



RETAIL USE RIDER

This Retail Use Rider applies to Premises leased by Tenant for retail purposes. Sections 9 through 14 shall apply if Landlord leases space at the Property to more than one tenant.

- 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 _____ percent (____%) of Tenant's gross sales for any full or partial Lease Year exceeds the base monthly rent payable for such Lease Year. This Percentage Rent shall be paid within fifteen (15) days after the end of every calendar month, based upon the Percentage Rent for such prior calendar month, less the base monthly rent due for such month.

The term "gross sales" shall mean the total of all sales (whether for cash, on credit, or otherwise) of all merchandise and services sold in, 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, mail, catalog, telegraph 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) receipts from pay telephones; (ix) 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 (x) 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 home office Tenant's 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 home office by Landlord or its duly authorized agents upon five (5) working days' notice given within two (2) years following the close of the Lease Year in question. If such audit shall disclose a deficiency in Percentage Rent, Tenant shall promptly pay such deficiency and, if the gross sales were understated by three percent (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 Lease term, including the fifteenth day of the month next succeeding the last month of the Lease 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.

Within thirty (30) days after the end of each Lease Year of the Lease term, Tenant shall furnish to Landlord a written statement, certified by Tenant to be correct, showing the total gross sales by months made in, upon or from the Premises during the preceding Lease Year, at which time adjustment shall be made between Landlord and Tenant so that the total Percentage Rent paid to Landlord for such Lease Year shall be a sum equal to the applicable percentage of Tenant's gross sales made in, upon or from the Premises during each Lease Year of the term hereof, less the base monthly Rent paid for such Lease 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 the gross sales and shall carry in the Premises at all times a stock of merchandise of such size, character, quantity, and quality reasonably designed to produce the greatest gross sales. Tenant shall carry on its business diligently and continuously at the Premises throughout the Lease term and will keep the Premises open for business on all business days 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.

RETAIL USE RIDER
(CONTINUED)

- 3. OWNERSHIP OF IMPROVEMENTS.** All trade fixtures, 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 may 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 standard electrical fixtures. The Trade Fixtures shall not be considered to be Alterations, as defined in the Lease.
- 4. SUBORDINATION OF SECURITY INTEREST AND LIEN.** Landlord hereby subordinates any and all claim, right, title and interest, including any statutory lien rights, in and to all Trade Fixtures and personal property of Tenant to the security interest of Tenant's lender(s), if any, either existing as of the Commencement Date or thereafter. Landlord shall promptly execute any subordination agreements reasonably requested of Landlord by Tenant's lender(s).
- 5. LIQUOR LICENSE, ETC.** The obligations of Tenant under the Lease are expressly conditioned upon Tenant obtaining, 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 waived this contingency within _____ days (**60, if not filled in**) of the execution of this Addendum or the Commencement Date, whichever is earlier, then Tenant may terminate this Lease by written notice to Landlord. Upon such termination, Landlord shall refund to Tenant all previously paid deposits and no party shall have any further obligation to the other under the Lease.
- 6. ADDITIONAL INSURANCE REQUIREMENTS.** If Tenant serves, distributes or sells any alcoholic beverages, then the insurance to be carried by Tenant pursuant to the Lease shall not exclude liability for violation of any governmental statute, ordinance, regulation or rule pertaining to the sale, gift, distribution or use of any alcoholic beverages, or liability by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or any other person, or which causes or contributes to the intoxication of any person. Tenant's indemnification obligations under the Lease shall extend to damages occurring on the Premises and elsewhere 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 or use of alcoholic beverages.
- 7. GARBAGE REMOVAL.** Tenant shall store all garbage within the area designated by Landlord at the rear of the Premises 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. 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 keep the designated garbage area clean and free of pests.
- 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 in a manner or amount such that the plumbing may become damaged or blocked. Tenant shall be solely responsible for the cost of any breakage, stoppage or damage resulting from the acts or omissions of Tenant or its personnel or customers.
- 9. NO SALES ON THE COMMON AREAS.** Tenant shall not place any displays or goods in any of the Common Areas. Tenant shall not solicit business in the parking area or any of the other Common Areas, or distribute handbills or other advertising material in or upon automobiles parked in the parking area.
- 10. DELIVERIES.** Tenant shall deliver and receive all goods and merchandise from the rear of the Premises or such other service areas designated by Landlord. Tenant shall have the right to use during the term of this Lease, in common with Landlord's other tenants, such service areas designated by Landlord subject to rules and regulations adopted by Landlord from time to time.
- 11. NO AUCTIONS OR DISTRESS SALES.** No auction, fire, bankruptcy, "going out of business" or other distress sales of any nature may be conducted on the Premises, whether the distress sale is voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding. The violation of this section shall be a material breach of this Lease and entitle Landlord to an injunction prohibiting any further violation in addition to all other rights and remedies under the Lease.



RETAIL USE RIDER
(CONTINUED)

- 12. TENANT'S PERSONNEL PARKING.** All employees, contractors, subcontractors, suppliers and agents of Tenant (collectively "Tenant's Personnel") shall not be permitted to park their vehicles or equipment in parking areas designated by Landlord from time to time 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 Landlord with all license plate numbers of 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 of this section, then Landlord may, in addition to any other right or remedy hereunder, charge Tenant Fifty Dollars (\$50.00) per day for each parking space impacted by a violation of this section.
- 13. MERCHANT'S ASSOCIATION; PROMOTIONAL FUND.** Tenant shall become a member of any merchant's association for the Property whether presently in existence or formed in the future. Tenant shall take all actions necessary to remain a member in good standing of the merchant's association throughout the Lease term. Tenant shall timely pay all membership dues which shall not exceed _____ cents per square foot of leasable floor area of the Premises in any calendar year. Although Landlord may consult with certain of the tenants from time to time, Landlord will be solely responsible for all aspects of those promotions, including selecting the date, time and manner of the promotions, decorating the Property, and advertising for the promotions. Tenant will cooperate with Landlord and abide by any special rules and regulations adopted by Landlord for each promotion.
- 14. EXCLUSIVE USE.** Tenant shall have the exclusive right to operate a _____ on the Property, except that premises leased to other tenants prior to the execution of the Lease may continue to be used for the permitted uses described in the leases for those premises until the expiration or termination of each such lease. After the execution of the Lease, Landlord shall not lease any other premises at the Property to other tenants who are permitted to operate the business that is reserved to Tenant.

Landlord's Initials:

Tenant's Initials:

Landlord's Initials:

Tenant's Initials: