____ County, _____

My commission Expires:

This instrument was prepared by Benjamin J. Dougherty, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Benjamin J. Dougherty.

LEASE

By and Between

**THE SOUTH BEND
REDEVELOPMENT COMMISSION**

and

**GIRBAUD HINES and SONJA YOUNG
dba VESUVIO'S PIZZA**

July ____, 2011

LEASE

THIS LEASE ("Lease") is made by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission, (the "Landlord") and Girbaud Hines and Sonja Young dba Vesuvio's Pizza, (the "Tenant") as of the date of last execution hereof by Landlord or Tenant (the "Effective Date").

WITNESSETH:

ARTICLE I. BASIC LEASE PROVISIONS

1.1. Basic Lease Provisions. The following basic provisions of this Lease (the "Basic Lease Provisions") constitute an integral part of this Lease and are set forth in this Section 1.1 for the convenience of the parties. Each reference in this Lease to a Basic Lease Provision shall be construed to incorporate all of the terms provided for under such provisions.

- | | |
|---------------------------------|---|
| (a) <u>Leased Premises:</u> | 117 E. Wayne Street and as further defined in <u>Section 2.1</u> hereof, consisting of approximately 2,844 square feet of " <u>Floor Area.</u> " |
| (b) <u>Term:</u> | Initial Term of Three (3) Lease Years, with One (1) option of Three (3) Years to extend the Initial Term, all as provided for in <u>Sections 3.1</u> and <u>3.2</u> hereof. |
| (c) <u>Tenant's Use:</u> | Dine-in / Carry-out restaurant selling pizza and related food items. |
| (d) <u>Tenant's Trade Name:</u> | Vesuvio's Pizza (or such other trade name taken by the Tenant) |
| (e) <u>Landlord's Address:</u> | 1200 County-City Building
227 West Jefferson Boulevard
South Bend, Indiana 46601 |
| | With copy to:
CBRE Bradley
Attn: Autumn Psaros
101 N. Michigan St., Ste 300
South Bend, IN 46601 |
| (f) <u>Tenant's Address:</u> | 345 Edgewater Dr.
Mishawaka, IN 46545
Attn: Girbaud Hines
Phone Number: 574-485-3389 |
| (g) <u>Lease Year:</u> | A " <u>Lease Year</u> " shall mean each period of twelve (12) consecutive full months, beginning on the Commencement Date as defined in <u>Section 3.1</u> (such that if the Commencement Date is not the first day of a calendar month, then the first Lease Year shall begin on the first day of the first calendar month following the Commencement Date, and any partial month in which the Commencement Date occurs will be included within the first Lease Year). |

- (h) Security Deposit: A security deposit equal to first month's gross rent shall be paid in equal monthly installments over a three (3) month period. First month's Gross Rent shall be due upon lease signing.
- (i) The Building: **Wayne Street Retail**, commonly referred to as 117 E. Wayne St, South Bend, Indiana, as more particularly described in Exhibit A, and depicted in Exhibit B, each attached hereto and made a part hereof.
- (j) Effective Date: The date of last execution hereof by Landlord or Tenant.
- (k) Delivery Date: The date to which possession is delivered to the Tenant as determined in Section 4.1.
- (l) Commencement Date: The date on which the "Initial Term" commences as determined in Section 3.1.

1.2. Base Rent. Tenant shall pay as outlined below and further defined in Section 5.1, Base Rent, in equal monthly installments commencing on the Commencement Date and thereafter during the entire Term on or before the first day of each calendar month, in advance. Tenant shall also pay Additional Rent, Common Expenses, Real Estate Tax Expenses, Insurance Expenses and Utilities as outlined in Article V below.

	Base Rent / Square Foot	Base Rent (Annually)	Base Rent (Monthly)
Year 1	\$ 6.33	\$ 18,000.00	\$ 1,500.00
Year 2	\$ 7.38	\$ 21,000.00	\$ 1,750.00
Year 3	\$ 8.44	\$ 24,000.00	\$ 2,000.00

ARTICLE II. PREMISES.

2.1. Premises. Landlord is the owner of the Building. Landlord, in consideration of the Rent, as hereinafter defined, to be paid and the covenants to be performed by Tenant, hereby leases to Tenant, and Tenant hereby leases from Landlord, that certain premises located in the Building and depicted on Exhibit A & B (the "Premises"), subject to the terms and conditions of this Lease. Landlord reserves the right, with respect to the Building, to modify, increase or decrease: the number, location, dimension, size, and height of buildings and other improvements in the Building; and the identity and type of other tenants. Tenant's interest in the Premises is and shall be subject to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters now or hereafter of record affecting the Premises or the Building.

2.2. Common Areas. Tenant shall have the right, in common with all other tenants in the Building, to use the areas in and around the Building designated by Landlord from time to time as common areas, including, without limitation, hallways, stairs, elevators, sidewalks, interior drives, parking areas and green areas (the "Common Areas"), subject to the Rules, as hereinafter defined. Landlord shall operate, maintain and insure the Common Areas for their intended purposes in such a manner as Landlord shall determine to be necessary or appropriate, including, without limitation, that Landlord at any time may close or change any part of the Common Areas as Landlord determines to be necessary or appropriate. Tenant understands that Landlord does not control the sidewalks located in the Michigan Street right of way. Tenant will file its request with the South Bend Board of Public Works for use of a portion of the sidewalk area for outdoor seating. Landlord will not oppose such request.

2.3. Quiet Enjoyment. Landlord warrants that it is the owner in fee simple of the Building, and that it has full right and authority to enter into this Lease, subject to all easements, restrictions, liens, encumbrances, rights-of-way and other matters of record. Landlord agrees that if Tenant observes all of the terms and conditions of, and performs all of its obligations under, this Lease, then, at all times during the Term, subject to the terms and conditions of this Lease, Tenant shall have the peaceable and quiet enjoyment of possession of the Premises, without any manner of hindrance from parties claiming under, by, or through Landlord.

ARTICLE III. TERM.

3.1. Initial Term. The "Commencement Date" shall commence thirty (30) days after the Effective Date, estimated to be August 25, 2011. The Initial Term shall end on that date which is Three (3) Lease Years after the Commencement Date, unless earlier terminated in accordance with the provisions of this Lease (the "Termination Date"). Tenant hereby covenants that within five (5) days after the Commencement Date, it shall execute the Commencement Certificate attached hereto as Exhibit F and made a part hereof, and deliver it to Landlord.

3.2. Extension Options. Provided that no Event of Default, as hereinafter defined, or any facts which with the giving of notice or passage of time, or both, would constitute an Event of Default, exists at the time of the exercise of any option to extend the Term hereof or exists at the end of the Initial Term, Tenant may renew this Lease and extend the Initial Term hereof for one (1) additional period of three (3) years ("Extended Term"), on the same terms and provisions as provided in this Lease, except that the Rent due in such Extended Term shall be subject to negotiation, with delivery of written notice of the exercise of such option not later than one hundred and eighty (180) days before the expiration of the Initial Term of this Lease. If Tenant fails to exercise its option to extend the Term hereof in the time periods set forth in this Section 3.2, all such option to extend shall immediately terminate and have no further force or effect, without further notice from Landlord. Any reference in this Lease to the "Term" shall mean the Initial Term as it may be extended pursuant to this Section 3.2.

3.3. Holding Over. If Tenant fails to surrender the Premises upon the expiration of the Term or earlier termination of the Lease (it being agreed that Tenant shall not be permitted to so hold over without Landlord's written consent), Tenant shall pay Landlord for each day of such holding over a sum equal to one hundred and twenty-five percent (125%) of the Rent payable during the preceding Lease Year prorated for the number of days for such holding over, plus Tenant's Pro Rata Share of all other amounts which Tenant would have been required to pay hereunder had this Lease been in effect (the "Holdover Rent"). If Tenant holds over without Landlord's written consent for a period in excess of thirty (30) days without any action from Landlord to dispossess Tenant, Tenant shall be deemed to occupy the Premises on a tenancy from month-to-month at the Holdover Rent, and all other terms and provisions of this Lease shall be applicable to such period. At any time, either party may terminate such tenancy from month-to-month upon written notice delivered to the other party at least thirty (30) days in advance. Tenant hereby waives any and all notice to which Tenant may otherwise be entitled under the laws of the State of Indiana (the "State") as a prerequisite to a suit against Tenant for unlawful detention or possession of the Premises. Tenant shall Indemnify, as hereinafter defined, Landlord from any Loss, as hereinafter defined, resulting from such hold over, including without limitation any liability incurred by Landlord to any succeeding tenant of the Premises.

ARTICLE IV. CONSTRUCTION

4.1. Landlord's Work. Intentionally Omitted. Landlord shall perform the work described in Exhibit D, attached hereto and made a part hereof (the "Landlord's Work") substantially in accordance with the plans and specifications for Landlord's Work, as such plans and specifications may be modified by Landlord as appropriate to complete Landlord's Work (the "Plans"). The "Delivery Date" shall be the date upon which Landlord's Work is substantially complete in accordance with the Plans, subject to delineated "punch list" items that do not prevent Tenant from using the Premises for the purpose of: (a) conducting its normal business operations; or (b) completing Tenant's Work, as hereinafter defined. On the Delivery Date, Tenant shall have full occupancy of the Premises, subject to all of the terms and conditions of this Lease. Landlord shall correct any "punch list" items within sixty (60) days after the Delivery Date.

4.2. Tenant's Work.

~~Plans. Within sixty (60) days after the Effective Date, Tenant shall submit to Landlord two (2) copies of the complete plans and specifications (the "Tenant's Plans") for the work Tenant deems necessary to prepare the Premises for occupancy by the Tenant (the "Tenant's Work"). Within thirty (30) days after Landlord's receipt of Tenant's Plans, Landlord shall notify Tenant of any failures of the Tenant's Plans to meet with Landlord's approval. Tenant shall, within ten (10) days after receipt of any such notice, cause the Tenant's Plans to be revised to the extent necessary to obtain Landlord's approval and to be resubmitted for Landlord's approval. When Landlord has approved the original or revised Tenant's Plans, Landlord shall initial and return one (1) set of approved Tenant's Plans (the "Approved Plans") to Tenant. Tenant shall not commence Tenant's Work until Landlord has approved Tenant's Plans, which approval shall not be unreasonably withheld.~~

~~Landlord's review and approval of Tenant's Plans shall not be deemed to be an assumption of responsibility by Landlord for the accuracy, sufficiency or propriety of Tenant's Plans, pursuant to applicable laws, rules, ordinances or regulations. If the Approved Plans are changed as a result of conditions placed on Tenant as a prerequisite to obtaining a permit, Tenant shall submit such changes to Landlord for approval, and Tenant shall not proceed further with the affected portions of Tenant's Work until Landlord has approved the changes. Such changes as are approved by Landlord shall become part of the Approved Plans.~~

(a) Performance. Tenant shall accept the Premises "as-is" and: (i) install its leasehold improvements, trade fixtures and equipment; and (ii) complete all other Tenant's Work. Prior to performing Tenant's Work, Tenant shall: (i) obtain all permits, licenses and approvals required for Tenant to perform Tenant's Work; and (ii) deliver to Landlord: (a) copies of such permits, licenses and approvals; and (b) evidence reasonably satisfactory to Landlord that Tenant has procured workers' compensation, builder's risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall: (i) perform Tenant's Work: (a) in accordance with the approved plans and all permits, licenses and approvals; and (b) in a good and workmanlike manner and in compliance with all applicable laws, statutes, and/or ordinances and any applicable governmental rules, regulations, guidelines, orders, and/or decrees (the "Laws"); (ii) ensure that all contractors, subcontractors, laborers and suppliers performing work or supplying materials are paid in full; and (iii) observe and perform all of its obligations under this Lease (except its obligation to pay Rent) at all times after the Delivery Date through the Commencement Date.

(b) Reserved.

ARTICLE V.
RENT.

5.1. Rent. Commencing thirty (30) days after on the Effective Date, Tenant shall pay to Landlord, in lawful United States currency without notice, demand, deduction, set-off, counterclaim or recoupment, and without relief from valuation or appraisal laws, the Base Rent, as set forth in Section 1.2, plus the Additional Rent charges plus Percentage Rent (as herein defined) (collectively, the "Rent"), together with any sales, use, or other taxes assessed thereon for the use and occupancy of the Premises. Rent shall be paid in monthly installments commencing as provided herein and thereafter during the entire Term or Extended Term on or before the first (1st) day of each calendar month, in advance. Tenant's obligations under this Section 5.1 shall survive the Termination Date.

5.2. Additional Rent. Commencing as provided in Section 5.1, Tenant shall pay to Landlord, as part of Rent, Additional Rent (the "Additional Rent"), all other sums, charges, and payments required to be paid by Tenant to Landlord under this Lease, whether or not the same are designated as Additional Rent including, but not limited to, Tenant's Pro Rata Share of the Center Expenses, as defined in Section 5.7(a). If any sum or charge is not paid at the time provided in this Lease, then it shall be collectible as Additional Rent with the next monthly installment of Rent; provided that nothing contained herein shall be deemed to suspend or delay the payment of such sum or charge, or to limit any right or remedy of Landlord with respect to its nonpayment.

