

# Colorado Liquor Retail License Application

<input type="checkbox"/> New License <input checked="" type="checkbox"/> New-Concurrent <input type="checkbox"/> Transfer of Ownership <input type="checkbox"/> State Property Only			
• All answers must be printed in black ink or typewritten • Applicant must check the appropriate box(es) • Applicant should obtain a copy of the Colorado Liquor and Beer Code: <a href="http://www.colorado.gov/enforcement/liquor">www.colorado.gov/enforcement/liquor</a>			
1. Applicant is applying as a/an <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Association or Other <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership (includes Limited Liability and Husband and Wife Partnerships)			
2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation <div style="border: 1px solid black; padding: 2px;">                     AN NAIL SPA AN AV NAIL SPA ASPEN GROVE LLC                 </div>			
2a. Trade Name of Establishment (DBA) <div style="border: 1px solid black; padding: 2px;">                     Anthony Vince Nail Spa                 </div>		Business Telephone <div style="border: 1px solid black; padding: 2px;">                     419 887 1889                 </div>	
3. Address of Premises (specify exact location of premises, include suite/unit numbers) <div style="border: 1px solid black; padding: 2px;">                     7301 Santa Fe Dr. unit 640                 </div>			
City <div style="border: 1px solid black; padding: 2px;">                     Littleton                 </div>	County <div style="border: 1px solid black; padding: 2px;">                     Arapahoe                 </div>	State <div style="border: 1px solid black; padding: 2px;">                     CO                 </div>	ZIP Code <div style="border: 1px solid black; padding: 2px;">                     80120                 </div>
4. Mailing Address (Number and Street) <div style="border: 1px solid black; padding: 2px;">                     8157 Laurel Lake Ct.                 </div>		City or Town <div style="border: 1px solid black; padding: 2px;">                     Liberty Township                 </div>	State <div style="border: 1px solid black; padding: 2px;">                     OH                 </div>
5. Email Address <div style="border: 1px solid black; padding: 2px;">                     LAN@ANTHONYVINCEANAILSPA.COM                 </div>			
6. If the premises currently has a liquor or beer license, you must answer the following questions			
Present Trade Name of Establishment (DBA)		Present State License Number	Present Class of License
		Present Expiration Date	

Section A                      Nonrefundable Application Fees	Section B (Cont.)                      Liquor License Fees
<input type="checkbox"/> Application Fee for New License.....\$550.00 <input checked="" type="checkbox"/> Application Fee for New License w/Concurrent Review.....\$650.00 <input type="checkbox"/> Application Fee for Transfer.....\$550.00	<input type="checkbox"/> Lodging & Entertainment - L&E (County) .....\$500.00 <input type="checkbox"/> Manager Registration - H & R .....\$75.00 <input type="checkbox"/> Manager Registration - Tavern.....\$75.00 <input type="checkbox"/> Manager Registration - Lodging & Entertainment.....\$75.00 <input type="checkbox"/> Manager Registration - Campus Liquor Complex .....\$75.00
<b>Section B                      Liquor License Fees</b> <input type="checkbox"/> Add Optional Premises to H & R.....\$100.00 X                      Total _____ <input type="checkbox"/> Add Related Facility to Resort Complex\$75.00 X                      Total _____ <input type="checkbox"/> Arts License (City) .....\$308.75 <input type="checkbox"/> Arts License (County) .....\$308.75 <input type="checkbox"/> Beer and Wine License (City).....\$351.25 <input type="checkbox"/> Beer and Wine License (County).....\$436.25 <input type="checkbox"/> Brew Pub License (City) .....\$750.00 <input type="checkbox"/> Brew Pub License (County).....\$750.00 <input type="checkbox"/> Campus Liquor Complex (City).....\$500.00 <input type="checkbox"/> Campus Liquor Complex (County).....\$500.00 <input type="checkbox"/> Campus Liquor Complex (State).....\$500.00 <input type="checkbox"/> Club License (City) .....\$308.75 <input type="checkbox"/> Club License (County) .....\$308.75 <input type="checkbox"/> Distillery Pub License (City).....\$750.00 <input type="checkbox"/> Distillery Pub License (County).....\$750.00 <input type="checkbox"/> Hotel and Restaurant License (City) .....\$500.00 <input type="checkbox"/> Hotel and Restaurant License (County) .....\$500.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City) .....\$600.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (County).....\$600.00 <input type="checkbox"/> Liquor-Licensed Drugstore (City) .....\$227.50 <input type="checkbox"/> Liquor-Licensed Drugstore (County) .....\$312.50 <input checked="" type="checkbox"/> Lodging & Entertainment - L&E (City) .....\$500.00	<input type="checkbox"/> Master File Location Fee .....\$25.00 X                      Total _____ <input type="checkbox"/> Master File Background .....\$250.00 X                      Total _____ <input type="checkbox"/> Optional Premises License (City).....\$500.00 <input type="checkbox"/> Optional Premises License (County) .....\$500.00 <input type="checkbox"/> Racetrack License (City).....\$500.00 <input type="checkbox"/> Racetrack License (County) .....\$500.00 <input type="checkbox"/> Resort Complex License (City).....\$500.00 <input type="checkbox"/> Resort Complex License (County) .....\$500.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (City) .....\$160.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (County) .....\$160.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (State).....\$160.00 <input type="checkbox"/> Retail Gaming Tavern License (City) .....\$500.00 <input type="checkbox"/> Retail Gaming Tavern License (County).....\$500.00 <input type="checkbox"/> Retail Liquor Store License-Additional (City).....\$227.50 <input type="checkbox"/> Retail Liquor Store License-Additional (County).....\$312.50 <input type="checkbox"/> Retail Liquor Store (City).....\$227.50 <input type="checkbox"/> Retail Liquor Store (County) .....\$312.50 <input type="checkbox"/> Tavern License (City) .....\$500.00 <input type="checkbox"/> Tavern License (County) .....\$500.00 <input type="checkbox"/> Vintners Restaurant License (City) .....\$750.00 <input type="checkbox"/> Vintners Restaurant License (County).....\$750.00

**Questions? Visit: [www.colorado.gov/enforcement/liquor](http://www.colorado.gov/enforcement/liquor) for more information**

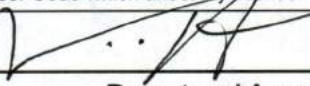
**Do not write in this space - For Department of Revenue use only**

License Account Number	Liability Date	Liability Information	Total
		License Issued Through (Expiration Date)	\$



Name <b>AV Nail Spa Aspen Grove LLC</b>		Type of License <b>Lodging &amp; Entertainment</b>		Account Number	
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?					Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):					
(a) Been denied an alcohol beverage license?					<input type="checkbox"/> <input checked="" type="checkbox"/>
(b) Had an alcohol beverage license suspended or revoked?					<input type="checkbox"/> <input checked="" type="checkbox"/>
(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?					<input type="checkbox"/> <input checked="" type="checkbox"/>
If you answered yes to 8a, b or c, explain in detail on a separate sheet.					
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.					<input type="checkbox"/> <input checked="" type="checkbox"/>
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?					<input type="checkbox"/> <input checked="" type="checkbox"/>
Waiver by local ordinance? <input type="checkbox"/> <input type="checkbox"/>					or
Other: _____					
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? <b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.					<input type="checkbox"/> <input type="checkbox"/>
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? <b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.					<input type="checkbox"/> <input type="checkbox"/>
13a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?					<input type="checkbox"/> <input type="checkbox"/>
13b. Are you a Colorado resident?					<input type="checkbox"/> <input checked="" type="checkbox"/>
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee.					<input type="checkbox"/> <input checked="" type="checkbox"/>
15. Does the applicant, as listed on line 2 of this application, <b>have legal possession of the premises by ownership, lease or other arrangement?</b>					<input checked="" type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____					
a. If leased, list name of landlord and tenant, and date of expiration, <b>exactly</b> as they appear on the lease:					
Landlord <b>Aspen GRF2, LLC</b>		Tenant <b>AV Nail Spa Aspen Grove LLC</b>		Expires <b>6/2029</b>	
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.					<input type="checkbox"/> <input checked="" type="checkbox"/>
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".					
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.					
Last Name <b>SEE ATTACHMENT</b>		First Name		Date of Birth FEIN or SSN Interest/Percentage	
Last Name		First Name		Date of Birth FEIN or SSN Interest/Percentage	
<b>Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.</b>					
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: Has a local ordinance or resolution authorizing optional premises been adopted?					<input type="checkbox"/> <input type="checkbox"/>
Number of additional Optional Premise areas requested. (See license fee chart)					
18. Liquor Licensed Drugstore (LLDS) applicants, answer the following: (a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? If "yes" a copy of license must be attached.					<input type="checkbox"/> <input type="checkbox"/>
19. Club Liquor License applicants answer the following: <b>Attach a copy of applicable documentation</b>					
(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?					<input type="checkbox"/> <input type="checkbox"/>
(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?					<input type="checkbox"/> <input type="checkbox"/>
(c) How long has the club been incorporated?					
(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?					<input type="checkbox"/> <input type="checkbox"/>
20. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following: (a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)					<input type="checkbox"/> <input type="checkbox"/>



Name <b>AV Nail Spa Aspen Grove LLC</b>	Type of License <b>Lodging &amp; Entertainment</b>	Account Number
<b>21. Campus Liquor Complex applicants answer the following:</b> (a) Is the applicant an institution of higher education? <span style="float: right;">Yes No <input type="checkbox"/> <input type="checkbox"/></span> (b) Is the applicant a person who contracts with the institution of higher education to provide food services? <span style="float: right;"><input type="checkbox"/> <input type="checkbox"/></span> <b>If "yes" please provide a copy of the contract with the institution of higher education to provide food services.</b>		
<b>22. For all on-premises applicants.</b> <b>a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record</b> - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details. <b>b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application</b> - DR 8000 and fingerprints.		
Last Name of Manager <b>TRAIN</b>	First Name of Manager <b>VAN</b>	
<b>23. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.</b> <span style="float: right;"><input type="checkbox"/> <input checked="" type="checkbox"/></span>		
<b>24. Related Facility - Campus Liquor Complex applicants answer the following:</b> a. Is the related facility located within the boundaries of the Campus Liquor Complex? <span style="float: right;">Yes No <input type="checkbox"/> <input type="checkbox"/></span> If yes, please provide a map of the geographical location within the Campus Liquor Complex. If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex. b. Designated Manager for Related Facility- Campus Liquor Complex		
Last Name of Manager <b>TRAIN</b>	First Name of Manager <b>VAN</b>	
<b>25. Tax Distraint Information. Does the applicant or any other person listed on this application including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?</b> <span style="float: right;"><input type="checkbox"/> <input checked="" type="checkbox"/></span> If yes, provide an explanation and include copies of any payment agreements.		
<b>26. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.</b>		
Name <b>Vinh Ho</b>	Home Address, City & State [REDACTED]	DOB [REDACTED] Position <b>Managing Member</b> %Owned <b>100</b>
Name	Home Address, City & State	DOB Position %Owned
Name	Home Address, City & State	DOB Position %Owned
Name	Home Address, City & State	DOB Position %Owned
Name	Home Address, City & State	DOB Position %Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above. ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable) ** If total ownership percentage disclosed here does not total 100%, applicant must check this box: <input checked="" type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.		
Name <b>AV Nail Spa Aspen Grove LLC</b>	Type of License <b>Lodging &amp; Entertainment</b>	Account Number
<b>Oath Of Applicant</b>		
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.		
Authorized Signature 	Printed Name and Title <b>Vinh Ho President</b>	Date <b>5/10/2019</b>
<b>Report and Approval of Local Licensing Authority (City/County)</b>		
Date application filed with local authority <b>6-3-2019</b>	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) <b>7-10-2019</b>	



The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:			
<input checked="" type="checkbox"/> Fingerprinted <input checked="" type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants			
That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license (Check One)			
<input type="checkbox"/> Date of inspection or anticipated date _____ <input checked="" type="checkbox"/> Will conduct inspection upon approval of state licensing authority			
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?			Yes No <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?  <b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.			<input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?			<input type="checkbox"/> <input type="checkbox"/>
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. <b>Therefore, this application is approved.</b>			
Local Licensing Authority for <i>City of Hixson</i>		Telephone Number <i>3179537800</i>	<input checked="" type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title	Date
Signature	Print	Title	Date



## Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

**Notice:** This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

1. Name of Business <b>AV Nail Spa Aspen Grove</b>		Home Phone Number <b>513-607-9391</b>	Cellular Number <b>513-607-9391</b>	
2. Your Full Name (last, first, middle) <b>Ho, VINH</b>		3. List any other names you have used		
4. Mailing address (if different from residence)		Email Address <b>LAN@AnthonyVinceNailSpa.com</b>		
5. List current residence address. Include any previous addresses within the last <b>five</b> years. (Attach separate sheet if necessary)				
<b>Street and Number</b>	<b>City, State, Zip</b>	<b>From</b>	<b>To</b>	
6. List all employment within the last <b>five</b> years. Include any self-employment. (Attach separate sheet if necessary)				
<b>Name of Employer or Business</b>	<b>Address (Street, Number, City, State, Zip)</b>	<b>Position Held</b>	<b>From</b>	<b>To</b>
See Attachment For Self Employ				
7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.				
<b>Name of Relative</b>	<b>Relationship to You</b>	<b>Position Held</b>	<b>Name of Licensee</b>	
8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				
9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) <span style="float: right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				



10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.) ☐ Yes ☒ No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.) ☐ Yes ☒ No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.) ☐ Yes ☒ No

### Oath of Applicant

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature

Print Signature

Title

Date

VINH HO

Managing Member

5/14/19



UNITED STATES DEPARTMENT OF JUSTICE

No. 24485392



DEPARTMENT OF JUSTICE

Personal description of holder  
as of date of naturalization:

Date of birth: December 25, 1972

Sex: Male

Height: 5 feet 9 inches

Marital status: Single

Country of former nationality:  
VIETNAM

INS Registration No. A43 395 277

I certify that the description given is true, and that the photograph affixed  
hereto is a likeness of me.

*[Signature]*  
(Complete and true signature of holder)

Be it known that, pursuant to an application filed with the Attorney General

at: CINCINNATI, OHIO

The Attorney General having found that:

VINH QUANG HO

then residing in the United States, intends to reside in the United States when so  
required by the Naturalization Laws of the United States, and had in all other  
respects complied with the applicable provisions of such naturalization laws and was  
entitled to be admitted to citizenship, such person having taken the oath of allegiance  
in a ceremony conducted by the



UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

at: CINCINNATI, OHIO

on: NOV X5 1999

that such person is admitted as a citizen of the United States of America.

*[Signature]*  
Commissioner of Immigration and Naturalization

IT IS PUNISHABLE BY U. S. LAW TO COPY,  
PRINT OR PHOTOGRAPH THIS CERTIFICATE,  
WITHOUT LAWFUL AUTHORITY.

DEPARTMENT OF JUSTICE



**Self-Employment**

AV Nail Spa Aspen Grove LLC, Managing Member, May 2018-Present

Creation By Lam Inc, President, December 2008-Present

Anthony Vince Lyndhurst Inc, President, February 2010-Present

Anthony Vince Nail Spa Inc, President, August 2007- Present



## Individual History Record

To be completed by the following persons, as applicable: sole proprietors; general partners regardless of percentage ownership, and limited partners owning 10% or more of the partnership; all principal officers of a corporation, all directors of a corporation, and any stockholder of a corporation owning 10% or more of the outstanding stock; managing members or officers of a limited liability company, and members owning 10% or more of the company; and any intended registered manager of Hotel and Restaurant, Tavern and Lodging and Entertainment class of retail license

**Notice:** This individual history record requires information that is necessary for the licensing investigation or inquiry. All questions must be answered in their entirety or the license application may be delayed or denied. If a question is not applicable, please indicate so by "N/A". **Any deliberate misrepresentation or material omission may jeopardize the license application.** (Please attach a separate sheet if necessary to enable you to answer questions completely)

1. Name of Business <b>AV Nail SPA ASPEN GROVE LLC</b>	Home Phone Number [REDACTED]		
2. Your Full Name (last, first, middle) <b>TRAN VAN THINH G</b>	3. List any other names you have used [REDACTED]		
4. Mailing address (if different from residence) [REDACTED]			
5. List current residence address. Include any previous addresses within the last five years. (Attach separate sheet if necessary)			
Street and Number	City, State, Zip	From	To

6. List all employment within the last five years. Include any self-employment. (Attach separate sheet if necessary)				
Name of Employer or Business	Address (Street, Number, City, State, Zip)	Position Held	From	To
<b>CASTLEROCK GAS STATION</b>	<b>830 N. WILCOX ST</b>	<b>Manager</b>	<b>2002</b>	<b>2019</b>
	<b>CASTLEROCK, CO 80104</b>			

7. List the name(s) of relatives working in or holding a financial interest in the Colorado alcohol beverage industry.			
Name of Relative	Relationship to You	Position Held	Name of Licensee

8. Have you ever applied for, held, or had an interest in a Colorado Liquor or Beer License, or loaned money, furniture, fixtures, equipment or inventory to any licensee? (If yes, answer in detail.) ☐ Yes ☒ No

9. Have you ever received a violation notice, suspension, or revocation for a liquor law violation, or have you applied for or been denied a liquor or beer license anywhere in the United States? (If yes, explain in detail.) ☐ Yes ☒ No



10. Have you ever been convicted of a crime or received a suspended sentence, deferred sentence, or forfeited bail for any offense in criminal or military court or do you have any charges pending? (If yes, explain in detail.) ☐ Yes ☒ No

11. Are you currently under probation (supervised or unsupervised), parole, or completing the requirements of a deferred sentence? (If yes, explain in detail.) ☐ Yes ☒ No

12. Have you ever had any professional license suspended, revoked, or denied? (If yes, explain in detail.) ☐ Yes ☒ No

**Oath of Applicant**

I declare under penalty of perjury that this application and all attachments are true, correct, and complete to the best of my knowledge.

Authorized Signature



Print Signature

VAN TRAN

Title

MANAGER

Date

6/15/19



UNITED STATES OF AMERICA



No. 37 509 965

CERTIFICATE OF NATURALIZATION

RECORDED

Personal description of holder  
as of date of naturalization:

Date of birth: **JANUARY 01, 1975**

Sex: **FEMALE**

Height: **5 feet 4 inches**

Marital status: **MARRIED**

Country of former nationality:  
**VIETNAM**

USCIS Registration No. **A078898036**

I certify that the description given is true, and that the photograph affixed  
hereto is a likeness of me.

*[Signature]*

(Complete and true signature of holder)

Be it known that, pursuant to an application filed with the Secretary of  
Homeland Security

at: **CENTENNIAL, COLORADO**

The Secretary having found that:  
**VAN TRAN**

residing at: **LITTLETON, COLORADO**



having complied in all respects with all of the applicable provisions of the  
naturalization laws of the United States, being entitled to be admitted as  
a citizen of the United States, and having taken the oath of allegiance at a  
ceremony conducted by

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

at: **CENTENNIAL, COLORADO**

on: **OCTOBER 19, 2015**

such person is admitted as a citizen of the United States of America.

*[Signature]*

U. S. Citizenship and Immigration Services

ALTERATION OR MISUSE OF THIS DOCUMENT  
IS A FEDERAL OFFENSE AND PUNISHABLE BY LAW



OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that,  
according to the records of this office,

AV NAIL SPA ASPEN GROVE LLC

is an entity formed or registered under the law of Ohio, has complied with all  
applicable requirements of this office, and is in good standing with this office. This entity has  
been assigned entity identification number 20181862856 and has provided the assumed entity  
name for use in Colorado

Anthony Vince Nail Spa

This certificate reflects facts established or disclosed by documents delivered to this office on  
paper through 05/09/2019 that have been posted, and by documents delivered to this office  
electronically through 05/10/2019 @ 13:47:10 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this  
official certificate at Denver, Colorado on 05/10/2019 @ 13:47:10 in accordance with applicable law. This  
certificate is assigned Confirmation Number 11567012 .



*Jena Griswold*

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."*



**LIMITED LIABILITY COMPANY  
OPERATING AGREEMENT OF  
AV NAIL SPA ASPEN GROVE LLC**

This agreement is made effective on the 25 day of May, 2018  
among the member(s) and the company.

**1. Formation.** A limited liability company (LLC) of the above name has been formed under the laws of the State of Ohio by filing Articles of Organization (or similar organizing document) with the Secretary of State (or other appropriate office) on 07/06/2017. The purpose of the business shall be to carry on any activity which is lawful under the jurisdiction in which it operates. The LLC may operate under a fictitious name or names as long as the LLC is in compliance with applicable fictitious name registration laws. The term of the LLC shall be perpetual or until dissolved as provided by law or by vote of the member(s) as provided in this agreement. Upon dissolution the remaining members shall have the power to continue the operation of the LLC as long as necessary and allowable under state law until the winding up of the affairs of the business has been completed.

**2. Members.** The name and address of each initial limited liability company member is:

Vinh Ho

8157 Laurel Lake Ct  
Liberty Township OH 45044

**3. Contributions.** The capital contribution of each limited liability company member in exchange for their LLC ownership is:

Name	LLC Ownership	Capital Contribution
VINH HO	100%	\$ <u>220,140.00</u>

**NOTE:** The capital contribution may be in the form of cash (or cash equivalents), labor or services (past or future), or property/equipment/assets other than cash. Regardless of the type of capital contribution, it should be expressed above in a dollar equivalent value that is agreed upon by all limited liability company members. Additionally, there may be accounting/tax ramifications for individuals contributing capital other than cash.

**4. Profit and Loss.** The profits and losses of the limited liability company shall be distributed amongst the members in proportion with the ownership of each member by default, but this may be changed at any time upon a unanimous vote of the members.



**5. Distributions.** The limited liability company shall have the power to make distributions to its members in such amounts and at such intervals as a majority of the members deem appropriate according to law.

**6. Management.** The limited liability company shall be managed by all LLC members. Any member may bind the LLC in all matters in the ordinary course of LLC business. In the event of a dispute between members, final determination shall be made with a vote by the members, votes being proportioned according to capital contributions.

**7. Registered Agent.** For receipt of official legal and tax correspondence from the State of Ohio, the registered agent of the limited liability company (sometimes known as a resident agent, statutory agent, agent for service of process, or delivery of service address) shall be maintained in accordance with the requirements of the State of Ohio and the State of Colorado where entity will be transferred to.

**8. Assets.** The assets of the limited liability company shall be registered in the legal name of the LLC and not in the names of the individual members, unless approved by a majority vote of the members.

**9. Records and Accounting.** The limited liability company shall keep an accurate accounting of its affairs using any method of accounting allowed by law. All members shall have a right to inspect the records during normal business hours. The members shall have the power to hire such accountants as they deem necessary or desirable.

**10. Banking.** The members of the limited liability company shall be authorized to set up bank accounts as in their sole discretion are deemed necessary and are authorized to execute any banking resolutions provided by the institution in which the accounts are being set up, or by adopting their own resolution.

**11. Taxes.** The limited liability company shall file such tax returns as required by law. The LLC shall elect to be taxed as a majority of the members decide is in their best interests. The "tax matters partner," as required by the Internal Revenue Code, shall be appointed by unanimous consent of the members.

**12. Separate Entity.** The limited liability company is a legal entity separate from its members. No member shall have any separate liability for any debts, obligations, or liability of the LLC except as provided in this agreement.

**13. Indemnity and Exculpation.** The limited liability company shall indemnify and hold harmless its members, managers, employees, officers, and agents to the fullest extent allowed by law for acts or omissions done as part of their duties to or for the LLC. Indemnification shall include all liabilities, expenses, attorney and accountant fees, and other costs reasonably expended. No member shall be liable to the LLC for acts done in good faith.

**14. Meetings.** The members shall have no obligation to hold annual or any other meeting, but may hold such meetings if they deem them necessary or desirable.



**15. Amendment of this Agreement.** This agreement may not be amended except in writing signed by all of the members.

**16. Conflict of Interest.** No member shall be involved with any business or undertaking which competes with the interests of the limited liability company except upon agreement in writing by all of the members.

**17. Deadlock.** In the event that the members cannot come to an agreement on any matter the members agree to submit the issue to mediation to be paid for by the limited liability company. In the event the mediation is unsuccessful, they agree to seek arbitration under the rules of the American Arbitration Association.

**18. Dissociation of a Member.** A member shall have the right to discontinue membership upon giving thirty days notice. A member shall cease to have the right to membership upon death, court-ordered incapacity, bankruptcy or expulsion. The limited liability company shall have the right to buy the interest of any dissociated member at fair market value.

**19. Dissolution.** The limited liability company shall dissolve upon the unanimous consent of all the members or upon any event requiring dissolution under state law. In the event of the death, bankruptcy, permanent incapacity, or withdrawal of a member the remaining members may elect to dissolve or to continue the operation of the LLC.

**20. General Provisions.** This agreement is intended to represent the entire agreement between the parties. In the event that any party of this agreement is held to be contrary to law or unenforceable, said party shall be considered amended to comply with the law and such holding shall not affect the enforceability of other terms of this agreement. This agreement shall be binding upon the heirs, successors, and assigns of the members.

**IN WITNESS** whereof, the members of the limited liability company sign this agreement and adopt it as their operating agreement this 25 day of May, 2018.

Vinh Ho, MANAGING MEMBER

A handwritten signature in black ink, appearing to be 'Vinh Ho', written over a horizontal line.



RETAIL LEASE

at

ASPEN GROVE

by and between

ASPEN GRF2, LLC

Landlord

and

AV Nail Spa Aspen Grove LLC  
Tenant

d.b.a. "Anthony Vince Nail Spa"

Littleton, Colorado



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EXHIBIT A - SHOPPING CENTER AND PREMISES

EXHIBIT B - INITIAL ALTERATIONS

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EXHIBIT E - PROHIBITED AND EXCLUSIVE USES  
EXHIBIT F - COMMENCEMENT DATE MEMORANDUM  
EXHIBIT G – GUARANTY OF LEASE

RETAIL LEASE  
REFERENCE PAGES

SHOPPING CENTER: ASPEN GROVE, located in Littleton, Colorado, as the same may be re-configured or modified at Landlord's discretion from time to time. Exhibit A sets forth the general layout of the Shopping Center, but shall not be deemed to be a warranty, representation or agreement that all or any part of the Shopping Center is, will be, or will continue to be configured as indicated on Exhibit A.

LANDLORD: ASPEN GRF2, LLC, a Delaware limited liability company

LANDLORD'S ADDRESS: Aspen GRF2, LLC  
973 Lomas Santa Fe Drive  
Solana Beach CA 92075  
Attn: John A. Waters

LEASE REFERENCE DATE: ~~August~~ July 1, 2018

TENANT: AV Nail Spa Aspen Grove LLC, an Ohio Limited Liability Company.

TENANT'S ADDRESS: 8157 Laurel Lake Court  
Liberty Township, Ohio 45044

PREMISES: Suite 640 in the Shopping Center (in the location generally depicted on Exhibit A)

PREMISES AREA: Approximately three thousand nine hundred ninety-eight (3,998) square feet. Tenant shall have 30 days after delivery of space to re-measure the floor area of the premises. In the event that the floor area of the Premises as determined by the re-measurement, and as confirmed and accepted by Landlord and its architect differs from the floor area set forth in this section by more than three percent (3%), , then the Minimum Rent, Tenants Proportionate Share of Additional Rent and Tenant Improvement Allowance shall be recalculated using the re-measured square footage of the Premises.

PERMITTED USE: The Premises shall be used for the operation of a first-class, upscale nail spa offering nail services, including manicures, pedicures, and nail enhancements. Tenant may offer incidental waxing, eyelash extensions, facials, relaxation message and nail polish and nail related products for retail sale, which collectively must both: (i) be less ten percent (10%) of Tenant's Gross Sales, and (ii) be conducted from less than three hundred (300) square feet of the Premises. Subject to obtaining a liquor licenses, and all other governmental approvals, Tenant may sell alcohol from the Premises for on-premises consumption only. The Premises may not be used for any other purpose or use whatsoever.

EXCLUSIVE USE: See Section 5.7

TENANT'S TRADE NAME: Anthony Vince Nail Spa



**COMMENCEMENT DATE:**

The earlier of (i) the date that is one hundred and fifty (150) days after the latter of: (A) the Delivery Date, or (B) Tenant's receipt of Tenant's Permits; or (ii) the date Tenant initially opens for business in the Premises. Notwithstanding the foregoing, and regardless of the issuance of Tenant's Permits, the Commencement Date shall not be later than two hundred and ten (210) days from the Delivery Date. Landlord shall give tenant 15 days advance written notice of the Delivery Date (which may be given by electronic mail and concurrent certified mail).

**TERMINATION DATE:**

The last day of the calendar month in which the tenth (10<sup>th</sup>) anniversary of the Commencement Date occurs.

**TERM OF LEASE:**

Ten (10) years beginning on the Commencement Date and ending on the Termination Date (unless sooner terminated pursuant to the Lease). Tenant shall have three (3) options to extend the Term for a period of five (5) years each, pursuant to Section 1.2.

**ANNUAL RENT:**

Commencing on the Commencement Date, Tenant shall pay Annual Rent in the following amounts:

Months	Minimum Monthly Rent	Minimum Annual Rent	Annual Rental Rate per square Foot
1-12	\$6,330.17	\$75,962.00	\$19.00
13-24	\$6,683.37	\$79,000.48	\$19.76
25-36	\$6,716.64	\$80,599.68	\$20.16
37-48	\$6,849.91	\$82,198.88	\$20.56
49-60	\$6,986.50	\$83,838.06	\$20.97
61-72	\$7,126.43	\$85,517.22	\$21.39
73-84	\$7,269.68	\$87,236.36	\$21.82
85-96	\$7,412.96	\$88,955.50	\$22.25
97-108	\$7,562.88	\$90,754.60	\$22.70
109-120	\$7,712.81	\$92,553.70	\$23.15

Annual Rent during the Option Terms shall be determined pursuant to Section 2.3.

**PERCENTAGE RENT:**

Six percent (6%) ("**Percentage Rent Rate**") of Tenant's Gross Sales in excess of the Breakpoint during each calendar year (or, at Landlord's option, Lease Year) during the Term of this Lease (prorated for the proportionate part, if any, of any partial calendar year contained within said period of time), as further set forth in Article 2 and Article 3 hereof. The Breakpoint shall be equal to One Million Three Hundred Eighty Thousand Dollars (\$1,380,000.00) ("**Breakpoint**").

**PROMOTION FUND CHARGE:**

One Dollar (\$1.00) per year, per square foot, which shall increase by ten percent (10%) every five (5) years.

**SECURITY DEPOSIT:**

None.

TENANT IMPROVEMENT  
ALLOWANCE:

Two Hundred Seventy-Nine Thousand Eight Hundred Sixty  
Dollars (\$279,860.00) payable pursuant to Section I of Exhibit B.

BROKERS:

Landlord: Legend Partners  
Tenant: SHOP Companies

GUARANTOR:

Creation-By-Lam Inc., an Ohio corporation .

The information in the Reference Pages is incorporated into and made a part of the Lease. In the event of any conflict between any information in the Reference Pages and the remainder of the Lease, the remainder of the Lease shall control. This Lease includes **Exhibits A through F**, all of which are made a part of this Lease.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the Lease Reference Date.

LANDLORD

TENANT

ASPEN GRF 2, LLC,  
a Delaware limited liability company

AV NAIL SPA ASPEN GROVE LLC, an Ohio  
Limited Liability Company

By: Gerrity Retail Fund 2 Holdings 1, LLC,  
a Delaware limited liability company,  
its Manager

By: 

Name: Vinh Ho

Title: Manager

By: Gerrity Retail Fund 2, Inc.,  
a Delaware corporation,  
its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: 

Name: John A. Waters

Title: Secretary



## LEASE

By this Lease Landlord leases to Tenant and Tenant leases from Landlord the Premises in the Shopping Center as set forth and described on the Reference Pages. This is a lease of real property, improvements, and fixtures. No personal property is leased hereunder. The Reference Pages, including all terms defined thereon, is incorporated as part of this Lease.

### 1. TERM.

1.1. The Term of this Lease shall begin on the Commencement Date. The date that Landlord initially tenders possession of the Premises to Tenant is herein referred to as the "Delivery Date". In the event Tenant shall occupy or use the Premises for any reason (including performance of Tenant's Work) prior to the Commencement Date, such use and occupancy shall be subject to all the terms, conditions and provisions of this Lease (other than the payment or rent, which shall not commence until the Commencement Date). The term "Lease Year" shall mean each 12-month period during the Term, with the first Lease Year commencing upon the Commencement Date, and the last Lease Year ending upon Termination Date. Within ten (10) days of Landlord's request, Tenant shall execute a memorandum ("Commencement Date Memorandum") in the form attached hereto as Exhibit F, or as otherwise provided by Landlord setting forth the Commencement Date, the Termination Date, the date Tenant opened for business in the Premises and other matters set forth therein.

1.2. Provided that Tenant is not in default under this Lease beyond any applicable notice and cure period at the time of exercise of the options to extend provided herein, and provided further Tenant is open and operating from 100% of the Premises for Tenant's Permitted Use and has not assigned, sublet or otherwise transferred its interest in this Lease, Tenant shall have three (3) non-transferable options to extend the Term of this Lease for a period of five (5) years each ("Option Terms"), by giving Landlord written notice at least two hundred seventy (270) days (but not more than one [1] year) before the expiration of the then applicable term. If Tenant exercises said option by written notice to Landlord, the extension of the Term of this Lease shall be automatically effected without the execution of any additional documents, and all of the terms, covenants, conditions, provisions and agreements applicable to the initial Term shall be applicable to the Option Terms, except as otherwise modified herein. Time is of the essence with respect to Tenant's exercise of the options to extend the Term of this Lease provided herein. Tenant's failure to strictly comply with the time and notice requirements set forth herein shall cause the options provided herein to automatically cease and terminate and, in such event, this Lease shall terminate upon the expiration of the then applicable term. All references in this Lease to the "Term" shall be deemed to mean the initial Term as extended by the Option Terms, as applicable. Within fifteen (15) days of Landlord's written request, Tenant shall execute an amendment of the Lease prepared by Landlord confirming the Option Terms and matters related thereto. The option to extend this Lease as described in this paragraph is personal to the Tenant-entity executing this Lease. If Tenant subleases any portion of the Premises or assigns or otherwise transfers any interest under this Lease prior to the exercise of the option, such option shall automatically become null and void.

### 2. RENT AND SECURITY DEPOSIT.

2.1. Tenant agrees to pay to Landlord, from and after the Commencement Date, the Annual Rent in effect from time to time by paying the monthly installment of Annual Rent then in effect on or before the tenth first day of each full calendar month during the Term. Rent for any period during the Term which is less than a full month shall be a prorated portion of the monthly installment of rent based upon a



thirty (30) day month. Said rent shall be paid to Landlord, without deduction or offset and without notice or demand, to such address as Landlord may from time to time designate.

2.2. In addition to the Annual Rent, Tenant agrees to pay to Landlord, as additional rent, the Percentage Rent. Payments of Percentage Rent shall be paid annually as provided in Section 3.1. For the purpose of computing Percentage Rent payable hereunder for any fractional period, the Breakpoint shall be prorated on the basis of a 365-day year.

2.3. Annual Rent for the First (1<sup>st</sup>) and Second (2<sup>nd</sup>) Option Terms shall be as follows:

FIRST OPTION	Minimum Monthly Rent	Minimum Annual Rent	Annual Rental Rate per Square Foot
121-132	\$9,660.43	\$115,925.10	\$23.61
133-144	\$9,856.83	\$118,281.90	\$24.09
145-156	\$10,151.43	\$121,817.10	\$24.81
157-168	\$10,351.92	\$124,223.00	\$25.30
169-180	\$10,560.59	\$126,727.10	\$25.81
SECOND OPTION			
181-192	\$10,773.36	\$129,280.30	\$26.33
193-204	\$10,986.13	\$131,833.50	\$26.85
205-216	\$11,207.08	\$134,484.90	\$27.39
217-228	\$11,432.12	\$137,185.40	\$27.94
229-240	\$11,661.25	\$139,935.00	\$28.50

The Annual Rent for the Third Option Term shall be at the then prevailing fair market rent (the "Fair Market Rent"), but shall in no event be less than the Annual Rent payable during the last year of the Second Option Term. Once Fair Market Rent is established, Minimum Annual Rent shall be increased by two percent (2%) upon each anniversary. Landlord shall, prior to the commencement of the Third Option Term, determine the Fair Market Rent as well as the annual increases thereto, as provided herein and notify Tenant of the same. The Fair Market Rent shall be determined by Landlord in good faith based on comparable rentals then charged and collected in the area where the Shopping Center is located, taking into account items customarily considered in such determinations, including location, the credit of tenants of other properties, size, age, design, utility and other relevant factors of other comparable properties in the area where the Shopping Center is located. In no event shall the Annual Rent during the Third Option Term be reduced pursuant to such determination, and if Landlord's determination of Fair Market Rent is less than the Annual Rent payable during the last year of the Second Option Term, then the Fair Market Rent shall be deemed to be the Annual Rent payable during the last year of the Second Option Term.

2.4. The term "**Tenant's Gross Sales**" (or "**Gross Sales**") shall mean the gross proceeds from business done in or from the Premises, including but not limited to, the entire sales price of merchandise and services sold (including gift and merchandise cards and certificates), charges for services or rentals, deposits not refunded to customers, the entire sales price of merchandise sold as a result of orders taken at the Premises but delivered elsewhere, and the entire sales price of merchandise delivered from the Premises as a result of orders taken elsewhere. The gross proceeds from business done by any concessionaire or licensee or otherwise in or from the Premises, gross proceeds from business done through vending machines or other devices located in the Premises and gross proceeds from business done in or from the Premises



with employees shall also be a part of Tenant's Gross Sales. An installment sale or a sale on credit shall be treated as a sale at the full sales price in the month during which such sale is made. No deduction from Tenant's Gross Sales shall be allowed for uncollected or uncollectible credit accounts. Tenant's Gross Sales shall not be deemed to include (a) any sums collected from customers and paid out for a sales or excise tax imposed by any duly constituted governmental authority if the amount of such tax is separately charged to the customer and paid by Tenant directly to or for the benefit of the governmental authority; (b) the exchange of merchandise with other stores of Tenant, if such exchange is made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which was made in or from the Premises or if such exchange of merchandise is not for the purpose of depriving Landlord of the benefit of a sale which otherwise would be made in or from the Premises; (c) the amount of returns to suppliers or manufacturers; or (d) sales of Tenant's fixtures not in the ordinary course of Tenant's business. Tenant shall be entitled to a credit against Gross Sales for any cash or credit refund made for any returned merchandise accepted by Tenant and previously included in Gross Sales.

2.5. During the Term, Tenant agrees that neither Tenant nor any person, firm or corporation who or which controls or is controlled by Tenant shall, directly or indirectly, individually or as a partner, stockholder or otherwise, own, operate or become financially interested in any competing business within a radius of two (2) miles from the outside boundary of the Shopping Center. In the event of any violation of such restriction and in addition to Landlord's other remedies, the gross sales of any such business within the restricted radius shall be included in Tenant's Gross Sales for purposes of computing Percentage Rent.

2.6. Tenant recognizes that late payment of any rent or other sum due under this Lease will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if rent or any other sum is not paid when due and payable pursuant to this Lease, a late charge shall be imposed in an amount equal to three percent (3%) per month of the unpaid rent or other payment, provided, however, that no such late fee shall be imposed for the first late payment during any twelve (12) month period provided Tenant makes such payment in full within five (5) days of receipt of notice from Landlord that such payment is due or past due. Any such charges shall be immediately payable to Landlord on demand and shall be Additional Rent hereunder. The amount of the late charge to be paid by Tenant shall be reassessed and added to Tenant's obligation for each successive monthly period until paid. The provisions of this Section 2.6 in no way relieve Tenant of the obligation to pay rent or other payments on or before the date on which they are due, nor do the terms of this Section 2.6 in any way affect Landlord's remedies pursuant to Article 19 of this Lease in the event said rent or other payment is unpaid after date due.

### 3. PERCENTAGE RENT PAYMENT, SALES REPORTS AND RECORDS.

3.1. On or before the twentieth (20<sup>th</sup>) day of the month following each calendar quarter during the Term, Tenant shall prepare and deliver to Landlord a statement of Tenant's Gross Sales signed by Tenant (said statement may be in the form of Tenant's State Sales/Use Tax Form, if applicable) for the preceding calendar quarter. In addition, within thirty (30) days after the expiration of each Lease Year, Tenant shall prepare and deliver to Landlord a statement of Tenant's Gross Sales during such Lease Year (which shall be used to determine the Percentage Rent) certified to be correct by Tenant, and if requested by Landlord, an independent Certified Public Accountant, which statement shall be accompanied with a check for any Percentage Rent payment owed.

3.2. Tenant shall keep, and shall cause each licensee or concessionaire of Tenant to keep, in the Premises or at some other location approved by Landlord in writing, an accurate set of books reflecting Tenant's Gross Sales and shall preserve all cash register tapes (including tapes from temporary registers), serially numbered sales slips, order records, the original of all mail and internet orders at and to the



Premises, records of transactions with concessionaires and licensees, shipping records, records of merchandise returned, federal, state and city tax returns, banking records and such other records as may be needed for an effective audit of Tenant's Gross Sales. Such records shall be sealed in a manner reasonably approved by Landlord and shall be retained for a period of at least 36 months after the end of the Lease Year to which they relate, or if Landlord shall have begun a special audit in accordance with Section 3.3, for such longer period as may be required to complete such special audit. All such books and records shall be subject to inspection and audit by Landlord at all reasonable times.

3.3. Landlord shall have the right to have auditors of Landlord's choice make a special audit of all books and records, wherever located, pertaining to Tenant's Gross Sales. If Tenant's Gross Sales, as so determined, exceed the figures submitted by Tenant by more than two percent (2%) or contain any inaccuracies (each, a "**Reporting Error**"), then Tenant shall pay the cost of such audit. Tenant recognizes that underreporting of Tenant's Gross Sales will result in administrative expense to Landlord, the extent of which additional expense is extremely difficult and economically impractical to ascertain. Tenant therefore agrees that if such deficiency exceeds five percent (5%), then a fee in an amount equal to Three Thousand Dollars (\$3,000.00) shall be payable by Tenant as liquidated damages ("**Underreporting Fee**"). Tenant shall promptly pay to Landlord any deficiency in Percentage Rent and the Underreporting Fee, if applicable, and Landlord shall promptly credit Tenant or refund Tenant within thirty (30) days at the end of the term with any overpayment in Percentage Rent, as the case may be, which is established by such special audit. If two (2) or more separate audits or examinations conducted by Landlord within a three (3)-year period disclose that Tenant has committed Reporting Errors, then the second Reporting Error shall be considered an Event of Default (as defined in Section 18.1) under this Lease, and Landlord may immediately exercise any or all remedies available under this Lease or at law.

3.4. Landlord shall deliver a copy of any special audit of Tenant's Gross Sales to Tenant and Tenant shall have thirty (30) days after receipt thereof to dispute the results of such audit. If Tenant disputes the results of such audit, Landlord and Tenant shall attempt in good faith to resolve such dispute. The acceptance by Landlord of payments of Percentage Rent shall be without prejudice to Landlord's right to examine Tenant's books and records.

#### 4. ADDITIONAL RENT.

4.1. From and after the Commencement Date, Tenant shall pay as additional rent for each Lease Year Tenant's Proportionate Share of Common Area Maintenance (CAM) and Taxes incurred for such Lease Year.

4.1.1 "**CAM**" shall be defined as: all costs and expenses of operation, maintenance, repair and management of the Shopping Center, including the following costs by way of illustration, but not limitation: insurance charges relating to all insurance policies and endorsements deemed by Landlord to be reasonably necessary or desirable for the protection, preservation or operation of all or any part of the Shopping Center; utility costs and services for all parts of the Common Areas (including any property management, marketing, maintenance and/or security office and community/public rooms or buildings), including, but not limited to, light, power, steam, gas, trash/waste collection and disposal, water and sewer (utility costs and services for all other parts of the Shopping Center, and costs of utilities and related services metered directly to the Premises, or jointly metered with other tenant premises, shall not be deemed to be CAM, and shall be payable by Tenant pursuant to Article 14); all assessments, charges, association fees and the like levied or assessed pursuant to any covenants and easements encumbering or applicable to the Shopping Center; the cost of security and alarm services (including any central station signaling system); any property management fees; the salaries of personnel involved in the direct management of the Shopping Center at or below the level of property manager; the cost of maintaining, repairing and replacing any



heating, ventilating and air conditioning systems not otherwise being paid for by tenants; the cost of landscaping and seasonal decorations; the cost of maintaining and repairing any exterior stairway, truck way, loading dock, package pickup station, pedestrian sidewalk and ramp, and all exterior walls of Shopping Center buildings and building surfaces, downspouts, gutters and related items; the cost of periodic painting of exterior walls of Shopping Center buildings; the cost of maintaining, repairing, operating and policing the buildings and improvements in the Shopping Center and their appurtenances and equipment, including, without limitation, the roof (including but not limited to the maintenance, repair and replacement of the roof membrane and covering), common signage, the garage and/or parking lot and any driveway areas, including the construction and maintenance of lighting facilities therefor, comfort stations and first aid stations, exterior window cleaning costs; labor costs; employee benefits and payroll taxes; all costs and expenses incurred by Landlord, to comply with laws, regulations, codes or ordinances, including, without limitation the Americans With Disabilities Act 42 U.S.C., 12101 et seq., and the regulations promulgated thereunder as may be amended from time to time, any successor law, all state accessibility laws, and all similar laws, rules, regulations and ordinances (collectively, "**ADA**"); accounting and legal fees; material costs; equipment costs, including the cost of service agreements on equipment; tool costs; the costs of licenses, permits and inspection fees, and any sales, use or service taxes incurred in connection therewith. In addition, Tenant shall pay to Landlord, or to a property management company selected by Landlord, an administrative fee equal to fifteen percent (15%) of total CAM. Notwithstanding anything to the contrary contained herein, Tenant acknowledges and agrees that the foregoing administrative fee, and any management fee or reimbursement of administrative and management salaries and related costs and expenses included hereunder in CAM, are all separate and independent permissible CAM charges, shall not be deemed to be duplicative of each other or any other costs or expenses included in CAM, and each shall be payable hereunder by Tenant without limitation or qualification. Further, Landlord shall be entitled to amortize and include as an additional rental adjustment: (i) an allocable portion of the cost of capital improvement items which are reasonably calculated to reduce operating expenses; (ii) fire sprinklers and suppression systems and other life safety systems; and (iii) other capital expenses which are required under any governmental laws, regulations or ordinances. All such costs shall be amortized over the reasonable life of such improvements in accordance with such reasonable life and amortization schedules as shall be determined by Landlord in accordance with generally accepted accounting principles, with interest on the unamortized amount at one percent (1%) in excess of the prime lending rate announced from time to time as such by Bank of America (or any successor thereto) ("**Interest Rate**"). Landlord's estimate of the first year Additional Rent is approximately Fifteen Dollars (\$15.00) per square foot of the Premises (which figure is Landlord's estimate, and not a cap or limitation).

4.1.2 "**Taxes**" shall be defined as: Real estate taxes and any other taxes, charges and assessments which are levied with respect to the Shopping Center or the land appurtenant to the Shopping Center, or with respect to any improvements, fixtures and equipment or other property of Landlord, real or personal, located in the Shopping Center and used in connection with the operation of the Shopping Center and said land, any payments to any ground lessor in reimbursement of tax payments made by such lessor; and all fees, expenses and costs incurred by Landlord in investigating, protesting, contesting or in any way seeking to reduce or avoid increase in any assessments, levies or the tax rate pertaining to any Taxes to be paid by Landlord in any Lease Year. Taxes shall not include any corporate franchise, or estate, inheritance or net income tax.

4.2. The annual determination of CAM shall be made by Landlord and certified to Tenant (the "**Expense Statement**"). If, within sixty (60) days after Tenant's receipt of the Expense Statement, Tenant notifies Landlord that Tenant desires to audit or review the Expense Statement, Landlord shall cooperate with Tenant to permit such audit or review during normal business hours, and all costs and expenses incurred in connection therewith shall be paid by Tenant. Tenant may not employ any auditor who works on a contingency fee basis in exercising its right to audit set forth in this Section 4.2. The failure of Tenant



to notify Landlord that Tenant desires an audit within sixty (60) days of Tenant's receipt of the Expense Statement shall constitute an acceptance by Tenant of the Expense Statement and a waiver by Tenant of its right to audit for such Lease Year. If Tenant commences an audit in accordance with this Section 4.2, then such audit and Tenant's auditor's report must be completed within ninety (90) days of Tenant's notice to Landlord of Tenant's desire to audit, and failure of Tenant to complete the audit within such ninety (90) day period shall constitute an acceptance by Tenant of the Expense Statement for such Lease Year. Tenant shall deliver to Landlord a copy of the results of such audit within thirty (30) days of its receipt by Tenant. If any audit conducted by Tenant shows that Tenant's Proportionate Share of CAM has been overstated, the amount of such overpayment shall be credited against the then next due payments to be made by Tenant under this Article 4 or promptly refunded to Tenant if such determination is made after the expiration or earlier termination of this Lease. If such audit conducted by Tenant shows that Tenant's Proportionate Share of CAM has been overstated by more than ten percent (10%), then, as Tenant's sole remedy, Landlord shall promptly pay to Tenant the reasonable cost of such audit in addition to the amount of such overpayment (as provided above). If such audit conducted by Tenant shows that Tenant's Proportionate Share of CAM has been understated, the amount owing by Tenant shall be paid to Landlord within ten (10) days. Notwithstanding anything to the contrary in any of the preceding sentences, if Landlord disputes the results of Tenant's audit, Landlord may conduct an independent audit of some or all of Tenant's audit results and shall not be obligated to credit or refund any amounts to Tenant unless and until the parties have reached agreement on Tenant's Proportionate Share of CAM for the Lease Year in question. No audit shall be conducted at any time that Tenant is in default of any of the terms of this Lease. Tenant and Tenant's agent agree to keep and maintain confidential any financial information obtained or learned from such review and to execute a reasonable writing confirming confidentiality at the time of the review.

4.3. Prior to the actual determination thereof for a Lease Year, Landlord may from time to time estimate Tenant's liability for CAM and/or Taxes under Section 4.1, Article 7 and Article 28 for the Lease Year or portion thereof. Landlord will give Tenant written notification of the amount of such estimate and Tenant agrees that it will pay, by increase of its Monthly Installments of Rent due in such Lease Year, additional rent in the amount of such estimate. Any such increased rate of Monthly Installments of Rent pursuant to this Section 4.3 shall remain in effect until further written notification to Tenant purchase hereto.

4.4. When the above mentioned actual determination of Tenant's liability for CAM and/or Taxes is made in any Lease Year and after Tenant's receipt of the Expense Statement, then:

4.4.1 If the total additional rent Tenant actually paid pursuant to Section 4.2 on account of CAM and/or Taxes for the Lease Year is less than Tenant's liability for CAM and/or Taxes, then Tenant shall pay to Landlord such deficiency as additional rent in one lump sum within thirty (30) days of receipt of Landlord's bill therefor; and

4.4.2 If the total additional rent Tenant actually paid pursuant to Section 4.2 on account of CAM and/or Taxes for the Lease Year is more than Tenant's liability for CAM and/or Taxes, then Landlord shall credit the difference against the then next due payments to be made by Tenant under this Article 4.

4.5. If the Commencement Date is other than January 1 or if the Termination Date is other than December 31, Tenant's liability for CAM and Taxes for the Lease Year in which said Date occurs shall be prorated based upon a three hundred sixty-five (365) day year.

4.6 The term "**Tenant's Proportionate Share**" shall be that fraction, the numerator of which shall be the total square footage in the Premises and the denominator of which shall be the total leasable square footage in the Shopping Center (or, in the case of the payment of Taxes, the total leasable square



footage in the tax parcel which includes the Premises). Tenant's Proportionate Share may change from time to time as the leasable square footage and/or configuration of the Shopping Center is changed. "Total leasable square footage in the Shopping Center" may not, at Landlord's option and discretion, include space occupied by tenants or occupants that do not fully contribute toward CAM costs. Possible additional exclusions from the preceding denominator calculation may (in Landlord's discretion) include but is not limited to (i) tenants or occupants who pay their real estate taxes directly to any taxing authority, (ii) tenants or occupants who maintain part of the Common Area at their own expense, and/or (iii) tenants or occupants who maintain their own insurance with respect to their building and/or any portion of the Common Areas; the square footage of such tenants and occupants shall not be deemed a part of the total leasable square footage in the Shopping Center for the purposes of pro-rating said Taxes and/or CAM for purposes of determining Tenant's Proportionate Share hereunder. Tenant agrees that Landlord's computation of the Tenant's Proportionate Share shall be conclusive and binding upon Tenant. Landlord reserves the right to equitably adjust Tenant's Proportionate Share from time to time in the event such adjustment becomes necessary or appropriate (for example, if the gross floor area of the buildings in the Shopping Center is expanded or reduced). Tenant acknowledges and agrees that Tenant's Proportionate Share may change from time to time as the leasable square footage of the Shopping Center and Landlord/Tenant responsibilities (e.g. roof repair, fire life & safety, trash removal, security, etc.) change, and/or configuration of the Shopping Center, is changed, and as otherwise set forth in this Lease, including, but not limited to, with respect to Cost Pools as described herein. Landlord shall have the right, from time to time, to equitably allocate some or all of the CAM for the Shopping Center, or amongst other properties owned or managed by Landlord or affiliates of Landlord, among different portions or user groups of the Shopping Center and other properties owned or managed by Landlord (or affiliates of Landlord), or if certain items of CAM are not attributable to all occupants and/or an occupant maintains a certain service at that occupant's own expense, in such event Landlord may, at Landlord's sole and absolute discretion, establish alternative methods of allocating such CAM (the "Cost Pool"). The CAM within each such Cost Pool shall be allocated and charged to the occupants within such Cost Pool in an equitable manner as determined in Landlord's good faith and reasonable business judgment.

## 5. USE OF PREMISES; TENANT COVENANTS.

5.1. Tenant shall open for business from the Premises for its Permitted Use, fully fixtured, stocked and staffed by no later than one hundred and fifty (150) days from after the latter of (A) the Delivery Date, or (B) Tenant's receipt of Tenant's Permits, failure of which shall be an Event of Default. Tenant shall continuously throughout the first three (3) years of the Term of this Lease conduct and carry on in the entire Premises under Tenant's Trade Name the type of business for the specific use described on the Reference Pages and shall not conduct or carry on any other business, failure of which shall be an Event of Default. Notwithstanding the foregoing, Tenant expressly agrees that Tenant shall not permit the Premises to be used for any of the uses or purposes set forth in Exhibit E attached hereto and made a part hereof. Tenant hereby indemnifies, defends and holds harmless Landlord from and against any and all claims, demands, actions, causes of action, losses (including but not limited to loss of rents resulting from the termination by another tenant of its lease), damages, costs, and expenses, including court costs and attorneys' fees, arising from or related to, wholly or in part, the use of the Premises for any purpose prohibited by Exhibit E.

5.2. Tenant shall comply with all matters of record affecting the Shopping Center and all governmental laws, ordinances and regulations applicable to the use of the Premises and its occupancy and shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any violations in or upon, or in connection with, the Premises, all at Tenant's sole expense. This Lease shall be in full force and effect in accordance with its terms and provisions upon the full execution of this Lease. Tenant shall be solely responsible for confirming that Tenant's proposed business operation in the Premises, for the use permitted under this Lease, is permissible under zoning and other



regulations and legal requirements, and Landlord makes no representation or warranty whatsoever in connection with any such matters.

5.3. Tenant shall operate its business in a dignified manner and in accordance with high standards of a store operation so as to maintain a character in keeping with the rest of the Shopping Center, and so as to produce the maximum Tenant's Gross Sales and shall, at all times when the Premises are open for business to the public, keep the Premises properly equipped with fixtures, stocked with an adequate supply of merchandise and attended by adequate personnel.

5.4. Tenant shall keep the Premises open for business with the public on the days and during the hours as from time to time may be reasonably determined by Landlord to be consistent with the days and hours of other tenants in the Shopping Center. In no event shall Tenant be open for business less than eight (8) hours on any business day or less than six (6) days in any given week. Tenant's initial hours, which are approved by Landlord, are 9:30 AM to 8:00 PM Monday through Saturday and 12 PM to 6 PM on Sunday. Tenant shall be exempt from all extended holiday hours. Notwithstanding the provisions of this Section, Tenant shall not be required to keep its Premises open for business at any time prohibited by applicable law, ordinance or governmental regulations and Tenant shall be permitted to close the Premises during reasonable periods for repairing, cleaning or decorating the Premises, with written permission from Landlord.

5.5. In the event that at any time during the Term, or any extension or renewal thereof, Tenant should vacate, abandon, or desert the Premises or cease operating its business therein for a period of ninety (90) days, then, in any such event, Tenant shall be in default hereunder and Landlord shall have, in addition to all rights and remedies provided under Article 19, the right to collect not only the Annual Rent, but also Additional Rent in lieu of any Percentage Rent that might have accrued during such period at the rate of the greater of (i) 200% of the amount of the Annual Rent, or (ii) the aggregate rent being paid by Tenant to Landlord for the last period prior to such event, in either case prorated on a daily basis for each day that Tenant shall fail to do business within the Premises in accordance with the terms of this Article 5, subject in any case to the provisions of Article 22. Additionally, in the event of such cessation of business described in this Section 5.5., Landlord may recapture the Premises and terminate this Lease effective upon delivery of written notice to Tenant.

5.6. Tenant shall install and maintain at all times displays of merchandise in display windows in the Premises. Tenant will light any electric signs and keep the display windows in the Premises well lighted during such times as the level of light outside the Premises is less than 10 foot-candles of natural light, and shall keep such signs and display windows lit until at least one-half hour after Tenant's close of business each day.

5.7. From and after the Lease Reference Date, Landlord shall not execute and deliver any lease for space in the Shopping Center pursuant to which Landlord authorizes the use of the premises demised by said lease primarily for providing manicures and pedicures as a nail salon ("Exclusive Use"). Notwithstanding any provision of this Section 5.7 to the contrary, the Exclusive Use shall not restrict, in any manner whatsoever, the incidental use of any tenant or portion of the Shopping Center for the conduct of business in conflict with the Exclusive Use. The term "incidental" as used herein shall mean that the performance of services included in the Exclusive Use by such other tenant shall not exceed twenty percent (20%) of such other tenant's gross sales in the Shopping Center. Further and notwithstanding anything in this Section 5.7 to the contrary, the Exclusive Use shall not apply: (i) to any portion of the Shopping Center not owned, or the use of which is not controlled, by Landlord as of the date of the Lease, (ii) to any portion of the Shopping Center in excess of 10,000 square feet of leasable area leased to, or occupied or owned by, a single person or entity, and (iii) to any leases in existence as of the Lease Reference Date, and any



amendments, extensions, renewals or assignments thereof. If Tenant (a) fails to continuously conduct business in the Premises primarily for the Exclusive Use, then Tenant shall be deemed to have abandoned the Exclusive Use, and Landlord shall thereupon be released from all obligations and restrictions with respect to the Exclusive Use. Additionally, Landlord's obligations hereunder shall be conditioned upon Tenant not being in default under the Lease in excess of any time to cure provided herein. If the Exclusive Use or Tenant's or Landlord's enforcement of the same violates, or is alleged or claims to violate, any law or governmental rule or regulation, Tenant shall indemnify, defend and hold Landlord harmless from and against all claims, losses, damages and expenses, including reasonable attorneys' fees, asserted against or suffered by Landlord resulting from any liability or obligation of Landlord arising out of, or in connection with, such violation, or alleged or claimed violation. Except as expressly set forth in this Section 5.7, Tenant shall have no exclusive right, expressed or implied, to conduct business of any nature whatsoever in the Shopping Center.

5.8. Tenant shall not, without Landlord's prior written consent: (i) make any changes to the storefront of the Premises; (ii) install any exterior lighting, decorations, painting, awnings, canopies and the like; or (iii) erect or install any signs, window or door lettering, placards, decoration or advertising media of any type which is visible from the exterior of the Premises, excepting only dignified displays of customary type for its display windows. No handwritten signs shall be permitted.

5.9. Tenant agrees to comply with and observe the rules and regulations set forth on Exhibit C. Tenant's failure to keep and observe said rules and regulations shall constitute a breach of this Lease as if the same were contained herein as covenants. Landlord reserves the right from time to time to amend or supplement said rules and regulations. Notice of such amendments and supplements shall be given to Tenant and Tenant agrees to comply with and observe all such rules and regulations, as revised.

5.10. Tenant shall not do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Shopping Center or injure, annoy, or disturb them or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose. Tenant shall not do, permit or suffer in, on, or about the Premises the sale of any alcoholic liquor without the written consent of Landlord first obtained, or the commission of any waste. Tenant shall not do or permit anything to be done on or about the Premises or bring or keep anything into the Premises which will in any way increase the rate of, invalidate or prevent the procuring of any insurance protecting against loss or damage to the Shopping Center or any of its contents by fire or other casualty or against liability for damage to property or injury to persons in or about the Shopping Center or any part thereof; and shall cooperate with Landlord's insurance representatives.

5.11. Tenant shall install at Tenant's expense an exterior sign conforming to the general appearance of other signs in the Shopping Center and Landlord's signage criteria which are attached hereto as Exhibit D. Tenant shall at all times keep all signs in accordance with Landlord's sign criteria and in good condition, proper operating order and in accordance with all applicable government regulations. Use of the roof of the building in which the Premises are located is reserved to Landlord and Landlord may install upon the roof equipment, signs, antenna, displays and other objects and may construct additional stories above the Premises, provided any such use does not unreasonably interfere with Tenant's occupancy of the Premises. Upon expiration or earlier termination of this Lease, Tenant shall remove any signs and repair any damage to the Shopping Center caused by the installation and removal thereof. Tenant shall not be entitled to any so-called pylon or monument signage.

5.12. Landlord may make changes, reductions and additions without restriction in all areas and parts of the Shopping Center (including all Common Areas and all buildings and other improvements therein), if such changes are deemed desirable by Landlord in its sole discretion. Landlord reserves the



right, at its sole discretion, at any time to make alterations or additions to, renovate, re-design, re-develop, subdivide, change the Building dimensions, or build additional stores on the Building or on any other building or buildings in, or any other areas of, the Shopping Center, to change the use of any building in the Shopping Center, or to expand, reduce, modify the size, dimensions or configuration of the Shopping Center and/or the Common Areas (and to adjust the boundaries of the Shopping Center accordingly), to modify the drive-ways, entrances/exits, and parking areas, including reducing or expanding the amount of parking, to construct, or reconstruct, and incorporate into the Shopping Center residential units, including, without limitation, multi-level or high-rise residential and/or mixed-use buildings. Landlord reserves the right from time to time to construct other buildings, structures, or improvements, including, but not limited to, leasable premises, surface, elevated or double-deck parking facilities in the Shopping Center and temporary scaffolds and other aids to construction. Landlord reserves the right to add additional levels to the Shopping Center and penetrate the Premises with additional supports as needed. Landlord reserves the right to erect and lease kiosks in the Common Areas. Tenant acknowledges that such construction, modification, changes, reduction or expansion of the Shopping Center or any part thereof, if and when it may occur, may involve barricading, materials storage, noise, dust, vibration, scaffolding, demolition, structural alterations, the presence of workmen and equipment, rearrangement of parking areas, Common Areas, roadways and lighting facilities, redirection of vehicular and pedestrian traffic, and other inconveniences typically associated with construction. Tenant agrees to sign any documents reasonably requested by Landlord to effectuate any of such rights. Tenant hereby grants to Landlord and its authorized employees, agents, contractors, architects, structural engineers and representatives such licenses and easements in, upon, above, below or through the Premises and any portion thereof as shall be reasonably required: (a) for the installation, inspection, surveying, maintenance and/or construction of mains, conduits, shafts, columns, footings, piers, pipes or other facilities to serve any building or any part thereof including, without limitation, the premises of any occupant of the Shopping Center; and (b) for any future construction, modification, reduction or expansion of the Shopping Center. Tenant waives any claim or defense it may have against Landlord and its authorized employees, agents, contractors, architects, structural engineers and representatives, or any right of offset against or deductions from rent or any other sum payable under this Lease, and any cause of action based upon interruption of or interference with Tenant's conduct of business, loss of business, decreased sales or inconvenience to its customers caused by any construction, modification, reduction or expansion of the Shopping Center.

5.13. Tenant shall not, and shall not direct, suffer or permit any of its agents, contractors, employees, licensees or invitees to at any time handle, use, manufacture, generate, store or dispose of in or about the Premises or the Shopping Center any (collectively "**Hazardous Materials**") flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives or any substance subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "**Environmental Laws**"), nor shall Tenant suffer or permit any Hazardous Materials to be used in any manner not fully in compliance with all Environmental Laws in the Premises or the Shopping Center and appurtenant land or allow the environment to become contaminated with any Hazardous Materials. Notwithstanding the foregoing, and subject to Landlord's prior consent, Tenant may handle, store, use or dispose of products containing small quantities of Hazardous Materials (such as aerosol cans containing insecticides, toner for copiers, routine cleaning supplies, paints, paint remover and the like) to the extent customary and necessary for the use of the Premises for retail store purposes; provided that Tenant shall always handle, store, use and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Shopping Center and appurtenant land or the environment. Tenant shall immediately advise Landlord in writing of (a) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted,



completed or threatened pursuant to any Environmental Laws relating to any Hazardous Materials affecting the Premises; and (b) all claims made or threatened by any third party against Tenant, Landlord, the Premises or the Shopping Center relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials on or about the Premises, and in either event, shall provide Landlord with copies of all communications with respect thereto.

In the event that any Hazardous Materials, including, but not limited to, any mold or related or similar substance, are at any time after Tenant initially enters into possession of the Premises discovered in the Premises, or otherwise emanating or arising from within the Premises, and if Tenant does not remove, remediate, dispose of or otherwise handle such materials as required and directed by Landlord, to Landlord's satisfaction and in compliance with applicable Environmental Laws, within five (5) business days after notice from Landlord, then Landlord may, but shall not be obligated to, at any time thereafter perform such removal, remediation, disposal and handling of such materials, or perform such other acts on Tenant's behalf, and for Tenant's account, as Landlord shall, at Landlord's sole discretion, deem prudent or necessary under the circumstances, and without releasing Tenant from any obligations hereunder. Tenant shall pay to Landlord, within fifteen (15) days after delivery by Landlord to Tenant of statements for the costs incurred by Landlord in connection with all work performed by Landlord hereunder, along with an administrative fee of fifteen percent (15%) of all such amounts, plus any attorney's fees incurred by Landlord. Tenant hereby grants Landlord the right and power, as attorney-in-fact for Tenant, to enter into the Premises as necessary to perform such work and related acts, without any compensation to Tenant or abatement of rent whatsoever, notwithstanding any interference with Tenant's business operation in the Premises, and Tenant hereby waives any claim whatsoever against Landlord in connection with such entry and work.

Tenant shall protect, defend, indemnify and hold each and all of the Landlord Entities (as defined in Article 31) harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of Tenant to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials (even though permissible under all applicable Environmental Laws or the provisions of this Lease), including, but not limited to, mold and similar substances, or by reason of any actual or asserted failure of Tenant to keep, observe or perform any provision of this Section 5.13. Without Landlord's prior written consent, Tenant shall not perform any environmental testing, take any remedial action or enter into any agreements or settlements in response to the presence of any Hazardous Materials in, on or about the Premises. Any such testing and/or remedial work may only be performed by licensed contractors approved in advance by Landlord. Tenant's obligations under this Section 5.13 shall survive the expiration or earlier termination of this Lease.

## 6. COMMON AREAS.

Subject to Landlord's rights under Article 17 and the rules and regulations set forth in Exhibit C, Tenant, and its licensees, concessionaires, employees and customers (for purposes of this Section 6, collectively "Tenant") shall have the nonexclusive right to use the "**Common Areas**" (which shall be defined as the areas of the Shopping Center other than tenants' premises, as constituted from time to time, and as otherwise designated by Landlord), in common with Landlord, other tenants of the Shopping Center and other persons entitled to use the same. Landlord may require that automobiles operated by Tenant or its employees be parked in specific portions of the Common Areas or other parking areas outside the Shopping Center which are in reasonable proximity thereto. Tenant shall not interfere with the rights of other persons to use the Common Areas. Landlord may temporarily close parts of the Common Areas for such periods of time as may be necessary for (i) temporary use as a work area in connection with the construction of buildings or other improvements within the Shopping Center or contiguous property, (ii) repairs or alterations in or to



the Common Areas or to any utility type facilities, (iii) preventing the public from obtaining prescriptive rights in or to the Common Areas, (iv) security reasons, or (v) doing and performing such other acts as in the use of good business judgment Landlord shall determine to be appropriate for the Shopping Center, provided however, that Landlord shall use reasonable efforts not to unduly interfere with or disrupt Tenant's business. Landlord shall have the right at any time to change the dimensions and location of any buildings in the Shopping Center and the arrangement and/or locations of entrances, parking areas, sidewalks, landscaped areas, passageways or other parts of the Common Areas and to change the name, number or designation by which the Shopping Center is commonly known.

## 7. ALTERATIONS.

7.1. Except for those, if any, specifically provided for in Exhibit B to this Lease, Tenant shall not make or suffer to be made any alterations, additions, or improvements, including, but not limited to, the attachment of any fixtures or equipment in, on, or to the Premises or any part thereof or the making of any improvements as required by Article 8, without the prior written consent of Landlord. When applying for such consent, Tenant shall, if requested by Landlord, furnish complete plans and specifications for such alterations, additions and improvements.

7.2. In the event Landlord consents to the making of any such alteration, addition or improvement by Tenant, the same shall be made using Landlord's contractor (unless Landlord agrees otherwise) at Tenant's sole cost and expense. If Tenant shall employ any contractor other than Landlord's contractor and such other contractor or any subcontractor of such other contractor shall employ any nonunion labor or supplier, Tenant shall be responsible for and hold Landlord harmless from any and all delays, damages and extra costs suffered by Landlord as a result of any dispute with any labor unions concerning the wage, hours, terms or conditions of the employment of any such labor. In any event Landlord may charge Tenant a reasonable charge to cover its overhead as it relates to such proposed work.

7.3. All alterations, additions or improvements proposed by Tenant shall be constructed in accordance with all government laws, ordinances, rules and regulations and Tenant shall, prior to construction, provide the additional insurance required under Article 12 in such case, and also all such assurances to Landlord, including but not limited to, waivers of lien, surety company performance bonds and personal guaranties of individuals of substance as Landlord shall require to assure payment of the costs thereof and to protect Landlord and the Shopping Center and appurtenant land against any loss from any mechanic's, materialmen's or other liens. Tenant shall pay in addition to any sums due pursuant to Article 4, any increase in real estate taxes attributable to any such alteration, addition or improvement for so long, during the Term, as such increase is ascertainable; at Landlord's election said sums shall be paid in the same way as sums due under Article 4.

7.4. All alterations, additions, and improvements in, on, or to the Premises made or installed by Tenant shall be and remain the property of Tenant during the Term, provided, however, upon the expiration or earlier termination of the Lease, the same shall become a part of the realty and belong to Landlord without compensation to Tenant, at which time title shall pass to Landlord under this Lease as by a bill of sale, unless Landlord elects otherwise. Upon such election by Landlord, Tenant shall upon demand by Landlord, at Tenant's sole cost and expense, forthwith and with all due diligence remove any such alterations, additions or improvements which are designated by Landlord to be removed, and Tenant shall forthwith and with all due diligence, at its sole cost and expense, repair and restore the Premises to their original condition, reasonable wear and tear and damage by fire or other casualty excepted.



## 8. REPAIR.

8.1. Landlord shall have no obligation to alter, remodel, improve, repair, decorate or paint the Premises, except as specified in Exhibit B if attached to this Lease, and except that Landlord shall repair and maintain the structural portions of the roof, foundation and exterior wall of the Shopping Center, including the basic plumbing, air conditioning, heating and electrical systems which do not serve the Premises exclusively. By taking possession of the Premises, Tenant accepts them as being in good order, condition and repair and in the condition in which Landlord is obligated to deliver them. It is hereby understood and agreed that no representations respecting the condition of the Premises or the Shopping Center have been made by Landlord to Tenant, except as specifically set forth in this Lease. Landlord shall not be liable for any failure to make any repairs or to perform any maintenance unless such failure shall persist for an unreasonable time after written notice of the need of such repairs or maintenance is given to Landlord by Tenant. Except to the extent, if any, prohibited by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

8.2. Tenant shall, at all times during the Term, keep the Premises in good condition and repair, including windows, glass and plate glass, doors, skylights, interior walls and finish work, floors and floor coverings, electrical systems and fixtures, plumbing work and fixtures and heating, ventilating and air conditioning equipment, and in compliance with all applicable governmental laws, ordinances and regulations, promptly complying with all governmental orders and directives for the correction, prevention and abatement of any violations or nuisances in or upon, or connected with, the Premises, all at Tenant's sole expense. Tenant shall, at its own cost and expense, enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor approved by Landlord for servicing all heating and air conditioning systems and equipment serving the Premises (and a copy thereof shall be furnished to Landlord). The service contract must include all services suggested by the equipment manufacturer in the operation/maintenance manual, as well as any additional requirements of Landlord, and must become effective within thirty (30) days of the date Tenant takes possession of the Premises. Landlord may, upon notice to Tenant, enter into such a maintenance/ service contract on behalf of Tenant or perform the work and in either case, charge Tenant the cost thereof along with a reasonable amount for Landlord's overhead.

