



RETAIL USE RIDER

This Retail Use Rider ("Rider") is a part of and incorporated by this reference into that certain Lease Agreement dated _____, 20____ ("Lease") between _____, a(n) _____ ("Landlord") and _____, a(n) _____ ("Tenant"), as the same may be amended, concerning the commercial space commonly known as _____ ("Premises"), which Premises are part of the real property located at _____ and commonly known as _____ ("Property").

- 1. PERCENTAGE RENT.** Tenant shall pay to Landlord, in addition to the Rent payable under the Lease, "Percentage Rent" equal to the amount, if any, by which _____% of Tenant's gross sales for any full or partial Lease Year exceeds the se rent payable for such Lease Year. Tenant shall pay Percentage Rent within fifteen (15) days after the end of first calendar month when Percentage Rent begins being payable hereunder.

The term "gross sales" shall mean the total amount of all sales at the actual sale price, whether for cash, on credit, or otherwise, of all merchandise and services sold at, on, or from the Premises, and from any place within a _____ mile radius of the Premises, whether by Tenant or by any party occupying the Premises as a licensee, concessionaire, sub-tenant or assignee of Tenant, even though such sales or services are ordered by telephone, by mail, online, by catalog, or otherwise. Payments on installments or credit sales shall be included in gross sales when received. Gross sales shall not include: (i) sums collected and paid out for any sales or retail excise tax; (ii) sales to employees at a discount; (iii) the value of exchanged or returned merchandise; (iv) sales of trade fixtures or store equipment after use on the Premises; (v) transfers of merchandise between stores of Tenant, provided no such transfer is made to avoid liability for Percentage Rent; (vi) finance, interest, service or carrying charges on credit sales; (vii) charges for services provided for the convenience of customers at no profit to Tenant; (viii) sales from which no monetary compensation is received and such sales are recorded for control purposes, only, or sales where the proceeds are given to and/or used for charity; and (ix) gratuities and service charges which were included on customer's bills and which are passed through directly to the service employees without diminution or deduction by Tenant.

Tenant shall maintain at Tenant's principal office and in accordance with generally accepted accounting principles usual and customary books and records which shall disclose all information reasonably required to determine gross sales. Such books and records shall be open to inspection and audit at Tenant's principal office by Landlord or its duly authorized agents upon five (5) working days' notice given within two (2) years following the close of the subject Lease Year. If such audit shall disclose a deficiency in Percentage Rent paid by Tenant, Tenant shall promptly pay such deficiency and, if the gross sales were understated by 3% or more, then Tenant shall pay the cost of such audit. Otherwise, Landlord shall pay the cost of such audit. Tenant shall maintain such books and records for not less than twenty-four (24) months following the close of each Lease Year.

Within fifteen (15) days after the end of each calendar month during the Term, including the fifteenth (15) day of the month following the last month of the Term, Tenant shall furnish to Landlord a written statement certified by Tenant to be correct, showing the total gross sales made during the preceding calendar month, and shall accompany each such statement with a payment to Landlord of the Percentage Rent due for such month (if any).

Within thirty (30) days after the end of each calendar year of the Term, Tenant shall furnish to Landlord a written statement, certified by Tenant to be correct, showing the total gross sales by months made in, at or from the Premises during the preceding calendar year, at which time an adjustment shall be made between Landlord and Tenant so that the total Percentage Rent paid to Landlord for such calendar year shall be a sum equal to the applicable percentage of Tenant's gross sales made in, at or from the Premises during each calendar year of the term hereof, less the Base Rent paid for such calendar year, if previously paid, so that the Percentage Rent, though payable monthly, shall be computed and adjusted on an annual basis. Any overpayment of Percentage Rent by Tenant shall be credited towards the next Rent payments due. Tenant shall pay to Landlord within ten (10) days any underpayment revealed by such annual report.

