



**RETAIL LEASE AGREEMENT
IDAHO
(Multi-Tenant Triple Net)**

THIS RETAIL LEASE AGREEMENT (the "Lease") is entered into and effective as of _____ (date), between _____ ("Landlord"), and _____ (Tenant"). Landlord and Tenant agree as follows:

1. LEASE SUMMARY.

- a. **Trade Name.** _____
- b. **Leased Premises.** The leased commercial real estate i) consists of an agreed gross leasable area ("GLA") of _____ square feet as outlined on the floor plan attached as Exhibit A (the "Premises"), 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 or structural elements. 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 Tenant's Premises, the actual number of square feet of ground floor space measured to the exterior faces of exterior walls and to the center of party walls, including columns, stairs, elevators and escalators, 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 on _____ or such earlier or later date as provided in Section 3 (the "Commencement Date").
- d. **Lease Termination Date.** The term of this Lease shall be for a period of _____ months and shall terminate at midnight on _____ or such earlier or later date as provided in Section 3 (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).
- e. **Base Rent.** The base monthly rent shall be (check one): \$ _____, or according to the Rent Rider attached hereto ("Base Rent"). Rent shall be payable at Landlord's address shown below in this Section 1, or such other place designated in writing by Landlord.

f. Percentage Rent.

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



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- g. Prepaid Rent.** Upon execution of this Lease, Tenant shall deliver to Landlord the sum of \$ _____ as prepaid rent, to be applied to the 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, or letter of credit according to the Letter of Credit Rider, CBA Form CR, attached hereto.
- i. Permitted Use.** The Premises shall be used only for _____ and for no other purpose without the prior written consent of Landlord (the "Permitted Use").
- j. Notice and Payment Addresses.**
Landlord: _____

Fax No.: _____
Email: _____

Tenant: _____

Fax No.: _____
Email: _____
- k. Tenant's Pro Rata Share.** Landlord and Tenant agree that Tenant's Pro Rata Share is _____%, based on the ratio of the agreed GLA of the Premises to the agreed GLA of the Building and all other buildings on the Property as of the date of this Lease. Any adjustment to the Premises' or Building's GLA measurements will be reflected in an adjustment to Tenant's Base Rent and/or Pro Rata Share, as applicable. Tenant acknowledges that the GLA of certain 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 on attached Exhibit C (the "Landlord's Work"), Tenant shall 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 the Landlord's Work); and acknowledges that the time needed to complete any such items shall not delay the Commencement Date.

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- c. Tenant Improvements.** Attached Exhibit C sets forth all Landlord's Work, if any, and all tenant improvements to be completed by Tenant (the "Tenant's Work"), that will be performed on the Premises. Responsibility for design, payment and performance of all such work shall be as set forth on attached Exhibit C. If Tenant fails to notify Landlord of any defects in the Landlord's Work within thirty (30) days of delivery of possession to Tenant, Tenant shall be deemed to have accepted the Premises in their then 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 in writing 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.
- 3. TERM.** The term of this Lease shall commence on the Commencement Date specified in Section 1, or on such earlier or later date as may be specified by written notice delivered by Landlord to Tenant advising Tenant that the Premises are ready for possession and specifying the Commencement Date, which shall not be less than _____ days (thirty (30) days if not filled in) following the date of such notice.
- a. Early Possession.** 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 or change the Commencement Date or the Termination Date set forth in Section 1, but otherwise all terms and conditions of this Lease shall nevertheless apply during the period of early occupancy before the Commencement Date.
- b. Delayed Possession.** Landlord shall act diligently to make the Premises available to Tenant; however, if Landlord is unable to provide possession on the Commencement Date set forth in Section 1, 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. In addition, the Termination Date set forth in Section 1 shall be modified so that the length of the Lease term remains the same. If Landlord does not deliver possession of the Premises to Tenant within _____ days (sixty (60) days if not filled in) after the date specified in Section 1, Tenant may elect to cancel this Lease by giving written notice to Landlord within ten (10) days after such time period ends. If Tenant gives notice of cancellation, 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. The first "Lease year" shall commence on the Commencement Date and shall end on the date which is twelve (12) months from the end of the month in which the Commencement Date occurs. Each successive lease year during the initial term and any extension terms shall be twelve (12) months, commencing on the first day following the end of the preceding Lease year. To the extent that the tenant improvements are not 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, the Lease shall nevertheless commence on the Commencement Date.