8.3. Except as provided in Article 22, there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Shopping Center or the Premises or to fixtures, appurtenances and equipment in the Shopping Center. Except to the extent, if any, prohibited by law, Tenant waives the right to make repairs at Landlord's expense under any law, statute or ordinance now or hereafter in effect.

## 9. LIENS.

Tenant shall keep the Premises, the Shopping Center and appurtenant land and Tenant's leasehold interest in the Premises free from any liens arising out of any services, work or materials performed, furnished, or contracted for by Tenant, or obligations incurred by Tenant. If Tenant has not, within ten (10) days following the imposition of any such lien, caused the same to be released of record or bonded, Tenant shall provide Landlord with insurance against the same issued by a major title insurance company or such other protection against the same as Landlord shall accept, Landlord shall have the right to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith shall be considered additional rent and shall be payable to it by Tenant within five (5) days of Landlord's demand. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or that Landlord shall deem proper, for the protection of Landlord, the Premises, the Shopping



Center, and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give to Landlord at least ten (10) days' prior notice of commencement of any construction on the Premises.

#### 10. ASSIGNMENT AND SUBLETTING.

10.1. Tenant shall not have the right to assign or pledge this Lease or to sublet the whole or any part of the Premises whether voluntarily or by operation of law, or permit the use or occupancy of the Premises by anyone other than Tenant, and shall not make, suffer or permit such assignment, subleasing or occupancy, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, and said restrictions shall be binding upon any and all assignees of the Lease and subtenants of the Premises. In the event Tenant desires to sublet, or permit such occupancy of, the Premises, or any portion thereof, or assign this Lease, Tenant shall give written notice thereof to Landlord at least ninety (90) days but no more than one hundred eighty (180) days prior to the proposed commencement date of such subletting or assignment, which notice shall set forth the name of the proposed subtenant or assignee, the relevant terms of any sublease or assignment and copies of financial reports and other relevant financial information of the proposed subtenant or assignee.

10.2. For purposes of this Article 10, the following events shall be deemed an assignment or sublease, as appropriate: (i) the issuance of equity interests (whether stock, partnership or trust interests or otherwise) in Tenant or any subtenant or assignee, or any entity controlling any of them, to any person or group of related persons, in a single transaction or a series of related or unrelated transactions, such that, following such issuance, such person or group shall have Control (as defined below) of Tenant or any subtenant or assignee; or (ii) a transfer of Control of Tenant or any subtenant or assignee, or any entity controlling them, in a single transaction or a series of related or unrelated transactions (including, without limitation, by consolidations, merger, acquisition or reorganization). Notwithstanding the foregoing, if Tenant or Tenant's parent is or becomes: (x) a publicly-traded company whose outstanding voting stock or other ownership is listed on a "national securities exchange" (as defined in the Securities Exchange Act of 1934 or is a "NASDAQ security" (as defined in Rule 11Aa3-1(a)(6) under such Act)), the disposition or acquisition of shares of publicly-traded company shall not be deemed an assignment or sublease hereunder; or (y) a closely-held corporation or limited liability company, the disposition or acquisition of shares or membership interests solely between or among the shareholders, members or key employees of Tenant or Tenant's parent and their families or any trust for the exclusive benefit of, or other entity wholly owned by, any such permitted transferees shall not be deemed an assignment or sublease hereunder provided that such disposition or acquisition does not involve a change in Control. "Control" shall mean direct or indirect ownership of fifty percent (50%) or more of all of the voting stock of a corporation or fifty percent (50%) or more of the legal or equitable interest in any other business entity, or the power to direct the operations of any entity (by equity ownership, contract or otherwise).

10.3. Notwithstanding any assignment or subletting, permitted or otherwise, Tenant shall at all times remain directly, primarily and fully responsible and liable for the payment of the rent specified in this Lease and for compliance with all of its other obligations under the terms, provisions and covenants of this Lease. Upon the occurrence of an Event of Default, if the Premises or any part of them are then assigned or sublet, Landlord, in addition to any other remedies provided in this Lease or provided by law, may, at its option, collect directly from such assignee or subtenant all rents due and becoming due to Tenant under such assignment or sublease and apply such rent against any sums due to Landlord from Tenant under this Lease, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease.



10.4. In addition to Landlord's right to approve of any subtenant or assignee, Landlord shall have the option, in its sole discretion, in the event of any proposed subletting or assignment, to terminate this Lease, or in the case of a proposed subletting of less than the entire Premises, to recapture the portion of the Premises to be sublet, as of the date the subletting or assignment is to be effective. The option shall be exercised, if at all, by Landlord giving written notice to Tenant within sixty (60) days following Landlord's receipt of Tenant's written notice as required above. If this Lease shall be terminated with respect to the entire Premises pursuant to this Section, the Term of this Lease shall end on the date stated in Tenant's notice as the effective date of the sublease or assignment as if that date had been originally fixed in this Lease for the expiration of the Term. If Landlord recaptures under this Section only a portion of the Premises, the rent to be paid from time to time during the unexpired Term shall abate proportionately based on the proportion by which the approximate square footage of the remaining portion of the Premises shall be less than that of the Premises as of the date immediately prior to such recapture. Tenant shall, at Tenant's own cost and expense, discharge in full any outstanding commission obligation on the part of Landlord with respect to this Lease, and any commissions which may be due and owing as a result of any proposed assignment or subletting, whether or not the Premises are recaptured pursuant to this Section 10.3 and rented by Landlord to the proposed tenant or any other tenant.

10.5. In the event that Tenant sublets, assigns or transfers this Lease, Tenant shall pay to Landlord as additional rent an amount equal to one hundred percent (100%) of any Increased Rent (as defined below) when and as such Increased Rent is received by Tenant. As used in this Section, "**Increased Rent**" shall mean the excess of (i) all rent and other consideration which Tenant is entitled to receive by reason of any sale, sublease, assignment or other transfer of this Lease, over (ii) the rent otherwise payable by Tenant under this Lease at such time. For purposes of the foregoing, any consideration received by Tenant in form other than cash shall be valued at its fair market value as determined by Landlord in good faith.

10.6. Notwithstanding any other provision hereof, Tenant shall have no right to make (and Landlord shall have the absolute right to refuse consent to) any assignment of this Lease or sublease of any portion of the Premises if: (a) at the time of either Tenant's notice of the proposed assignment or sublease or the proposed commencement date thereof, there shall exist any uncured Event of Default of Tenant or matter which would become an Event of Default of Tenant with the giving of notice or the passage of time or both unless cured; (b) the proposed assignee or sublessee is (1) an entity with which Landlord is already in negotiation as evidenced by the issuance of a written proposal, (2) an entity which is already an occupant of the Shopping Center unless Landlord is unable to provide the amount of space required by such occupant, (3) a governmental agency, (4) incompatible with the character of occupancy of the Shopping Center, (5) an entity or related to an entity with whom Landlord or any affiliate of Landlord has had adverse dealings; (c) the assignment or subletting would involve a change in use from that expressly permitted under this Lease; (d) Landlord disapproves of the proposed assignee or subtenant's reputation or creditworthiness; (e) Landlord determines that the proposed assignee may be unable to perform all of Tenant's obligations under this Lease or the proposed subtenant may be unable to perform all of its obligations under the proposed sublease; or (f) the assignment or subletting would subject the Premises to a use which would: (1) involve increased personnel or wear upon the Shopping Center; (2) violate any exclusive right granted to another tenant of the Shopping Center or with the terms of any easement, covenant, condition or restriction, or other agreement affecting the Property; (3) require any addition to or modification of the Premises or the Shopping Center in order to comply with building code or other governmental requirements; or (4) involve a violation of any other provision of this Lease. Tenant expressly agrees that Landlord shall have the absolute right to refuse consent to any such assignment or sublease and that for the purposes of any statutory or other requirement of reasonableness on the part of Landlord such refusal shall be reasonable.



10.7. Upon any request to assign or sublet, Tenant will pay to Landlord an amount equal to \$1,500.00, plus attorneys' fees incurred by Landlord in investigating and considering any proposed or purported assignment or pledge of this Lease or sublease of any of the Premises, regardless of whether Landlord shall consent to, refuse consent, or determine that Landlord's consent is not required for, such assignment, pledge or sublease, which amounts Tenant acknowledges and agrees is fair and reasonable compensation for Landlord's handling and processing of such an assignment, pledge and/or subletting hereunder. Any purported assignment, mortgage, transfer of this Lease or subletting which does not comply with the provisions of this Article 10 shall be void. Tenant hereby waives any suretyship defenses it may now or hereafter have to an action brought by Landlord under any provisions of applicable law.

10.8. Notwithstanding anything contained herein to the contrary and without limiting the generality of Section 10.6 above, Tenant shall not: (a) sublet all or part of the Premises or assign this Lease on any basis such that the rental or other amounts to be paid by the subtenant or assignee thereunder would be based, in whole or in part, on the income or profits derived by the business activities of the subtenant or assignee; (b) sublet all or part of the Premises or assign this Lease to any person or entity in which, under Section 856(d)(2)(B) of the Internal Revenue Code of 1986, as amended (the "Code"), the Company or any affiliate of the Company owns, directly or indirectly (by applying constructive ownership rules set forth in Section 856(d) (5) of the Code), a ten percent (10%) or greater interest; or (c) sublet all or part of the Premises or assign this Lease in any other manner or otherwise derive any income which could cause any portion of the amounts received by Landlord pursuant hereto or any sublease to fail to qualify as "rents from real property" within the meaning of Section 856(d) of the Code, or which could cause any other income received by Landlord to fail to qualify as income described in Section 856(c) (2) of the Code. The requirements of this Section 10.8 shall likewise apply to any further subleasing by any subtenant. All references herein to Section 856 of the Code also shall refer to any amendments thereof or successor provisions thereto.

## 11. INDEMNIFICATION.

None of the Landlord Entities shall be liable and Tenant hereby waives all claims against them for any damage to any property or any injury to any person in or about the Premises or the Shopping Center by or from any cause whatsoever (including without limiting the foregoing, rain or water leakage of any character from the roof, windows, walls, basement, pipes, plumbing works or appliances, the Shopping Center not being in good condition or repair, gas, fire, oil, electricity or theft). Tenant shall protect, indemnify and hold the Landlord Entities harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of (a) any damage to any property (including but not limited to property of any Landlord Entity) or any injury (including but not limited to death) to any person occurring in, on or about the Premises or the Shopping Center to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault, or omission by or of Tenant, its agents, servants, employees, invitees, or visitors to meet any standards imposed by any duty with respect to the injury or damage; (b) the conduct or management of any work or thing whatsoever done by Tenant in or about the Premises or from transactions of Tenant concerning the Premises; (c) Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Premises or its occupancy; or (d) any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to this Lease. The provisions of this Article shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.



## 12. INSURANCE.

12.1. From and after the Delivery Date, and continuing throughout the Term, Tenant shall keep in force: (a) a Commercial General Liability insurance policy or policies on an occurrence basis to protect the Landlord Entities against any liability to the public or to any invitee of Tenant or a Landlord Entity incidental to the use of or resulting from any accident occurring in or upon the Premises with a limit of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 in the annual aggregate, or such larger amount as Landlord may reasonably require from time to time, covering bodily injury and property damage liability and \$1,000,000 products/completed operations aggregate; (b) Comprehensive Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 Combined Single Limit per accident; (c) Worker's Compensation Insurance with limits as required by statute; (d) Employers Liability with limits of \$500,000 each accident, \$500,000 disease policy limit, \$500,000 disease—each employee; (e) All Risk or Special Form coverage protecting Tenant against loss of or damage to Tenant's alterations, additions, improvements, carpeting, floor coverings, panelings, decorations, fixtures, inventory, plate glass and other business personal property situated in or about the Premises to the full replacement value of the property so insured; (f) Business Interruption Insurance with limit of liability representing loss of at least twelve (12) months of income; and (g) Minimum excess/umbrella policy on an occurrence basis of \$1,000,000. Maximum allowable deductibles will be \$10,000 for liability insurance and \$25,000 for property insurance unless otherwise approved in writing by Landlord. Tenant's failure to comply with the foregoing requirements relating to insurance shall constitute a default under this Lease. Landlord's failure to demand certificates of insurance prior to Tenant's occupancy of the Premises or at any other time shall not release Tenant from its duty to comply with this paragraph and shall not constitute a waiver of any rights or remedies of Landlord. In addition to any other remedies under this Lease, upon such failure by Tenant, Landlord may, but is not obligated to, obtain such insurance on behalf of the parties hereto, whereupon Tenant shall pay to Landlord upon demand as Additional Rent the premium cost thereof plus interest thereon at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by law from the date of payment by Landlord until repaid by Tenant. Insurance maintained by Tenant shall be primary and non-contributing with any insurance maintained by Landlord.

12.2. Each of the aforesaid policies shall (a) be provided at Tenant's expense; (b) name Landlord, the holder of any Superior Interest (as defined in Article 16) and the Shopping Center management company, if any, as additional insureds (General Liability) and loss payee (Property - Special Form); (c) be issued by an insurance company with a minimum Best's rating of "A-:VII" during the Term; and (d) provide that said insurance shall not be canceled unless thirty (30) days prior written notice (ten days for nonpayment of premium) shall have been given to Landlord; a certificate of Liability on ACORD Form 25 and a certificate of Property Insurance on ACORD Form 27 and said policy or policies or certificates thereof shall be delivered to Landlord by Tenant prior to the date that Tenant enters or occupies the Premises for any reason and at least ten (10) days prior to each renewal of said insurance. The failure or refusal of Tenant to provide the foregoing policies or certificates as required herein shall not delay the Commencement Date. Landlord shall not be required to tender possession of the Premises to Tenant until the foregoing policies or certificates are delivered to Landlord, and in the event that Landlord is otherwise prepared to tender possession of the Premises to Tenant, then for purposes of the Commencement Date, the Premises shall be deemed to have been delivered to Tenant on such date that Landlord would otherwise have tendered possession of the Premises to Tenant, but for Tenant's failure to deliver the policies or certificates of insurance as and when required herein.

12.3. Whenever Tenant shall undertake any alterations, additions or improvements in, to or about the Premises the aforesaid insurance protection must extend to and include injuries to persons and damage to property arising in connection with such work, without limitation including liability under any applicable



structural work act, and such other insurance as Landlord shall require; and the policies of or certificates evidencing such insurance must be delivered to Landlord prior to the commencement of any such work.

### 13. WAIVER OF SUBROGATION.

Tenant, on behalf of its insurance companies insuring the Premises, its contents, Tenant's other property or other portions of the Shopping Center, waives any right of subrogation which such insurer or insurers may have against Landlord, Landlord's partners, beneficiaries, directors, officers, agents and employees. Landlord, on behalf of its insurance companies described herein, waives any right of subrogation which such insurer may have against Tenant. Tenant and Landlord shall each secure an appropriate clause in, or an endorsement to such insurance policies, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. If any part of the Premises or the Shopping Center is damaged by fire or other cause for which a party is required to carry insurance pursuant to this Lease ("**Insuring Party**"), the other party shall not be liable to the Insuring Party (and the Insuring Party hereby waives all claims on behalf of itself and shall cause its insurance company to waive all such claims) for any loss, cost or expense arising out of or in connection with such damage. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant or any of the Tenant's employees, agents, contractors, representatives, licensees, subtenants, or assignees, for any damages arising out of or in connection with (a) any act or omission of any other tenant or occupant of the Shopping Center or for losses arising out of or in connection with theft or burglary or other acts or omissions of third parties or (b) fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises or the Shopping Center, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures.

### 14. SERVICES AND UTILITIES.

Commencing on the Delivery Date, Tenant shall pay for all water, gas, heat, steam, light, power, telephone, sewer, waste disposal, sprinkler system charges and other utilities and services used in, on or from the Premises, together with any taxes, penalties and surcharges or the like pertaining thereto and any maintenance charges for utilities. Tenant shall be responsible for all impact, connection, school, mitigation, meter, hook up, and other fees and costs of every kind and nature related to Tenant's connection to, and/or use of utilities. If any such utilities and services are not separately metered to the Premises, Tenant shall pay such proportion of all charges jointly metered with other premises as determined by Landlord, in its sole reasonable discretion. Any such charges paid by Landlord and assessed against Tenant shall be immediately payable to Landlord on demand and shall be additional rent hereunder. Landlord shall in no event be liable for any interruption or failure of utility services on or to the Premises. If Tenant is billed directly by a public utility with respect to Tenant's electrical usage at the Premises, then, upon request, Tenant shall provide monthly electrical utility usage for the Premises to Landlord for the period of time requested by Landlord (in electronic or paper format) or, at Landlord's option, provide any written authorization or other documentation required for Landlord to request information regarding Tenant's electricity usage with respect to the Premises directly from the applicable utility company.

### 15. HOLDING OVER.

Tenant shall pay Landlord for each day Tenant retains possession of the Premises or part thereof after termination of this Lease by lapse of time or otherwise at the rate ("**Holdover Rate**") which shall be 150% of the greater of: (a) the amount of the Annual Rent for the last period prior to the date of such termination plus all rent adjustments under Article 2 and Additional Rent under Article 4; and, (b) the then market rental value of the Premises as determined by Landlord assuming a new lease of the Premises of the then usual



duration and other terms, in either case prorated on a daily basis, and also pay all damages sustained by Landlord by reason of such retention. If Landlord gives notice to Tenant of Landlord's election to that effect, such holding over shall constitute renewal of this Lease for a period from month to month at the Holdover Rate, but if the Landlord does not so elect, no such renewal shall result notwithstanding acceptance by Landlord of any sums due hereunder after such termination; and instead, a tenancy at sufferance at the Holdover Rate shall be deemed to have been created. No provision of this Article 15 shall be deemed to waive Landlord's right of reentry or any other right under this Lease or at law.

## 16. SUBORDINATION.

16.1. Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be subject and subordinate at all times to ground or underlying leases and to the lien of any mortgages or deeds of trust now or hereafter placed on, against or affecting the Shopping Center, Landlord's interest or estate in the Shopping Center, or any ground or underlying lease (collectively, "**Superior Interests**"); provided, however, that if the lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have Tenant's interest in this Lease be superior to any such instrument, then, by notice to Tenant, this Lease shall be deemed superior, whether this Lease was executed before or after said instrument. Notwithstanding the foregoing, Tenant covenants and agrees to execute and deliver upon demand such further instruments evidencing such subordination or superiority of this Lease as may be required by Landlord.