5.3. Late Charge. Any amount of Rent that is overdue shall bear interest at the lesser of: (a) the maximum rate payable by Tenant under State law; or (b) the rate of eighteen percent (18%) per annum from the date

when such amount is due and payable under this Lease until the date paid. If any amount of Rent is paid more than five (5) days after its due date, then Landlord shall be entitled to a late payment fee of One Hundred Dollars (\$100.00) in addition to the interest charge set forth in this Section 5.3.

5.4. Common Expenses.

- a. Pro Rata Share. Tenant's "Pro Rata Share" shall be a fraction: (a) the numerator of which is the Floor Area, as defined in Section 1.1; and (b) the denominator of which is the square footage of all areas leasable to tenants in the Building. As of the Effective Date, Tenant's Pro Rata Share is 2,844/2,844 or one hundred percent (100.00%). Tenant's Pro Rata Share shall be re-calculated from time to time if either the numerator or the denominator changes.
- b. Payment. Tenant shall pay to Landlord as a portion of the Rent its Pro Rata Share of the Common Expenses, as hereinafter defined (the "CAM Contribution"), which share shall equal the amount of all Common Expenses, multiplied by Tenant's Pro Rata Share. The obligations of Tenant under this Section 5.4 shall survive the Termination Date.
- c. Common Expenses. "Common Expenses" shall mean all costs and expenses of every kind or nature paid or incurred by Landlord during the Term in operating, managing and servicing the Building, including, without limitation: (i) management fees; (ii) wages, salaries and benefits of maintenance personnel (not to exceed the amount fairly and equitably allocated to the Building); (iii) charges under maintenance contracts; (iv) costs and expenses to perform or provide maintenance or repairs and to satisfy Landlord's obligation to operate, maintain and insure the Common Areas under this Lease; (v) sewer, water and storm water drainage charges attributable to the Common Areas, and the costs to maintain any retention and detention ponds and other storm water drainage facilities; (vi) premiums for customary insurance incurred by the Landowner including insurance, if any, obtained by the Landlord to satisfy an obligation under this Lease; (vii) costs for signage located in the Common Areas, including, without limitation, costs for light bulbs and electricity, and costs incurred with respect to any exterior sign for the Building; (viii) costs and expenses to provide light, heat, air conditioning and ventilation for the Common Areas; and (ix) depreciation or amortization of capital assets, improvements, repairs or replacements (the "Amortized Capital Costs"). Tenant shall be responsible for its Pro Rata Share of the Amortized Capital Costs, together with interest if not paid when due, notwithstanding that the capital asset, improvement, repair or replacement may have been acquired or made before the Commencement Date. Common Expenses shall not include: (1) any leasing or rental commissions; (2) any legal fees in connection with financings or refinancings, preparation or negotiation of leases, or exercising or enforcing Landlord's rights and remedies under leases; (3) any costs of tenant improvements or build-outs; (4) any penalties or interest assessed against Landlord for late payment of its indebtedness; or (5) payments of principal or interest required by any financing or refinancing. Notwithstanding anything to the contrary set forth herein, amounts separately billed to, and paid directly by, a tenant of the Building shall be deducted in calculating Common Expenses from the costs and expenses that Landlord incurs to operate the Building.

5.5. RealEstate Tax Expenses. Tenant shall pay to Landlord, as Additional Rent, Tenant's Pro Rata Share of (collectively, the "Tax Expenses"): (a) all real estate taxes and assessments of any nature levied during the Term on, against, or with respect to the Building (the "Real Estate Taxes"); (b) any and all costs and expenses incurred by Landlord in connection with an appeal of the Real Estate Taxes; and (c) all Real Estate Taxes levied during the Term on, against, or with respect to Tenant's leasehold interest in the Premises. The obligations of Tenant hereunder with respect to the payment of Real Estate Taxes levied during the final year of the Term shall survive the Termination Date.

5.6. Insurance Expenses. Tenant shall pay to Landlord, as Additional Rent, its Pro Rata Share of any and all costs incurred by Landlord in connection with the Casualty Insurance, as defined in Section 8.1, and the Liability Insurance, as defined in Section 8.1, including, but not limited to, all premiums and deductibles paid by Landlord (collectively, the "Insurance Expenses").

5.7. Percentage Rent. Intentionally Omitted. Beginning on the Effective Date, Tenant will be liable to Landlord for the Percentage Rent provided herein, in addition to the Rent, and Additional Rent without previous demand therefore and without any abatement, diminution, set off, or deduction.

(a) Definition of Gross Sales. Intentionally Omitted. For purposes of calculating Percentage Rent, the term "Gross Sales" means the selling price of all merchandise sold in, at, on, or from any part of the Premises and the charges for and services of any sort sold or performed in, at, or from any portion of the Premises, including sales made by Tenant or any subtenant, licensee, assignee or concessionaire and including sales from orders accepted in, on or from the Premises for delivery from places other than the Premises, or orders filled from the Premises even though accepted from places other than the Premises, including orders via electronic, telephonic, video, computer or other technology-based systems now existing or developed in the future. Gross Sales includes all sales and charges, for cash or credit, regardless of collections in the case of the latter. The parties acknowledge that Tenant's successful operation of its business is of prime importance to both parties, and Tenant hereby agrees to use its best efforts to maximize Gross Sales in the Premises for the benefit of Landlord and Tenant.

On or before the fifteenth (15th) day of each month during the Term, Tenant will furnish Landlord a statement signed by Tenant showing the amount of Gross Sales for the preceding month. Gross Sales shall be taken from the first day to last day of each calendar month including weekends and holidays, with Percentage Rent calculated there from and due along with such statement on or before the fifteenth (15th) day of each month in advance.

5.7 Estimation.

- a. Estimation. From time to time, Landlord may estimate (or re-estimate) the amount of the Tax Expenses, Insurance Expenses, and/or CAM Contributions (collectively, the "Center Expenses") payable by Tenant for any whole or partial calendar year during the Term. Tenant shall pay, as Additional Rent, equal monthly installments of its Pro Rata Share of the estimated Center Expenses during such whole or partial calendar year.
- b. Statement. Within ninety (90) days after the end of each whole or partial calendar year during the Term, Landlord shall deliver to Tenant a written statement that shows the computation of the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is more than the actual Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Landlord shall credit the excess: first, against any outstanding Rent due from Tenant; and second, against future Center Expenses, to be paid by Tenant; provided that, if there are no future Center Expenses to be paid by Tenant, then Landlord shall refund the excess to Tenant within thirty (30) days. If the total of the Center Expenses paid by Tenant for such whole or partial calendar year is less than the actual amount of the Center Expenses payable by Tenant with respect to such whole or partial calendar year, then Tenant shall pay the amount of such deficiency with the next regular installment of Rent unless the Termination Date has occurred, in which case Tenant shall pay any deficiency within thirty (30) days after Landlord delivers Landlord's written statement.

5.8. Utilities. Tenant shall: (a) promptly pay all charges for sewer, water, gas, electricity, telephone, and other utility services used in, on, at, or from, the Premises (all of which utilities shall be separately metered to the Premises) (the "Utility Charges"); and (b) deliver to Landlord, upon demand, receipts or other satisfactory evidence of payment of the Utility Charges.

ARTICLE VI.

ALTERATIONS AND MAINTENANCE OF AND REPAIRS TO THE PREMISES

6.1. Landlord Repairs. Landlord shall, at its expense: (a) keep the foundations and roof of the Premises in good order, repair and condition; and (b) maintain the exterior walls of the Premises in a structurally sound condition, except to the extent that there is damage caused by any act or omission of Tenant or its employees, agents, contractors, invitees or licensees. Landlord shall be responsible for the installation and replacement of all

heating, ventilating, and cooling equipment and systems serving the Premises (the “HVAC Systems”) provided however that the Landlord may bill the Tenant as Additional Rent if the Landlord’s consultant determines with reasonable certainty that the need to replace the HVAC Systems was as a result of the Tenant’s misuse of it or the Tenant’s failure to notify the Landlord of its malfunctioning. The Landlord may enter into a maintenance contract with a reputable company (the “Maintenance Contract”), pursuant to which Maintenance Contract such company shall institute a regularly scheduled program of preventive maintenance and repair of the HVAC Systems to keep and maintain such items in good order, condition, and repair at all times, and any such expenses incurred by the Landlord as a result of such Maintenance Contract or any routine or otherwise insubstantial repairs shall be considered a Common Expense allocable to this Premises only, unless the HVAC Systems service more than one Tenant. Except as provided in this Section 6.1, Landlord shall not be obligated to make repairs, replacements or improvements of any kind to or for the Premises, or any trade fixtures or equipment contained therein, all of which such repairs, replacements or improvements shall be the responsibility of Tenant.

6.2. Tenant Repairs. Except for repairs to be performed by Landlord pursuant to Section 6.1, Tenant shall: (a) keep the Premises clean, neat, and safe, and in good order, repair and condition, including, without limitation, that Tenant shall make all maintenance, repairs, alterations, additions, or replacements to the Premises as may be required by any Law, or by fire underwriters or underwriters’ fire prevention engineers; (b) keep all glass in windows, doors, fixtures, skylights, and other locations clean and in good order, repair, and condition, and replace glass that may be damaged or broken with glass of the same quality; and (c) paint and decorate the Premises as necessary or appropriate to comply with the terms and conditions of this Section 6.2. The Tenant shall be responsible for notifying the Landlord of any damage to, malfunctioning of, or apparent repairs necessary to be made to the HVAC Systems or to the plumbing, electrical or other systems used by or for the Premises.

6.3. Tenant Alterations.

(a) Alterations. Tenant, at its sole cost and expense, may install in the Premises such improvements and equipment as Tenant reasonably determines to be necessary or appropriate to conduct its business. Tenant, at its cost and expense, also may make non-structural alterations or improvements to the interior of the Premises if: (i) the cumulative cost of making such alterations or improvements is less than Three Thousand Dollars (\$3,000.00); (ii) Tenant delivers to Landlord written notice describing the proposed alteration or improvement with particularity, and provides to Landlord copies of any plans and specifications for the alteration or improvement; and (iii) on the Termination Date, Tenant surrenders the part of the Premises altered or improved in as good a condition as on the date that Tenant accepts the Premises. Tenant shall not, without the prior written consent of Landlord, make any: (1) alterations, improvements, or additions of or to the exterior of the Premises; or (2) except as described above, structural or other alterations, improvements, or additions of or to any part of the Premises. All alterations, improvements, or additions to the Premises, exclusive of moveable equipment, shall become the sole property of Landlord on the Termination Date.

(b) Permits. Before making any alterations, improvements, or additions, Tenant shall: (i) obtain all permits, licenses, and approvals necessary for the completion of the improvements, alterations, or additions; and (ii) deliver to Landlord: (A) copies of such permits, licenses, and approvals; and (B) evidence reasonably satisfactory to Landlord that Tenant has procured workers’ compensation, builder’s risk, general liability, and personal and property damage insurance as Landlord reasonably may require. Tenant shall at Tenant’s cost and expense: (1) complete the construction of any alterations, improvements or additions in a good and workmanlike manner, and in compliance with all Laws and all permits, licenses and approvals; and (2) assure that all contractors, subcontractors, laborers, and suppliers performing work or supplying materials are paid in full.

(c) Liens. Tenant shall not suffer or cause the filing of any mechanic’s or other lien against the Premises or the Building. Tenant shall further not enter into any contract or agreement that provides explicitly or implicitly that a lien may be attached against the Premises, the Building or any improvements. If any mechanic’s or other lien is filed against the Premises, the Building, or any part thereof for work claimed to have been done for, or materials claimed to have been furnished to, Tenant, other than for the performance of Landlord’s Work, then Tenant shall: (i) cause such lien to be discharged of record within twenty (20) days after notice of the filing by bonding or as provided or required by law; or (ii) provide evidence satisfactory to Landlord that the lien is being contested by proceedings adequate to prevent foreclosure of the lien, together with indemnity satisfactory to

Landlord (in an amount equal to at least one hundred fifty percent (150%) of the claimed lien) to Landlord within thirty (30) days after notice of the filing thereof. All liens suffered or caused by Tenant shall attach to Tenant's interest only. Nothing in this Lease shall be deemed or construed to: (1) constitute consent to, or request of, any party for the performance of any work for, or the furnishing of any materials to, Tenant; or (2) give Tenant the right or authority to contract for, authorize, or permit the performance of, any work or the furnishing of any materials that would permit the attaching of a mechanic's lien to the Premises or the Building or Landlord's interest therein.

6.4. Signs. Tenant shall not affix or maintain upon the exterior of the Premises or make visible from the exterior any sign, advertising placard, name, insignia, trademark, or descriptive material, without the prior written approval of Landlord, which approval shall not be withheld unreasonably. No such materials may be displayed or attached which are against any applicable law or regulation.

ARTICLE VII.

USE.

7.1. Use of the Premises. At all time during the Term, Tenant shall:

(a) Use the Premises solely for Tenant's Use, as defined in Section 1.1(c), doing business under Tenant's Trade Name, as defined in Section 1.1(d), and for no other use or purpose;

(b) Tenant will open the Premises for business on the Commencement Date and operate one hundred percent (100%) of the Premises during the entire Term, without interruption, during at least the hours of 5:00 p.m. through 2:00 a.m., Monday through Saturday, or such other minimum hours upon which Landlord may agree from time to time with prior written consent, provided that such operation may be interrupted for such reasonable periods as may be necessary to repair, restore, or remodel the Premises, or for purposes of taking inventory, Tenant shall obtain the prior written consent of Landlord, which approval shall not be unreasonably withheld for such time periods. Tenant will keep its sign and the interior of the Premises lighted at least one (1) hour past such closing time. Tenant agrees that Tenant will open and close at the times set forth above. If Tenant either (i) opens for business more than thirty (30) minutes late; or (ii) closes for business more than thirty (30) minutes early on more than two (2) occasions in any Lease Year, Tenant will pay to Landlord as a further item of Additional Rent, the sum of Two Hundred Fifty Dollars (\$250.00) per occurrence thereafter.

(c) Remain fully fixtured, fully stocked, and fully staffed at all times.

(d) Conduct the business located on the Premises at all times in a high grade and reputable manner so as to produce the maximum volume of sales and transactions and to help establish and maintain a high reputation for the Building.

During the Term, Tenant will be considered to "Operate" or be "Operating" in the Premises so long as Tenant is open for business in compliance with this Section 7.1.

7.2. Covenant to Open. Tenant covenants that it will open and begin Operating in the Premises as of the Effective Date.

7.3. Compliance with Law. Tenant shall promptly comply with all federal, state and local Laws and ordinances and lawful orders and regulations affecting the Premises, and the health, cleanliness, safety, construction, occupancy and use of same, in effect from time to time. Tenant shall promptly and fully comply with all federal, state and local Laws and ordinances in effect from time to time prohibiting discrimination or segregation by reason of race, color, religion, disability, gender or national origin or otherwise.

7.4. Operation by Tenant. Tenant covenants and agrees that it: will not place or maintain any merchandise or vending machines outside the building on the Premises; will store garbage, trash, rubbish and other refuse in rat-proof and insect-proof containers with adequate screening to hide such garbage, trash, rubbish and refuse from view on the Premises and the Shopping Center, and will remove the same frequently and regularly, all at Tenant's cost; will not permit any sound system to be audible or objectionable advertising medium to be visible

outside the Premises; will not commit or permit waste or a nuisance upon the Premises; will not permit or cause objectionable odors to emanate or be dispelled from the Premises; will not distribute advertising matter to, in or upon any portion of the Building; will not permit the loading or unloading or the parking or standing of delivery vehicles outside any area designated therefore, nor permit any use of vehicles which will interfere with the use of any portion of the Building; will not use the any portion of the Building for promotional activities, to include without limitation rides, carnival type shows, entertainment, outdoor shows, automobile or other product shows; will comply with all Laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, including those with authority over insurance rates, with respect to the use or occupancy of the Premises, and including, but not limited to, the Occupational Safety and Health Act ("OSHA") and the Americans With Disabilities Act ("ADA"), as the same may be amended from time to time. Tenant covenants and agrees that it will not serve liquor or any other alcoholic beverages in or from the Premises unless Tenant first obtains the written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion.

7.5. Storage. Tenant shall store in the building on the Premises only merchandise and products which Tenant intends to sell at, in, or from the Premises within a reasonable time after receipt thereof.

7.6. Sales and Use. Tenant shall not permit, allow, or cause to be conducted in the Premises: (a) a public or private auction; or (b) a sale that would indicate to the public that Tenant (i) is bankrupt, (ii) is going out of business, or (iii) has lost or is preparing to terminate its possession of the Premises. The Premises shall not be used except in a manner consistent with the general high standards of the neighborhood, and shall not be used in a disreputable or immoral manner or in violation of federal, state or local Laws or ordinances. Tenant shall not operate the Premises either in whole or in part as a clearance, outlet, off-price, or discount store, provided that nothing in this Section 7.6 is intended to affect Tenant's pricing policies.

7.7. Emissions and Hazardous Materials.

(a) Emissions. Tenant shall not, without the prior written consent of Landlord:

i. make, or permit to be made, any use of the Premises or any portion thereof which emits, or permits the emission of, an unreasonable amount of dust, sweepings, dirt, cinders, fumes or odors into the atmosphere, the ground or any body of water, whether natural or artificial (including without limitation rivers, streams, lakes, ponds, dams, canals, sanitary or storm sewers, or flood control channels), which is in violation of any Laws;

ii. create, or permit to be created, any sound level which will interfere with the quiet enjoyment of any real property by any tenant or occupant of the Building, or which will create a nuisance or violate any Laws;

iii. transmit, receive, or permit to be transmitted or received, any electromagnetic, microwave or other radiation which is harmful or hazardous to any person or property in, on or about the Premises or the Building, or which interferes with the operation of any electrical, electronic, telephonic or other equipment wherever located, whether on the Premises or the Building;

iv. create, or permit to be created, any ground vibration that is discernible outside the Premises; or

v. produce, or permit to be produced, any intense glare, light or heat except within an enclosed or screened area and then only in such manner that the glare, light or heat shall not be discernible outside the Premises.

(b) Hazardous Materials. Tenant shall be permitted to use and store those Hazardous Materials, as defined below, that are used in the normal course of Tenant's Use at the Premises, so long as such Hazardous Materials are used, stored, handled and disposed of in compliance with applicable Law. Subject to the exception contained in the preceding sentence, Tenant shall not, without the prior written consent of Landlord, cause or permit, knowingly or unknowingly, any Hazardous Material to be brought or remain upon, kept, used, discharged, leaked, or emitted in or about, or treated at, the Premises or the Building. As used in this Lease, "Hazardous Material(s)" shall mean any hazardous, toxic, infectious or radioactive substance, material, matter or waste which is or becomes regulated by any federal, state or local Law, ordinance, order, rule, regulation, code or any other governmental

restriction or requirement, and shall include, but not be limited to, asbestos, petroleum products, and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 et seq. ("CERCLA"), and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec. 6901 et seq. ("RCRA"), and the term "Hazardous Chemical" as defined in OSHA (hereinafter "Environmental Laws").

In addition to, and in no way limiting, Tenant's duties and obligations under this Lease, should Tenant breach any of its duties and obligations as set forth in this Section 7.7(b), or if the presence of any Hazardous Material(s) on the Premises results in contamination of the Premises, the Building, any land other than the Building, the atmosphere, or any water or waterway (including without limitation groundwater), or if contamination of the Premises or of the Building by any Hazardous Material(s) otherwise occurs for which Tenant is otherwise legally liable to Landlord for damages resulting therefrom, Tenant shall Indemnify, as hereinafter defined, Landlord from and against any Loss, as hereinafter defined, arising during or after the Term as a result of such contamination. The term "Loss," in this Section 7.7(b) includes, without limitation, costs and expenses incurred in connection with any investigation of site conditions or any cleanup, remediation, removal, fines, monitoring, or restoration work required or imposed by any federal, state or local governmental agency or political subdivision because of the presence of Hazardous Material(s) on or about the Premises or the Building, or because of the presence of Hazardous Material(s) anywhere else which came or otherwise emanated from Tenant or the Premises. The indemnification contained in this Section 7.7(b) shall survive the Termination Date.

7.8. Inspections. Tenant shall permit Landlord and its employees, agents and contractors to enter the Premises at reasonable times (or at any time in the event of an emergency) for the purpose of: (a) inspecting the Premises; (b) making repairs, replacements, additions, or alterations to the Premises, or to the building in which the Premises is located; and (c) showing the Premises to prospective purchasers, lenders, and tenants. During the last one hundred and eighty (180) days of the Term, Landlord may put a "For Lease" sign in the storefront window of the Premises.

7.9. Sidewalks. Tenant acknowledges that the use of the sidewalks adjoining the Premises is controlled by the South Bend Board of Public Works (the "BPW"). The Landlord makes no representation concerning the availability of such use for dining or other purposes. Tenant understands that it must make application to the BPW for a permit to use the adjoining sidewalks. Landlord shall not oppose such application.

ARTICLE VIII. **INSURANCE AND INDEMNIFICATION**

8.1. Tenant's Liability Insurance. Tenant, at its expense, shall maintain during the Term, commercial general liability insurance on the Premises covering Tenant as the named insured and identifying Landlord as an "additional insured" with terms satisfactory to Landlord and with companies qualified to do business in the State, for limits of not less than \$700,000.00 for bodily injury, including death resulting therefrom, and personal injury for any one (1) occurrence, \$1,000,000.00 property damage insurance, or a combined single limit in the amount of \$6,000,000.00. At all times, Tenant shall maintain limits naming Landlord as an "additional insured" in an amount sufficient to cover any possible liability Landlord may have pursuant the amounts set forth at Indiana Code § 34-13-3-4, as the same may be amended, superseded or recodified from time to time.

8.2. Hazardous Materials Coverage. Notwithstanding the above mentioned commercial general liability insurance policy limit for Tenant, if Tenant does or intends to bring, possess, use, store, treat or dispose any Hazardous Material in or upon the Premises or the Building, Tenant shall purchase additional public liability insurance and supply Landlord with certificates of insurance reflecting the additional insurance, with coverage of no less than \$5,000,000.00 and purchase environmental impairment liability insurance with coverage of not less than \$5,000,000.00 with a deductible of not greater than \$50,000.00 to insure that anything contaminated with or by the Hazardous Material be removed from the Premises and/or the Building, and that the Premises and/or the Building be restored to a clean, neat, attractive, healthy, sanitary and non-contaminated condition.

8.3. Dram Shop Coverage. In addition to the insurance required under this Article VIII, for any such period of time as Tenant shall serve liquor or other alcoholic beverages in or from the Premises, Tenant agrees to

maintain minimum limits of coverage of at least \$2,000,000 covering "liquor law" liability (sometimes also known as "dram shop" insurance) which shall insure Tenant, as the named insured, and Landlord, as the additional insured, and all those claiming by, through or under Landlord, against any and all claims, demands or actions for personal or bodily injury to, or death of, one person or multiple persons in one or more accidents, and for damage to property, as well as for damages due to loss of means of support, loss of consortium, and the like so that at all times Landlord will be fully protected against claims that may arise by reason of or in connection with the sale and dispensing of liquor and alcoholic beverages in and from the Premises.

8.4. Tenant's Additional Insurance. Tenant shall comply with the provisions of the applicable workers' compensation laws, and shall insure its liability thereunder. Tenant, at its expense, shall maintain plate glass insurance covering all exterior plate glass in the Premises or shall be obligated to promptly replace any damaged exterior glass, to the satisfaction of the Landlord within five (5) days of the occurrence of such damage. In the event that the Tenant neither obtains insurance providing for the immediate repair of the damaged glass nor repairs said damage to the satisfaction of the Landlord within five (5) days of the occurrence of such damage, the Landlord may have the damaged glass repaired at the Tenant's expense.

8.5. Policies. All policies of insurance required by this Article to be maintained by Tenant shall: (a) be in a form, and maintained with an insurer, reasonably satisfactory to Landlord; and (b) provide that such policies shall not be subject to cancellation, termination, or change without written notice to Landlord at least thirty (30) days in advance. Tenant shall deposit with Landlord the policy or policies of insurance required to be maintained by Tenant pursuant to this Article VIII, or proper certificates of such insurance, duly executed by the insurance company or the general agency writing such policies and effective not later than the Commencement Date. Tenant shall deposit appropriate renewal or replacement policies or certificates with Landlord not less than ten (10) days prior to the expiration of any such policy or policies. Tenant shall also furnish Landlord with certificates evidencing such coverages from time to time upon Landlord's request. If Tenant shall fail to timely procure or renew any of the insurance required under this Article VIII, Landlord may obtain replacement coverage and the cost of same shall be deemed Additional Rent payable by Tenant with the next installment of Rent thereafter becoming due and payable.

8.6. Indemnity.

(a) Definition of "Loss." The term "Loss," as used throughout this Lease, shall mean any and all claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions, causes of action, and losses of any and every kind and nature (including, without limitation, sums paid in settlement of claims and for attorney's fees and court costs).

(b) Definition of "Indemnify." The term "Indemnify," as used throughout this Lease, shall mean that Tenant shall indemnify Landlord, save it harmless and, at Landlord's option and with attorneys approved in writing by Landlord, defend Landlord, and its contractors, agents, employees, members, managers, officers, and mortgagees, if any, from any Loss arising out of the condition specified in the particular indemnity provision.