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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 Base Rent stated in Section 1 in advance on or before the first day of each month during the Lease 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 (collectively "rent" or "Rent") when required under this Lease. Payments for any partial month at the beginning or end of the Lease shall be prorated. All payments due to Landlord under this Lease, including late fees and interest, shall be also constitute Additional Rent, and upon failure of Tenant 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, it being understood that, except as otherwise expressly provided herein, 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 five percent (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 fifteen percent (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.** In addition to Base Rent, Tenant shall pay to Landlord Percentage Rent at the rate specified in Section 1 above.
- f. Gross Sales Defined.** "Gross Sales" shall mean the entire amount of the actual sale price, whether for cash, credit or otherwise, of all sales of goods and services and all other income and receipts whatsoever of all business conducted in, 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 received, placed or filled at the Premises, (ii) deposits not refunded to purchasers, (iii) orders taken at the Premises

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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-, or credit card-operated or otherwise (not to be construed to authorize vending or game machines unless specifically set forth elsewhere in this Lease), (v) sale price of gift and merchandise certificates, (vi) payments from other parties for shelf or advertising space at the Premises, (vii) the full value of all consideration other than money received, (viii) all other gross income or receipts from any business or operation in, at, or on the Premises, and (ix) Gross Sales (as defined in this subsection) by any sublessee, concessionaire or licensee. However, Gross Sales shall not include, but Tenant shall keep separate records of, the following as part of Tenant's Records: (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 in, at, or on the Premises where the merchandise is returned by the purchaser, (d) any sales or excise tax imposed by any duly constituted governmental authority (provided that no income or franchise tax; capital stock tax; tax based upon gross receipts, assets or net worth; or similar tax shall be deducted from Gross Sales), 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 the business of Tenant and not for the purpose of consummating a sale that has previously been made in, at, or on the Premises or for the purpose of depriving Landlord of the benefit of a sale that otherwise would be made in, at, or on the Premises. No deduction shall be allowed for any uncollected or uncollectible amounts or reserves therefor, nor for cost 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 provided, or in which any portion of the payment is received, whichever first occurs, regardless of when or whether full payment is received.

- g. Gross Sales Records.** Tenant shall ensure that the business of Tenant and of any subtenant, licensee or concessionaire in, at or on the Premises is operated such that the following books and records are prepared, preserved and maintained in accordance with generally accepted accounting principles: (i) daily dated, sealed, continuous, cash register tapes, (ii) serially numbered sales slips, (iii) settlement report sheets of transactions with subtenants, concessionaires and licensees, (iv) bank statements, (v) general ledger or summary record of all receipts and disbursements from operations in, at or from the Premises, (vi) state and local sales and use tax returns, and (vii) such other records that would normally be kept pursuant to generally accepted accounting principles, or as the Landlord may reasonably require in order to determine Gross Sales hereunder ("Tenant's Records"). Tenant shall retain Tenant's Records at the Premises or at the home or regional office of Tenant for at least three (3) years from the end of the lease year to which they are applicable or, if any audit is required or a controversy should arise between the parties regarding Percentage Rent, until such audit or controversy is terminated, even though such retention period may be after the expiration of the Term or earlier termination of this Lease.
- h. Gross Sales Statements.** Tenant shall provide Landlord with a monthly statement of Gross Sales, including copies of any sales or use tax returns or statements filed with or prepared for local or state authorities during such period, within fifteen (15) days after the end of each calendar month, signed by an authorized representative, 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. Percentage Rent shall be paid on a monthly basis commencing with the first month in each year in which Tenant's Gross Sales for such lease year exceed the Breakpoint set forth in Section 1, above. If any Percentage Rent is due for any month, the payment shall accompany the monthly statement. In addition

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to regular monthly statements, Tenant shall provide an annual statement within sixty (60) days after the end of each lease year, which shall show the total amount of Gross Sales for such lease year, and shall be 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. If such annual statement shows that Tenant underpaid Percentage Rent for the lease year, Tenant shall include the additional amount with the yearly statement, and if the yearly statement shows that Tenant overpaid Percentage Rent, Landlord shall provide a credit or refund. 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 ten (10) days' notice to Tenant, cause a complete audit or examination to be made of Tenant's Records and such books and records of any subtenant, licensee or concessionaire for all or any part of the three lease years immediately preceding such notice. During the audit, Landlord or its authorized representatives shall have full and free access to Tenant's Records and the right to require that Tenant, its agents and employees furnish information or an explanation of the information as may be necessary for a proper examination and audit. If an audit or examination discloses that any of Tenant's statements of Gross Sales understates Gross Sales made during any lease year by three percent (3%) or more, or if Tenant shall have failed to furnish Landlord any monthly Gross Sales statements during any lease year or shall have failed to prepare and maintain Tenant's Records as required by this Lease, Tenant shall pay Landlord the cost of the audit or examination, including travel and related expenses, and any deficiency in Percentage Rent, with interest at the Default Rate. Landlord's acceptance of Percentage Rent during the Lease shall be without prejudice to the Landlord's examination, audit and other rights hereunder.
- j. **Breakpoint Prorations.** The 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 reduced proportionately. If two Breakpoint amounts are in effect during different portions of a given 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, 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(h) 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 breaches any covenant or condition of this Lease, including but not limited to the payment of Rent, Landlord may apply all or any part of the security deposit to the payment of any sum in default and any damage suffered by Landlord as a result of Tenant's breach. 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 Landlord applies the security deposit as contemplated by this Section, Tenant shall, within five (5) days after written demand therefore by Landlord, deposit with Landlord the amount so applied. If Tenant complies with all of the covenants and conditions of this Lease throughout the Lease term, the security deposit shall be repaid to Tenant without interest within thirty (30) days after the surrender of the Premises by Tenant in the condition required by Section 13 of this Lease.
6. **USES.** The Premises shall be used only for the Permitted Use specified in Section 1 above, and for no other business or purpose without the prior written consent of Landlord. The Premises shall be used continuously and uninterruptedly solely for the specific use set forth in Section 1 above and under the Trade Name set forth

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in Section 1 above and for no other purpose or use whatsoever. No act shall be done on or around the Premises that is unlawful 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 on 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 for business at least six (6) days a week and at least eight (8) hours a day; (ii) adequately staff its store with sufficient employees to handle the maximum business and carry sufficient stock of merchandise of such amount, character and quality to accomplish this purpose; (iii) keep the display windows and signs, if any, well-lighted during the hours from sundown to midnight; (iv) keep the Premises and exterior and interior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (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-selling 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: (vii) conduct any auction or bankruptcy sales; (viii) conduct any fire sale except as a result of a fire on the Premises; (ix) conduct any going out of business sale or close-out sale except at the expiration of the Lease term; (x) 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 hereafter; (xi) permit anything to be done on the Premises which will in any way obstruct, interfere with or infringe on the rights of other occupants or invitees of the Property; (xii) install or erect any satellite dish or other roof- or building-mounted equipment; (xiii) install any Automated Teller Machines ("ATMs"), cash machines, lottery machines, appliances, video games, arcade games, pinball machines, or pay telephones in or about the Premises; or (xiv) 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: (1) the handling or sale of alcoholic beverages unless expressly permitted elsewhere in this Lease; (2) the handling or sale of gasoline, petroleum products, tires, or automobile accessories; (3) a beauty shop, nail shop, or salon; (4) the handling or sale of wigs or hair pieces; (5) a theater; (6) a place of amusement or recreation including the use of video, electronic, mechanical, or other gaming machines other than as offered for sale (and except for small numbers of hand-held, non-arcade game machines for the convenience of Tenant's customers); (7) a massage parlor, adult bookstore or adult video store; (8) a health spa or dance studio or aerobic studio; (9) a church or other religious institution; (10) a day care center; (11) a warehouse facility; (12) a car wash or automobile or motorcycle sales, maintenance or service facility; or (13) a training or educational facility.

Neither Tenant nor any person who controls or is controlled by Tenant shall own, operate or become interested in a business 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 from the Premises for the purpose of computing Percentage Rent.

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7. **COMPLIANCE WITH LAWS.** Tenant shall not cause or permit the Premises to be used in any way which violates any law, ordinance, or governmental regulation or order. Landlord represents to Tenant that, as of the Commencement Date, to Landlord's knowledge, but without duty of investigation, and with the exception of any Tenant's Work, the Premises comply with all applicable laws, rules, regulations, or orders, including without limitation, the Americans With Disabilities Act, if applicable, 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 Tenant's 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 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 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; 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; and to the extent serving areas other than just the Premises, heating, ventilation and air conditioning ("HVAC") service, repair and replacement when necessary. Common Area Charges shall not include: Landlord's income tax or general corporate overhead, depreciation on the Building or equipment therein; loan payments; real estate broker's commissions; capital improvements to or major repairs of the Building's structural roof, exterior walls, and structural floors and foundations, except as described 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. 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. Permitted Common Area Charges of a capital nature will be amortized over a reasonable period.