16.2. Tenant shall not, without the prior written consent of the holder of any Superior Interest (each, a "**Holder**"): (i) enter into any agreement amending, modifying or terminating this Lease if the agreements governing the Superior Interest require the prior written consent thereto by the Holder, (ii) prepay any of the rents, additional rents or other sums due under this Lease for more than one (1) month in advance of the due date thereof, (iii) voluntarily surrender the Premises or terminate this Lease without cause or shorten the term thereof, except as expressly permitted by the terms of this Lease, or (iv) assign this Lease or sublet the Premises or any part thereof, if the agreements governing the Superior Interest require the prior written consent thereto by the Holder; and any such amendment, modification, termination, prepayment, voluntary surrender, assignment or subletting, without the prior written consent of the Holder, to the extent required, shall not be binding on such Holder.

16.3. Tenant shall promptly notify each Holder (of whom Tenant has received written notice) of any default by Landlord under this Lease or any other circumstance which would entitle Tenant to cancel or terminate this Lease or abate the rents, additional rents or other sums payable thereunder, and agrees that, notwithstanding any provisions of this Lease to the contrary, no notice of cancellation, termination or abatement thereof shall be effective unless the Holder shall have received notice of the default or other circumstance giving rise to such cancellation, termination or abatement and such Holder shall have failed to cure such default or remedy such circumstance (i) within the cure period available to Landlord under this Lease plus thirty (30) days or (ii) within thirty (30) days following the date on which possession of the Shopping Center is obtained by such Holder, if such act or omission is not capable of being remedied without possession of the Shopping Center; provided, however, that if such default is not capable of cure within the relevant thirty (30)-day period, then, provided that such Holder has commenced such cure within the relevant thirty (30)-day period then such period shall be extended so long as such Holder is thereafter diligently pursuing any action necessary to cure such default or remedy such circumstance, as the case may be.



## 17. REENTRY BY LANDLORD.

17.1. Landlord reserves and shall at all times have the right to reenter the Premises to inspect the same, to supply any service to be provided by Landlord to Tenant under this Lease, to show said Premises to prospective purchasers, mortgagees or tenants, and to alter, improve or repair the Premises and any portion of the Shopping Center, without abatement of rent, and may for that purpose erect, use and maintain scaffolding, pipes, conduits and other necessary structures and open any wall, ceiling or floor in and through the Shopping Center and Premises where reasonably required by the character of the work to be performed, provided access to the Premises shall not be materially impaired, and further provided that the business of Tenant shall not be interfered with unreasonably.

17.2. Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency to obtain entry to any portion of the Premises. Landlord is authorized to gain access by such means as Landlord shall elect and the cost of repairing any damage occurring in doing so shall be borne by Tenant and paid to Landlord as additional rent upon demand.

17.3. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by any action of Landlord authorized by this Article 17. Tenant agrees to reimburse Landlord, on demand, as additional rent, for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease.

## 18. DEFAULT.

18.1. The following events shall be deemed to be Events of Default under this Lease:

18.1.1 Tenant shall fail to pay when due any sum of money becoming due to be paid to Landlord under this Lease, whether such sum be any installment of the rent reserved by this Lease, any other amount treated as additional rent under this Lease, or any other payment or reimbursement to Landlord required by this Lease, whether or not treated as additional rent under this Lease, and such failure shall continue for a period of ten (10) days after written notice that such payment was not made when due;

18.1.2 Tenant shall fail to comply with any term, provision or covenant of this Lease which is not provided for in another Section of this Article 18 and shall not cure such failure within thirty (30) days after written notice of such failure to Tenant.

18.1.3 Tenant shall abandon or vacate any substantial portion of the Premises or cease continuously operating its business therein.

18.1.4 Tenant shall fail to vacate the Premises immediately upon termination of this Lease, by lapse of time or otherwise, or upon termination of Tenant's right to possession only.

18.1.5 Tenant shall become insolvent, admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or a petition to take advantage of any insolvency statute, make an assignment for the benefit of creditors, make a transfer in fraud of creditors, apply for or consent to the appointment of a receiver of itself or of the whole or any substantial part of its property, or file a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws, as now in effect or hereafter amended, or any other applicable law or statute of the United States or any state thereof.



18.1.6 A court of competent jurisdiction shall enter an order, judgment or decree adjudicating Tenant bankrupt, or appointing a receiver of Tenant, or of the whole or any substantial part of its property, without the consent of Tenant, or approving a petition filed against Tenant seeking reorganization or arrangement of Tenant under the bankruptcy laws of the United States as now in effect or hereafter amended, or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within thirty (30) days from the date of entry thereof.

## 19. REMEDIES.

19.1. Upon the occurrence of any of the Events of Default described or referred to in Article 18, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

19.1.1 Landlord may, at its election, terminate this Lease or terminate Tenant's right to possession only, without terminating the Lease.

19.1.2 Upon any termination of this Lease, whether by lapse of time or otherwise, or upon any termination of Tenant's right to possession without termination of the Lease, Tenant shall surrender possession and vacate the Premises immediately, and deliver possession thereof to Landlord, and Tenant hereby grants to Landlord full and free license to enter into and upon the Premises in such event and to repossess Landlord of the Premises as of Landlord's former estate and to expel or remove Tenant and any others who may be occupying or be within the Premises and to remove Tenant's signs and other evidence of tenancy and all other property of Tenant therefrom without being deemed in any manner guilty of trespass, eviction or forcible entry or detainer, and without incurring any liability for any damage resulting therefrom, Tenant waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Landlord's right to rent or any other right given to Landlord under this Lease or by operation of law.

19.1.3 Upon any termination of this Lease, whether by lapse of time or otherwise, Landlord shall be entitled to recover as damages, all rent, including any amounts treated as additional rent under this Lease, and other sums due and payable by Tenant on the date of termination, plus as liquidated damages and not as a penalty, an amount equal to the sum of: (a) an amount equal to the then present value of the rent reserved in this Lease for the residue of the stated Term of this Lease including any amounts treated as additional rent under this Lease and all other sums provided in this Lease to be paid by Tenant, minus an amount equal to the then present value of the fair rental value of the Premises for such residue; (b) the value of the time and expense necessary to obtain a replacement tenant or tenants, and the estimated expenses described in Section 19.1.4 relating to recovery of the Premises, preparation for reletting and for reletting itself; and (c) the cost of performing any other covenants which would have otherwise been performed by Tenant.

19.1.4 Upon any termination of Tenant's right to possession only without termination of the Lease:

19.1.4.1 Neither such termination of Tenant's right to possession nor Landlord's taking and holding possession thereof as provided in Section 19.1.2 shall terminate the Lease or release Tenant, in whole or in part, from any obligation, including Tenant's obligation to pay the rent, including any amounts treated as additional rent, under this Lease for the full Term, and if Landlord so elects Tenant shall pay forthwith to Landlord the sum equal to the entire amount of the rent, including any amounts treated as additional rent under this Lease, for the remainder of the Term plus any other sums provided in this Lease to be paid by Tenant for the remainder of the Term.



19.1.4.2 Landlord may, but need not, relet the Premises or any part thereof for such rent and upon such terms as Landlord, in its sole discretion, shall determine (including the right to relet the Premises for a greater or lesser term than that remaining under this Lease, the right to relet the Premises as a part of a larger area, and the right to change the character or use made of the Premises). In connection with or in preparation for any reletting, Landlord may, but shall not be required to, make repairs, alterations and additions in or to the Premises and redecorate the same to the extent Landlord deems necessary or desirable, and Tenant shall, upon demand, pay the cost thereof, together with Landlord's expenses of reletting, including, without limitation, any commission incurred by Landlord. If Landlord decides to relet the Premises or a duty to relet is imposed upon Landlord by law, Landlord and Tenant agree that nevertheless Landlord shall at most be required to use only the same efforts Landlord then uses to lease premises in the Shopping Center generally and that in any case that Landlord shall not be required to give any preference or priority to the showing or leasing of the Premises over any other space that Landlord may be leasing or have available and may place a suitable prospective tenant in any such other space regardless of when such other space becomes available. Landlord shall not be required to observe any instruction given by Tenant about any reletting or accept any tenant offered by Tenant unless such offered tenant has a creditworthiness acceptable to Landlord and leases the entire Premises upon terms and conditions including a rate of rent (after giving effect to all expenditures by Landlord for tenant improvements, broker's commissions and other leasing costs) all no less favorable to Landlord than as called for in this Lease, nor shall Landlord be required to make or permit any assignment or sublease for more than the current term or which Landlord would not be required to permit under the provisions of Article 10.

19.1.4.3 Until such time as Landlord shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified in such case in Section 19.1.3, Tenant shall pay to Landlord upon demand the full amount of all rent, including any amounts treated as additional rent under this Lease and other sums reserved in this Lease for the remaining Term, together with the costs of repairs, alterations, additions, redecorating and Landlord's expenses of reletting and the collection of the rent accruing therefrom (including attorney's fees and broker's commissions), as the same shall then be due or become due from time to time, less only such consideration as Landlord may have received from any reletting of the Premises; and Tenant agrees that Landlord may file suits from time to time to recover any sums falling due under this Article 19 as they become due. Any proceeds of reletting by Landlord in excess of the amount then owed by Tenant to Landlord from time to time shall be credited against Tenant's future obligations under this Lease but shall not otherwise be refunded to Tenant or inure to Tenant's benefit.

19.2. Landlord may, at Landlord's option, enter into and upon the Premises with, or if Tenant shall have vacated the Premises without, five (5) days' notice, if Landlord determines in its sole discretion that Tenant is not acting within a commercially reasonable time to maintain, repair or replace anything for which Tenant is responsible under this Lease and correct the same, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without incurring any liability for any damage or interruption of Tenant's business resulting therefrom.

19.3. Tenant expressly waives any right to trial by jury.

19.4. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Landlord under this Lease or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

19.5. No act or thing done by Landlord or its agents during the Term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate



this Lease or accept a surrender of said Premises shall be valid, unless in writing signed by Landlord. No waiver by Landlord of any violation or breach of any of the terms, provisions and covenants contained in this Lease shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions and covenants contained in this Lease. Landlord's acceptance of the payment of rental or other payments after the occurrence of an event of default shall not be construed as a waiver of such default, unless Landlord so notifies Tenant in writing. Forbearance by Landlord in enforcing one or more of the remedies provided in this Lease upon an event of default shall not be deemed or construed to constitute a waiver of such default or of Landlord's right to enforce any such remedies with respect to such default or any subsequent default.

19.6. To secure the payment of all rentals and other sums of money becoming due from Tenant under this Lease, Landlord shall have and Tenant grants to Landlord a first lien upon the leasehold interest of Tenant under this Lease, which lien may be enforced in equity, and a continuing security interest upon all goods, wares, equipment, fixtures, furniture, inventory, accounts, contract rights, chattel paper and other personal property of Tenant situated on the Premises, and such property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord under this Lease shall first have been paid and discharged. In the event of a default under this Lease, Landlord shall have, in addition to any other remedies provided in this Lease or by law, all rights and remedies under the Uniform Commercial Code, including without limitation the right to sell the property described in this Section 19.6 at public or private sale upon five (5) days' notice to Tenant. Tenant shall execute all such financing statements and other instruments as shall be deemed necessary or desirable in Landlord's discretion to perfect the security interest hereby created.

19.7. Any and all property which may be removed from the Premises by Landlord pursuant to the authority of this Lease or of law, to which Tenant is or may be entitled, may be handled, removed and/or stored, as the case may be, by or at the direction of Landlord but at the risk, cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. Any such property of Tenant not retaken by Tenant from storage within thirty (30) days after removal from the Premises shall, at Landlord's option, be deemed conveyed by Tenant to Landlord under this Lease as by a bill of sale without further payment or credit by Landlord to Tenant.

19.8. For the purposes of determining the amounts payable under this Article, Percentage Rent shall be included as additional rent on the basis of the average gross receipts for the thirty-six (36) months (or such fewer number of months since the Commencement Date) preceding Tenant's default.

## 20. TENANT'S BANKRUPTCY OR INSOLVENCY.

20.1. If at any time and for so long as Tenant shall be subjected to the provisions of the United States Bankruptcy Code or other law of the United States or any state thereof for the protection of debtors as in effect at such time (each a "**Debtor's Law**"):

20.1.1 Tenant, Tenant as debtor-in-possession, and any trustee or receiver of Tenant's assets (each a "**Tenant's Representative**") shall have no greater right to assume or assign this Lease or any interest in this Lease, or to sublease any of the Premises than accorded to Tenant in Article 10, except to the extent Landlord shall be required to permit such assumption, assignment or sublease by the provisions of such Debtor's Law. Without limitation of the generality of the foregoing, any right of any Tenant's Representative to assume or assign this Lease or to sublease any of the Premises shall be subject to the conditions that:



20.1.1.1 Such Debtor's Law shall provide to Tenant's Representative a right of assumption of this Lease provided that Tenant's Representative shall have timely exercised such right and Tenant's Representative shall have fully cured any default of Tenant under this Lease.

20.1.1.2 Tenant's Representative or the proposed assignee, as the case shall be, shall have deposited with Landlord as security for the timely payment of rent an amount equal to the larger of: (a) three months' rent and other monetary charges accruing under this Lease; and (b) any sum specified in Section 2.6; and shall have provided Landlord with adequate other assurance of the future performance of the obligations of the Tenant under this Lease. Without limitation, such assurances shall include, at least, in the case of assumption of this Lease, demonstration to the satisfaction of the Landlord that Tenant's Representative has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that Tenant's Representative will have sufficient funds to fulfill the obligations of Tenant under this Lease; and, in the case of assignment, submission of current financial statements of the proposed assignee, audited by an independent certified public accountant reasonably acceptable to Landlord and showing a net worth and working capital in amounts determined by Landlord to be sufficient to assure the future performance by such assignee of all of the Tenant's obligations under this Lease.

20.1.1.3 The assumption or any contemplated assignment of this Lease or subleasing any part of the Premises, as shall be the case, will not breach any provision in any other lease, mortgage, financing agreement or other agreement by which Landlord is bound.

20.1.1.4 Landlord shall have, or would have had absent the Debtor's Law, no right under Article 10 to refuse consent to the proposed assignment or sublease by reason of the identity or nature of the proposed assignee or sublessee or the proposed use of the Premises concerned.

## 21. QUIET ENJOYMENT.

Landlord represents and warrants that it has full right and authority to enter into this Lease and that Tenant, while paying the rental and performing its other covenants and agreements contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises for the Term without hindrance or molestation from Landlord subject to the terms and provisions of this Lease. Landlord shall not be liable for any interference or disturbance by other tenants or third persons, nor shall Tenant be released from any of the obligations of this Lease because of such interference or disturbance.

## 22. DAMAGE BY FIRE, ETC.

22.1. In the event that the Premises are partially or totally destroyed by fire or any other peril covered by insurance maintained by Landlord, Landlord shall, within a period of one hundred eighty (180) days after the occurrence of such destruction, but only to the extent that proceeds of such insurance are available to Landlord for such purpose, commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect. In the event insurance proceeds are not sufficient to pay the cost of such reconstruction, or if the damage or destruction is due to the acts or omissions of Tenant, its agents, employees or contractors, or if Landlord is restricted by any governmental authority or any mortgagee of the Shopping Center, Landlord may elect to either terminate this Lease or pay the cost of such reconstruction. Such reconstruction shall be only to the extent necessary to restore the "Landlord's Work" in the Premises as described in Exhibit B, and Tenant shall be obligated, at Tenant's sole cost and expense, for the restoration and repair of all of the items specified as "Tenant's Work" in Exhibit B in the event of such reconstruction, as well as Tenant's other leasehold improvements, trade fixtures and other personal property on the Premises.



22.2. In the event that the Premises are partially or totally destroyed as a result of any casualty or peril not covered by Landlord's insurance, Landlord may within a period of one hundred eighty (180) days after the occurrence of such destruction (a) commence reconstruction and restoration of the Premises and prosecute the same diligently to completion, in which event this Lease shall continue in full force and effect; or (b) notify Tenant in writing that it elects not to so reconstruct or restore the Premises, in which event this Lease shall cease and terminate as of the date of service of such notice, unless Tenant is unable to continue the operation of its business after the occurrence of such destruction, in which event this Lease shall cease and terminate as of the date of such destruction. In the event of any reconstruction of the Premises by Landlord following destruction as a result of any casualty or peril not covered by Landlord's insurance, such reconstruction shall be only to the extent necessary to restore the "Landlord's Work" in the Premises as described in Exhibit B and Tenant shall be obligated for the restoration of all of the items specified as "Tenant's Work" in Exhibit B in the event of such reconstruction, as well as Tenant's other leasehold improvements, trade fixtures and other personal property on the Premises.

22.3. Notwithstanding anything to the contrary herein contained, in the event of a total destruction of the Shopping Center or a partial destruction of the Shopping Center, the cost of restoration of which would exceed one-quarter ( $\frac{1}{4}$ ) of the then replacement value of the Shopping Center, by any cause whatsoever, whether or not insured against and whether or not the Premises are partially or totally destroyed, Landlord may, within a period of one hundred eighty (180) days after the occurrence of such destruction, notify Tenant in writing that it elects not to so reconstruct or restore the Shopping Center, in which event this Lease shall cease and terminate as of the date of such destruction.

22.4. Notwithstanding the foregoing, in the event that the Premises are partially or totally destroyed during the last two (2) years of the Term of this Lease, Landlord shall have the option to terminate this Lease by giving written notice to Tenant of the exercise of such option within thirty (30) days after such destruction, in which event this Lease shall cease and terminate as of the date of service of such notice. For the purposes of this Article 22, partial destruction shall be deemed to be a destruction to an extent of at least one-quarter ( $\frac{1}{4}$ ) of the full replacement cost of the Premises as of the date of destruction.

22.5. In the event of any termination of this Lease in accordance with this Article 22, the parties shall be released thereby without further obligation to the other party coincidental with the surrender of possession of the Premises to Landlord except for items which have theretofore accrued and are then unpaid or unperformed.

22.6. In the event of reconstruction and restoration as herein provided, and provided Tenant has maintained the business interruption or loss of income insurance required pursuant to Article 12, to the extent that the proceeds of such business interruption or loss of income insurance may be exhausted during the period of reconstruction and restoration, Annual Rent payable hereunder shall be thereafter abated proportionately with the degree to which Tenant's use of the Premises is impaired during the remainder of the period of reconstruction and restoration; provided, however, the amount of Annual Rent abated pursuant to this Section 22.6 shall in no event exceed the amount of loss of rental insurance proceeds actually received by Landlord. Tenant shall continue the operation of its business in the Premises during any such period to the extent reasonably practicable from the standpoint of prudent business management, and the obligation of Tenant to pay Percentage Rent, Additional Rent and all other charges shall remain in full force and effect. Tenant shall not be entitled to any compensation or damages from Landlord for loss of the use of the whole or any part of the Premises, Tenant's personal property or any inconvenience or annoyance occasioned by such destruction, reconstruction or restoration. Tenant hereby waives any statutory rights of termination, which may arise by reason of any partial or total destruction of the Premises, which Landlord is obligated to restore or may restore under any of the provisions of this Lease.