(c) General Indemnity. Except for loss, injury or damage caused solely by the willful misconduct of Landlord, its employees, contractors, or agents, Tenant covenants to Indemnify Landlord for any Loss in connection with or arising from any use or condition of the Premises or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, licensees, invitees or visitors, occurring on or about the Premises and in the case of Tenant, its agents, contractors or employees occurring on or about the Building. Except for loss, injury or damage caused by the negligent acts or willful misconduct of Tenant, its employees, contractors, invitees, licensees, visitors or agents, Landlord covenants to Indemnify Tenant, and save it harmless, from and against any and all claims, actions, damages, injuries, accidents, liability and expense, including reasonable attorneys' fees, in connection with or arising from, or occasioned wholly or in part by, any act or omission of Landlord, its agents, contractors or employees occurring on or about the Building, excluding the Premises.

(d) Covenant to Hold Harmless. Landlord shall be defended and held harmless by Tenant from any liability or claims for damages to any person or any property in or upon the Premises unless caused by the willful act of Landlord, including but not limited to the person and property of Tenant and its officers, agents, employees, and shall pay all expenses incurred by Landlord in defending any such claim or action, including without limitation

attorney fees of Landlord and any judgment or court costs. All property kept, stored or maintained in the Premises shall be so kept, stored or maintained solely at the risk of Tenant

The Landlord shall not be liable for damage caused by hidden defects or failure to keep said Premises in repair, and shall not be liable for any damage done or occasioned by or from plumbing, gas, water, steam, or other pipes, or sewerage, or the bursting or leaking of plumbing or of any plumbing or heating fixtures or waste or soil pipe existing in connection with the Building or Premises, nor for damage occasioned by water, nor for any damages arising from negligence of co-tenants or other occupants of the Building, or the agents, employees or servants of any of them, or of any owners or occupants of adjacent or contiguous property.

The Landlord shall not be liable for any injury to the Tenant, its employees and agents or any other person, occurring on said Premises, irrespective of whether said injury is caused by a defect in said Premises or by reasons of said Premises becoming out of repair or arising from any other cause whatsoever, and the Landlord shall not be liable for damage to Tenant's property or to the property of any other person which may be located in or upon said Premises and the Tenant agrees to indemnify and save harmless the Landlord from any and all claims arising out of injuries to persons or property occurring on said Premises.

8.7. Release of Subrogation. Each party hereto does hereby release and discharge the other party from any liability, which the released party would have had (but for this section) to the releasing party, arising out of or in connection with any accident or occurrence or casualty: (a.) which is or would be covered by a fire and extended-coverage policy with vandalism and malicious mischief endorsement or by a sprinkler leakage or water damage policy, regardless of whether or not such coverage is being carried by the releasing party, and (b.) to the extent of recovery under any other casualty, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the released party, its officers, agents or employees; and insofar as Tenant is the releasing party, it will also release the other tenants in the Building from any such liability as if the other tenants were each a released party under this section. Notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for any damage to person or party arising from the negligent act or omission or willful misconduct of any other tenant or occupant of the Building, and Tenant hereby expressly waives any claim for such damages.

8.8. The Tenant will not allow said Premises to be used for any purpose that will increase the rate of insurance thereon, nor to be occupied in whole or in part by any other person.

ARTICLE IX. **CASUALTY AND CONDEMNATION.**

9.1. Casualty.

(a) Insubstantial Damage. If the Premises is damaged by fire or any other casualty (the "Casualty Damage"), and the estimated cost to repair such Casualty Damage is less than fifty percent (50%) of the estimated cost to replace the Premises, then Landlord shall repair such Casualty Damage so long as sufficient insurance proceeds recovered as a result of such Casualty Damage remain after: (i) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (ii) deduction for any expenses incurred in collecting the insurance proceeds. Notwithstanding anything to the contrary set forth herein, in no event shall Landlord be required to repair or replace: (1) the improvements to the Premises made by Tenant; or (2) any trade fixtures, equipment, or inventory of Tenant (or any other person or entity) located on, in, or about the Premises.

(b) Substantial Damage. If: (i) there is Casualty Damage to the Premises, and the cost to repair such Casualty Damage is equal to or greater than fifty percent (50%) of the estimated cost to replace the Premises; (ii) there is Casualty Damage to the building of which the Premises is a part, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such building; or (c) there is Casualty Damage to the buildings (taken in the aggregate) in the Building, and the cost to repair such Casualty Damage is equal to or greater than twenty-five percent (25%) of the cost to replace such buildings; then Landlord may elect either to: (1) repair or rebuild the Premises, the building of which the Premises is a part, or the aggregate

buildings in the Building, as applicable; or (2) terminate this Lease upon delivery of written notice to Tenant within ninety (90) days after the occurrence of the Casualty Damage.

(c) Partial Abatement of Rent. Base Rent shall be abated proportionately (based upon the proportion that the unusable space in the Premises due to the Casualty Damage bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of any Casualty Damage.

(d) Repair of Tenant Improvements. If Landlord is required or elects to repair the Premises, then Tenant shall repair or replace: (i) the alterations, improvements, and additions to the Premises made by Tenant; and/or (ii) any equipment of Tenant located on, in, or about the Premises.

(e) Notice. Tenant shall give Landlord prompt written notice of any Casualty Damage in or to the Premises or the Common Areas of which Tenant has knowledge.

9.2. Condemnation. If: (a) all or a substantial part of the Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain; or (b) all or a substantial part of the Premises is conveyed to a public or quasi-public body under threat of condemnation (collectively, the "Condemnation"); and the Condemnation renders the Premises unsuitable for use for Tenant's Use, then, at the option of either Landlord or Tenant exercised within ninety (90) days after the Condemnation occurs: (i) this Lease shall terminate as of the date possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; (ii) all Rent shall be apportioned as of the date that possession of all or such part of the Premises is taken by, or conveyed to, the condemning authority; and (iii) all obligations hereunder, except those due or mature, shall cease and terminate. If there is a Condemnation with respect to: (A) more than twenty-five percent (25%) of the square footage of the building of which the Premises is a part; or (B) more than twenty-five percent (25%) of the aggregate square footage of the Building; then Landlord, at its option, exercised within ninety (90) days after the Condemnation occurs, may elect to terminate this Lease as of the date possession of such square footage is taken by, or conveyed to, the condemning authority, and: (i) all Modified Gross Rent shall be apportioned as of the date that possession of such square footage is taken by, or conveyed to, the condemning authority; and (ii) all obligations hereunder, except those due or mature, shall cease and terminate. All compensation awarded or paid for the Condemnation (the "Condemnation Proceeds") shall belong to and be the sole property of Landlord; provided that Landlord shall not be entitled to the amount of any Condemnation Proceeds awarded or paid solely to Tenant for loss of business or costs and expenses of relocation and removing improvements and equipment. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, then Landlord shall be responsible for the performance of all work necessary to make the Premises usable by Tenant; provided that Landlord shall not be obligated to incur costs for such work in excess of the Condemnation Proceeds awarded or paid to Landlord and remaining after: (y) Landlord's mortgagee has withheld any amount of the proceeds to which it is entitled, if any; and (z) deduction for any expenses incurred in collecting the Condemnation Proceeds. If neither Landlord nor Tenant elects to terminate this Lease pursuant to this Section 9.2, or if any Condemnation is temporary in nature, then Base Rent shall be abated proportionately (based upon the proportion that the that area Premises taken by, or conveyed to, the condemning authority bears to the total space in the Premises) for each day that the Premises or any part thereof is unusable by reason of the Condemnation.

ARTICLE X. SURRENDER.

10.1. Surrender of Leased Premises. Except as herein otherwise expressly provided in this Article X, Tenant shall surrender and deliver up the Premises, together with all property affixed to the Premises, to Landlord at the expiration or other termination of this Lease or of Tenant's right to possession hereunder, without fraud or delay, in good order, condition and repair except for reasonable wear and tear after the last necessary repair, replacement, or restoration is made by Tenant, free and clear of all liens and encumbrances, and without any payment or allowance whatsoever by Landlord on account of any improvements made by Tenant.

10.2. Removal of Certain Property. All furniture and business equipment furnished by or at the expense of Tenant shall be removed by or on behalf of Tenant at or prior to the expiration or other termination of this Lease or of Tenant's right of possession hereunder, but only if, and to the extent, that the removal thereof will not cause

physical injury or damage to the Premises or necessitate changes or repairs to the same. Tenant repair and restore any injury or damage to the Premises arising from such removal so as to return the Premises the condition described in Section 10.1 above, or alternatively, Tenant shall pay or cause to be paid to Landlord one hundred ten percent (110%) of the cost of repairing or restoring injury or damage with such costs to be considered Additional Rent and shall be deemed due and payable as of the date on which surrender by Tenant is required under this Lease.

10.3. Property Not Removed. Any personal property of Tenant which shall remain in or upon the Premises after Tenant has surrendered possession of the Premises shall be deemed to have been abandoned by Tenant, and at the option of Landlord, such property: (a) shall be retained by Landlord as its property; (b) shall be disposed of by Landlord in such manner as Landlord shall determine, without accountability to any person; or (c) shall be removed by Tenant within three (3) business days at Tenant's expense upon written request from Landlord or such Tenant fails to remove such property within such timeframe Landlord may remove such property at Tenant's expenses, charging Tenant one hundred ten percent (110%) of the costs incurred by Landlord to remove said items, which funds shall be due immediately upon notification of Tenant of such charges. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant remaining in the Premises after Tenant surrenders possession thereof.

10.4. Survival of Terms. The terms of this Article X and other terms of this Lease referred to herein shall survive any termination of this Lease.

ARTICLE XI. DEFAULT.

11.1. Events of Default. Each and all of the following events shall be deemed an "Event of Default" by Tenant under this Lease:

(a) Nonpayment. Tenant's failure to pay Base Rent, Additional Rent, or other sums or charges that Tenant is obligated to pay by any provision of this Lease when due.

(b) Lapse of Insurance. Any failure to maintain the insurance coverages required to be maintained by Tenant under this Lease.

(c) All Other Lease Violations. Tenant's failure to perform or observe any other covenant, condition, or agreement of this Lease, which failure is not cured within thirty (30) days after the giving of notice thereof by Landlord specifying the items in default unless such default is of such nature that it cannot be cured within such thirty (30) day period, in which case no Event of Default shall occur so long as the Tenant shall commence the curing of the default within such thirty (30) day period and shall thereafter diligently prosecute the curing of same; provided, however, if the Tenant shall default in the performance of any such covenant or agreement of this Lease more than one time in any twelve (12) month period notwithstanding that such default shall have been cured by Tenant, the second and further defaults in said twelve (12) month period may be deemed by Landlord, in its sole discretion, an Event of Default without the ability for cure.

(d) Falsification of Information. If Tenant, any guarantor of Tenant's obligations under this Lease, or any agent of Tenant falsifies any report in any material respect or misrepresents other information in any material respect required to be furnished to Landlord pursuant to this Lease.

(e) Merger or Consolidation. If Tenant is merged or consolidated with any other entity, or there is a transfer of a controlling interest in Tenant, other than as permitted in Section 13.1(b) of this Lease.

(f) Tenant's or Guarantor's Death, Dissolution or Liquidation. The death of Tenant or any guarantor of Tenant's obligations under this Lease; or the commencement of steps or proceedings toward the dissolution, winding up, or other termination of the existence of Tenant or of any guarantor of Tenant's obligations, or toward the liquidation of either of their respective assets.

(g) Bankruptcy. The commencement of a case under any chapter of the United States Bankruptcy Code by or against Tenant or any guarantor of Tenant's obligations hereunder, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant or any such guarantor as bankrupt or insolvent, or the reorganization of Tenant or any such guarantor, or an arrangement by Tenant or any such guarantor with its creditors, unless the petition is filed or case commenced by a party other than Tenant or any such guarantor and is withdrawn or dismissed within thirty (30) days after the date of its filing.

(h) Assignment or Attachment. The making of an assignment by Tenant or any guarantor of Tenant's obligations hereunder for the benefit of its creditors, or if in any other manner Tenant's interest in this Lease passes to another by operation of law, including, without limitation, by attachment, execution, or similar legal process, which is not discharged or vacated within thirty (30) days, except as permitted under this Lease.

(i) Appointment of Receiver or Trustee. The appointment of a receiver or trustee for the business or property of Tenant or any guarantor of Tenant's obligations hereunder, unless such appointment shall be vacated within ten (10) days after its entry.

(j) Inability to Pay. The admission in writing by Tenant or any guarantor of Tenant's obligations under this Lease of its inability to pay its debts when due.

(k) Breach by Guarantor. The breach by any guarantor of any of that guarantor's obligations under its guaranty.

(l) As Otherwise Provided. The occurrence of any other event including but not limited to Tenant's business being shut down by the Health Department for a period of five (5) consecutive days or more without remedy, Tenant's failure to create and maintain a quality, presentable, street presence in Landlord's sole discretion, or any other event described as a default elsewhere in the Lease or any amendment thereto, regardless of whether such event is defined as an "Event of Default."

11.2. Remedies. Upon the occurrence of an Event of Default, Landlord, without notice to Tenant in any instance (except where expressly provided for below or by applicable law) may do any one or more of the following:

(a) Satisfy Tenant Obligations. Landlord may perform, on behalf of and at the expense of Tenant, any obligation of Tenant under this Lease which Tenant has failed to perform and of which Landlord has given Tenant notice (entering upon the Premises for such purpose, if necessary), the cost of which performance by Landlord, plus interest thereon at the lesser of (i) the highest rate permitted by law, or (ii) eighteen percent (18%) per annum from the date of such expenditure, and reasonable cost and expense incurred by Landlord, shall be deemed Additional Rent and shall be payable by Tenant to Landlord with the first Rent installment thereafter becoming due and payable. The performance by Landlord of any Tenant obligation under this Section 11.2(a) shall not be construed either as a waiver of the Event of Default or of any other right or remedy of Landlord with respect to such Event of Default or as a waiver of any term or condition of this Lease. Notwithstanding the provisions of this Section 11.2(a) and regardless of whether an Event of Default shall have occurred, Landlord may exercise the remedy described in this Section 11.2(a) without any notice to Tenant if Landlord, in its good faith judgment, believes that it or the Premises would be materially injured by failure to take rapid action or if the unperformed obligation of Tenant constitutes an emergency.

(b) Termination of Lease. Landlord may terminate this Lease, by written notice to Tenant, without any right by Tenant to reinstate its right by payment of Rent due or other performance of the terms and conditions hereof. Upon such termination, Tenant shall immediately surrender possession of the Premises to Landlord, and Landlord shall, in addition to all other rights and remedies that Landlord may have, immediately become entitled to receive from Tenant: (i) an amount equal to the aggregate of all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant; (ii) reasonable costs and expenses incurred by Landlord in connection with a re-entry or taking of possession of the Premises; (iii) reasonable costs and expenses incurred by Landlord in connection with making alterations and repairs for the purpose of reletting the Premises; (iv) reasonable attorneys' fees; (v) the unamortized value of the Construction Allowance, if any.

(c) Termination of Possessory Rights. Landlord may terminate Tenant's rights to possession of the Premises without terminating this Lease or Tenant's obligations hereunder and Tenant shall continue to be obligated to pay all Base Rent and Additional Rent which then remains due to Landlord but unpaid by Tenant and Tenant shall continue to be obligated for future Base Rent and Additional Rent as the same comes due under this Lease.

(d) Acceleration of Rent. Landlord may, whether it terminates the Lease or Tenant's possessory rights to the Premises, accelerate and declare immediately due all of the Base Rent and Additional Rent (as reasonably estimated by Landlord) that otherwise would have been due from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised.

(e) Rent Minus Fair Market Value. Landlord may declare immediately due and payable from Tenant, in addition to any damages or other amounts becoming due from Tenant under any other provision of this Lease, an amount equal to the difference between the Base Rent and Additional Rent reserved in this Lease from the date of the Event of Default through the stated expiration date of the Initial Term or any Extended Term, the option for which has been exercised, and the then-fair market value of the Premises for the same period.

(f) Other Remedies. Pursue any legal or equitable remedy allowed by applicable laws of the State.

11.3. Failure to Surrender. If Tenant fails to surrender the Premises upon expiration of the Term or earlier termination of the Lease pursuant to Section 11.2(b), or termination of Tenant's possession rights, the provisions of Section 3.3 shall apply, and Landlord may, without further notice and with or without process of law, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental and other income of and from the same.

11.4. Reimbursement of Landlord's Costs in Exercising Remedies. Landlord may recover from Tenant, and Tenant shall pay to Landlord upon demand, such reasonable and actual costs and expenses as Landlord may incur in recovering possession of the Premises, placing the same in good order and condition and repairing and altering the same for reletting, and all other reasonable and actual costs and expenses, commissions and charges incurred by Landlord in reletting and otherwise exercising any remedy provided herein or as a result of any Event of Default by Tenant hereunder (including, without limitation, reasonable attorneys' fees).

11.5. Remedies Are Cumulative. No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereafter existing at law or in equity or by statute.

11.6. Counterclaim. If Landlord commences any proceedings for non payment of Rent, Tenant will not interpose any counterclaim of any nature or description in such proceedings. This shall not, however, be construed as a waiver of Tenant's right to assert such claims in a separate action brought by Tenant. The covenants to pay Rent and other amounts due hereunder are independent covenants and Tenant shall have no right to hold back, offset or fail to pay any such amounts for any reason whatsoever, except as may be specifically provided for herein to the contrary, it being understood and acknowledged by Tenant that Tenant's only recourse is to seek an independent action against Landlord.

11.7. Bankruptcy.

(a) Assumption of Lease. In the event that Tenant shall become a Debtor under Chapter 7 of the United States Bankruptcy Code (the "Code") or a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapters 11 or 13 of the Code, or a proceeding is filed under Chapter 7 and is transferred to Chapters 11 or 13, the Trustee or Tenant, as Debtor and as Debtor In-Possession, may not elect to assume this Lease unless, at the time of such assumption, the Trustee or Tenant has:

i. Cured or provided Landlord "Adequate Assurance," as defined below, that:

A. Within ten (10) days from the date of such assumption the Trustee or Tenant will cure all monetary defaults under this Lease and compensate Landlord for any actual pecuniary loss resulting from any existing default including, without limitation, Landlord's reasonable costs, expenses, accrued interest as set forth in Section 11.2 of the Lease, and attorneys' fees incurred as a result of the default and/or to enforce the terms hereof;

B. Within thirty (30) days from the date of such assumption the Trustee or Tenant will cure all non-monetary defaults under this Lease; and

C. The assumption will be subject in all respects to all of the provisions of this Lease.

ii. For purposes of this Section 11.7, Landlord and Tenant hereby acknowledge that, in the context of a bankruptcy proceeding of Tenant that this Lease is a lease of real property within a Building and, at a minimum "Adequate Assurance" shall mean:

A. The Trustee or Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured and priority obligations and administrative expenses to assure Landlord that the Trustee or Tenant will have sufficient funds to fulfill the obligations of Tenant under this Lease, and to keep the Leased Premises stocked with merchandise and properly staffed with sufficient employees to conduct a fully Operational, actively promoted business in the Leased Premises;

B. The bankruptcy court shall have entered an order segregating sufficient cash payable to Landlord, and/or the Trustee or Tenant shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Trustee or Tenant acceptable as to value and kind to Landlord, to secure to Landlord the obligation of the Trustee or Tenant to cure the monetary and/or non-monetary defaults under this Lease within the time periods set forth above; and

C. The Trustee or Tenant at the very least shall deposit a sum equal to one (1) month's Rent to be held by Landlord (without any allowance for interest thereon) to secure Tenant's future performance under the Lease.

(b) Assignment of Lease. If the Trustee or Tenant has assumed the Lease pursuant to the provisions of this Section 11.7 for the purpose of assigning Tenant's interest hereunder to any other person or entity, such interest may be assigned only after the Trustee, Tenant or the proposed assignee have complied with all of the terms, covenants and conditions of Section 13.1 herein, including, without limitation, those with respect to Additional Rent and the use of the Premises only as permitted in Article VII herein; Landlord and Tenant hereby acknowledging that such terms, covenants and conditions are commercially reasonable in the context of a bankruptcy proceeding of Tenant. Any person or entity to which this Lease is assigned pursuant to the provisions of the Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Lease on and after the date of such assignment. Any such assignee shall upon request execute and deliver to Landlord an instrument confirming such assignment and assumption in form acceptable to Landlord.

(c) Adequate Protection. Upon the filing of a petition by or against Tenant under the Code, Tenant, as Debtor and as Debtor in Possession, and any Trustee who may be appointed hereby agree to adequately protect Landlord as follows:

i. To immediately perform each and every obligation of Tenant under this Lease until such time as this Lease is either rejected or assumed by order of the bankruptcy court;

ii. To pay all monetary obligations required under this Lease, including, without limitation, the payment of Base Rent and such Additional Rent charges payable hereunder which is considered reasonable compensation for the use and occupancy of the Premises;

iii. Provide Landlord a minimum thirty (30) days' prior written notice, unless a shorter period is agreed to in writing by Landlord, of any proceeding relating to any assumption of this Lease or any intent to abandon the Premises, which abandonment shall be deemed a rejection of this Lease; and

iv. To perform to and for the benefit of Landlord as otherwise required under the Code.

The failure of Tenant to comply with the above shall result in an automatic rejection of this Lease and the automatic stay under Section 362 of the Code shall automatically be terminated as to Landlord and the Premises.

(d) Accumulative Rights. The rights, remedies and liabilities of Landlord and Tenant set forth in this Section 11.7 shall be in addition to those which may now or hereafter be accorded, or imposed upon, Landlord and Tenant by the Code.

(e) Changes in Code. If the Code is changed or amended such that any references in this Section 11.7 to particular provisions or terms of art lose the meaning that they have as of the Effective Date, such provisions or terms of art of this Lease shall be deemed to be amended to reflect such changes in the Code.

ARTICLE XII. **ESTOPPEL CERTIFICATES, ATTORNMENT, AND SUBORDINATION.**

12.1. Estoppel Certificates. Tenant and Landlord agree to execute and deliver, within ten (10) days after request therefor by the other party, a statement, in writing, certifying to Landlord and/or any party designated by Landlord, or Tenant and/or any party designated by Tenant, as the case may be, that: (a) this Lease is in full force and effect; (b) the Commencement Date; (c) that Rent is paid currently without any off-set or defense thereto, (d) the amount of Rent, if any, paid in advance; (e) that there are no known uncured defaults by Landlord or Tenant, or stating those known and claimed, provided that, in fact, such facts are accurate and ascertainable, and (f) any other information reasonably requested.

12.2. Attornment. In the event any proceedings are brought for the foreclosure of, or in the event of conveyance by deed-in-lieu of foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Premises, Tenant hereby attorns to the successor-in-interest of Landlord and covenants and agrees to execute an instrument in writing reasonably satisfactory to same whereby Tenant attorns to such successor-in-interest and recognizes such successor-in-interest as Landlord hereunder.

12.3. Subordination.

(a) Landlord shall have the right at any time and from time-to-time to create security interests in the form of a mortgage, deed of trust or other similar lien or encumbrance (a "Mortgage") upon or affecting Landlord's fee estate in the Premises, or any part thereof, and the rights of Tenant under this Lease shall be subject and subordinate to any such Mortgage; provided, however, that in the event of any foreclosure or sale under any such Mortgage or the delivery by Landlord of any deed-in-lieu of foreclosure to the holder of any such Mortgage, then the holder of any such Mortgage agrees not to disturb Tenant's possession so long as Tenant is not in default under the terms of this Lease beyond any notice and/or cure periods provided for under this Lease and attorns to such holder or the foreclosure purchaser as Landlord under this Lease. Said subordination shall be self-operative and no further instrument of subordination shall be necessary unless required by any such Mortgage holder, in which event Tenant agrees to, within ten (10) days after request by Landlord or the Mortgage holder, execute any agreement reasonably required by such Mortgage holder to memorialize said subordination and to memorialize the terms of any related agreements between Tenant and such Mortgage holder. Any holder of any of any such Mortgage is herein referred to as "Landlord's Mortgagee(s)." Notwithstanding the foregoing, a Landlord's Mortgagee may at any time subordinate its Mortgage to this Lease without Tenant's consent by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such Mortgage without regard to their respective dates of execution and delivery and, in that event, such Landlord's Mortgagee shall have the same rights with respect to this Lease as though it had been executed prior to the execution and delivery of any such Mortgage and had been assigned to such Landlord's Mortgagee.

(b) This Lease shall be subject to and subordinate to all easements, restrictions, liens, encumbrances, rights-of-way, or other matters affecting the Premises of record.

ARTICLE XIII.
ASSIGNMENT AND SUBLETTING

13.1. Assignment and Subletting.

(a) Tenant shall not sublet, mortgage, encumber or in any manner transfer, in whole or in part, this Lease, the Premises or any estate or interest in said Premises or Lease. Except as expressly permitted herein, Tenant shall not assign this Lease or any estate or interest therein or allow the occupancy thereof by any person or entity other than Tenant, without Landlord's prior written consent, which may be granted or withheld in Landlord's sole and absolute discretion. Consent by Landlord to one or more assignments of this Lease shall not operate to exhaust Landlord's rights under this Article XIII. In the event that Tenant, with or without the previous consent of Landlord, does assign or in any manner transfer this Lease or any estate or interest therein or sublet the Premises or any part thereof, or allow the occupancy thereof by any person or entity other than Tenant, Tenant shall not be released from any of its obligations under this Lease unless a release is given, in writing, by Landlord.

(b) If this Lease is assigned or the Premises or any part thereof occupied by any entity other than Tenant, Landlord may collect rent from the assignee or occupant and apply the same to the Rent herein reserved, but no such assignment, occupancy or collection of Rent shall be deemed a waiver of any restrictive covenant contained in this Section 13.1 or the acceptance of the assignee or occupant as tenant, or a release of Tenant from the performance by Tenant of any covenants on the part of Tenant herein contained. Any sublease of the Premises shall be void. Landlord shall have the right, at any time, to immediately remove an occupant or than Tenant from the Premises along with any possession of said occupant, which shall be deemed to have been abandoned if not claimed by occupant within three (3) business days of their removal, and the Landlord's acceptance of rent from the occupant shall in no way waive any rights the Landlord may have against the occupant. The Tenant shall indemnify the Landlord for any actions, claims or demands made by the occupant or its assigns against the Landlord. Any assignment: (x) as to which Landlord has consented or is deemed to have consented; or (y) which is required by reason of a final nonappealable order of a court of competent jurisdiction; or (z) which is made by reason of and in accordance with the provisions of any law or statute, including, without limitation, the laws governing bankruptcy, insolvency or receivership, shall be subject to all terms and conditions of this Lease, and shall not be effective or deemed valid unless, at the time of such assignment:

i. Each assignee shall assume the obligations of this Lease by executing, acknowledging and delivering to Landlord, before the effective date of such assignment, a written assumption agreement in form and substance reasonably satisfactory to Landlord;

ii. Landlord shall receive affidavits, made by both Tenant and its assignee through an officer or principal of each such entity, stating the full consideration to be received by Tenant as assignor as a result of said assignment, including, if any, payments for Tenant's improvements, proposed rent (which includes, without limitation, all monthly charges allocated to common area maintenance, insurance, real property taxes, and utility charges) and any other payments;

iii. Each assignee shall have submitted to Landlord a current financial statement, audited by a certified public accountant, showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of Tenant's obligations hereunder;

iv. Each assignee shall have submitted to Landlord, in writing, evidence satisfactory to Landlord of substantial experience in operating a business similar to that offered by Tenant and permitted under Section 1.1(c) of this Lease or a business otherwise requested by the Landlord and in operating said business in a space or volume comparable to that contemplated under this Lease;

v. The business reputation of each assignee shall meet or exceed generally acceptable commercial standards;

vi. The use of the Premises by each assignee shall not violate, or create any potential violation of, applicable Laws, codes or ordinances, nor violate any other agreements affecting the Premises, Landlord or other occupants in the Building; and

vii. Tenant shall pay Landlord the sum of One Thousand Five Hundred Dollars (\$1,500.00) as reimbursement to Landlord for administrative and legal expenses incurred by Landlord in connection with any such assignment.

(c) In the event that Tenant desires to assign this Lease, Tenant shall give notice to Landlord setting forth the terms of the proposed assignment. Tenant shall advise Landlord of the name of the proposed assignee, shall furnish Landlord with the information required by Landlord with respect to the proposed assignee, and Landlord shall advise Tenant, within sixty (60) business days after receipt of such notice and all required information from Tenant, that Landlord either consents or refuses to consent to an assignment to the proposed assignee.

13.2. Assignment by Landlord. Landlord, at any time and from time to time, may assign its interest in this Lease, and, if: (a) Landlord assigns its interest in this Lease; and (b) the assignee assumes all of the obligations of Landlord under the terms and conditions of this Lease; then Landlord and its successors and assigns (other than the assignee of this Lease) shall be released from any and all liability hereunder.

ARTICLE XIV. MISCELLANEOUS

14.1. Security Deposit. Tenant shall deposit the Security Deposit equal to one month's gross rent, as defined in Section 1.1(h), with Landlord in equal monthly installments over a three (3) month period. Landlord: (a) shall hold the Security Deposit without liability to Tenant for interest; and (b) may commingle the Security Deposit with its other funds. The Security Deposit, or any portion thereof, may be applied by Landlord to cure any default by Tenant under this Lease, without prejudice to any other remedy or remedies that Landlord may have on account of such application. Upon any such application by Landlord, Tenant shall pay to Landlord on demand the amount applied by Landlord to cure such default so that the Security Deposit is restored to its original amount. If Landlord conveys the Premises during the Term: (A) Landlord may turn the Security Deposit over to Landlord's grantee or successor; and (B) Tenant shall release Landlord from any and all liability with respect to the Security Deposit. If Tenant faithfully performs its obligations under the terms and conditions of this Lease, then Landlord shall return to Tenant the amount of the Security Deposit not applied by Landlord to cure defaults by Tenant, without interest, within thirty (30) days after the latter of: (y) the Termination Date; or (z) the date that Tenant has surrendered possession to Landlord in accordance with the terms and conditions of this Lease.

14.2. Guaranty. Intentionally Omitted. ~~This Lease shall not become effective until the execution of a personal guaranty of this Lease in the form attached hereto as Exhibit F (the "Guaranty"). Upon execution of this Lease and the Guaranty, the executed Guaranty shall be attached to this Lease as Exhibit F-1.~~

14.3. Notices. Any notice, demand, request or other instrument (any "Notice") which may be or is required to be given under this Lease shall be in writing and shall be deemed given and received: (a) on the date of delivery when delivered in person (with receipt for delivery); (b) three (3) business days after deposit with the U.S. Postal Service, when sent by United States certified or registered mail, return receipt requested, postage prepaid; or (c) on the next business day following deposit of any such Notice with a national overnight delivery carrier (with receipt evidencing such delivery) such as, but not limited to, Federal Express or UPS. Any Notice to be delivered in person or by mail shall be addressed: (a) if to Landlord, at the address set forth in Section 1.1(f) hereof, or at such other address as Landlord may designate by written notice; and (b) if to Tenant, at the address set forth in Section 1.1(g) hereof, or at such other address as Tenant may designate by written notice.

14.4. Waiver. One or more waivers of any covenant or condition by Landlord shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant, except as otherwise provided herein.

14.5. Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between Landlord and Tenant other than as are herein set forth. No alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party.

14.6. Remedies Cumulative. The rights and remedies of Landlord and Tenant hereunder shall be cumulative, and no one of them shall be deemed or construed as exclusive of any other right or remedy hereunder, at law, or in equity. The exercise of any one such right or remedy by Landlord or Tenant shall not impair its standing to exercise any other such right or remedy.

14.7. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent due hereunder shall be deemed to be other than on account of the Rent first due hereunder. No endorsement or statement on any check or letter accompanying any check or payment of Rent shall be deemed to be an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to the right of Landlord to recover the balance of such Rent or to pursue any other right or remedy.

14.8. Relationship. Nothing contained herein shall be deemed or construed to create between the parties any relationship other than that of landlord and tenant.

14.9. Information. Tenant shall provide to Landlord, upon request, accurate financial statements of Tenant and/or any guarantors of this Lease (which, in the event Tenant or a guarantor is an entity, shall be certified by the highest-ranking financial officer of Tenant or guarantor).

14.10. Construction. The laws of the State in which the Premises is located shall govern the validity, performance, and enforcement of this Lease. The invalidity or unenforceability of any term or condition of this Lease shall not affect the other terms and conditions, and this Lease shall be construed in all respects as if such invalid or unenforceable term or condition had not been contained herein. The captions of this Lease are for convenience only and do not in any way limit or alter the terms and conditions of this Lease. Whenever in this Lease a singular word is used, it also shall include the plural wherever required by the context and vice versa. All references in this Lease to periods of days shall be construed to refer to calendar, not business, days, unless business days are specified. This Lease shall be recorded, but a failure to record shall not affect the effectiveness of this Lease. All Exhibits referenced in this Lease are attached hereto and incorporated herein by reference.

14.11. Force Majeure. Notwithstanding anything to the contrary set forth herein, if Landlord or Tenant is delayed in, or prevented from observing or performing any of its obligations hereunder (other than the payment of any amount of money due hereunder) as the result of: (a) an act or omission of the other party; or (b) any other cause that is not within the control of the delayed or prevented party (including, without limitation, inclement weather, the unavailability of materials, equipment, services or labor, and utility or energy shortages or acts or omissions of public utility providers); then: (A) such observation or performance shall be excused for the period of the delay; and (B) any deadlines for observation or performance shall be extended for the same period.

14.12. Counterparts. This Lease may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute but one and the same instrument.

14.13. Successors and Assigns. Except as otherwise expressly provided herein, this Lease, and all of the terms and conditions hereof, shall inure to the benefit of, and be binding upon, the respective heirs, executors, administrators, successors, and assigns of Landlord and Tenant. All indemnities set forth herein shall survive the Termination Date.

14.14. Authority. Each person executing this Lease represents and warrants that: (a) he or she has been authorized to execute and deliver this Lease by the entity for which he or she is signing; and (b) this Lease is the valid and binding agreement of such entity, enforceable in accordance with its terms.

14.15. Exculpation. If there is a breach or default by Landlord under this Lease, Tenant shall look solely to the equity interest of Landlord in the Premises and any rentals derived therefrom; provided that in no event shall any judgment be sought or obtained against any individual person or entity comprising Landlord.

14.16. Equal Opportunity Obligation. Tenant agrees not to discriminate against any employee or applicant for employment, to be employed by Tenant with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of his or her race, color, religion, sex, handicap, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Lease. Tenant further agrees execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit E.

14.17. Anti-Collusion Requirement. By executing this Lease, Tenant certifies that it has not, nor has any member, employer, representative or agent of its firm, directly or indirectly, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, that it has not received nor paid any sum of money or other consideration for the negotiation and execution of this Lease other than that which is set out herein. Tenant further agrees to execute and deliver an affidavit attesting to the terms of this provision in the form set forth at Exhibit E.

14.18. Early Termination. Landlord shall have the right to terminate this Lease ("Termination Right") with thirty (30) days prior written notice to Tenant ("Termination Notice").

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date set forth above.

"LANDLORD"

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**
by and through the South Bend Redevelopment Commission


Signature

Marcia I. Jones, President
Printed Name and Title

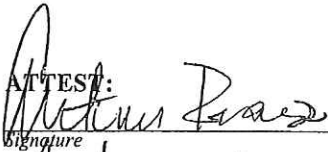
"TENANT"

**GIRBAUD HINES
d/b/a VESUVIO'S PIZZA**

By: 

Name: Girbaud Hines

Title: owner

ATTEST:

Signature

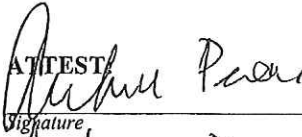
Autumn Psaras
Printed Name and Title

**SONJA YOUNG
d/b/a VESUVIO'S PIZZA**

By: 

Name: Sonja Young

Title: owner

ATTEST:

Signature

Autumn Psaras
Printed Name and Title

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this ____ day of _____, 2011, personally appeared _____, known to be to be the _____, of the South Bend Redevelopment Commission and acknowledged execution of the foregoing Lease on behalf of said Commission.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

Before me, the undersigned, a Notary Public for and in said County and State this ____ day of _____, 2011, personally appeared Girbaud Hines and Sonja Young, known to me to be the individuals who signed the foregoing Lease, and acknowledged execution of the foregoing Lease.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____

EXHIBIT A

Legal Description of Building

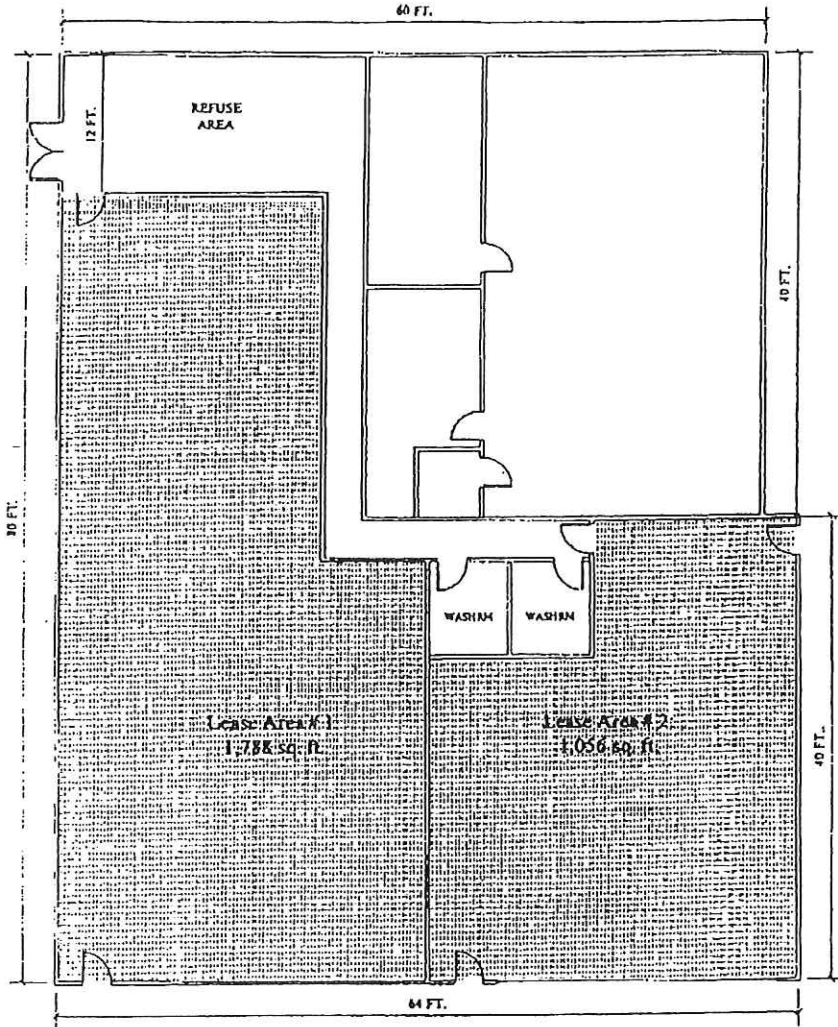
The retail space in the Wayne Street Parking Garage, 117 E. Wayne St., South Bend, IN 46601, which commonly referred to as the Wayne Street Retail, South Bend, Indiana, which is more particularly described as follows:

RETAIL AREA I & II OF WAYNE & ST. JOSEPH PARKING GARAGE
PARCEL ID: 71-08-12-158-014.000-026

EXHIBIT B

Site Plan of Building and Description of Premises

Wayne St. Garage Retail Space: Potential Layout



↑
N
(NOT TO SCALE)

EXHIBIT E

NON-DEBARMENT, NON-COLLUSION AND
NON-DISCRIMINATION AFFIDAVIT

STATE OF INDIANA)
) SS:
COUNTY OF ST. JOSEPH)

The undersigned, being duly sworn on oath, hereby certifies, on behalf of _____,
("Tenant"), as follows:

1. That the undersigned is duly authorized and is competent to certify to the statements contained herein on behalf of Tenant.
2. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
3. That Tenant has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by the firm, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.
4. That Tenant hereby agrees to abide by the following nondiscrimination commitment, which shall be made a part of any contract that Tenant may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions:

Tenant agrees not to discriminate against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

By: _____
Name: _____
Title: _____

Subscribed and sworn to before me this _____ day of _____, 2011.

_____, Notary Public
Resident of St. Joseph County, Indiana

My commission expires: _____

EXHIBIT F
Form of Commencement Certificate
COMMENCEMENT CERTIFICATE

This Commencement Certificate is made this ___ day of _____, 2011, by and between the City of South Bend, Indiana, Department of Redevelopment ("Landlord") and GIRBAUD HINES and SONJA YOUNG, dba VESUVIO'S PIZZA ("Tenant"):

WITNESSETH

Landlord and Tenant are parties to that certain Lease, dated _____, 2011, for certain real estate in South Bend, St. Joseph County, Indiana (the "Lease"). Pursuant to Section 3.1 of the Lease, Landlord and Tenant, intending to be legally bound, hereby agree as follows:

1. The Commencement Date was the ___ day of _____, 2011.
2. The date upon which the Term shall expire shall be the ___ day of _____, 2011.
3. Tenant is in possession of the Premises and is obligated to pay the Rent.

IN WITNESS WHEREOF, the parties hereto have duly executed this Commencement Certificate as of the dates set forth below.

"LANDLORD"

**CITY OF SOUTH BEND, INDIANA,
DEPARTMENT OF REDEVELOPMENT**
by and through the South Bend Redevelopment Commission

Signature

Printed Name and Title

"TENANT"

**GIRBAUD HINES
d/b/a VESUVIO'S PIZZA**

By: _____

Name: _____

Title: _____

ATTEST:

Signature

Printed Name and Title

ATTEST:

Signature

Printed Name and Title

**SONJA YOUNG
d/b/a VESUVIO'S PIZZA**

By: _____

Name: _____

Title: _____

EXHIBIT 10

TO ASSIGNMENT AND ASSUMPTION OF GARAGE-RELATED AGREEMENTS

COMMERCIAL PROPERTY MANAGEMENT AND LEASING AGREEMENT

This Commercial Property Management And Leasing Agreement (this "Agreement") is made effective as of February 1, 2015 (the "Effective Date") by and between the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, of 1400 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601 ("Owner") and Bradley Company, LLC, an Indiana limited liability company, of 112 West Jefferson Boulevard, Suite 300, P.O. Box 540, South Bend, Indiana 46624-0540 ("Agent") (each, a "Party," and collectively, the "Parties").

RECITALS

A. The Parties acknowledge that this Agreement is intended to replace that Commercial Property Management and Leasing Agreement entered into on or about February 1, 2009, between Owner and Agent (as assignee of Robert Bradley Associates, LLC) (the "Prior Agreement");

B. Owner exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being I.C. 36-7-14 (the "Act");

C. Pursuant to its authority under the Act, Owner owns certain real property located in South Bend, Indiana, which it leases for redevelopment purposes in accordance with the Act;

D. Owner desires to obtain, and Agent desires to provide, certain management and leasing services in connection with the Properties (as defined below); and

E. Agent has familiarized itself with the character, location, construction, layout, plan, and operation of the Properties, including but not limited to the electrical, heating, plumbing, air conditioning, and ventilation systems and all other mechanical equipment, and Agent has the professional expertise required to provide the services requested by Owner.

NOW, THEREFORE, in consideration of the mutual promises stated in this Agreement, the Parties agree as follows:

1. **PROPERTIES.** The terms and conditions of this Agreement apply to the following Properties: 117 East Wayne Street – Wayne Street Garage Retail (the "Wayne Street Garage Shops"); 118-131 South Michigan Street – Leighton Plaza Garage Retail/Michigan Street Shops (the "Leighton Plaza Garage Shops"); and 130 South Main Street – Leighton Plaza Courtyard (the "Leighton Plaza Courtyard") (collectively, the "Properties").

2. **APPOINTMENT AND ACCEPTANCE.** Subject to the terms and conditions stated in this Agreement, Owner appoints Agent to serve as Owner's agent in the management and leasing of the Properties. Agent accepts the appointment and acknowledges the fiduciary relationship of trust and confidence created by this Agreement and that Agent owes Owner the duties of loyalty, care, and skill required by Indiana real estate licensing law in furthering the interests of Owner in connection with the Properties and this Agreement. No provision of this

Agreement will be construed to grant to Agent the consent of Owner as to any proposed dual-agency or limited-agency arrangement. In the event Agent desires to enter into such an arrangement with Owner and a prospective lessee, Agent will submit to the Contract Administrator identified in Section 18 a written request for Owner's consent, and Agent will likewise seek the prospective lessee's informed consent as to the proposed arrangement.

3. TERM AND TERMINATION.

(a) The Prior Agreement shall be deemed terminated effective January 31, 2015, and the Parties will have no further obligations under the Prior Agreement. This Agreement exclusively will govern the relationship between the Parties effective as of the Effective Date.

(b) The initial term of this Agreement will commence on the Effective Date and conclude on July 15, 2016. This Agreement will automatically renew for an additional term of one (1) year beginning on July 16, 2016 (the "Initial Renewal Date") and will automatically renew likewise on each succeeding anniversary of the Initial Renewal Date, unless either Party hereto shall provide the other with written notice of its intent not to renew this Agreement a minimum of sixty (60) days prior to the Initial Renewal Date or any anniversary of the Initial Renewal Date.

(c) Upon the occurrence of a default, as defined in Section 17 of this Agreement, the non-defaulting Party may, upon the written notice required by Section 17 to the defaulting Party, terminate this Agreement.

(d) Notwithstanding anything in this Agreement to the contrary, the Parties agree that Owner shall have an absolute right to terminate this Agreement, with respect to any part (or all, as applicable) of the Properties that Owner sells or otherwise transfers to a third party.

(e) Upon expiration or termination of this Agreement, Agent will immediately (a) deliver to Owner all data, documents, files, and work papers of any kind or description possessed by Agent in connection with its management and leasing of the Properties, and (b) upon Owner's request, deliver written notice to any third party identified by Owner indicating that Agent's agency has terminated and, if so instructed by Owner, identifying a replacement agent for the Properties.

4. AGENT'S AUTHORITY; LIMITATIONS; EMERGENCY REPAIRS; FIDELITY INSURANCE.

(a) Agent will act at all times for Owner's best interests and in accordance with its fiduciary duties to Owner. Agent agrees that during the entire term of this Agreement Agent will carry, at Agent's sole cost and expense, fidelity insurance coverage in an amount not less than One Hundred Thousand Dollars (\$100,000.00) and that Agent will provide Owner with a copy of Agent's certificate evidencing said fidelity insurance coverage promptly upon the execution of this Agreement by Agent.

(b) Owner grants Agent, for purposes of carrying out its duties hereunder and engaging vendors to provide necessary services to the Properties, limited authority to act and execute contracts on behalf of, and in the name of, Owner, provided that no such contract may exceed a cost of Three Thousand Dollars (\$3,000.00) or a term of one (1) year. Expenses incurred under a contract entered into by Agent on behalf of Owner pursuant to the foregoing sentence will be paid out of the Operating Account as Property Expenses.

(c) Agent has no authority under this Agreement to bind Owner to any contract exceeding the limitations stated in Section 4(b) of this Agreement. Agent may seek authorization to enter into a contract exceeding the limitations stated in Section 4(b) of this Agreement by submitting to the Contract Administrator identified in Section 18 of this Agreement a written request for authorization. Agent may not enter into any such contract before receiving Owner's consent.

(d) Agent will have no ownership interest of any kind in the Properties, and Agent will not be responsible for the Properties' compliance with the requirements of applicable law, provided, however, that Agent has a duty promptly to notify Owner of any condition or defect in the Properties of which Agent is aware that requires any action to preserve and protect the Properties or to promote and protect the health and safety of any occupant of the Properties.

(e) Agent has no authority or power under this Agreement to make any structural changes in the Properties or to make any major alterations or additions in or to the Properties or equipment therein, unless Agent has first obtained Owner's written consent and instructions concerning the same. Notwithstanding the foregoing sentence, Agent may make emergency repairs to the Properties without first obtaining Owner's consent and instructions in the event such repairs are necessary because of imminent danger to life or property, or to avoid suspension of any necessary service to the Properties, and such repairs must be commenced before Owner is able to provide its consent and instructions.

5. RESPONSIBILITIES OF OWNER. Owner will cooperate with Agent and its personnel to the extent necessary to allow Agent to expeditiously, efficiently, and economically perform its responsibilities under this Agreement. Owner will designate a Contact Person(s) who shall be authorized to speak on behalf of Owner in communications with Agent on any matter relating to this Agreement. Any action taken by Agent at the direction of or pursuant to authorization from a Contact Person shall be considered an Owner-authorized action. Owner agrees that, during the term of this Agreement and for a period of one (1) year after its expiration or termination for any reason, it will not interfere with or attempt to impair the relationship between Agent and any of its employees, nor will Owner directly or indirectly solicit, entice, hire or otherwise induce or cause an employee of Agent to terminate or change such employee's relationship with his employer or attempt to do any such things without prior written consent of Agent.

6. LEASING. Agent will serve as Owner's exclusive leasing agent and will offer for lease the commercial space and other facilities and concessions in the Properties in accordance with the following provisions:

- (a) Agent will follow the Owner's instructions concerning solicitation and selection of tenants, so long as such instructions are lawful.
- (b) Agent is prohibited from discriminating against any prospective tenant because of the race, color, religion, sex, familial status, handicap, age, or national origin of the prospective tenant.
- (c) Agent will show the premises to prospective tenants.
- (d) Agent will solicit, receive and process applications for leases and will develop and maintain a current list of prospective tenants.
- (e) Agent will collect security deposits in accordance with the terms of each tenant's lease and the requirements of applicable law. Agent will deliver each security deposit to Owner (or place the same in an account maintained by Agent for the benefit of Owner) upon receipt. Within fifteen (15) days after a tenant has moved out of leased premises, or at such other time requested by Owner, Agent shall provide Owner with a detailed report of Agent's inspection of the premises, along with a recommendation as to the retention or release of the security deposit applicable to the premises. Agent will keep a list of said security deposits, which Agent will account for in each monthly financial report required under Section 13(c) of this Agreement.
- (f) Agent will keep a copy of each certificate of insurance carried by each tenant leasing premises in the Properties in addition to copies of all other documents a tenant is required to submit under the terms of its lease.
- (g) In advance of issuing any letter of intent or entering into any agreement regarding a potential tenancy, Agent will prepare and submit to Owner an analysis of each lease, including an analysis of Owner's return on investment and benefit to Owner after Agent's commission.
- (h) Owner authorizes Agent to place and remove "For Lease" or "Available" on the Properties. Agent is authorized to advertise the Properties on the internet and in print or other media, as Agent deems advisable, and to take and use photographs and video of the Properties.

7. COLLECTION OF RENT AND OTHER RECEIPTS; OPERATING ACCOUNT.

(a) Agent will make good faith efforts to collect rents, charges, and other amounts due from tenants promptly when such amounts become due.

(b) Agent shall deposit all amounts collected from tenants in a separate account with a bank or other financial institution whose deposits are insured by an agency of the United States Government (the "Operating Account"). The Operating Account shall be maintained by Agent on behalf of Owner, and Owner's funds shall not be commingled with funds of Agent.

(c) In the event the balance of the Operating Account exceeds Ten Thousand Dollars (\$10,000.00) for any period of ten (10) consecutive days, Agent will disburse to Owner from the Operating Account the amount necessary to reduce the balance of the Operating Account to Ten Thousand Dollars (\$10,000.00).

(d) Agent will provide to the Contract Administrator identified in Section 18 of this Agreement copies of all bank statements for the Operating Account within ten (10) business days of receipt by Agent.

8. PAYMENT OF PROPERTY EXPENSES.

(a) Agent may withdraw funds from the Operating Account for the following purposes only: (i) to transfer funds to Owner in accordance with Section 7(c), (ii) to pay Property Expenses, and (iii) to pay other expenses approved in advance in writing by Owner pursuant to Section 4(c) of this Agreement. "Property Expense" means the expenses for the following and any other expense expressly so designated in this Agreement:

- i. Subject to the limitations stated in Section 4(b) of this Agreement, expenses incurred in the management and maintenance of the Properties, specifically including any amounts owed third party vendors engaged to provide services to the Properties and the costs of all supplies, equipment, tools, appliances, materials, and services necessary for proper maintenance;
- ii. Subject to the limitations stated in Section 4(b) of this Agreement, expenses related to utility or communication services provided to the Properties;
- iii. All compensation owed Agent hereunder, specifically including Management Fees, Maintenance Fees, and Commissions;
- iv. Phone calls, faxes, and photocopies made by Agent's employees in connection with Agent's services to Owner under this Agreement;
- v. Handling, shipping, mailing, and reproduction of written or graphical materials related to the Properties;
- vi. Mileage when traveling in connection with the Properties; and
- vii. Fees charged by third parties for rental lock boxes and wire transfers.

(b) On an ongoing basis, Agent shall pay out of the Operating Account all expenses due and payable as Property Expenses. If there exists any actual or anticipated shortfall in the Operating Account such that regular payment of Property Expenses is or will be impossible, Agent will promptly notify Owner of such circumstances and will exercise its best efforts to assist Owner in arranging for prompt and timely payment of any outstanding Property Expenses by alternative means, provided, however, that Agent will not be required to expend or advance its own funds for the payment of Property Expenses or for any other purpose on Owner's behalf. Owner expressly acknowledges it has a duty to keep the Operating Account properly funded so that Agent may make both customary and emergency expenditures for the Property, provided, however, that Agent agrees to notify the Contract Administrator identified in Section 18 of this

Agreement in writing at any time the current balance of the Operating Account is less than Five Thousand Dollars (\$5,000.00) so that Owner may increase said balance, if the Owner deems and increase to be appropriate and necessary.

9. TENANT RELATIONS; ENFORCEMENT OF LEASES.

(a) Agent will maintain good faith communications with the tenants of the Properties to the end that problems affecting the Properties and tenants may be avoided or solved on a mutually satisfactory basis.

(b) Agent will make good faith efforts to secure full compliance by each tenant with the terms of his, her, or its lease and will emphasize voluntary compliance so that involuntary termination of tenancies may be avoided whenever possible consistent with sound management. If Agent determines that any action, including any legal proceeding, is proper or necessary to enforce the terms of a tenant's lease, Agent will promptly inform Owner of the same. Agent will carry out only such enforcement actions as instructed by Owner. Notwithstanding Section 4(b) of this Agreement, Agent may incur only such costs and/or attorneys' fees authorized in advance by Owner in connection with such actions, which will be paid by Agent out of the Operating Account as Property Expenses, unless separately paid by Owner.

10. UTILITIES AND SERVICE. Agent will arrange for all services to the Properties including but not limited to water, electricity, gas, sewage, trash removal, vermin extermination, the plowing of snow and the treatment of ice, landscaping, sweeping, litter control and all related services. Agent is authorized to enter into contracts necessary to secure such utilities and services, at all times subject to the then-applicable budget approved by Owner in accordance with Section 12 of this Agreement (notwithstanding Agent's right to make emergency expenditures to prevent injury to person or damage to the Properties). All expenses incurred for such utilities and services will be paid by Agent out of the Operating Account as Property Expenses, unless separately paid by Owner.

11. ON-SITE PERSONNEL. All on-site personnel, if any, will be employees of Agent, who will hire, pay, supervise and discharge them. Neither Agent nor any of its employees will be deemed to be an employee, partner, or co-venturer of Owner.

12. BUDGETS. The fiscal year for purposes of this Agreement will be from November 1 through October 31. Agent will prepare a recommended annual operating budget for each fiscal year that will begin during the term of this Agreement and submit the same to Owner on or before October 1 of the previous fiscal year. On or before November 1 of the new fiscal year, Owner will review, revise as necessary, and approve the annual operating budget for the Properties. Agent is authorized to expend funds held in the Operating Account to pay Property Expenses up to the maximum limit for each category established in the annual operating budget approved by Owner. Any request for a modification of the approved annual operating budget will be made by Agent to Owner as soon as possible, and Owner may approve or deny such request in its sole discretion.

13. FINANCIAL RECORDS AND REPORTS. Agent will have the following responsibilities with respect to financial records and reports relating to the Properties:

(a) Agent will establish and maintain a comprehensive system of records, books, and accounts in a manner satisfactory to Owner and subject to applicable state law. All records, books, and accounts will be subject to examination at reasonable hours by Owner.

(b) With respect to each fiscal year ending during the term of this Agreement, Agent will cause compiled annual financial reports concerning the Properties to be prepared and submitted to Owner within sixty (60) days after the end of the fiscal year.

(c) By the twentieth (20th) day of each month, Agent will furnish Owner with a statement of receipts and disbursements during the previous month, a schedule of accounts receivable and payable, and reconciled bank statements for the Operating Account and security deposit account as of the end of the previous month. Each report will contain a discussion of pertinent activity and any significant variances from the annual operating budget and the need for Owner's consideration of a revision of budgeted expenses.

14. INSURANCE. At Owner's option, Owner may instruct Agent to cause certain kinds and amounts of insurance covering the Properties to be placed and maintained in effect. Any premiums for such insurance maintained by Agent on behalf of Owner will be paid by Agent as Property Expenses, unless separately paid by Owner. Agent will investigate and report in writing to the Contractor Administrator and the South Bend Legal Department, as identified in Section 18 of this Agreement, concerning all accidents, claims, and potential claims for damages relating to the Properties and will cooperate with Owner and/or Owner's insurer(s) in connection therewith.

15. INDEMNIFICATION. Owner agrees to assume all liability for and expressly indemnify and hold Agent harmless from any and all claims, losses, actions, demands, liabilities, damages, judgments, fines, penalties, forfeitures, settlements, expenses, attorney's fees and costs, arising out of any injury, death, loss, property damage, damage to the environment, and instance of non-compliance with any federal, state or local law, regulation or order (collectively "Claims") sustained or alleged to have been sustained in connection with or in any way related to (a) the Property, or (b) Agent's actions or omissions, or the actions or omissions of Agent's employees, contractors, agents, servants and subcontractors with respect to the Property or on behalf of Owner. Owner's assumption and indemnification obligations stated in this Section 15 (a) include a duty to pay all costs incurred by Agent in connection with defending and satisfying Claims, including, without limitation, attorney's fees for counsel employed to represent either Party; (b) extend to Agent's employees, independent contractors and agents and their costs for attorney's fees; (c) apply to Claims by a party and all third parties; and (d) shall survive for one (1) year after any expiration date and/or termination of this Agreement. However, Owner's assumption and indemnification obligations stated in this Section 15 shall not extend to Claims arising out of Agent's willful misconduct or gross negligence. Agent shall not be required to defend or to employ counsel to represent Owner in the defense of any Claim.

16. AGENT'S COMPENSATION. Agent will be compensated for services rendered to Owner under this Agreement in accordance with this Section 16.

(a) Agent will collect, and is entitled to, a monthly management fee (the "Management Fee") paid out of the Operating Account as a Property Expense. Such Management Fee will be payable not later than the fifth (5th) day of each month for the preceding month and will be equal to the sum of the following parts:

- i. for the Wayne Street Garage Shops, \$200.00 or 5% of Gross Revenues collected with respect to the Wayne Street Garage Shops during the preceding month, whichever is greater; plus
- ii. for the Leighton Plaza Garage Shops, \$625.00 or 5% of Gross Revenues collected with respect to the Leighton Plaza Garage Shops during the preceding month, whichever is greater; plus
- iii. for the Leighton Plaza Courtyard, \$75.00.

As used in this Section, "Gross Revenues" means the total of all base rents (excluding payments for common expenses, taxes, insurance, and the like) actually collected by Agent on behalf of Owner during the applicable period.

(b) For maintenance work completed by Agent's employees, Agent will collect, and is entitled to, maintenance fees (the "Maintenance Fees") at the hourly rates stated in Exhibit A attached hereto. Agent will submit an invoice for the Maintenance Fees on a recurring basis, which will be paid out of the Operating Account as a Property Expense, unless other arrangements are made in advance. Time spent by maintenance technicians outside the hours from 7:30 AM to 4:30 PM, Monday through Friday, will be billed at the Overtime Rates stated in Exhibit A.

(c) Agent will collect leasing commissions (the "Commissions") on the following terms:

- i. For new leases in which Agent represents both Owner and the tenant (or in which the tenant does not utilize the services of any licensed real estate broker), Agent's Commission will be equal to 8% of the gross base rent (excluding payments for common expenses, taxes, insurance, and the like) payable to Owner over the initial term of the lease.
- ii. For new leases in which the tenant is represented by a real estate broker other than Agent or any individual sales professional(s) of Agent, Agent's Commission will be equal to 10% of the gross rental income scheduled over the initial term of the lease.

- iii. For lease renewals, lease expansions, and lease extensions negotiated by Agent, Agent's Commission will be equal to 3.5% of the gross rental income collected during the term of the renewal, expansion, or extension.
- iv. Agent will collect its Commission as a Property Expense paid out of the Operating Account. One-half of the Commission will be earned upon execution of a new lease, a lease renewal, a lease expansion, or a lease extension by a tenant, and one-half of the Commission will be earned upon commencement of the same. Once earned, each portion of a Commission may be paid immediately.

In the event the Operating Account balance is insufficient to fund any fee or reimbursement owed Agent hereunder, Owner will be responsible for promptly paying such amounts directly to Agent.

17. DEFAULT. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement in accordance with Section 3(c), or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 17, then no default shall exist and the noticing Party shall take no further action.

18. NOTICES. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Agent: Bradley Company, LLC
112 W. Jefferson Blvd., Suite 300
P.O. Box 540
South Bend, IN 46624
Attn: Corporate Counsel

Owner: South Bend Redevelopment Commission
1400 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Brock Zeeb (the "Contract Administrator")

With a copy to: South Bend Legal Department
1200 S. County-City Building
227 W. Jefferson Blvd.
South Bend, IN 46601
Attn: Corporation Counsel

19. AUTHORITY. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

20. ASSIGNMENT. Agent may not assign its rights or obligations under this Agreement to any third party without the prior written consent of Owner; provided, however, that Agent may assign this Agreement to a purchaser of all (or substantially all) of Agent's assets upon sixty (60) days' advance written notice to Owner.

21. INTERPRETIVE PROVISIONS.

(a) This Agreement constitutes the entire agreement between Owner and Agent with respect to the management of the Properties, and no representation, promise, or inducement not stated in this Agreement will be binding upon the Parties. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by both Parties' authorized representatives.

(b) This Agreement may be executed in several counterparts, which when taken together shall constitute a complete original agreement. Facsimile signatures will be deemed original signatures.

(c) This Agreement shall be binding upon the respective successors and assigns of each Party.

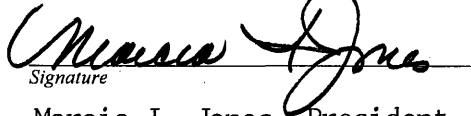
(d) This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date.

OWNER:

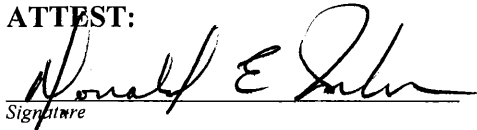
**CITY OF SOUTH BEND,
DEPARTMENT OF REDEVELOPMENT**


Signature

Marcia I. Jones, President
Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

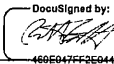

Signature

Donald E. Inks, Secretary
Printed Name and Title

South Bend Redevelopment Commission

AGENT:

Bradley Company, LLC, an Indiana limited liability company

By:  _____
DocuSigned by:
460E047FF2E044A

Bradley J. Toothaker
Its: President & CEO

EXHIBIT A

Maintenance Rates

<u>Service</u>	<u>Regular Rate</u>	<u>Overtime Rate*</u>
Janitorial	\$35.50	\$53.25
Weeding	\$35.50	\$53.25
Grounds trash pick up	\$35.50	\$53.25
Inspections	\$35.50	\$53.25
Carpentry	\$52.50	\$78.75
Painting	\$52.50	\$78.75
Snow Shoveling	\$35.50	\$53.25
Electrical	\$69.50	\$104.25
Plumbing	\$69.50	\$104.25

*See Section 16(b).