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- b. Calculation and Payment.** As Additional Rent, Tenant shall pay to Landlord on the first of each month with payment of Tenant's Base Rent one-twelfth of Tenant's pro rata share (as set forth in Section 1) of Common Area Charges.
- (i) Landlord shall provide to Tenant, at 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 twelve (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 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 of the Lease term, Landlord shall determine and 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 thirty (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 thirty (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 ninety (90) days after Tenant's receipt of such Common Area Charges Statement. If Tenant fails to provide notice of dispute within such ninety (90) day period, the Common Area Charges Statement shall be final and conclusive. Any audit conducted by Tenant shall be completed within sixty (60) days after Tenant's request. 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 thirty (30) days following completion of the audit. 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 has expired, the excess shall be refunded to Tenant within thirty (30) days after completion of the audit. 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.

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- 9. UTILITIES AND SERVICES.** Landlord shall provide the Premises the following services, the cost of which shall be included in the Common Area Charges to the extent not separately metered to the Premises: water and electricity for the Premises seven (7) days per week, twenty-four (24) hours per day. 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.

Tenant shall furnish all other utilities (including, but not limited to, HVAC, telephone, Internet, and cable service if available) and other 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. Notwithstanding the foregoing, if Tenant's use of the Premises incurs utility service charges which are above , the costs of which shall also be included in Operating Costs, Landlord reserves the right to require Tenant to pay a reasonable additional charge for such usage. 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.** Tenant shall pay all taxes, assessments, liens and license fees 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 on Tenant's personal property located on the Premises. Landlord shall pay all taxes and assessments with respect to the Property, including any taxes resulting from a reassessment of the Building or the Property due to a change of ownership or otherwise, 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 nonexclusive use and convenience of Tenant with other tenants 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 heating, ventilating and air conditioning systems, common electrical service, equipment and facilities, and common mechanical systems, equipment and facilities. Tenant shall comply with reasonable rules and regulations concerning the use of the Common Areas adopted by Landlord from time to time. 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, 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, preventing the public from obtaining prescriptive rights in or to the Common Areas, and temporary use of the Common Areas 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 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 to whom Landlord has granted or may grant such rights, to use the Common Areas. Tenant shall abide by rules and regulations adopted by Landlord from time to time and shall use its best efforts to cause its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, to comply with those rules and regulations, and not interfere with the use of Common Areas by others. Tenant shall cause its employees to park in areas designated for employee parking at or away from the Property, as designate by Landlord from time to time.
- c. Maintenance of Common Areas.** Landlord shall maintain the Common Areas in good order, condition and repair. This maintenance cost shall be included in Common Area Charges pursuant to Section 8. In performing such maintenance, Landlord shall use 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, including any Tenant's Work identified on attached Exhibit C (the "Alterations"), with the prior written consent of Landlord, which, with respect to Alterations not affecting the structural components of the Premises or utility systems therein, shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have thirty (30) days in which to respond to Tenant's request for any Alterations so long as such request includes the name of Tenant's contractors and reasonably detailed plans and specifications therefor. The term "Alterations" shall not include the installation of shelves, movable partitions, Tenant's equipment, and trade fixtures that may be performed without damaging existing improvements or the structural integrity of the Premises, the Building, or the Property, and Landlord's consent shall not be required for Tenant's installation or removal of those items. 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 (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 materialmens' liens against the Premises or the Property or any interest therein. Landlord shall be deemed the owner of all Alterations except for those which Landlord requires to be removed at the end of the Lease. Tenant shall remove all Alterations at the end of the Lease term unless Landlord conditioned its consent upon Tenant leaving a specified Alteration at the Premises, in which case Tenant shall not remove such Alteration. Tenant shall immediately repair any damage to the Premises caused by removal of Alterations.
- 13. REPAIRS AND MAINTENANCE; SURRENDER.** Tenant shall, at its sole expense, maintain the Premises in good condition and promptly make all 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 serving more than just the Premises, and the Common Areas, the costs of which shall be included in Common Area Charges. 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

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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 of the Lease term, whether by lapse of time or otherwise, Tenant shall promptly and peacefully surrender the Premises, together with all keys, to Landlord in as good condition as when received by Tenant from Landlord or as thereafter improved, 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 one hundred eighty (180) days prior to the expiration or sooner termination of the Lease term, and (b) for posting "for lease" signs within one hundred eighty (180) days prior to the expiration or sooner termination of the Lease 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 any approved signage at Tenant's sole expense and in compliance with all applicable laws. 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 violates this Section. Tenant shall not affix or maintain upon the glass panes and supports of the show windows and doors, or within twelve inches (12") of the show windows and doors, any signs, advertising placards, names, insignia, trademarks, descriptive material or any other such like item or items except such as shall have first received the written approval of the Landlord as to size, type, color, location, copy, nature and display qualities. Tenant shall, at its own expense, be required to erect an exterior sign on its store front, which sign shall be in place and operating (if illuminated) concurrent with Tenant opening for business in the Premises. All 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 signs which comply with the terms of this Article, Tenant shall not erect, place, paint, or maintain in or on the Premises, any sign, exterior advertising medium, or any other object of any kind whatsoever, whether an advertising device or not, visible or audible outside the Premises. Tenant shall not change the color, size, location, composition, wording or design of any sign or advertisement on the Premises that may have been previously approved by Landlord, without the prior written approval of Landlord and the 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 automobiles or other vehicles parked in or about said Common Area. Without otherwise limiting the foregoing, 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 the Premises. Tenant shall not damage or deface the Premises when installing or removing signage and shall repair any injury or damage to the Premises caused by such installation or removal. Tenant shall pay its pro-rata share of operating, maintaining, repairing, lighting, and, where reasonably necessary, replacement of any multi-tenant signage on which Tenant is granted space by Landlord.

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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 but not rendered untenable, by fire or other insured casualty, 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 twenty (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 twenty-five percent (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 sixty (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 Lease 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 sixty (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 twenty (20) days' written notice to Landlord unless Landlord, within such twenty (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 the 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 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); 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.

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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 the 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 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 twenty-five percent (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. 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 Lease term, Tenant shall pay for and maintain commercial general liability insurance with broad form property damage and contractual liability endorsements. This policy shall name Landlord, its property manager (if any), and other parties designated by Landlord as additional insureds using an endorsement form acceptable to Landlord, and shall 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, and a deductible of not more than \$10,000. Tenant's insurance will be primary and noncontributory with any liability insurance carried by Landlord. Landlord may also require Tenant to obtain and maintain 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.
- b. Tenant's Property Insurance.** During the Lease 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 improvements, alterations, personal property, fixtures and equipment 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 in which the Premises are located. 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 thirty (30) days prior written notice to Landlord. Tenant shall deliver to Landlord upon commencement of the Lease 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 written 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.

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- 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 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.** 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 property insurance required to be carried or otherwise carried by each of them. Each party shall provide notice to the property insurance carrier or carriers of this mutual waiver of subrogation, and shall cause its respective property 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 property 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 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 shall survive expiration or termination of this Lease.

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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 lease exclusives 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. Consent to any 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 same, including attorneys fees, upon demand of Landlord, up to a maximum of \$1,250.

If Tenant is a partnership, limited liability company, corporation, or other entity, any transfer of this Lease by merger, consolidation, redemption or liquidation, 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, if required, for the payment of Rent and performance of all terms of this Lease. In connection with any Transfer, Tenant shall provide Landlord with copies of all assignments, subleases and assumption agreements and documents.

20. LIENS. Tenant shall not to subject the Landlord's assets to any liens or claims of lien. Tenant shall keep the Premises free from any liens created by or through Tenant. Tenant shall indemnify and hold Landlord harmless from liability for any such liens including, without limitation, liens arising from any Alterations. If a lien is filed against the Premises by any person claiming by, through or under Tenant, Tenant shall, within ten (10) days after Landlord's demand, at Tenant's expense, either remove the lien or furnish to Landlord a bond in form and amount and issued by a surety satisfactory to Landlord, indemnifying Landlord and the Premises against all liabilities, costs and expenses, including attorneys' fees, which Landlord could reasonably incur as a result of such lien.

21. DEFAULT. The following occurrences shall each constitute a default by Tenant ("Event of Default").

- a. Failure To Pay.** Failure by Tenant to pay any sum, including Rent, due under this Lease following five (5) days' notice from Landlord of the failure to pay.
- b. Vacation/Abandonment.** Vacation by Tenant of the Premises (defined as an absence for at least fifteen (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 sixty (60) days after its institution or commencement.