- 2. CONTINUOUS OPERATION.** Tenant shall operate Tenant's business in the Premises to maximize gross sales and shall carry at all times in the Premises a stock of merchandise of such size, character, quantity, and quality reasonably adequate to produce the greatest gross sales. Tenant shall carry on its business diligently and

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continuously at the Premises throughout the Term and will keep the Premises open for business in accordance with the following minimum business hours:

Monday-Friday: _____ a.m. to _____ p.m.
Saturday: _____ a.m. to _____ p.m.
Sunday: _____ a.m. to _____ p.m.

- 3. OWNERSHIP OF TRADE FIXTURES.** Notwithstanding anything in the Lease to the contrary, all trade fixtures, trade equipment and other property placed on the Premises by Tenant and any alterations or replacements thereof, including, but not limited to, all bars, booths, light fixtures, stoves, ovens, refrigeration units, bar stools, music, television, or paging systems, shelving, display racks and other equipment (collectively, "Trade Fixtures"), shall remain the property of, and shall be removed by, Tenant upon the expiration or earlier termination of this Lease; provided, however, Tenant shall not remove any fixtures including doors, plumbing fixtures, HVAC units, or building standard electrical fixtures. The Trade Fixtures shall not be considered to be Alterations, as such term is defined in the Lease. Tenant shall immediately repair any damage to the Premises caused by the installation and/or removal of Trade Fixtures.
- 4. SUBORDINATION OF SECURITY INTEREST AND LIEN.** Notwithstanding anything in the Lease to the contrary, Landlord hereby subordinates any and all claim, right, title and interest, including any statutory lien rights, in and to all of Tenant's Trade Fixtures and personal property located in the Premises to the security interest of Tenant's lender(s), if any, existing as of the Commencement Date or arising thereafter. Landlord shall promptly execute any usual and customary subordination agreements reasonably requested of Landlord by Tenant's lender(s).
- 5. PERMITS & LICENSES CONTINGENCY.** As conditions precedent to Tenant's obligations under the Lease, Tenant shall obtain, at its sole cost and expense, all building permits, certificates of occupancy, and any other approvals, licenses, or permits, including, without limitation, a Class _____ liquor license. If Tenant has not obtained all of the foregoing permits and approvals or otherwise waived this contingency in writing within _____ days ((60) days if not filled in) from the execution of the Lease r from the Commencement Date, whichever date occurs earlier, then Tenant may terminate this Lease by delivering written notice to Landlord no later than ten (10) days following the expiration of the foregoing period. Upon such termination, Landlord shall refund to Tenant all prepaid rent and security deposits, if any, and no party shall have any further obligation to the other under the Lease. Failure of Tenant to timely exercise the foregoing termination option shall be deemed satisfaction or waiver of the contingency described herein.
- 6. ADDITIONAL INSURANCE REQUIREMENTS.** If Tenant serves, distributes or sells any alcoholic beverages, then the insurance coverage to be carried by Tenant pursuant to the Lease shall include liability for violations of any governmental statute, ordinance, order, regulation or rule pertaining to the sale, gift, distribution, packaging, consumption or use of any alcoholic beverages, or liability by reason of the selling, serving or giving of any alcoholic beverage (or any substance causing or contributing to the intoxication of any person) to a minor or to a person under the influence of alcohol or any other person. The indemnification obligations of Tenant under the Lease shall extend to damages occurring on the Premises and elsewhere at the Building or Property resulting from risks insurable by any of the following: (i) dram shop liability insurance; (ii) host liquor liability insurance; (iii) liquor legal liability insurance; or (iv) insurance otherwise related to the sale, gift, distribution, packaging, consumption or use of alcoholic beverages.
- 7. GARBAGE REMOVAL.** Tenant shall store all garbage for disposal within the area designated by Landlord at the rear of the Premises, or other place Landlord may designate from time to time, and only in receptacles approved by Landlord. Tenant shall not operate an incinerator or burn trash or garbage within the Premises or on the Common Areas, Building or Property. Tenant shall pay all costs associated with disposal of its garbage, including but not limited to the cost of pick-up, containers and deposits. Tenant may, at its option, contract for its own garbage removal and disposal. Tenant shall maintain the designated garbage area clean, sanitary conditions and free of insects and rodents.
- 8. PLUMBING.** Tenant shall not use the plumbing facilities for any purpose other than that for which they were constructed and will not deposit any foreign substances therein. Tenant shall be solely responsible for the costs arising from any breakage, blockage, stoppage or damage resulting from the acts or omissions of Tenant or its



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personnel, employees, officers, agents, contractors, customers, clients, visitors, guests, or other licensees or invitees.

9. **NO SALES ON THE COMMON AREAS (Only applicable if Property is multi-tenant).** Tenant shall not place any displays or goods in any of the Common Areas. Tenant shall not solicit business in the parking areas or any of the other Common Areas, or distribute handbills or other advertising material in or upon automobiles parked in the parking areas.
10. **DELIVERIES (Only applicable if Property is multi-tenant).** Tenant shall make and receive deliveries of all goods and merchandise from the rear of the Premises or such other service areas designated by Landlord from time to time. Tenant shall have the right to use in common with other tenants of the Building or Property such delivery service areas designated by Landlord, subject to rules and regulations adopted by Landlord from time to time.
11. **NO AUCTIONS OR DISTRESS SALES (Only applicable if Property is multi-tenant).** Tenant shall not conduct any auction, fire, bankruptcy, "going out of business" or other distress sales of any nature on the Premises or Common Areas whether or not such sales are voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding. Tenant's violation of this section shall constitute an Event of Default by Tenant under the Lease and pursuant to which Landlord shall be entitled to seek an injunction prohibiting any further violation, in addition to all other rights and remedies under the Lease, at law and in equity.
12. **TENANT'S PERSONNEL PARKING (Only applicable if Property is multi-tenant).** Tenant shall not permit its employees, contractors, subcontractors, suppliers or agents (collectively, "Tenant's Personnel") to park their vehicles or equipment in parking areas designated by Landlord for patrons of the Property. Landlord may, at its option, designate particular parking areas, if any, to be used by Tenant's Personnel. Upon Landlord's request, Tenant shall furnish to Landlord a list of all license plate numbers belonging to Tenant's Personnel and shall thereafter update the list to reflect changes in such personnel. If Tenant's Personnel do not comply with the restrictions set forth herein, then Landlord may, in addition to any other right or remedy hereunder, charge to Tenant as Additional Rent the amount of Fifty Dollars (\$50.00) per day for each parking space impacted by a violation of this section.
13. **MERCHANT'S ASSOCIATION; PROMOTIONAL FUND (Only applicable if Property is multi-tenant).** Tenant shall become a member of any merchant's association for the Property whether presently in existence upon the execution of the Lease or formed thereafter. Tenant shall take all actions necessary to remain a good standing member of the merchant's association throughout the Term. Tenant shall timely pay all membership dues which shall not exceed _____ cents per rentable square foot of the Premises in any calendar year, which dues shall constitute Additional Rent under the Lease. Landlord shall be solely responsible for all aspects of promotions, including selecting the date, time and manner of promotions, decorating the Property, and advertising for promotions. Tenant will cooperate with Landlord and abide by any special rules and regulations adopted by Landlord for each promotion.
14. **EXCLUSIVE USE (Only applicable if Property is multi-tenant).** So long as Tenant is open and operating for business at the Premises as a _____, Tenant shall have the exclusive right to operate a _____ on the Property, except for (a) those premises leased to other tenants for such use prior to the execution of the Lease, which premises may continue to be used for such uses as set forth in the leases for the respective premises, and (b) those premises leased by other tenants at the Property where Landlord does not have the right in its sole discretion to deny consent to any change of use by such tenants or their assignees or subtenants. After the execution of the Lease, Landlord shall not lease any other premises at the Property to other tenants who are permitted to operate any business for which Tenant has been granted exclusive use rights pursuant to this Section.

Landlord's Initials:

Tenant's Initials:

Landlord's Initials:

Tenant's Initials: