



RETAIL LEASE AGREEMENT
(Multi-Tenant - Triple Net)
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THIS RETAIL LEASE AGREEMENT (the "Lease") is entered into and effective as of this ____ day of ____, 20____, between ____, a(n) ____ ("Landlord"), and ____, a(n) ____ ("Tenant"). Landlord and Tenant agree as follows:

1. LEASE SUMMARY.

- a. **Tenant's Trade Name.** _____.
- b. **Leased Premises.** The leased commercial real estate (the "Premises") (i) consists of an agreed gross leasable area ("GLA") of ____ square feet as outlined on the floor plan attached as Exhibit A, (ii) is located on the land legally described on attached Exhibit B; and (iii) is commonly known as ____ (suite number and address). The Premises do not include, and Landlord reserves, the exterior walls and roof of the building in which the Premises are located (the "Building"), the land beneath the Building, and the pipes and ducts, conduits, wires, fixtures, and equipment above the suspended ceiling, and the structural elements of the Building. The Building, the land upon which it is situated, all other improvements located on such land, and all Common Areas appurtenant to the Building are referred to as the "Property." The Building and all other buildings on the Property as of the date of this Lease consist of a total agreed GLA of ____ square feet. GLA, as used herein, shall mean: 1) as to each building or part thereof within the Property, including the Premises, the actual number of square feet of ground floor space measured to the exterior faces of exterior walls and to the center of party walls, including columns, stairs, elevators and escalators, but excluding exterior ramps and loading docks; and 2) the actual number of square feet of any area in the Property exclusively used by a particular tenant, measured from the exterior faces of outside walls, fences, or boundary markers.
- c. **Lease Commencement Date.** The term of this Lease shall commence upon (check one):
 Substantial completion of (choose one)
 Landlord's Work, or
 Tenant's Work, as further described in the attached Exhibit C ("Work Letter"), but in no event later than ____, 20____
 ____, 20____
(the "Commencement Date").
- d. **Lease Termination Date.** The term of this Lease shall terminate at midnight on the last day of the ____ full month following the Commencement Date, or such earlier or later date as otherwise provided in this Lease (the "Termination Date"). Tenant shall have no right or option to extend this Lease, unless otherwise set forth in a rider attached to this Lease (e.g., Option to Extend Rider, CBA Form OR-ID).
- e. **Base Rent.** The monthly base rent shall be (check one): \$____ or according to the Rent Rider attached hereto ("Base Rent"). Rent shall be payable by wire transfer or at Landlord's address shown below in Section 1(j), or such other place designated in writing by Landlord.
- f. **Percentage Rent.** Tenant's payment of percentage rent shall be calculated as follows (the "Percentage Rent"):

<u>Period:</u>	<u>Percentage Rent:</u>
_____	_____ % of Gross Sales exceeding a breakpoint of \$_____.
_____	_____ % of Gross Sales exceeding a breakpoint of \$_____.
_____	_____ % of Gross Sales exceeding a breakpoint of \$_____.



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_____ % of Gross Sales exceeding a breakpoint of \$_____.
_____ % of Gross Sales exceeding a breakpoint of \$ _____.

- g. **Prepaid Rent.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$_____ as prepaid Rent, to be applied to the Base Rent due for months _____ through _____ of the Lease.
- h. **Security Deposit.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$_____ to be held as a security deposit pursuant to Section 5 below. The security deposit shall be in the form of (check one): cash, check or wire transfer, or letter of credit according to the Letter of Credit Rider (CBA Form LCR-ID) attached hereto.
- i. **Permitted Use.** The Premises shall be used only for _____, subject to applicable zoning and other laws, and for no other purpose without the prior written consent of Landlord (the "Permitted Use").

j. **Notice and Payment Addresses.**

Landlord:

Email: _____

Tenant:

Email: _____

- k. **Tenant's Pro Rata Share.** Landlord and Tenant agree that Tenant's "Pro Rata Share" is _____%, based on the ratio of the GLA of the Premises to the sum of the GLA of the Building and the GLA of all other buildings on the Property as of the date of this Lease. Any adjustment to the GLA measurements of the Premises or Building or other buildings will be reflected in an adjustment to the Base Rent and Tenant's Pro Rata Share. Tenant acknowledges that the GLA of certain other tenants at the Property may be excluded from the total GLA of the Property for purposes of calculating Tenant's Pro Rata Share of Common Area Charges or other expenses.

2. PREMISES.

- a. **Lease of Premises.** Landlord leases to Tenant, and Tenant leases from Landlord the Premises upon the terms specified in this Lease.
- b. **Acceptance of Premises.** Except as specified elsewhere in this Lease, Landlord makes no representations or warranties to Tenant regarding the Premises, including the structural condition of the Premises or the condition of all mechanical, electrical, and other systems on the Premises. Except for any tenant improvements to be completed by Landlord as described in the Work Letter attached as Exhibit C ("Landlord's Work"), Tenant shall accept the Premises and its improvements in their

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respective AS-IS, WHERE-IS condition, and shall further be responsible for performing any work necessary to bring the Premises into a condition satisfactory to Tenant. By signing this Lease, Tenant acknowledges that it has had an adequate opportunity to investigate the Premises; acknowledges responsibility for making any corrections, alterations and repairs to the Premises (other than Landlord's Work); and acknowledges that the time needed to complete any such items shall not delay the Commencement Date. To the fullest extent permitted by law, Tenant hereby waives any rights of Tenant arising under Section 6-320 of Idaho Code.

- c. **Tenant Improvements.** The Work Letter attached as Exhibit C sets forth all Landlord's Work, if any, and all tenant improvements to be completed by Tenant ("Tenant's Work"), if any, that will be performed on the Premises. Responsibility for design, payment and performance of all such work shall be as set forth in the Work Letter.

3. TERM. The term of this Lease shall commence on the Commencement Date and shall end on the Termination Date, subject to any option to extend the term of this Lease set forth in a rider attached hereto (the "Term").

- a. **Early Possession.** Tenant shall have reasonable access to the Premises during the ____ days ((0) days if not filled in) preceding the Commencement Date for the sole purpose of installing Tenant's furniture, telecommunications, fixtures, telephone systems and computer cabling and the performance of Tenant's Work, if any. Such access shall be fully coordinated with Landlord in advance and Tenant shall not interfere with Landlord's Work. All of the terms and conditions of this Lease, including Tenant's insurance and indemnification obligations, shall apply during such time, except for payment of Base Rent. If Landlord permits Tenant to possess or occupy the Premises prior to the Commencement Date specified in Section 1, then such early occupancy shall not advance the Commencement Date or the Termination Date set forth in Section 1.

- b. **Delayed Possession.** Landlord shall act diligently to make the Premises available to Tenant; provided, however, neither Landlord nor any agent or employee of Landlord shall be liable for any damage or loss due to Landlord's inability or failure to deliver possession of the Premises to Tenant as provided in this Lease. If possession is delayed, the Commencement Date set forth in Section 1 shall also be delayed. If Landlord does not deliver possession of the Premises to Tenant within ____ days ((60) days if not filled in) after the Commencement Date specified in Section 1 (check one): Tenant may elect to cancel this Lease by giving written notice to Landlord no later than ____ (10) days if not filled in) after such time period ends, or then all Base Rent and Additional Rent shall be abated for each one (1) day after the Commencement Date during which possession of the Premises has not been delivered to Tenant. If Tenant gives such notice of cancellation, as Tenant's sole and exclusive remedy, the Lease shall be cancelled, all prepaid Rent and security deposits shall be refunded to Tenant, and neither Landlord nor Tenant shall have any further obligations to the other.

Notwithstanding anything in this Section 3(b) to the contrary, to the extent that any portions of the Landlord's Work or Tenant's Work have not been sufficiently completed in time for the Tenant to occupy or take possession of the Premises on the Commencement Date due to the failure of Tenant to fulfill any of its obligations under this Lease ("Tenant Delays"), the Lease Term and Tenant's obligation to pay Base Rent and Additional Rent shall nevertheless commence on the Commencement Date set forth in Section 1, or upon the date that the Commencement Date would have occurred but for the Tenant Delays. The first "Lease Year" shall commence on the Commencement Date and shall end on the date which is 12 months from the end of the month in which the Commencement Date occurs. Each successive Lease Year during the Term shall be 12 months, commencing on the first day following the end of the preceding Lease Year.

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4. RENT.

- a. **Payment of Rent.** Tenant shall pay Landlord without notice, demand, deduction or offset, in lawful money of the United States, the monthly Base Rent stated in Section 1 in advance on or before the first day of each month during the Term beginning on (check one): the Commencement Date, or _____ (if no date specified, then on the Commencement Date), and shall also pay any other additional payments due to Landlord (“Additional Rent”), including Percentage Rent and Common Area Charges (as such terms are defined herein, and together with Base Rent and Additional Rent, the “Rent”) when required under this Lease. Payments for any partial month during the Term shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall be also constitute Additional Rent, and upon Tenant’s failure to pay any such costs, charges or expenses, Landlord shall have the same rights and remedies as otherwise provided in this Lease for the failure of Tenant to pay Rent.
- b. **Triple Net Lease.** This Lease is what is commonly called a “Net, Net, Net” or “triple-net” Lease, which means that Landlord shall receive all Base Rent free and clear of any and all other impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to Base Rent, Tenant shall pay to the parties respectively entitled thereto, or satisfy directly, all Additional Rent and other impositions, insurance premiums, repair and maintenance charges, and any other charges, costs, obligations, liabilities, requirements, and expenses, including without limitation the Common Area Charges described in Section 8, which arise with regard to the Premises or may be contemplated under any other provision of the Lease during its term, except for costs and expenses expressly made the obligation of Landlord in this Lease.
- c. **Late Charges; Default Interest.** If any sums payable by Tenant to Landlord under this Lease are not received within five (5) business days after their due date, Tenant shall pay Landlord an amount equal to the greater of \$100 or (5%) of the delinquent amount for the cost of collecting and handling such late payment in addition to the amount due and as Additional Rent. All delinquent sums payable by Tenant to Landlord and not paid within five (5) business days after their due date shall, at Landlord’s option, bear interest at the rate of (15%) per annum, or the highest rate of interest allowable by law, whichever is less (the “Default Rate”). Interest on all delinquent amounts shall be calculated from the original due date to the date of payment.
- d. **Less Than Full Payment.** Landlord’s acceptance of less than the full amount of any payment due from Tenant shall not be deemed an accord and satisfaction or compromise of such payment unless Landlord specifically consents in writing to payment of such lesser sum as an accord and satisfaction or compromise of the amount which Landlord claims. Any portion that remains to be paid by Tenant shall be subject to the late charges and default interest provisions of this Section 4.
- e. **Percentage Rent.** Tenant shall pay to Landlord Percentage Rent at the rate specified in Section 1(f) above.
- f. **Gross Sales Defined.** “Gross Sales” shall mean the total amount of sales, at the actual sale price, whether for cash, credit or otherwise, of all goods and services and all other income and receipts whatsoever of all business conducted at or on the Premises, including, without limitation: (i) mail, catalogue, telephone, facsimile, internet, electronic, video and computer orders, and orders by means of other technology-based systems whether now existing or hereafter developed, and other orders whether or not received, placed or filled at the Premises, (ii) deposits not refunded to purchasers, (iii) orders taken at the Premises although filled elsewhere, (iv) gross receipts from vending and game machines, whether coin-, card-, computer- (including mobile phone), or credit card-operated or otherwise (which terms shall not to be construed to authorize Tenant to install vending or game machines unless specifically set forth elsewhere in this Lease), (v) sale price of gift and merchandise

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certificates, (vi) payments from third-parties for shelf or advertising space at the Premises, (vii) the full value of all consideration received other than money, (viii) all other gross income or receipts from any business or operation at or on the Premises, and (ix) Gross Sales (as defined in this subsection) by any subtenant, concessionaire or licensee. Gross Sales shall not include, but as part of Tenant's Records (as such term is defined below), Tenant shall keep separate records of: (a) returns to shippers or manufacturers, (b) proceeds from the sale of used trade fixtures, (c) any cash or credit refunds made upon any sale made at or on the Premises where the merchandise is returned by the purchaser, (d) any sales or excise tax imposed by any governmental authority (provided, however, Tenant shall not deduct from Gross Sales any income or franchise tax; capital stock tax; tax based upon gross receipts, assets or net worth; or similar tax), and (e) the exchange of merchandise between the stores and warehouses of Tenant, if any, where such exchange of merchandise is made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale that has previously been made at or on the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would be made at or on the Premises. No deduction from Gross Sales shall be allowed for any uncollected or uncollectible amounts or reserves therefore, nor for costs of products or services sold, or other costs, charges or expenses of purchasing, financing, selling, transportation, overhead or taxes except as expressly provided herein. Trade-ins shall not reduce the sale price of the item sold for purposes of calculating Gross Sales. Layaway, credit and installment sales shall be included in the month in which the goods or services are delivered or rendered, or in which any portion of the payment therefore is received, whichever first occurs, regardless of when or whether full payment is received.

- g. **Gross Sales Records.** Tenant shall prepare, preserve and maintain, and/or shall cause any subtenant, licensee or concessionaire at or on the Premises to prepare, preserve and maintain, records of Gross Sales for at least three (3) years after the expiration of the respective Lease Year (including after the expiration or earlier termination of the Term); such records shall be kept in accordance with generally accepted accounting principles.
- h. **Gross Sales Statements.** Within 15 days after the end of each calendar month of the Term, Tenant shall provide Landlord with a monthly statement of Gross Sales signed by an authorized representative of Tenant, including copies of any sales or use tax returns or statements filed with or prepared for local or state authorities during such period, which shall show Gross Sales and an itemization of any exclusions or deductions therefrom for such month, as well as year-to-date amounts for the current Lease Year. Tenant shall pay Percentage Rent on a monthly basis commencing with the first month in each year in which Gross Sales for such Lease Year exceed the applicable breakpoint set forth in Section 1 above. Tenant shall pay any Percentage Rent due for a calendar month simultaneously with its submission of the monthly statement described hereunder. In addition to submission of regular monthly statements, within 60 days after the end of each Lease Year, Tenant shall provide an annual statement certified to be true, complete and correct by an independent certified public accountant reasonably satisfactory to Landlord, or at Tenant's option, by Tenant's chief financial officer, showing the total amount of Gross Sales for such Lease Year. If such annual statement shows that Tenant underpaid Percentage Rent for the Lease Year, Tenant shall pay the additional amount simultaneously with Tenant's submission of the yearly statement, and if the yearly statement shows that Tenant overpaid Percentage Rent, Landlord shall credit or refund to Tenant the amounts overpaid. Tenant shall require that any subtenant, licensee or concessionaire furnish similar statements.
- i. **Audits.** Landlord may from time to time (but not more frequently than once each calendar year), upon at least 10 days' notice to Tenant, cause a complete audit or examination of Tenant's Records and such books and records of any subtenant, licensee or concessionaire for all or any part of the three (3) Lease Years immediately preceding such notice. During the audit or examination, Landlord or its authorized representatives shall have full access to Tenant's Records and the right to require that

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Tenant, its agents and employees, furnish information or an explanation of the information as may be necessary for a proper audit and examination. If an audit or examination discloses that any of Tenant's statements of Gross Sales understate Gross Sales made during any Lease Year by three percent (3%) or more, or if Tenant failed to furnish Landlord any monthly statements of Gross Sales during any Lease Year or failed to prepare and maintain Tenant's Records as required by this Lease, Tenant shall pay to Landlord the cost of the audit or examination, including travel and related expenses, and any deficiency in Percentage Rent, including interest at the Default Rate. Landlord's acceptance of Percentage Rent during the Term of the Lease is without prejudice to the Landlord's rights to audit, examination and other rights provided hereunder.

j. **Breakpoint Prorations.** The applicable breakpoint for any partial Lease Year shall be prorated on a per diem basis. If Base Rent is abated or reduced for any reason during any Lease Year, the breakpoint for such period shall be proportionately reduced. If two breakpoint amounts are in effect during different portions of a Lease Year, the breakpoint for such Lease Year shall be the weighted average of both breakpoint amounts, determined as follows: (i) each breakpoint amount shall be multiplied by the number of days during which it is in effect, and then divided by 365 days, and (ii) the amounts so computed shall be added to obtain the weighted average breakpoint for such Lease Year.

5. **SECURITY DEPOSIT.** Upon execution of this Lease, Tenant shall deliver to Landlord the security deposit specified in Section 1 above. Landlord's obligations with respect to the security deposit are those of a debtor and not of a trustee, and Landlord may commingle the security deposit with its other funds. If Tenant defaults in the performance of any covenant or condition of this Lease, Landlord shall have the right, but not the obligation, to use or retain all or any portion of the security deposit for the payment of: (i) Base Rent, Additional Rent, or any other sum as to which Tenant is in default; or (ii) the amount Landlord spends or may become obligated to spend, or to compensate Landlord for any losses incurred by reason of Tenant's default. Tenant acknowledges, however, that the security deposit shall not be considered as a measure of Tenant's damages in case of default by Tenant, and any payment to Landlord from the security deposit shall not be construed as a payment of liquidated damages for Tenant's default. If at any time during the Term of the Lease the security deposit delivered by Tenant becomes insufficient to cover the amounts required under this Section 5, whether or not due to Landlord's application of all or a portion of the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefor by Landlord, deposit with Landlord an amount sufficient to replenish the security deposit to the amount required in Section 1 above. If Tenant is not in default of any covenant or condition of this Lease at the end of the Term, Landlord shall return any unused portion of the security deposit without interest within 30 days after the surrender of the Premises by Tenant in the condition required by Section 13 of this Lease. To the fullest extent permitted by law, Tenant hereby waives any rights of Tenant arising under Section 6-321 of Idaho Code.

6. **USES.** The Premises shall be used only for the Permitted Use, and for no other business or purpose without the prior written consent of Landlord. Tenant shall use the Premises continuously and uninterrupted under the Trade Name set forth in Section 1 above, only, and for no other purpose or use whatsoever. Tenant shall not do or permit any act to be done on or around the Premises that violates any law, ordinance, governmental regulation or order or that will increase the existing rate of insurance on the Premises, the Building, or the Property or cause the cancellation of any insurance on the Premises, the Building, or the Property. Tenant shall not commit or allow to be committed any waste upon the Premises, or any public or private nuisance. Tenant shall not do or permit anything to be done on the Premises, the Building, or the Property which will obstruct or interfere with the rights of other tenants or occupants of the Property, or their employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees or to injure or annoy such persons.

Tenant shall: (i) remain open to the public for business at least six (6) days per week and at least eight (8) hours per day; (ii) adequately staff its store with adequate personnel to handle the maximum business activity

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and carry sufficient stock of merchandise of such amount, character and quality to support the same; (iii) keep the display windows and signs, if any, well-lit during the hours from sundown to midnight; (iv) maintain the Premises and exterior and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (v) warehouse, store or stock only such merchandise as Tenant intends to offer for sale at retail; and (vi) use for office or other non-retail purposes only such space as is reasonably required for Tenant's business. Tenant shall not, without Landlord's prior written consent, which consent Landlord may withhold in its sole discretion: (a) conduct any auction or bankruptcy sales in or around the Premises; (b) conduct any fire sale except as a result of a fire on the Premises; (c) conduct any "going out of business" sale or close-out sale except at the expiration of the Lease term; (d) sell any so-called "surplus", "Army and Navy", or "secondhand" goods, as those terms are generally used on the Commencement Date and from time to time thereafter; (e) install or erect any satellite dish or other roof-mounted or building-mounted equipment; (f) install any Automated Teller Machines ("ATMs"), cash machines, lottery machines, appliances, video games, arcade games, pinball machines, vending machines, or pay telephones in or about the Premises; or (g) bring or keep on the Premises any item or thing or permit any act thereon which is prohibited by any law, statute, ordinance or governmental regulation now in force or hereinafter enacted or promulgated, or which is prohibited by any standard form of fire insurance policy.

Furthermore, no portion of the Premises shall be used for (check all that apply): the handling or sale of alcoholic beverages unless expressly permitted elsewhere in this Lease; the handling or sale of gasoline, petroleum products, tires, or automobile accessories; a beauty shop, nail shop, or salon; the handling or sale of wigs or hair pieces; a theater; a place of amusement or recreation including the use of video, electronic, mechanical, or other gaming machines other than as offered for sale (except for small numbers of hand-held, non-arcade game machines for the convenience of Tenant's customers); a massage parlor; adult bookstore or adult video store; a health spa, dance studio or aerobic studio; a church or other religious institution; a day care center; a warehouse or storage facility; a car wash or sales, maintenance or service facility for motorized conveyances; or a training or educational facility.

(check if applicable) Neither Tenant nor any person who controls or is controlled by Tenant shall own, operate or hold interest in a business that is similar or related to that operated by Tenant within the Premises, or within a radius of three (3) miles in any direction from the exterior boundary of the Property. As used in this Lease, the word "person" means any natural person or persons in individual or representative capacities and any entity or entities of any kind whatsoever, including without limitation, corporations, partnerships and associations, limited liability companies, or any combination of persons or entities. Without limiting Landlord's remedies, in the event Tenant should violate this covenant, Landlord may, at its option and for so long as such violative business is being operated, include all gross sales generated by such violative business in calculating the Gross Sales transacted by Tenant from the Premises for the purpose of computing Percentage Rent.

7. COMPLIANCE WITH LAWS. Landlord represents to Tenant that, as of the Commencement Date, to Landlord's actual knowledge, but without duty of investigation, and with the exception of any Tenant's Work, the Premises comply with all applicable laws, rules, regulations, and orders, including without limitation, the Americans With Disabilities Act, and Landlord shall be responsible to promptly cure at its sole cost any noncompliance which existed on the Commencement Date. Tenant shall be responsible for complying with all laws applicable to the Premises as a result of the Permitted Use, and Tenant shall be responsible for making any changes or alterations as may be required by law, rule, regulation, or order for the Permitted Use at its sole cost and expense. Otherwise, if changes or alterations are required by law, rule, regulation, or order unrelated to the Permitted Use, Landlord shall make such changes and alterations at its expense.

8. COMMON AREA CHARGES.

a. **Definition.** As used herein, "Common Area Charges" shall mean all costs of operating, maintaining and repairing the Premises, the Building and the Property and all Common Areas thereon, determined in accordance with generally accepted accounting principles, and including without limitation the

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following: all taxes and assessments (including, but not limited to, real and personal property taxes and assessments, local improvement district assessments and other special purpose assessments, and taxes on rent or gross receipts); insurance premiums paid by Landlord and (to the extent used) deductibles for insurance applicable to the Property; water, sewer and all other utility charges (other than utilities separately metered and paid directly by Tenant or other tenants); janitorial and all other cleaning services; refuse and trash removal; supplies, materials, tools, and equipment used in the operation, repair, and maintenance of the Property; refurbishing and repainting; carpet replacement; to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service, repair and replacement when necessary; elevator service and repair and replacement of elevators when necessary; pest control; lighting systems, fire detection and security services; landscape maintenance; management (fees and/or personnel costs); parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; repair, maintenance, and, where reasonably required, replacement of signage; amortization of capital improvements as Landlord may in the future install to comply with governmental regulations and rules or undertaken in good faith with a reasonable expectation of reducing Common Area Charges (the useful life of which shall be a reasonable period of time as determined by Landlord); costs of legal services (except those incurred directly relating to a particular occupant of the Building); and accounting services, labor, supplies, materials and tools. Common Area Charges shall not include: Landlord's income tax or general corporate overhead, depreciation or amortization on the Building or equipment therein; loan or ground lease payments; real estate broker's commissions; capital improvements to or major repairs of the Building shell (i.e., the Building structure, exterior walls, roof, and structural floors and foundations), except to the extent expressly permitted above; or any costs regarding the operation, maintenance and repair of the Premises, the Building, or the Property paid directly by Tenant or other tenants in the Building, or otherwise reimbursed to Landlord, or other costs for which another party is required to pay Landlord (except as part of common area charge recoveries under other tenant leases) so that Landlord shall not recover any item of cost more than once. If Tenant is renting a pad separate from any other structures on the Property for which Landlord separately furnishes the services described in this paragraph, then the term "Common Area Charges" shall not include those costs of operating, repairing, and maintaining the enclosed mall which can be separately allocated to the tenants of the other structures. Common Area Charges which cannot be separately allocated to the tenants of other structures may include but are not limited to: insurance premiums; taxes and assessments; management (fees and/or personnel costs); exterior lighting; parking lot, road, sidewalk and driveway patching, resurfacing and maintenance; snow and ice removal; and costs of legal services and accounting services. Common Area Charges of a capital nature will be amortized over a reasonable period.

- b. **Calculation and Payment.** Tenant shall pay to Landlord Common Area Charges pursuant to the following procedure:
- (i) Landlord shall provide to Tenant, on or before the Commencement Date, a good faith estimate of annual Common Area Charges for the calendar year in which the Commencement Date occurs. Landlord shall also provide to Tenant, as soon as possible following the first day of each succeeding calendar year, a good faith estimate of Tenant's annual Pro Rata Share of Common Area Charges for the then-current year.
 - (ii) Each estimate of Tenant's annual Pro Rata Share of Common Area Charges determined by Landlord, as described above shall be divided into 12 equal monthly installments. Tenant shall pay to Landlord such monthly installment of Common Area Charges with each monthly payment of Base Rent. In the event the estimated amount of Tenant's Pro Rata Share of Common Area Charges has not yet been determined for any calendar year, Tenant shall pay the monthly installment in the estimated amount determined for the preceding calendar year

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until the estimate for the current calendar year has been provided to Tenant. When the estimate for the current calendar year is received, Tenant shall then pay any shortfall or receive a credit for any surplus for the preceding months of the current calendar year and shall, thereafter, make the monthly installment payments in accordance with the current estimate.

- (iii) As soon as reasonably possible following the end of each calendar year during the Term, Landlord shall provide to Tenant a statement (the "Common Area Charges Statement") setting forth the amount of Common Area Charges actually incurred and the amount of Tenant's Pro Rata Share of Common Area Charges actually payable by Tenant with respect to such calendar year. In the event the amount of Tenant's Pro Rata Share of Common Area Charges exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following receipt of the Common Area Charges Statement. In the event the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Common Area Charges actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Common Area Charges payable by Tenant pursuant to this Section, or if the Term of this Lease has expired, the excess shall be refunded to Tenant within 30 days after delivery of such Common Area Charges Statement.
- (iv) If Tenant disputes any amount shown on the Common Area Charges Statement, Tenant may audit Landlord's books and records for the calendar year covered by such Common Area Charges Statement upon written notice to Landlord given within 90 days after Tenant's receipt of such Common Area Charges Statement. If Tenant fails to provide notice of dispute within such 90-day period, the Common Area Charges Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within 60 days after Tenant's request. If Landlord concurs with the audit results, and (x) if the audit reveals that Tenant's Pro Rata Share of Common Area Charges exceeds the sum of the monthly installments actually paid by Tenant for such calendar year, Tenant shall pay to Landlord the difference within 30 days following completion of the audit; or (y) if the audit reveals that the sum of the monthly installments actually paid by Tenant for such calendar year exceeds the amount of Tenant's Pro Rata Share of Common Area Charges actually due and owing, the difference shall be applied as a credit to Tenant's future Pro Rata Share of Common Area Charges payable by Tenant pursuant to this Section, or if the term has expired, the excess shall be refunded to Tenant within 30 days after completion of the audit. If Landlord does not concur with the results of Tenant's audit, the parties shall within twenty (20) days thereafter agree on a neutral auditor who shall complete an audit within thirty (30) days after selection, and the decision of the neutral auditor shall be binding on the parties. The parties shall share evenly in the costs of any such neutral auditor. Landlord and Tenant shall cooperate as may be reasonably necessary in order to facilitate the timely completion of any audit. Nothing in this Section shall in any manner modify Tenant's obligations to make payments as and when provided under this Lease.

9. **UTILITIES AND SERVICES.** Landlord shall provide the following services for the Premises seven (7) days per week, twenty-four (24) hours per day, the cost of which shall be included in the Common Area Charges to the extent not separately metered to and exclusively serving the Premises (with the costs of such separately metered services to be directly billed to and paid by Tenant): (check all that apply) water; electricity; sewer; trash and/or recycling removal; and HVAC from _____ a.m. to _____ p.m. Monday through Friday; _____ a.m. to _____ p.m. on Saturday; and _____ a.m. to _____ p.m. on Sunday; janitorial service in the Premises and Building _____ nights ((5) nights if not filled in) each week, exclusive of holidays. HVAC services will also be provided by Landlord to the Premises during additional hours on reasonable notice to

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Landlord, at Tenant's sole cost and expense, at an hourly rate reasonably established by Landlord from time to time and payable by Tenant, as and when billed, as Additional Rent. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above those usual and customary for the Permitted Use, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage.

Tenant shall furnish all other utilities (including, but not limited to, HVAC, telephone, internet, and cable service, if available) and other services, including janitorial services, which Tenant requires with respect to the Premises, except those to be provided by Landlord as described above, and shall pay, at Tenant's sole expense, the cost of all utilities separately metered to the Premises and of all other utilities and other services which Tenant requires with respect to the Premises, except those to be provided by Landlord and included in Common Area Charges as described above. Landlord shall not be liable for any loss, injury or damage to person or property caused by or resulting from any variation, interruption, or failure of utilities due to any cause whatsoever, and Rent shall not abate as a result thereof.

10. TAXES AND ASSESSMENTS. Tenant shall pay all taxes, assessments, liens and license fees ("Taxes") levied, assessed or imposed by any authority having the direct or indirect power to tax or assess any such liens, related to or required by Tenant's use of the Premises as well as all Taxes on Tenant's personal property located on the Premises. Landlord shall pay all taxes and assessments with respect to the Property, all of which shall be included in Common Area Charges and subject to partial reimbursement by Tenant as set forth in Section 8.

11. COMMON AREAS.

a. **Definition.** The term "Common Areas" means all areas, facilities and building systems that are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant and other tenants at the Property and which are not leased or held for the exclusive use of a particular tenant. To the extent that such areas and facilities exist within the Property, Common Areas include hallways, entryways, stairs, elevators, driveways, walkways, terraces, docks, loading areas, restrooms, trash facilities, parking areas and garages, roadways, pedestrian sidewalks, landscaped areas, security areas, lobby or mall areas, common HVAC systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with, and shall use commercially reasonable efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees to comply with, reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time, and shall not interfere with the use of Common Areas by others. Without advance notice to Tenant and without any liability to Tenant, Landlord may change the size, use, or nature of any Common Areas; erect improvements on the Common Areas or convert any portion of the Common Areas to the exclusive use of Landlord or selected tenants; use the Common Areas for such promotions, exhibitions and similar uses as Landlord reasonably deems in the best interests of the Property and its tenants; and temporarily close parts of the Common Areas for such periods of time as may be necessary for temporary use as a work area in connection with the construction of buildings or other improvements within the Property or contiguous property; prevent the public from obtaining prescriptive rights in or to the Common Areas; use the Common Areas temporarily for a "farmers' market" or comparable entertainment or shopping events, so long as Tenant is not thereby deprived of the substantial benefit of the Premises. Landlord reserves the use of exterior walls and the roof of the Building and other improvements at the Property, and the right to install, maintain, use, repair and replace pipes, ducts, conduits, and wires leading through the Premises in areas which will not materially interfere with Tenant's use thereof.

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- b. **Use of the Common Areas.** Tenant shall have the non-exclusive right, in common with such other tenants at the Property to whom Landlord has granted or may grant such rights, to use the Common Areas.
- c. **Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be includable in the Common Area Charge assessed to Tenant pursuant to Section 8. In performing such maintenance, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises.

12. ALTERATIONS. Tenant may make alterations, additions or improvements to the Premises (the "Alterations"), only with the prior written consent of Landlord, which consent, with respect to Alterations not affecting the structural components of the Premises or utility systems therein or for which the aggregate cost and expense does not exceed \$10,000, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have 30 days following Tenant's request for Landlord's consent to any Alterations to respond to such request, provided that Tenant's request includes the names of Tenant's contractors and reasonably detailed plans and specifications therefor. The term "Alterations" shall not include: (i) any of Tenant's Work approved by Landlord pursuant to Exhibit C, (ii) Tenant's Signage (as further provided in Section 15), or (iii) the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be installed and removed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property. Tenant shall perform all work at Tenant's expense and in compliance with all applicable laws and shall complete all Alterations in accordance with plans and specifications approved by Landlord, using contractors approved by Landlord, and in a manner so as not to unreasonably interfere with other tenants. Tenant shall pay when due, or furnish a bond for payment of (as set forth in Section 20), all claims for labor or materials furnished to or for Tenant at, or for use in, the Premises, which claims are or may be secured by any mechanics' or materialmen's liens against the Premises or the Property or any interest therein. Except as otherwise provided in the Work Letter attached as Exhibit C with respect to Tenant's Work, any improvements installed as part of Tenant's Work or Alterations performed or caused to be performed by Tenant (check one): shall become the property of Landlord, or shall be removed by Tenant at its sole cost and expense upon the expiration or earlier termination of the Term (unless Landlord conditioned its consent in writing upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration, and it shall become Landlord's property). Tenant shall immediately repair any damage to the Premises caused by removal of improvements performed as part of Tenant's Work and/or Alterations.

13. REPAIRS AND MAINTENANCE; SURRENDER. Tenant shall, at its sole cost and expense, maintain the entire Premises in good condition and promptly make all non-structural repairs and replacements necessary to keep the Premises safe and in good condition, including all HVAC components and other utilities and systems and its store front, signage, windows, window frames, and plate glass. Landlord shall maintain and repair the Building structure, foundation, subfloor, exterior walls, roof structure and surface, and HVAC components and other utilities and systems to the extent serving more than just the Premises, and the Common Areas, the costs of which shall be included in Common Area Charges, unless otherwise expressly excluded pursuant to Section 8(a). Tenant shall not damage any demising wall or disturb the structural integrity of the Premises, the Building, or the Property and shall promptly repair any damage or injury done to any such demising walls or structural elements caused by Tenant or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. Notwithstanding anything in this Section to the contrary, Tenant shall not be responsible for any repairs to the Premises made necessary by the negligence or willful misconduct of Landlord or its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees therein. If Tenant fails to perform Tenant's obligations under this Section, Landlord may, at Landlord's option, enter upon the Premises after ten 10 days' prior notice to Tenant and put the same in good order, condition and repair and the cost thereof, together with interest thereon at the Default Rate set forth in Section 4, shall be due and payable as Additional Rent to Landlord together with Tenant's next installment of Base Rent. Upon expiration or earlier termination of the

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Term, Tenant shall promptly and peacefully surrender the Premises to Landlord, together with all keys, in materially as good condition as when received by Tenant from Landlord or as thereafter improved (but subject to any obligations to remove any Tenant's Work and Alterations and/or restore the same as further provided in this Lease), reasonable wear and tear and insured casualty excepted.

- 14. ACCESS AND RIGHT OF ENTRY.** After twenty-four (24) hours' notice from Landlord (except in cases of emergency, when no notice shall be required), Tenant shall permit Landlord and its agents, employees and contractors to enter the Premises at all reasonable times to make repairs, inspections, alterations or improvements, provided that Landlord shall use reasonable efforts to minimize interference with Tenant's use and enjoyment of the Premises. This Section shall not impose any repair or other obligation upon Landlord not expressly stated elsewhere in this Lease. After reasonable notice to Tenant, Landlord shall have the right to enter the Premises for the purpose of (a) showing the Premises to prospective purchasers or lenders at any time, and to prospective tenants within 180 days prior to the expiration or sooner termination of the Term, and (b) posting "for lease" signs within 180 days prior to the expiration or sooner termination of the Term.
- 15. SIGNAGE.** Tenant shall obtain Landlord's written consent as to size, location, materials, method of attachment, and appearance, before installing any signs upon the Premises. Tenant shall install and maintain any approved signage ("Signage") at Tenant's sole expense and in compliance with all applicable laws. As part of Tenant's Signage, Tenant may, at its own expense, erect and maintain upon the interior sales areas of the Premises all signs and advertising matter customary and appropriate in the conduct of Tenant's business, subject to Landlord's right to remove any signs or advertising matter which violate this Section. Tenant shall not affix or maintain upon the glass panes and supports of the show windows and doors, or within 12 inches of the show windows and doors, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other like item(s), except as otherwise approved by Landlord in writing with respect to size, type, color, location, copy, nature and display qualities. As part of Tenant's Signage, Tenant shall, at its own expense, erect and maintain an exterior sign on its store front, which sign shall be completely installed and operating (if illuminated) before or concurrent with Tenant opening for business in the Premises. All of Tenant's signs, decorations and advertising media shall conform in all respects to any sign criteria established by Landlord for the Property from time to time, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. Except for Tenant's exterior storefront sign and signs which comply with the terms of this Section, Tenant shall not erect, place, paint, or maintain in or on the Premises, any sign, advertising medium, or any other object of any kind whatsoever, whether an advertising device and whether visible or audible, outside of the Premises. Tenant shall not change the approved color, size, location, composition, wording or design of any sign or advertisement on the Premises without the prior written approval of Landlord and any applicable governmental authorities. Tenant shall not solicit business in or about the Common Areas, nor distribute any handbills or other advertising matter in or on vehicles parked in or about said Common Area. Tenant shall not, without first obtaining Landlord's written consent, use any advertising or promotional media, including, without limitation, searchlights, loudspeakers or phonographs, which can be heard, seen or experienced outside of the Premises. Unless otherwise provided in Exhibit C with respect to any Tenant Work, any Signage installed by Tenant shall be removed from the Premises, Building and Property at Tenant's expense upon the expiration or earlier termination of the Term. Tenant shall not damage or deface the Premises when installing or removing Signage and shall repair any injury or damage to the Premises, Building and Property caused by such installation or removal. Tenant shall pay its Pro Rata Share of the costs of operating, maintaining, repairing, lighting, and, where reasonably necessary, replacement of any multi-tenant signage on which Tenant is granted space by Landlord.
- 16. DESTRUCTION OR CONDEMNATION.**
- a. **Damage and Repair.** If the Premises or the portion of the Building or the Property necessary for Tenant's occupancy are partially damaged by fire or other insured casualty but not rendered

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untenantable, then Landlord shall diligently restore the Premises and the portion of the Property necessary for Tenant's occupancy to the extent required below and this Lease shall not terminate. Tenant may, however, terminate the Lease if Landlord is unable to restore the Premises within six (6) months of the casualty event by giving 20 days' written notice of termination.

The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are damaged. If insurance proceeds are not available or are not sufficient to pay the entire cost of restoring the Premises, or if Landlord's lender does not permit all or any part of the insurance proceeds to be applied toward restoration, then Landlord may elect to terminate this Lease and keep the insurance proceeds, by notifying Tenant within 60 days of the date of such casualty.

If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the GLA of the Property are entirely destroyed, or partially damaged and rendered untenable, by fire or other casualty, Landlord may, at its option: (a) terminate this Lease as provided herein, or (b) restore the Premises and the portion of the Property necessary for Tenant's occupancy to their previous condition to the extent required below; provided, however, if such casualty event occurs during the last six (6) months of the Term (after considering any option to extend the term timely exercised by Tenant) then either Tenant or Landlord may elect to terminate the Lease. If, within 60 days after receipt by Landlord from Tenant of written notice that Tenant deems the Premises or the portion of the Property necessary for Tenant's occupancy untenable, Landlord fails to notify Tenant of its election to restore those areas, or if Landlord is unable to restore those areas within six (6) months of the date of the casualty event, then Tenant may elect to terminate the Lease upon 20 days' notice to Landlord unless Landlord, within such 20 day period, notifies Tenant that it will in fact restore the Premises or actually completes such restoration work to the extent required below, as applicable.

If Landlord restores the Premises or the Property under this Section, Landlord shall proceed with reasonable diligence to complete the work, and Base Rent shall be abated in the same proportion as the untenable portion of the Premises bears to the whole Premises, provided that there shall be a Base Rent abatement only if the damage or destruction of the Premises or the Property did not result from, or was not contributed to directly or indirectly by the act, fault or neglect of Tenant, or Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees. No damages, compensation or claim shall be payable by Landlord for inconvenience, loss of business or annoyance directly, incidentally or consequentially arising from any repair or restoration of any portion of the Premises or the Property. Landlord shall have no obligation to carry insurance of any kind for the protection of Tenant; any Alterations or improvements paid for by Tenant; any Tenant's Work identified in Exhibit C (regardless of who may have completed them); Signage; Tenant's furniture; or on any fixtures, equipment, improvements or appurtenances of Tenant under this Lease, and Landlord's restoration obligations hereunder shall not include any obligation to repair any damage thereto or replace the same.

- b. **Condemnation.** If the Premises, the portion of the Building or the Property necessary for Tenant's occupancy, or 50% or more of the GLA of the Property are made untenable by eminent domain, or conveyed under a threat of condemnation, this Lease shall terminate at the option of either Landlord or Tenant as of the earlier of the date title vests in the condemning authority or the condemning authority first has possession of the Premises or the portion of the Property taken by the condemning authority. All Rents and other payments shall be paid to that date.

If the condemning authority takes a portion of the Premises or of the Building or the Property necessary for Tenant's occupancy that does not render them untenable, then this Lease shall continue in full force and effect and Rent shall be equitably reduced based on the proportion by which the floor area of any structures is reduced. The reduction in Rent shall be effective on the earlier of the date the

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condemning authority first has possession of such portion or title vests in the condemning authority. The Premises or the portion of the Building or the Property necessary for Tenant's occupancy shall not be deemed untenable if 25% or less of each of those areas are condemned. Landlord shall be entitled to the entire award from the condemning authority attributable to the value of the Premises, the Building, or the Property and Tenant shall make no claim for the value of its leasehold estate, Tenant's Work or Alterations. Tenant shall be permitted to make a separate claim against the condemning authority for moving expenses if Tenant may terminate the Lease under this Section, provided that in no event shall Tenant's claim reduce Landlord's award.

17. INSURANCE.

- a. **Tenant's Liability Insurance.** During the Term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall (i) contain an endorsement identifying Landlord, its property manager (if any), and other parties designated by Landlord as additional insureds using an endorsement form acceptable to Landlord, (ii) insure Tenant's activities and those of Tenant's employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees with respect to the Premises against loss, damage or liability for personal injury or bodily injury (including death) or loss or damage to property with a combined single limit of not less than \$2,000,000 per occurrence, and a deductible of not more than \$10,000, and (iii) contain a provision requiring the insurer to deliver or mail written notice of cancellation to the named insureds at least 45 days before the effective date of the cancellation. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain at Tenant's sole cost business income coverage for at least six (6) months, business auto liability coverage, plate glass insurance, and, if applicable to Tenant's Permitted Use, liquor liability insurance and/or warehouseman's coverage.
- b. **Tenant's Property Insurance.** During the Term, Tenant shall pay for and maintain special form clauses of loss coverage property insurance (with coverage for earthquake if required by Landlord's lender and, if the Premises are situated in a flood plain, flood damage) for all of Tenant's personal property, fixtures and equipment, Tenant's Work, and Alterations, in the amount of their full replacement value, with a deductible of not more than \$10,000.
- c. **Miscellaneous.** Tenant's insurance required under this Section shall be with companies rated A-/VII or better in Best's Insurance Guide, and which are admitted in the State of Idaho. No insurance policy shall be cancelled or reduced in coverage and each such policy shall provide that it is not subject to cancellation or a reduction in coverage except after 30 days prior written notice to Landlord. Tenant shall deliver to Landlord, prior to Tenant's first taking possession of or occupying the Premises, and from time to time thereafter, copies of the insurance policies or evidence of insurance and copies of endorsements required by this Section. In no event shall the limits of such policies be considered as limiting the liability of Tenant under this Lease. If Tenant fails to acquire or maintain any insurance or provide any policy or evidence of insurance required by this Section and such failure continues for three (3) days after notice from Landlord, Landlord may, but shall not be required to, obtain such insurance for Landlord's benefit and Tenant shall reimburse Landlord for the costs of such insurance upon demand. Such amounts shall be Additional Rent payable by Tenant hereunder and in the event of non-payment thereof, Landlord shall have the same rights and remedies with respect to such non-payment as it has with respect to any other non-payment of Rent hereunder.
- d. **Landlord's Insurance.** Landlord shall carry special form clauses of loss coverage property insurance of the Building shell and core in the amount of their full replacement value, liability insurance with respect to the Common Areas, and such other insurance of such types and amounts as Landlord, in its discretion, shall deem reasonably appropriate. The cost of any such insurance shall be included in

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Common Area Charges, and if such insurance is provided by a “blanket policy” insuring other parties and/or locations in addition to the Building, then only the portion of the premiums allocable to the Building and Property shall be included in Common Area Charges.

- e. **Waiver of Subrogation.** Notwithstanding any other provision of this Lease to the contrary, Landlord and Tenant hereby release each other and any other tenant, their agents or employees, from responsibility for, and waive their entire claim of recovery for any loss or damage arising from any cause covered by insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective insurance carriers to waive all rights of subrogation against the other. This waiver shall not apply to the extent of the deductible amounts to any such policies or to the extent of liabilities exceeding the limits of such policies.

18. INDEMNIFICATION.

- a. **Indemnification by Tenant.** Tenant shall defend, indemnify, and hold Landlord and its property manager (if any) harmless against all liabilities, damages, costs, and expenses, including attorneys’ fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Tenant or Tenant’s employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Tenant. Tenant shall use legal counsel reasonably acceptable to Landlord in defense of any action within Tenant’s defense obligation.
- b. **Indemnification by Landlord.** Landlord shall defend, indemnify and hold Tenant harmless against all liabilities, damages, costs, and expenses, including attorneys’ fees, for personal injury, bodily injury (including death) or property damage arising from any negligent or wrongful act or omission of Landlord or Landlord’s employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees on or around the Premises or the Property, or arising from any breach of this Lease by Landlord. Landlord shall use legal counsel reasonably acceptable to Tenant in defense of any action within Landlord’s defense obligation.
- c. **Waiver of Immunity.** Landlord and Tenant each specifically and expressly waive any immunity that each may be granted under the Idaho State Worker’s Compensation Act, Title 72 of the Idaho Code. Neither party’s indemnity obligations under this Lease shall be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts or other employee benefit acts.
- d. **Exemption of Landlord from Liability.** Except to the extent of claims arising out of Landlord’s gross negligence or intentional misconduct, Landlord shall not be liable for injury to Tenant’s business or assets or any loss of income therefrom or for damage to any property of Tenant or of its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, or any other person in or about the Premises or the Property.
- e. **Survival.** The provisions of this Section 18 shall survive expiration or termination of this Lease.

- 19. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign, sublet, mortgage, encumber or otherwise transfer any interest in this Lease (collectively referred to as a “Transfer”) or any part of the Premises, without first obtaining Landlord’s written consent, which shall not be unreasonably withheld, conditioned, or delayed. No Transfer shall relieve Tenant of any liability under this Lease notwithstanding Landlord’s consent to such Transfer. Without limiting the generality of the foregoing, it shall be deemed reasonable for Landlord to deny consent to a proposed Transfer if the transferee’s proposed use of the Premises would violate any exclusive lease rights granted by Landlord to other tenants at the Property or would, in Landlord’s commercially reasonable opinion, interfere with Landlord’s desired tenant-mix for the Property. Landlord’s consent to any

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Transfer shall not operate as a waiver of the necessity for Landlord's consent to any subsequent Transfer. In connection with each request for consent to a Transfer, Tenant shall pay the reasonable cost of processing the same, including attorneys' fees, upon demand of Landlord, up to a maximum of \$1,250.

Any transfer of this Lease by merger, consolidation, redemption or liquidation of Tenant, or any change in the ownership of, or power to vote, which singularly or collectively represents a majority of the beneficial interest in Tenant, shall constitute a Transfer under this Section.

As a condition to Landlord's approval, if given, any potential assignee or sublessee otherwise approved by Landlord shall assume all obligations of Tenant under this Lease and shall be jointly and severally liable with Tenant and any guarantor for the payment of Rent and performance of all obligations of Tenant under this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements and related documents.

20. LIENS. Tenant is not authorized to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Property and Premises free from any liens created by or through Tenant. Tenant shall indemnify, defend, and hold Landlord and the Property and Premises harmless from liability for any such liens including, without limitation, liens arising from any of Tenant's Work or Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall have the right to contest the correctness or validity of the lien, provided, however, within 10 days after Landlord's demand, at Tenant's expense, Tenant shall either remove the lien or procure and record a lien release bond issued by a surety satisfactory to Landlord in form and amount sufficient to satisfy statutory requirements for satisfaction and release of the subject lien(s) from the Premises and Property. Tenant shall indemnify Landlord, the Premises and Property against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

21. DEFAULT. Each of the following events shall be an "Event of Default" by Tenant under this Lease:

- a. **Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' written notice from Landlord of the failure to pay.
- b. **Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least 15 consecutive days without prior notice to Landlord), or abandonment by Tenant of the Premises (defined as an absence of five (5) days or more while Tenant is in breach of some other term of this Lease). Tenant's vacation or abandonment of the Premises shall not be subject to any notice or right to cure.
- c. **Insolvency.** Tenant's insolvency or bankruptcy (whether voluntary or involuntary); or appointment of a receiver, assignee or other liquidating officer for Tenant's business; provided, however, that in the event of any involuntary bankruptcy or other insolvency proceeding, the existence of such proceeding shall constitute an Event of Default only if such proceeding is not dismissed or vacated within 60 days after its institution or commencement.
- d. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, is taken by execution or other process of law directed against Tenant, or attachment of Tenant's interest in this Lease by any creditor of Tenant, if such attachment is not discharged within 15 days after being levied.
- e. **Other Non-Monetary Defaults.** The breach by Tenant of any agreement, term or covenant of this Lease other than one requiring the payment of money and not otherwise enumerated in this Section or elsewhere in this Lease, which breach continues for a period of 30 days after notice by Landlord to Tenant of the breach, provided that, if the nature of such default is such that it cannot be cured within such 30 day period, no Event of Default shall occur so long as Tenant commences such cure within 30 days of notice by Landlord and diligently pursues such cure to completion, but in no event longer than 60 days from the date of Landlord's notice.

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- f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date following five (5) days' notice from Landlord of Tenant's failure to take possession.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within 30 days after notice by Tenant to Landlord, provided that, if the nature of such default is such that it cannot be cured within such 30 day period, Landlord shall not be in default if Landlord commences such cure within 30 days of notice by Tenant and diligently pursues such cure to completion. If Landlord fails to cure any such default within the allotted time, Tenant's sole remedy shall be to seek actual money damages (but not consequential or punitive damages) for loss arising from Landlord's failure to discharge its obligations under this Lease. Nothing herein contained shall relieve Landlord from its duty to perform any of its obligations to the standard prescribed in this Lease.

Any notice periods granted herein shall be deemed to run concurrently with and not in addition to any default notice periods required by law.

- 22. REMEDIES.** Landlord shall have the following remedies upon an Event of Default. Landlord's rights and remedies under this Lease shall be cumulative and not exclusive.

- a. **Termination of Lease.** Landlord may terminate Tenant's interest under the Lease, but no act by Landlord other than notice of termination from Landlord to Tenant shall terminate this Lease. The Lease shall terminate on the date specified in the notice of termination. Upon termination of this Lease, Tenant will remain liable to Landlord for damages in an amount equal to Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Term, less the net proceeds, if any, of any reletting of the Premises by Landlord subsequent to the termination, after deducting all of Landlord's Reletting Expenses (as defined below). Landlord shall be entitled to either collect damages from Tenant monthly on the days on which rent or other amounts would have been payable under the Lease, or alternatively, Landlord may accelerate Tenant's obligations under the Lease and recover from Tenant: (i) unpaid rent which had been earned at the time of termination; (ii) the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of rent loss that Tenant proves could reasonably have been avoided; (iii) the amount by which the unpaid rent for the balance of the term of the Lease after the time of award exceeds the amount of rent loss that Tenant proves could reasonably be avoided (discounting such amount by the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%); and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under the Lease, or which in the ordinary course would be likely to result from the Event of Default, including without limitation Reletting Expenses described below. For purposes of this Section, Percentage Rent shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twenty-four (24) month period, except that if it becomes necessary to compute such amounts before such a period has occurred then such amounts shall be computed on the basis of the average monthly amounts accruing during such shorter period.
- b. **Re-Entry and Reletting.** Landlord may continue this Lease in full force and effect and, without demand or notice, re-enter and take possession of the Premises or any part thereof, expel the Tenant from the Premises and anyone claiming through or under the Tenant, and remove the personal property of either. Landlord may relet the Premises, or any part of them, in Landlord's or Tenant's name for the account of Tenant, for such period of time and at such other terms and conditions as Landlord, in its discretion, may determine. Landlord may collect and receive the rents for the Premises. To the fullest extent permitted by law, the proceeds of any reletting shall be applied: first, to pay Landlord all Reletting Expenses (defined below); second, to pay any indebtedness of Tenant to Landlord other than rent; third, to the rent due and unpaid hereunder; and fourth, the residue, if any,

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shall be held by Landlord and applied in payment of other or future obligations of Tenant to Landlord as the same may become due and payable, and Tenant shall not be entitled to receive any portion of such revenue. Re-entry or taking possession of the Premises by Landlord under this Section shall not be construed as an election on Landlord's part to terminate this Lease, unless a notice of termination is given to Tenant. Landlord reserves the right following any re-entry or reletting, or both, under this Section to exercise its right to terminate the Lease. Tenant will pay Landlord Rent and other sums which would be payable under this Lease if repossession had not occurred, less the net proceeds, if any, after reletting the Premises and after deducting Landlord's Reletting Expenses. "Reletting Expenses" is defined to include all expenses incurred by Landlord in connection with reletting the Premises, including without limitation, all repossession costs, brokerage commissions and costs for securing new tenants, attorneys' fees, remodeling and repair costs, costs for removing persons or property, costs for storing Tenant's property and equipment, and costs of tenant improvements and rent concessions granted by Landlord to any new Tenant, prorated over the life of the new lease.

- c. **Waiver of Redemption Rights.** Tenant, for itself, and on behalf of any and all persons claiming through or under Tenant, including creditors of all kinds, hereby waives and surrenders all rights and privileges which they may have under any present or future law, to redeem the Premises or to have a continuance of this Lease for the Term, or any extension thereof.
- d. **Nonpayment of Additional Rent.** All costs which Tenant is obligated to pay to Landlord pursuant to this Lease shall in the event of nonpayment be treated as if they were payments of Rent, and Landlord shall have the same rights it has with respect to nonpayment of Rent.
- e. **Failure to Remove Property.** If Tenant fails to remove any of its property from the Premises at Landlord's request following an uncured Event of Default, Landlord may, at its option, remove and store the property at Tenant's expense and risk. If Tenant does not pay the storage cost within five (5) days of Landlord's request, Landlord may, at its option, have any or all of such property sold at public or private sale (and Landlord may become a purchaser at such sale), in such manner as Landlord deems proper, without notice to Tenant. Landlord shall apply the proceeds of such sale: (i) to the expense of such sale, including reasonable attorneys' fees actually incurred; (ii) to the payment of the costs or charges for storing such property; (iii) to the payment of any other sums of money which may then be or thereafter become due Landlord from Tenant under any of the terms hereof; and (iv) the balance, if any, to Tenant. Nothing in this Section shall limit Landlord's right to sell Tenant's personal property as permitted by law or to foreclose Landlord's lien for unpaid rent, if any.

23. MORTGAGE SUBORDINATION AND ATTORNMENT. This Lease shall automatically be subordinate to any mortgage or deed of trust created by Landlord which is now existing or hereafter placed upon the Premises including any advances, interest, modifications, renewals, replacements or extensions ("Landlord's Mortgage"). Tenant shall attorn to the holder of any Landlord's Mortgage or any party acquiring the Premises at any sale or other proceeding under any Landlord's Mortgage provided the acquiring party assumes the obligations of Landlord under this Lease. Tenant shall promptly and in no event later than 15 days after request execute, acknowledge and deliver documents which the holder of any Landlord's Mortgage may reasonably require as further evidence of this subordination and attornment. Notwithstanding the foregoing, Tenant's obligations under this Section to subordinate in the future are conditioned on the holder of each Landlord's Mortgage and each party acquiring the Premises at any sale or other proceeding under any such Landlord's Mortgage not disturbing Tenant's occupancy and other rights under this Lease, so long as no uncured Event of Default by Tenant exists.

24. NON-WAIVER. Landlord's waiver of any breach of any provision contained in this Lease shall not be deemed to be a waiver of the same provision for subsequent acts of Tenant. The acceptance by Landlord of Rent or other amounts due by Tenant hereunder shall not be deemed to be a waiver of any previous breach by Tenant.

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- 25. HOLDOVER.** If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return them to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy at sufferance, which may be terminated according to Idaho law. During such tenancy, Tenant agrees to pay to Landlord 150% of the rate of rental last payable under this Lease, unless a different rate is agreed upon by Landlord. All other terms of the Lease shall remain in effect other than any options to extend the Term. Tenant acknowledges and agrees that this Section does not grant any right to Tenant to holdover, and that Tenant may also be liable to Landlord for any and all damages or expenses which Landlord may have to incur as a result of Tenant's holdover.
- 26. NOTICES.** All notices under this Lease shall be in writing and effective (i) when delivered in person or via overnight courier to the other party, or (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1. The addresses for notices and payment of rent set forth in Section 1 may be modified by either party only by written notice delivered in conformance with this Section.
- 27. COSTS AND ATTORNEYS' FEES.** If Tenant or Landlord engage the services of an attorney to collect monies due or to bring any action for any relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or other payments, or possession of the Premises, the losing party shall pay the prevailing party a reasonable sum for attorneys' fees in such action, whether in mediation or arbitration, at trial, on appeal or in any bankruptcy proceeding.
- 28. ESTOPPEL CERTIFICATES.** Tenant shall, from time to time, upon written request of Landlord, execute, acknowledge and deliver to Landlord or its designee a written statement specifying the following, subject to any modifications necessary to make such statements true and complete: (i) the total leasable area of the Premises; (ii) the date the Term commenced and the date it expires; (iii) the amount of minimum monthly Rent and the date to which such Rent has been paid; (iv) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; (v) that this Lease represents the entire agreement between the parties; (vi) that all obligations under this Lease to be performed by either party have been satisfied; (vii) that there are no existing claims, defenses or offsets which the Tenant has against the enforcement of this Lease by Landlord; (viii) the amount of Rent, if any, that Tenant paid in advance; (ix) the amount of security that Tenant deposited with Landlord; (x) if Tenant has sublet all or a portion of the Premises or assigned its interest in the Lease and to whom; (xi) if Tenant has any option to extend the Term of the Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises as Landlord may reasonably request. Tenant acknowledges and agrees that any statement delivered pursuant to this Section may be relied upon by a prospective purchaser of Landlord's interest or assignee of any mortgage or new mortgagee of Landlord's interest in the Premises. If Tenant shall fail to respond within 10 days to Landlord's request for the statement required by this Section, Landlord may provide the statement and Tenant shall be deemed to have admitted the accuracy of the information provided by Landlord.
- 29. TRANSFER OF LANDLORD'S INTEREST.** This Lease shall be assignable by Landlord without the consent of Tenant. In the event of any transfer or transfers of Landlord's interest in the Premises, other than a transfer for collateral purposes only, upon the assumption of this Lease by the transferee, Landlord shall be automatically relieved of obligations and liabilities accruing from and after the date of such transfer, including any liability for any retained security deposit or prepaid rent, for which the transferee shall be liable, and Tenant shall attorn to the transferee.
- 30. LANDLORD'S LIABILITY.** Notwithstanding anything in this Lease to the contrary, covenants, undertakings and agreements herein made on the part of Landlord are made and intended not as personal covenants, undertakings and agreements for the purpose of binding Landlord personally or the assets of Landlord but are made and intended for the purpose of binding only the Landlord's interest in the Premises, as the same may from time to time be encumbered. In no event shall Landlord or its partners, shareholders, or members, as the case may be, ever be personally liable hereunder.

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31. RIGHT TO PERFORM. If Tenant shall fail to timely pay any sum or perform any other act on its part to be performed hereunder, Landlord may make any such payment or perform any such other act on Tenant's behalf. Tenant shall, within 10 days of demand, reimburse Landlord for its expenses incurred in making such payment or performance. Landlord shall (in addition to any other right or remedy of Landlord provided by law) have the same rights and remedies in the event of the nonpayment of sums due under this Section as in the case of default by Tenant in the payment of Rent.

32. HAZARDOUS MATERIAL. As used herein, the term "Hazardous Material" means any hazardous, dangerous, toxic or harmful substance, material or waste including biomedical waste which is or becomes regulated by any local governmental authority, the State of Idaho or the United States Government, due to its potential harm to the health, safety or welfare of humans or the environment. Landlord represents and warrants to Tenant that, to Landlord's actual knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date in excess of reportable quantities except as may otherwise have been disclosed to Tenant in writing before the execution of this Lease. If there is any Hazardous Material on, in, or under the Premises as of the Commencement Date which has been or thereafter becomes unlawfully released in excess of reportable quantities through no fault of Tenant, then Landlord shall indemnify, defend and hold Tenant harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including without limitation sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, incurred or suffered by Tenant either during or after the Term as the result of such contamination.

Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about, or disposed of on the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, except with Landlord's prior consent (except in *de minimis quantities* typical of the Permitted Use, such as in office supplies and household cleansers) and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes, ordinances, and product labels. If Tenant breaches the obligations stated in the preceding sentence, then Tenant shall indemnify, defend and hold Landlord harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses including, without limitation, diminution in the value of the Premises or the Property; damages for the loss or restriction on use of leasable or usable space or of any amenity of the Premises or the Property, or elsewhere; damages arising from any adverse impact on marketing of space at the Premises or the Property; and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees incurred or suffered by Landlord either during or after the Term. These indemnifications by Landlord and Tenant include, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work, whether or not required by any federal, state or local governmental agency or political subdivision, because of Hazardous Material present in the Premises, or in soil or ground water on or under the Premises. Tenant shall immediately notify Landlord of any inquiry, investigation or notice that Tenant may receive from any third party regarding the actual or suspected presence of Hazardous Material on the Premises.

Without limiting the foregoing, if the presence of any Hazardous Material brought upon, kept or used in or about the Premises or the Property by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of any Hazardous Material on the Premises or the Property or any adjacent property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or the Property or such adjacent property to the condition existing prior to the release of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval may be withheld at Landlord's sole discretion. The provisions of this Section shall survive expiration or earlier termination of this Lease.

33. QUIET ENJOYMENT. Provided Tenant pays Rent and performs all of its obligations in this Lease, Tenant's possession of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

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- 34. MERGER.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.
- 35. GENERAL.**
- a. **Heirs and Assigns.** This Lease shall apply to and be binding upon Landlord and Tenant and their respective heirs, executors, administrators, successors and assigns.
 - b. **Brokers' Fees.** Tenant represents and warrants to Landlord that except for _____ "Tenant's Brokerage," if any), it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Landlord against any loss, cost, liability or expense incurred by Landlord as a result of any claim asserted by any such brokerage, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Tenant. Landlord represents and warrants to Tenant that except for _____ "Landlord's Brokerage," if any), it has not engaged any broker, finder or other person who would be entitled to any commission or fees for the negotiation, execution or delivery of this Lease and shall indemnify and hold harmless Tenant against any loss, cost, liability or expense incurred by Tenant as a result of any claim asserted by any such brokerage, finder or other person on the basis of any arrangements or agreements made or alleged to have been made by or on behalf of Landlord.
 - c. **Entire Agreement.** This Lease contains all of the covenants and agreements between Landlord and Tenant relating to the Premises. No prior or contemporaneous agreements or understandings pertaining to the Lease shall be valid or of any force or effect and the covenants and agreements of this Lease shall not be altered, modified or amended to except in writing, signed by Landlord and Tenant.
 - d. **Severability.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision of this Lease.
 - e. **Force Majeure.** Time periods for either party's performance under any provisions of this Lease (excluding payment of Rent) shall be extended for periods of time during which the party's performance is prevented due to circumstances beyond such party's control, including without limitation, fires, floods, earthquakes, lockouts, strikes, embargoes, governmental regulations, acts of God, public enemy, war or other strife; provided in no event shall any of the foregoing events operate to extend the Term of this Lease.
 - f. **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of Idaho.
 - g. **Memorandum of Lease.** Neither this Lease nor any memorandum or "short form" thereof shall be recorded without Landlord's prior consent.
 - h. **Submission of Lease Form Not an Offer.** One party's submission of this Lease to the other for review shall not constitute an offer to lease the Premises. This Lease shall not become effective and binding upon Landlord and Tenant until it has been fully executed by both parties.
 - i. **No Light, Air or View Easement.** Tenant has not been granted an easement or other right for light, air or view to or from the Premises. Any diminution or shutting off of light, air or view by any structure which may be erected on or adjacent to the Building shall in no way affect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.



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- j. **Authority of Parties.** Each party to this Lease represents and warrants to the other that the persons executing this Lease on behalf of such party has the authority to enter into this Lease on behalf of such party, that the execution and delivery of this Lease has been duly authorized, and that upon such execution and delivery, this Lease shall be binding upon and enforceable against such party.
- k. **Time.** "Day" as used herein means a calendar day and "business day" means any day on which commercial banks are generally open for business in the state where the Premises are situated. Any period of time which would otherwise end on a non-business day shall be extended to the next following business day. Time is of the essence of this Lease.

36. EXHIBITS AND RIDERS. The following exhibits and riders are made a part of this Lease, and the terms thereof shall control over any inconsistent provision in the sections of this Lease:

Exhibit A: Floor Plan Outline of the Premises

Exhibit B: Legal Description of the Property

Exhibit C: Work Letter

CHECK THE BOX FOR ANY OF THE FOLLOWING THAT WILL APPLY. CAPITALIZED TERMS USED IN THE RIDERS SHALL HAVE THE MEANING GIVEN TO THEM IN THE LEASE.

- Rent Rider
- Arbitration Rider
- Letter of Credit Rider
- Guaranty of Tenant's Lease Obligations Rider
- Option to Extend Rider
- Rules and Regulations

37. BROKER COMPENSATION AGREEMENT. THIS SECTION SHALL APPLY ONLY IN THE EVENT THAT LANDLORD AND THE BROKERAGE WORKING WITH THE LANDLORD HAVE NOT ENTERED INTO A SEPARATE, SIGNED, WRITTEN AGREEMENT FOR COMPENSATION OF THE BROKERAGE WORKING WITH THE LANDLORD. Landlord agrees to pay a commission to Landlord's Brokerage as follows:

- \$_____
- _____% of the gross rent payable pursuant to the Lease
- \$_____ per square foot of the Premises
- Other _____

Landlord's Brokerage shall shall not (shall not if not filled in) be entitled to a commission upon the extension by Tenant of the Term pursuant to any right reserved to Tenant under the Lease calculated as provided above or as follows _____ (if no box is checked, as provided above). Landlord's Brokerage shall shall not (shall not if not filled in) be entitled to a commission upon any expansion of Premises pursuant to any right reserved to Tenant under the Lease, calculated as provided above or as follows _____ (if no box is checked, as provided above).

With respect to any commission earned upon execution of this Lease or pursuant to any expansion of the Premises, Landlord shall pay one-half upon execution of the Lease or any amendment/addenda thereto expanding the Premises, and one-half upon occupancy of the Premises by Tenant. With respect to any commission earned upon extension of the Term of this Lease, Landlord shall pay one-half upon execution of



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any amendment/addenda to the Lease extending the Term and one-half upon the commencement date of such extended term. Landlord's Brokerage shall pay to Tenant's Brokerage the amount stated in a separate agreement between them (including the rules of any MLS to which they both belong), or, if there is no agreement, \$_____ or _____% (complete only one) of any commission paid to Landlord's Brokerage, within five (5) days after receipt by Landlord's Brokerage.