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- d. **Levy or Execution.** The taking of Tenant's interest in this Lease or the Premises, or any part thereof, by execution or other process of law directed against Tenant, or is taken upon or subjected to any attachment by any creditor of Tenant, if such attachment is not discharged within fifteen (15) days after being levied.
- e. **Other Non-Monetary Defaults.** Breaching 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 thirty (30) days after notice by Landlord to Tenant of the breach.
- f. **Failure to Take Possession.** Failure by Tenant to take possession of the Premises on the Commencement Date or failure by Tenant to commence any Tenant Improvement in a timely fashion.

Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event less than thirty (30) days after written notice by Tenant to Landlord. 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 of 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 none shall exclude any other right or remedy allowed by law.

- a. **Termination of Lease.** Landlord may terminate Tenant's interest under the Lease, but no act by Landlord other than written 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 the Rent and other sums that would have been owing by Tenant under this Lease for the balance of the Lease term, less the net proceeds, if any, of any re-letting 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 24-month period has occurred then such amounts shall be computed on the basis of the average monthly amounts accruing during such shorter period.

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- 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, 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 written 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 the 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 Lease term, or any extensions 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.
- 23. MORTGAGE SUBORDINATION AND ATTORNMEN** 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

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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 fifteen (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 the 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.
- 25. HOLDOVER.** If Tenant shall, without the written consent of Landlord, remain in possession of the Premises and fail to return the Premises to Landlord after the expiration or termination of this Lease, the tenancy shall be a holdover tenancy and shall be on a month-to-month basis, 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. 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, (ii) three (3) days after being sent by registered or certified mail to the other party at the address set forth in Section 1; or (iii) upon confirmed transmission by facsimile to the other party at the facsimile numbers 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 rentable square footage of the Premises; (ii) the date the Lease 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 Lease or option to purchase the Premises; and (xii) such other factual matters concerning the Lease or the Premises

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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 ten (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.** Anything in this Lease to the contrary notwithstanding, 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.
- 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 act on Tenant's behalf. Tenant shall, within ten (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 knowledge without duty of investigation, there is no Hazardous Material on, in, or under the Premises as of the Commencement Date 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 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 Lease 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 agents, employees, contractors or invitees, except with Landlord's prior consent and then only upon strict compliance with all applicable federal, state and local laws, regulations, codes and ordinances. 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 space or of any amenity of the Premises or the Property, or elsewhere, damages arising from any adverse impact on marketing of space at

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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 Lease 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 by Tenant, its employees, officers, agents, servants, contractors, customers, clients, visitors, guests, or other licensees or invitees, results in any unlawful release of Hazardous Materials on the Premises or the Property, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises or the 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 termination of this Lease.

- 33. QUIET ENJOYMENT.** So long as Tenant pays the 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.
- 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 Broker"), if any, it has not engaged any brokerage, 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 Broker"), if any, it has not engaged any brokerage, 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 except in writing, signed by Landlord and Tenant.

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- 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.
- 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 signed by both of them.
- 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 effect this Lease or the obligations of Tenant hereunder or impose any liability on Landlord.
- j. Authority of Parties.** Each party signing this Lease represents and warrants to the other that it has the authority to enter into this Lease, 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 the party on signing.
- 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 Tenant Improvement Schedule

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

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37. REPRESENTATION CONFIRMATION; LIMITED DUAL AGENCY.

(a) **Representation Confirmation.** Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with Tenant and Landlord.

Section 1:

- The brokerage working with TENANT is acting as an AGENT for TENANT
- The brokerage working with TENANT is acting as a LIMITED DUAL AGENT for TENANT, without an ASSIGNED AGENT.
- The brokerage working with TENANT is acting as a LIMITED DUAL AGENT for TENANT, and has an ASSIGNED AGENT acting solely on behalf of TENANT.
- The brokerage working with TENANT is acting as a NONAGENT for TENANT.

Section 2:

- The brokerage working with LANDLORD is acting as an AGENT for LANDLORD.
- The brokerage working with LANDLORD is acting as a LIMITED DUAL AGENT for LANDLORD, without an ASSIGNED AGENT.
- The brokerage working with LANDLORD is acting as a LIMITED DUAL AGENT for LANDLORD, and has an ASSIGNED AGENT acting solely on behalf of LANDLORD.
- The brokerage working with LANDLORD is acting as a NONAGENT for LANDLORD.

Each party signing this document confirms that the party has received, read and understood the Idaho Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS ALSO A SEPARATE, SIGNED, WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

(b) **Limited Dual Agency and Assigned Agency. Limited Dual Agency and Assigned Agency.** The parties have received, read and understands the Idaho Real Estate Commission's "Agency Disclosure Brochure." The parties understand that Broker may provide agency representation to both Landlord and Tenant. The parties understand that, as an agent for both Tenant/client and Landlord/client, Broker will be a limited dual agent of each client and cannot advocate on behalf of one client over another, and cannot legally disclose to either client certain confidential client information concerning price negotiations, terms or factors motivating the Tenant/client to buy or the Landlord/client to sell without specific written permission of the client to whom the information pertains. The specific duties, obligations and limitations of a limited dual agent are contained in the Agency Disclosure Brochure as required by Section 54-2085, Idaho Code. The parties understand that a limited dual agent does not have a duty of undivided loyalty to either client.

The parties further acknowledge that, to the extent Broker offers assigned agency as a type of agency representation, individual sales associates may be assigned to represent each client to act solely on behalf of the client consistent with applicable duties set forth in Section 54-2087, Idaho Code. In an assigned agency situation, the designated broker (the broker who supervises the sales associates) will remain a limited dual



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agent of the client and shall have the duty to supervise the assigned agents in the fulfillment of their duties to their respective clients, to refrain from advocating on behalf of any one client over another, and to refrain from disclosing or using, without permission, confidential information of any other client with whom the brokerage has an agency relationship.

- Both parties are represented in this transaction by separate brokers, and limited dual agency and assigned agency are not applicable in this transaction.
- Broker **may** act as a Limited Dual Agent and may, in Broker's discretion, assign individual agents to represent Seller and potential buyers of the Property.
- Broker **may not** act as a Limited Dual Agent.

_____/_____
[Landlord's Initials]

_____/_____
[Tenant's Initials]

38. CUSTOMER COMPENSATION AGREEMENT. THIS PROVISION SHALL APPLY ONLY IN THE EVENT THAT THE BROKERAGE WORKING WITH THE LANDLORD IS A NON-AGENT, AND, THEREFORE, THE LANDLORD REMAINS A CUSTOMER AND NOT A CLIENT. IF LANDLORD IS A CLIENT, THE BROKERAGE AND LANDLORD MUST ENTER INTO A SEPARATE, SIGNED, WRITTEN AGREEMENT FOR AGENCY REPRESENTATION THAT ADDRESSES COMPENSATION OF THE BROKERAGE. Landlord should review the Representation Confirmation provision of this Lease as well as the Agency Disclosure Brochure for additional information. Landlord agrees to pay a commission to Landlord's Brokerage (identified in the Representation Confirmation paragraph above) 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 Lease 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). Any commission shall be earned upon execution of this Lease, and paid one-half upon execution of the Lease and one-half upon occupancy of the Premises by Tenant. Landlord's Brokerage shall pay to Tenant's Brokerage (identified in the Representation Confirmation paragraph above) 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 or sale 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.



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39. BROKER PROVISIONS.

LANDLORD'S AGENT, TENANT'S AGENT AND THEIR BROKERS 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.

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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STATE OF IDAHO

COUNTY OF _____

ss.

On this _____ day of _____, in the year _____, before me personally appeared _____ known or identified to me (or proved to me on the oath of _____) to be the person whose name is subscribed to within instrument, and acknowledged to me that he she executed the same:

- on his or her own behalf.
- on behalf of _____ as attorney-in-fact.
- on behalf of _____ as partner of the partnership.
- on behalf of _____ as manager of member of the LLC.
- on behalf of _____ as officer of the corporation.
- on behalf of _____ as trustee.

(Signature of Notary)

(Legibly Print or Stamp Name of Notary)

Notary public in and for the state of Idaho

Residing at _____

My appointment expires _____



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EXHIBIT C
[Tenant Improvement Schedule]

1. Tenant Improvements to be Completed by Landlord

Blank lined area for listing improvements to be completed by the landlord.

2. Tenant Improvements to be Completed by Tenant

Blank lined area for listing improvements to be completed by the tenant.

[THIS COULD ALSO BE DONE BY SEPARATE EXHIBITS, ONE FOR LANDLORD'S T.I.s AND ONE FOR TENANT'S T.I.s.]