If any other lease is entered into between Landlord and Tenant pursuant to a right reserved to Tenant under the Lease, Landlord shall shall not (shall not if not filled in) pay an additional commission according to any commission agreement or, in the absence of one, according to the commission schedule of Landlord's Brokerage in effect as of the execution of this Lease. Landlord's successor shall be obligated to pay any unpaid commissions upon any transfer of this Lease and any such transfer shall not release the transferor from liability to pay such commissions.

38. BROKER PROVISIONS.

LANDLORD'S BROKERAGE, TENANT'S BROKERAGE AND THEIR EMPLOYEES AND INDEPENDENT CONTRACTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES CONCERNING THE PREMISES, THE MEANING OF THE TERMS AND CONDITIONS OF THIS LEASE; LANDLORD'S OR TENANT'S FINANCIAL STANDING; ZONING; COMPLIANCE OF THE PREMISES WITH APPLICABLE LAWS; SERVICE OR CAPACITY OF UTILITIES; OPERATING COSTS; OR HAZARDOUS MATERIALS. LANDLORD AND TENANT ARE EACH ADVISED TO SEEK INDEPENDENT LEGAL ADVICE ON THESE AND OTHER MATTERS ARISING UNDER THIS LEASE.



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IN WITNESS WHEREOF this Lease has been executed the date and year first above written.

LANDLORD:

TENANT:

LANDLORD:

TENANT:

BY:

BY:

ITS:

ITS:



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EXHIBIT A

[Floor Plan/Outline of the Premises]



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EXHIBIT B

[Legal Description of the Property]

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EXHIBIT C

[Work Letter]

CHECK IF APPLICABLE:

1. **Improvements to be Completed by Landlord**

A. Performance of Improvements. Subject to the terms and conditions of this Lease and any Improvement Allowance provided herein, Landlord's obligations to improve the Premises shall be limited to the work ("Landlord's Work") described below. All other work shall be performed by Tenant at its sole expense or, if performed by Landlord, shall be promptly reimbursed by Tenant. Landlord's Work shall be deemed to be "substantially complete" on the date that Landlord's notifies Tenant that Landlord's Work is complete, except for punch list items that do not impair the use or operations thereof, would not prevent Tenant from occupancy and/or performing Tenant's Work, and except for that portion of Landlord's Work, if any, which cannot be feasibly performed before Tenant completes Tenant's Work, fixturing, or decorating.

The work to be done by Landlord in satisfying its obligation to complete Landlord's Work under the Lease shall be limited to the following (check one):

As identified below (check and describe all that apply);

- FLOOR: _____
- WALLS: _____
- CEILING: _____
- LIGHTING: _____
- WASHROOM(S): _____
- ELECTRICAL: _____
- HVAC: _____
- OTHER: _____

As mutually agreed upon between Landlord and Tenant as follows:

- (i) Within _____ days (10) days if not filled in) after mutual acceptance of the Lease, Tenant shall prepare and submit for Landlord's review a preliminary sketch of the improvements to be performed by Landlord ("Preliminary Landlord Plan"). Landlord and Tenant shall cooperate in good faith to adopt a mutually acceptable Preliminary Landlord Plan.

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- (ii) Upon Landlord's approval of the Preliminary Landlord Plan, Landlord shall promptly prepare (or cause to be prepared) construction documents (i.e., those plans used for submittal to the appropriate governmental bodies for all necessary permits and approvals for Landlord's Work, if any) for Tenant's review and approval, which approval shall not be unreasonably withheld, conditioned or delayed, The construction documents, once approved, shall then constitute "Landlord's Improvement Plans."
- (iii) Landlord shall submit the Landlord's Improvement Plans to the appropriate governmental body for plan checking and issuance of necessary permits and approvals, as applicable. Landlord and Tenant shall cooperate and use commercially reasonable efforts to cause to be made any changes in the Landlord's Improvement Plans necessary to obtain such permits and approvals; provided, however, any costs and expenses resulting from the foregoing changes to Landlord's Work that exceed the Improvement Allowance shall be borne at Tenant's sole cost and expense.

B. Defects in Landlord's Work. If Tenant fails to notify Landlord of any defects in the Landlord's Work within thirty (30) days of delivery of possession of the Premises to Tenant, Tenant shall be deemed to have accepted the Premises in their then-existing condition. If Tenant discovers any major defects in the Landlord's Work during this 30 day period that would prevent Tenant from using the Premises for the Permitted Use, Tenant shall notify Landlord and the Commencement Date shall be delayed until after Landlord has notified Tenant that Landlord has corrected the major defects and Tenant has had five (5) days to inspect and approve the Premises. The Commencement Date shall not be delayed if Tenant's inspection reveals minor defects in the Landlord's Work that will not prevent Tenant from using the Premises for the Permitted Use. Tenant shall prepare a punch list of all minor defects in Landlord's Work and provide the punch list to Landlord, which Landlord shall promptly correct.

2. **Improvements to be Completed by Tenant**

A. Performance of Improvements. Subject to the terms and conditions of the Lease and any Improvement Allowance provided herein, Tenant shall complete, at its sole cost and expense, the work identified in the Tenant Improvement Plans (as such term is defined below) adopted by Landlord and Tenant in accordance with the provisions below ("Tenant's Work"). Tenant's Work shall be performed lien free and in a workmanlike manner, without interference with other work, if any, being done in the Premises or Property, including any of Landlord's Work, and in compliance with all laws and reasonable rules promulgated from time to time by Landlord, its property manager, architect, and contractors.

The work to be done by Tenant in satisfying its obligation to complete Tenant's Work under the Lease shall be limited to the following (check one):

As identified below (check and describe all that apply);

FLOOR: _____

WALLS: _____

CEILING: _____

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- LIGHTING: _____
- WASHROOM(S): _____
- ELECTRICAL: _____
- HVAC: _____
- OTHER: _____

As mutually agreed upon between Landlord and Tenant as follows:

- (i) Within _____ days ((10) days if not filled in) after mutual acceptance of the Lease, Tenant shall prepare and submit for Landlord's review a preliminary sketch of the Tenant Improvements ("Preliminary Tenant Plan"). Landlord and Tenant shall cooperate in good faith to adopt a mutually acceptable Preliminary Plan.
- (ii) Upon approval of the Preliminary Tenant Plan by Landlord, Tenant shall promptly prepare construction documents (i.e., those plans used for submittal to the appropriate governmental bodies for all necessary permits and approvals for the Tenant's Work, if any) for Landlord's review and approval. The construction documents, once approved, shall then constitute the "Tenant Improvements Plans."
- (iii) Upon approval by Landlord, Tenant shall submit the Tenant Improvements Plans to the appropriate governmental body for plan checking and issuance of necessary permits and approvals. Tenant, with Landlord's approval, shall cause to be made any changes in the Tenant Improvements Plans necessary to obtain such permits and approvals.
- (iv) Landlord makes no warranty or representation of any type or nature with respect to the adequacy or sufficiency of the Tenant Improvements Plans for any purpose. Landlord makes no warranty or representation of any type or nature with respect to the quality, suitability, or ability of contractor or the quality of the work or materials supplied or performed with respect to the Tenant Improvements by contractor, the subcontractors, Tenant's agents, or any other person or entity.

B. General Requirements. Tenant shall submit to Landlord, prior to the commencement of the construction of Tenant's Work, the following information for Landlord's review and approval (check all that apply):

The names, contact names, addresses, and license numbers of all general contractors and subcontractors Tenant intends to use in the construction of Tenant's Work.

A reasonably detailed schedule for Tenant's performance of Tenant's Work (including, without limitation, the date on which Tenant's Work will commence, the estimated date of completion of Tenant's Work, and the date on which Tenant expects to open for business in the Premises).

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Evidence of insurance as required in the Lease and any other insurance usual and customary for performance of Tenant's Work and requested by Landlord.

Copies of all required governmental permits.

C. Contractor Qualifications. All contractors and subcontractors to perform Tenant's Work shall be licensed contractors, capable of performing quality workmanship and working in harmony with Landlord's general contractor in the Building, if any. Upon notice from Landlord, Tenant shall stop using (or cause contractor or any subcontractor to stop using) any person or entity disturbing labor harmony with any work force or trade engaged in performing Tenant's Work or other work, labor, or services in or about the Building. All work shall be coordinated with any on-going construction work on the Building. Landlord shall have the right to disapprove, in Landlord's reasonable discretion, any contractor or subcontractor which Tenant desires to engage for Tenant's Work.

3. Improvement Allowance

Provided there is no uncured Event of Default by Tenant under the Lease, upon completion of Landlord's Work or Tenant's Work, as applicable, Landlord shall provide an allowance ("Improvement Allowance") toward the costs and expenses associated with improvements to the Premises in accordance with the following (check one):

\$_____ per square foot of leasable area in the Premises. The Improvement Allowance shall be used only for (choose one): Landlord's Work, or Tenant's Work, excepting _____. If costs associated with completing Tenant's Work exceed the Improvement Allowance, or if any costs of Tenant's Work are not to be paid out of the Improvement Allowance, then the excess or excluded amount shall be paid directly by Tenant.

None; Tenant shall be obligated to pay all costs, expenses and fees associated with completing the Tenant's Work in accordance with the Tenant Improvement Plans.

None; Landlord shall be obligated to pay all costs, expenses and fees associated with completing the Landlord's Work in accordance with the Landlord Improvement Plans, however, excepting any costs related to Tenants' furniture, cabling, fixtures and equipment, Signage, design services, and _____, and in no event in an amount exceeding \$_____.

4. Removal of Improvements/Surrender. The following scope of Tenant's Work (check one):

shall become the property of Landlord

shall be removed by Tenant at its sole cost and expense upon the expiration or earlier termination of the Lease Term: _____.