### 23. EMINENT DOMAIN.

If all or any substantial part of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, or conveyance in lieu of such appropriation, either party to this Lease shall have the right, at its option, of giving the other, at any time within thirty (30) days after such taking, notice terminating this Lease, except that Tenant may only terminate this Lease by reason of taking or appropriation, if such taking or appropriation shall be so substantial as to materially interfere with Tenant's use and occupancy of the Premises. If neither party to this Lease shall so elect to terminate this Lease, the rental thereafter to be paid shall be adjusted on a fair and equitable basis under the circumstances. In addition to the rights of Landlord above, if any substantial part of the Shopping Center shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain or conveyance in lieu thereof, and regardless of whether the Premises or any part thereof are so taken or appropriated, Landlord shall have the right, at its sole option, to terminate this Lease. Landlord shall be entitled to any and all income, rent, award, or any interest whatsoever in or upon any such sum, which may be paid or made in connection with any such public or quasi-public use or purpose, and Tenant hereby assigns to Landlord any interest it may have in or claim to all or any part of such sums, other than any separate award which may be made with respect to Tenant's trade fixtures and moving expenses; Tenant shall make no claim for the value of any unexpired Term. The rights contained in this Article 23 shall be Tenant's sole and exclusive remedy in the event of a taking or condemnation. Landlord and Tenant each hereby waive any provisions of applicable law contrary to the terms and conditions of this Article 23.

### 24. SALE BY LANDLORD.

In event of a sale or conveyance by Landlord of the Shopping Center, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions, expressed or implied, contained in this Lease in favor of Tenant, and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. Except as set forth in this Article 24, this Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. If any security has been given by Tenant to secure the faithful performance of any of the covenants of this Lease, Landlord may transfer or deliver said security, as such, to Landlord's successor in interest and thereupon Landlord shall be discharged from any further liability with regard to said security.

### 25. ESTOPPEL CERTIFICATES.

Within ten (10) days following any written request which Landlord may make from time to time, Tenant shall execute and deliver to Landlord or mortgagee or prospective mortgagee a sworn statement certifying: (a) the date of commencement of this Lease; (b) the fact that this Lease is unmodified and in full force and effect (or, if there have been modifications to this Lease, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications); (c) the date to which the rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in Tenant's statement; and (e) such other matters as may be requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Article 25 may be relied upon by any mortgagee, beneficiary or purchaser and Tenant shall be liable for all loss, cost or expense resulting from the failure of any sale or funding of any loan caused by any material misstatement contained in such estoppel certificate. Tenant irrevocably agrees that if Tenant fails to execute and deliver such certificate within such ten (10) day period Landlord or Landlord's beneficiary or agent may execute and deliver such certificate on Tenant's behalf, and that such certificate shall be fully binding on Tenant.



## 26. SURRENDER OF PREMISES.

26.1. Tenant shall, at least thirty (30) days before the last day of the Term, arrange to meet Landlord for a joint inspection of the Premises. In the event of Tenant's failure to arrange such joint inspection to be held prior to vacating the Premises, Landlord's inspection at or after Tenant's vacating the Premises shall be conclusively deemed correct for purposes of determining Tenant's responsibility for repairs and restoration.

26.2. At the end of the Term or any renewal of the Term or other sooner termination of this Lease, Tenant will peaceably deliver up to Landlord possession of the Premises, together with all improvements or additions upon or belonging to the same, by whomsoever made, in the same conditions received or first installed, broom clean and free of all debris, excepting only ordinary wear and tear and damage by fire or other casualty. Tenant may, and at Landlord's request shall, at Tenant's sole cost, remove upon termination of this Lease, any and all furniture, furnishings, equipment, movable partitions of less than full height from floor to ceiling, trade fixtures, as well as all data/telecommunications cabling and wiring installed by or on behalf of Tenant, whether inside walls, under any raised floor or above any ceiling, and other property installed by Tenant, title to which shall not be in or pass automatically to Landlord upon such termination, repairing all damage caused by such removal. Property not so removed shall, unless requested to be removed, be deemed abandoned by the Tenant and title to the same shall thereupon pass to Landlord under this Lease as by a bill of sale. All other alterations, additions and improvements in, on or to the Premises shall be dealt with and disposed of as provided in Article 7 hereof.

26.3. All obligations of Tenant under this Lease not fully performed as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term. In the event that Tenant's failure to perform prevents Landlord from releasing the Premises, Tenant shall continue to pay rent pursuant to the provisions of Article 15 until such performance is complete. Upon the expiration or earlier termination of the Term, Tenant shall pay to Landlord the amount, as estimated by Landlord, necessary to repair and restore the Premises as provided in this Lease and/or to discharge Tenant's obligation for unpaid amounts due or to become due to Landlord. All such amounts shall be used and held by Landlord for payment of such obligations of Tenant, with Tenant being liable for any additional costs upon demand by Landlord, or with any excess to be returned to Tenant after all such obligations have been determined and satisfied. Any otherwise unused Security Deposit shall be credited against the amount payable by Tenant under this Lease.

## 27. NOTICES.

Any notice or document required or permitted to be delivered under this Lease shall be addressed to the intended recipient, shall be transmitted personally, by fully prepaid registered or certified United States Mail return receipt requested, or by reputable independent contract delivery service furnishing a written record of attempted or actual delivery, and shall be deemed to be delivered when tendered for delivery to the addressee at its address set forth on the Reference Pages, or at such other address as it has then last specified by written notice delivered in accordance with this Article 27, or if to Tenant at either its aforesaid address or its last known registered office or home of a general partner or individual owner, whether or not actually accepted or received by the addressee.

## 28. TAXES PAYABLE BY TENANT.

In addition to rent and other charges to be paid by Tenant under this Lease, Tenant shall reimburse to Landlord, upon demand, any and all taxes payable by Landlord (other than net income taxes) whether or not now customary or within the contemplation of the parties to this Lease: (a) upon, allocable to, or



measured by or on the gross or net rent payable under this Lease, including without limitation any gross income tax or excise tax levied by the State, any political subdivision thereof, or the Federal Government with respect to the receipt of such rent; (b) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy of the Premises or any portion thereof, including any sales, use or service tax imposed as a result thereof; (c) upon or measured by the Tenant's gross receipts or payroll or the value of Tenant's equipment, furniture, fixtures and other personal property of Tenant or leasehold improvements, alterations or additions located in the Premises; or (d) upon this transaction or any document to which Tenant is a party creating or transferring any interest of Tenant in this Lease or the Premises. In addition to the foregoing, Tenant agrees to pay, before delinquency, any and all taxes levied or assessed against Tenant and which become payable during the term hereof upon Tenant's equipment, furniture, fixtures and other personal property of Tenant located in the Premises. All payments made pursuant to this Article 28 are intended to constitute additional rent hereunder.

#### 29. INTENTIONALLY OMITTED.

#### 30. PROMOTION FUND AND ADVERTISING EXPENDITURE.

30.1. Tenant agrees to pay to Landlord as additional rent on the tenth day of each month of the Term, commencing with the Commencement Date, the Promotion Fund Charge to advertise and promote the Shopping Center and to decorate the Shopping Center in observance of certain holiday seasons. If the Commencement Date or Termination Date falls on a day other than the tenth day of a calendar month, the first or last payment required hereunder shall be adjusted accordingly.

30.2. It is agreed that the Promotion Fund Charge may be increased over and above the Promotion Fund Charge shown on the Reference Pages commencing with the first full Lease Year following the Lease Year in which the Commencement Date falls, and for each Lease Year thereafter, proportionate to increases in the Consumer Price Index for the metropolitan area in which the Shopping Center is located.

30.3. In the event that a merchant's association is in existence in the Shopping Center, Tenant agrees that it will join and maintain membership in such association and pay such dues and assessments as may be fixed from time to time by such association provided that Landlord may at any time elect to disband such association and establish a Promotion Fund as provided in Section 30.1 above. To the extent such dues and assessments are used for the purposes described in Sections 30.1 and 30.3 above, Tenant shall be entitled to a credit against the charges specified in said Sections.

#### 31. DEFINED TERMS AND HEADINGS.

The Article headings shown in this Lease are for convenience of reference and shall in no way define, increase, limit or describe the scope or intent of any provision of this Lease. Any indemnification or insurance of Landlord shall apply to and inure to the benefit of all the following "**Landlord Entities**", being Landlord, Landlord's investment manager, and the trustees, boards of directors, officers, general partners, beneficiaries, stockholders, employees and agents of each of them and any Holder of a Superior Interest. Any option granted to Landlord shall also include or be exercisable by Landlord's trustee, beneficiary, agents and employees, as the case may be. In any case where this Lease is signed by more than one person, the obligations under this Lease shall be joint and several. The terms "Tenant" and "Landlord" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and each of their respective successors, executors, administrators and permitted assigns, according to the context hereof. Tenant hereby accepts and agrees to be bound by the Premises Area specified on the Reference Pages.



### 32. TENANT'S AUTHORITY/REPRESENTATIONS AND COVENANTS.

32.1. If Tenant signs as a corporation, partnership, trust or other legal entity each of the persons executing this Lease on behalf of Tenant represents and warrants that Tenant has been and is qualified to do business in the state in which the Premises is located, that the entity has full right and authority to enter into this Lease, and that all persons signing on behalf of the entity were authorized to do so by appropriate actions. Tenant agrees to deliver to Landlord, simultaneously with the delivery of this Lease, a corporate resolution, proof of due authorization by partners, opinion of counsel or other appropriate documentation reasonably acceptable to Landlord evidencing the due authorization of Tenant to enter into this Lease. Tenant hereby represents and warrants that neither Tenant, nor any persons or entities holding any legal or beneficial interest whatsoever in Tenant, are (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes; or (iii) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons." If the foregoing representation is untrue at any time during the Term, an Event of Default will be deemed to have occurred, without the necessity of notice to Tenant.

32.2. Tenant acknowledges that Gerrity Retail Fund 2 Holdings 1, LLC and Gerrity Retail Fund 2, Inc. (each, the "**Company**"), affiliates of Landlord, may elect to be taxed as a real estate investment trust (a "**REIT**") under the Code. Tenant shall not take or omit to take any action, or permit any status to exist at the Premises, which would adversely affect the Company's status as a REIT. Tenant hereby agrees to modifications of this Lease required to retain or clarify the Company's status as a REIT, provided such modifications: (a) are reasonable, (b) do not adversely affect in a material manner Tenant's use of the Premises as herein permitted, and (c) do not increase the Annual Rent, additional rent and other sums to be paid by Tenant or Tenant's other obligations pursuant to this Lease, or reduce any rights of Tenant under this Lease, then Landlord may submit to Tenant an amendment to this Lease incorporating such required modifications, and Tenant shall execute, acknowledge and deliver such amendment to Landlord within ten (10) days after Tenant's receipt thereof.

### 33. RIGHT OF LANDLORD TO PERFORM FOR TENANT.

If Tenant fails to make any payment required hereunder (other than Annual Rent) or fails to perform any other of its obligations hereunder, Landlord may, but shall not be obliged to, and without waiving any default of Tenant or releasing Tenant from any obligations to Landlord hereunder, make any such payment or perform any other such obligation on Tenant's behalf. All sums so paid by Landlord and all necessary incidental costs in connection with the performance by Landlord of an obligation of Tenant (together with interest thereon from the date of such payment by Landlord until paid at the Interest Rate (as defined in Section 4.1.1) shall be payable by Tenant to Landlord upon demand, and Tenant's failure to make such payment upon demand shall entitle Landlord to the same rights and remedies provided Landlord in the event of non-payment of rent.

### 34. FORCE MAJEURE.

If performance by a party of any portion of this Lease is made impossible by any prevention, delay or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor or materials or reasonable substitutes for those items; government actions; civil commotions; fire or other casualty; or other causes beyond the reasonable control of the party obligated to perform, performance by



that party for a period equal to the period of that prevention, delay or stoppage is excused; provided, however, that in no event shall Tenant's obligation timely to pay Annual Rent as set forth in Article 2, Additional Rent as set forth in Article 4, or any other expenses, costs or charges payable by Tenant under this Lease be excused by this Article 34.

### 35. COMMISSIONS.

Each of the parties represents and warrants to the other that it has not dealt with any broker, finder or other representative in connection with this Lease, except as described on the Reference Pages.

Landlord hereby discloses to Tenant that Legend Partners, is a licensed real estate broker in the State of Colorado, which has acted as Landlord's sole agent in connection with the leasing of the Premises to Tenant pursuant to the terms and provisions of the Lease. In that regard, or in the event Landlord is alternatively, or in addition thereto, represented by any other person, corporation, partnership or other entity holding a real estate license, Tenant hereby expressly acknowledges and agrees that (a) such licensee(s) shall, for all purposes hereunder or at law or in equity, be acting as agent(s) of Landlord only and (b) no dual agency shall be deemed to exist or to have been created by any such licensee's actions, statements, warranties or representations (whether verbal or written) or by omission thereof, so that under no circumstances shall any such licensee(s) ever be deemed in any way to be the agent of Tenant in connection with the leasing of the Premises to Tenant pursuant to the terms and provisions of the Lease. Tenant hereby expressly waives any and all claims that such dual agency exists and further acknowledges and agrees that there shall be absolutely no liability on the part of Landlord or any such agent(s) or licensee(s) of Landlord arising as a result of any such claim, notwithstanding any action, statement, warranty or representation of any kind (whether written or oral) to the contrary made to Tenant by such agent(s) or licensee(s). For purposes of this Section, the terms "licensee(s)" and "agents(s)" shall be deemed to also include subagents and employees of such licensee(s), agent(s) or subagent(s).

### 36. TIME AND APPLICABLE LAW.

Time is of the essence of this Lease and all of its provisions. This Lease shall in all respects be governed by the laws of the state in which the Shopping Center is located. Tenant consents to personal jurisdiction and venue in the state and judicial district in which the Shopping Center is located.

### 37. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Article 10, the terms, covenants and conditions contained in this Lease shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the parties to this Lease.

### 38. ENTIRE AGREEMENT.

This Lease, together with its exhibits, contains all agreements of the parties to this Lease and supersedes any previous negotiations. There have been no representations made by Landlord or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties to this Lease.



#### 39. EXAMINATION NOT OPTION.

Submission of this Lease shall not be deemed to be a reservation of the Premises. Landlord shall not be bound by this Lease until it has received a copy of this Lease duly executed by Tenant and has delivered to Tenant a copy of this Lease duly executed by Landlord, and until such delivery Landlord reserves the right to exhibit and lease the Premises to other prospective tenants.

#### 40. RECORDATION.

Tenant shall not record or register this Lease or a short form memorandum hereof without the prior written consent of Landlord, and then shall pay all charges and taxes incident to such recording or registration.

#### 41. FINANCIAL STATEMENTS AND CREDIT REPORTS.

At Landlord's request, Tenant shall, within ten (10) days after such request, deliver to Landlord a copy, certified by an officer of Tenant, if Tenant is a corporation, the manager of Tenant if Tenant is a limited liability company, a general partner of Tenant, if Tenant is a general or limited partnership, or by Tenant if Tenant is an individual(s), as being a true and correct copy, of Tenant's most recent audited financial statement, or, if unaudited, certified by Tenant's chief financial officer as being true, complete and correct in all material respects. Tenant hereby authorizes Landlord to obtain one or more credit reports on Tenant at any time, and shall execute such further authorizations as Landlord may reasonably require in order to obtain a credit report.

#### 42. ATTORNEY FEES.

In the event it becomes necessary for either party hereto to file suit to enforce this Lease or any provision contained herein, the prevailing party in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, the costs of litigation, which shall include reasonable attorneys' fees and expenses incurred in connection with such suit. The prevailing party is that party which receives substantially the relief sought in the litigation. Except as otherwise set forth in the first sentence of this Article 42, should it be necessary for Landlord to employ legal counsel to enforce any of the provisions contained in this Lease, Tenant agrees to pay, as additional rent, all Landlord's attorneys' fees reasonably incurred as a result thereof.

#### 43. LIMITATION OF LANDLORD'S LIABILITY.

Redress for any claim against Landlord under this Lease shall be limited to and enforceable only against and to the extent of Landlord's interest in the Shopping Center. The obligations of Landlord under this Lease are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of its trustees or board of directors and officers, as the case may be, its investment manager, the general partners thereof, or any beneficiaries, stockholders, employees, or agents of Landlord or the investment manager. Any claim, defense or other right of Tenant arising in connection with this Lease shall be barred unless Tenant files an action or interposes a defense based thereon within one hundred eighty (180) days after the date of the alleged event on which Tenant is basing its claim, defense or right. Notwithstanding any other provision of this Lease, Landlord shall not be liable for any consequential damages for interruption or loss of business, income or profits, or claims of constructive eviction.

#### 44. 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 hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

#### 45. LANDLORD'S CONTINGENCY.

This Lease shall be contingent upon Landlord obtaining a wavier from ULTA Cosmetics in a form and substance acceptable to Landlord in its sole discretion, within sixty (60) days of the Effective Date of this Lease (the "ULTA Contingency"). To the extent Landlord is unable to satisfy the ULTA Contingency within such sixty (60) day period, Landlord shall be permitted to terminate this Lease upon delivery of written notice and copy of letter from ULTA denying the proposed to Tenant.

#### 46. CO-TENANCY.

If at any time during the Term tenants occupying more than fifty percent (50%) of the square footage of the Shopping Center shall not be open for business, such event shall be deemed a "Cotenancy Failure". If a Cotenancy Failure shall occur, and as frequently as any shall occur, if Tenant is open for business in substantially all of the Premises and if Tenant is not in default after applicable cure periods, Tenant shall pay five percent (5%) of Gross Sales in lieu of Minimum Rent, until the Cotenancy Failure is remedied. If the Cotenancy Failure is not remedied within 12 months, if Tenant is open for business in substantially all of the Premises, and if Tenant is not in default after applicable cure periods, Tenant may terminate this Lease by written notice to Landlord within 60 days after the expiration of such 12-month period, effective 45 days after Tenant gives written notice of such termination to Landlord, after which time neither Landlord nor Tenant shall accrue any further obligations under this Lease. If Tenant does not terminate this Lease within 60 days after the expiration of such 12-month period, Tenant shall once again be obligated to pay to Landlord, commencing with the first day following the expiration of the aforesaid 12-month period, 100% of the Minimum Annual Rent and all Additional Rent, and this Lease shall continue in accordance with its terms except that, only with respect to that particular Cotenancy Failure, this section shall be of no further force or effect.

Notwithstanding any provision of the immediately preceding paragraph to the contrary, the time periods described therein shall be tolled, day for day, if the Cotenancy Failure results from casualty, condemnation or force majeure.

*[SIGNATURES FOLLOW ON NEXT PAGE]*



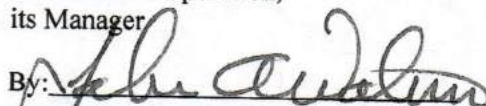
IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the Lease Reference Date.

LANDLORD:

ASPEN GRF2, LLC,  
a Delaware limited liability company

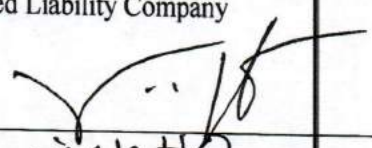
By: Gerrity Retail Fund 2 Holdings I, LLC,  
a Delaware limited liability company,  
its Manager

By: Gerrity Retail Fund 2, Inc.,  
a Delaware corporation,  
its Manager

By:   
Name: John A. Waters  
Title: Secretary

TENANT:

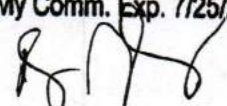
AV NAIL SPA ASPEN GROVE LLC, an Ohio  
Limited Liability Company

By:   
Name: VINN HIO  
Title: Manager

By:  
Name:  
Title:



KELLY JO WHERLEY  
NOTARY PUBLIC  
STATE OF OHIO  
Recorded in  
Lucas County  
My Comm. Exp. 7/25/2020

  
7/25/18

[SIGNATURES SHALL BE NOTARIZED]

[Use and attach state-approved notary certificate]



## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego )

On August 1, 2018 before me, Megan Mackey, Notary Public  
(insert name and title of the officer)

personally appeared John A. Waters  
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in  
his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the  
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Megan Mackey (Seal)





## EXHIBIT A SHOPPING CENTER AND PREMISES

Exhibit A is intended only to show the general layout of the Shopping Center and the Premises as of the Lease Reference Date. It does not in any way supersede any of Landlord's rights set forth in the Lease with respect to arrangements and/or locations of public parts of the Shopping Center and changes in such arrangements and/or locations. It is not to be scaled; any measurements or distances shown should be taken as approximate. References to tenants hereon are not and shall not be deemed representations of existing or future tenancies.

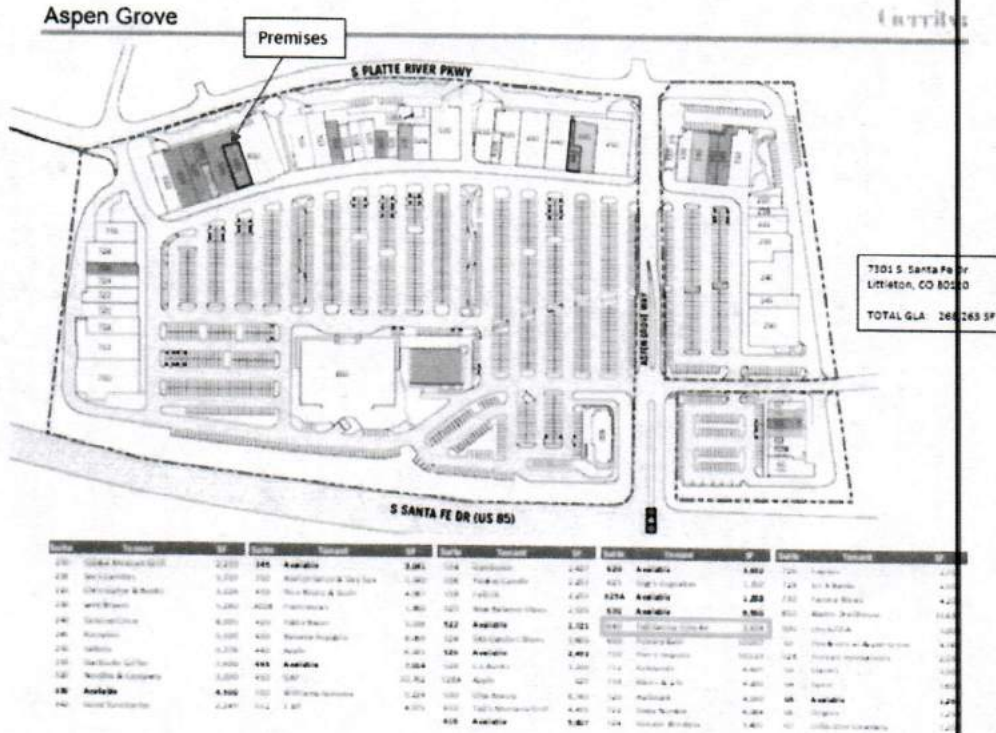




EXHIBIT B  
INITIAL ALTERATIONS

I. Landlord's Work

Tenant shall accept possession of the Premises on the Delivery Date in their "AS IS" condition, except only Landlord's obligations set forth on Exhibit B-1 ("Landlord's Work"). Except as set forth herein, Landlord shall not be obligated to perform or pay for any work in, to or upon the Premises. Landlord makes no representation as to the suitability of the Premises for Tenant's use. Tenant shall be responsible for all improvements and governmental requirements necessary for the operation of Tenant's business and to obtain a valid Certificate of Occupancy from the applicable governmental authority.

Tenant Improvement Allowance.

Landlord agrees to contribute a sum (the "Tenant Improvement Allowance") not to exceed Two Hundred Seventy Nine Thousand Eight Hundred Sixty Dollars (\$279,860.00) toward the cost of Tenant's Work, provided that said sum shall in no event be applied toward Tenant's personal property, trade fixtures, equipment or inventory, or toward any space planning, architectural, engineering, design or permit fees, costs or expenses. The first half of the Tenant Improvement Allowance shall be paid to Tenant within 30 days, upon: (i) Tenant completing 50% or more of Tenant's Work; (ii) Landlord certifying such portion of Tenant's Work complies with Tenant's Plans and is free of defects; (iii) Tenant providing conditional lien releases and unconditional lien releases for prior payments made; and (iv) Tenant not being in default of this Lease. Upon written request, Landlord shall pay Tenant the second half of the Tenant Improvement Allowance within thirty (30) days after the Tenant has opened for business in the Premises (and provided no Event of Default has occurred) and delivered to Landlord the following:

1. The original "Certificate of Occupancy" issued by the applicable building department in the city in which the Shopping Center is located;
2. A copy of Tenant's recorded, valid "Notice of Completion," if applicable in the state where the Shopping Center is located;
3. A complete list of the names, addresses, telephone numbers and contract amounts for all contractors, subcontractors, vendors and/or suppliers providing materials and/or labor for Tenant's Work;
4. Copies of all invoices from Tenant's contractor, subcontractors, vendors and/or suppliers of labor and/or materials for Tenant's Work, which Tenant has paid;
5. All unconditional mechanics' lien releases or other lien releases on account of Tenant's Work, which are notarized, unconditional and in recordable form or in such form as Landlord shall have approved;
6. Copies of all building permits, indicating inspection and approval of the Premises by the issuer of said permits;
7. An architect's certification that the Premises have been constructed in accordance with



the approved Tenant's Plans and are one hundred percent (100%) complete in accordance with this Exhibit B; and

8. Tenant shall sign and deliver to Landlord the Commencement Date Memorandum within ten (10) days after Landlord has completed and provided the Commencement Date Memorandum to Tenant.

The Tenant Improvement Allowance shall not, in any event, be in excess of the out-of-pocket cost to Tenant of the construction of Tenant's Work. The cost any additional work performed by Landlord for the benefit of Tenant as well as any rentals owing under this Lease, shall be deducted from the Tenant Improvement Allowance before said Tenant Improvement Allowance is paid to Tenant. Should Tenant fail to open for business within the time limit set forth in the Lease, or should Tenant fail to request, in writing (along with all the information and documentation required herein), payment of the Tenant Improvement Allowance within one hundred eighty (180) days after its opening for business in the Premises, then Landlord shall not be obligated to pay Tenant the Tenant Improvement Allowance.

## II. Tenant's Work

- (A) Tenant's Work. Tenant agrees to perform or cause to be performed, at Tenant's sole cost and expense, any and all acts necessary or appropriate to completely construct and furnish the Premises to permit the same to be fully utilized for the Permitted Use and in accordance with all of the terms of the Lease ("**Tenant's Work**"), including, but not limited to, the work described below, which shall be completed by Tenant to Landlord's reasonable satisfaction, at Tenant's sole expense. Tenant's Work shall include without limitation all of the following:

### All work necessary for the conduct of Tenant's business in the Premises.

Notwithstanding the foregoing, all roof penetrations and roof restoration, all work affecting supporting walls, columns and other support elements, the foundation or the fire sprinkler or life safety systems, if any of the same shall be permitted by Landlord, shall be performed at Tenant's expense by such contractor as Landlord may designate. Upon completion of such work, Tenant shall cause said contractor to furnish a letter addressed to Landlord stating that Tenant's Work has been performed and completed in accordance with Tenant's plans and specifications as approved by Landlord and applicable governmental authority and, if applicable, that the same has not affected the bondability of the Shopping Center roof.

## (B) Tenant's Plans and Specifications.

- (1) Tenant to provide preliminary plans for Landlord's review within thirty (30) days of Lease execution. After preliminary plans are approved by Landlord, Tenant will submit final plans within thirty (30) days.
- (2) Tenant shall provide Landlord with four (4) sets of such plans and specifications duly sealed and signed by a registered architect licensed in the state in which the Shopping Center is located containing the following information (unless otherwise specifically agreed in writing by Landlord):



- |     |  |              |
|-----|--|--------------|
| (a) | Floor Plan   | 1/8" scale   |
| (b) | Overall Sections   | 1/8" scale   |
| (c) | Storefront and Interior Elevations   | 1/8" scale   |
| (d) | Sections of Partition Types  | 1/2" scale   |
| (e) | Details of Special Conditions  | 1 1/2" scale |
| (f) | Door Schedule w/Door & Head Details  | 1 1/2" scale |
| (g) | Finish Schedule  | 1 1/2" scale |
| (h) | Sign Drawings and Details  | 1 1/2" scale |
| (i) | Electrical, Plumbing and Mechanical Plans indicating items not presently existing.   |              |
| (j) | Outline specifications covering all Tenant's Work, including additional plans drawn to suitable scale indicating additional items of construction not specifically mentioned above.              |              |
| (k) | Sprinkler plans (if applicable).   |              |
| (l) | Electrical Load calculations and riser diagrams, if other than existing.   |              |
| (m) | HVAC load calculations and air conditioning unit specifications, if other than existing.   |              |
| (n) | Number, location and size of all proposed roof openings and penetrations, with complete data on the operating weight and load support plan for all equipment located within the Shopping Center. |              |
- (2) Landlord shall either: (a) evidence its approval of said Tenant's Plans and specifications; or (b) refuse such approval if Landlord shall determine that said Tenant's Plans and specifications are not acceptable to Landlord. If Landlord does not approve Tenant's Plans and specifications, Landlord shall advise Tenant of those revisions or corrections which Landlord requires and Tenant shall, within ten (10) days thereafter, submit proposed plans and specifications, so revised or corrected as to satisfy Landlord's requirements, to Landlord for its approval. Tenant shall furnish to Landlord any further information reasonably required by Landlord concerning Tenant's Plans and specifications within ten (10) days after Landlord's request therefor. Landlord shall return comments to Tenant within ten (10) days after tenant submission. Tenant shall make no changes in such approved Tenant's Plans and specifications without Landlord's prior written consent.
- (3) Tenant shall submit Tenant's Plans, within fifteen (15) days of Landlord's approval, to all applicable authorities in order to obtain permits for Tenant's Work ("Tenant's Permits"). Tenant shall diligently pursue all Tenant's Permits and advise Landlord regularly as to status (and at all times upon Landlord's inquiry). Tenant, at its sole expense, shall obtain all



necessary demolition, building and other permits and approvals from the applicable governmental authorities having jurisdiction, based upon the approved plans and specifications. Tenant, at its sole expense, shall also obtain any necessary permits and approvals from all utility companies for any connections required by Tenant and shall pay any fees relating thereto. Upon issuance of such Tenant's Permits and approvals and payment of fees therefor, Tenant shall supply Landlord with copies of all of the same, together with a complete set of Tenant's plans and specifications, properly stamped and approved by the aforementioned governmental authorities and utility companies, and a complete set of Tenant's "As Built" plans and specifications.

- (4) If the final plans and specifications approved by the relevant governmental authorities are in conflict with this Exhibit B then any changes to the plans and specifications resulting in such conflicts shall be subject to Landlord's approval. If Landlord does not approve such changes, then either Landlord or Tenant may cancel this Lease by giving notice to such effect to the other party.

(C) Tenant's Construction.

- (1) All Tenant's Work shall be performed and constructed in accordance with plans and specifications fully approved as provided in Section (B) of this Exhibit B and with any other criteria furnished by Landlord.

All construction by Tenant shall comply in every respect with all applicable building, fire and underwriter's codes and shall be completed in a first class, workmanlike manner, using new materials, fixtures and equipment. All Tenant's Work will be performed by contractors selected by Tenant duly licensed in the state in which the Shopping Center is located; provided that they are approved in writing in advance by Landlord, which approval shall not be unreasonably withheld or delayed.

- (2) Tenant shall commence construction of the Premises not later than thirty (30) days after either of the following dates, whichever shall be the later to occur: (a) the Delivery Date, or (b) the date on which Tenant receives Tenant's Permits. If any such portion of Tenant's Work (including plans and specifications) is not furnished by Tenant to Landlord within the required time periods in form to permit approval by Landlord, then Landlord may at its option at any time while Tenant is in default of this provision, in addition to any and all other remedies provided in this Lease, after not less than ten (10) days' notice to Tenant, terminate all rights of possession of Tenant, if any; provided that Tenant shall remain liable for all obligations arising during the Term as provided in this Lease. In addition, if Landlord determines that Landlord and Tenant are unable to agree upon plans and specifications, Landlord shall have the option, upon ten (10) days' prior written notice to Tenant, to declare this Lease null and void and of no further force or effect, in which event this Lease shall terminate on the date specified in such notice.
- (3) All Tenant's Work and all disbursements of money, shall be effectuated in accordance with the following procedures and conditions:
  - (a) Tenant's contractor and Tenant shall prepare or cause to be prepared a contract wherein the contractor shall agree to complete Tenant's Work in accordance with the approved plans and specifications.



(b) Said contract shall be in the form of the current edition of Document A107 of the American Institute of Architects and shall provide, among other things, as follows:

- (i) That notwithstanding anything contained in the contract documents to the contrary, the contractor will perform the work and furnish the materials required therefore on the sole credit of Tenant; that no lien for labor or materials will be filed or claimed by the contractor against the Premises or the Shopping Center of which the Premises are a part;
- (ii) That said contractor shall furnish a bond in compliance with the terms of Section 2(C)(7) of this Exhibit B, if required by Landlord.
- (iii) That said contractor shall furnish Tenant and Landlord with certificates of insurance evidencing (a) insurance against claims under worker's compensation acts and other employee benefits acts, in compliance with statutory limits; (b) insurance against claims for damages because of bodily injury, including death, to said contractor's employees and all others, with limits of \$2,000,000.00 per person and \$2,000,000.00 per occurrence; and damage to property with limits of \$2,000,000.00, if any or all of the foregoing arise out of or result from the contractor's operations under the contract whether such operations (including operation of automobile vehicles) be by the contractor or any subcontractor or anyone directly or indirectly employed by either; and (c) All Risk builders risk casualty and liability insurance in the full amount of the contract sum. All of said certificates of insurance shall name as additional named insured parties Landlord and other parties designated by Landlord, and shall carry an endorsement insuring the following contractual liability, which shall be imposed upon the contractor by the construction contract.

The contractor shall be responsible from the time of its signing the contract or from the time of the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind to person or property resulting from the work, in addition to the liability imposed upon the contractor on account of personal injury (including death) or property damage suffered through the contractor's negligence, which liability is not impaired or otherwise affected hereby. The contractor hereby assumes the obligation to save the Landlord harmless and to protect, defend and indemnify the Landlord from every expense, liability, or payment arising out of or through injury (including death) to any person or persons or damage to property or any person at any place in which work is located arising out of or suffered through any act or omission of the contractor or any subcontractor, or any one either directly or indirectly employed by or under the supervision of any of them in the prosecution of the work included in this contract;

- (iv) That the contractor at all times shall keep the Premises and adjacent areas free from accumulation of waste materials or rubbish caused by its operation and shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the work and shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (a) all employees on the work



site and other persons who may be affected thereby, (b) all the work and all materials and equipment to be incorporated therein, and (c) other property at the work site adjacent thereto, such precautions to include, without limitation, the furnishing of guard rails and barricades and the securing of the Premises; and

- (v) That the terms hereof shall bind and inure to the benefit of said contractor and Landlord, and their respective heirs, personal representatives, successors and assigns.
- (4) No construction shall be commenced by Tenant prior to Tenant's full compliance with the requirements of this Exhibit B and Landlord's consent to commence work in the Premises. Tenant shall cooperate fully with Landlord, and shall cause its contractor to cooperate fully with Landlord, in the scheduling of delivery of materials to the Premises and performance and construction of Tenant's Work so as to minimize interference with and disturbance of the operations of other tenants and occupants of the Shopping Center and their customers and invitees.
- (5) At all times during Tenant's construction, Landlord and its representatives shall have the right to enter upon the Premises for the purpose of inspecting construction and progress of the Tenant's Work. Landlord, in its reasonable discretion, and otherwise for any non-compliance by Tenant shall have the right to order Tenant to terminate any construction work at any time (i.e., either in the initial construction of the Premises or at any time during the Term) being performed by or on behalf of Tenant in the Premises. Upon notification from Landlord to Tenant to cease any such work, Tenant shall forthwith remove from the Premises all agents, employees, contractors and subcontractors of Tenant performing such work, until such time as Landlord shall have given its written consent for the resumption of such construction work, and Tenant shall have no claim for damages of any nature whatsoever against Landlord in connection therewith. Landlord shall have the right to perform, on behalf of and for the account of Tenant, subject to reimbursement by Tenant, any of Tenant's Work that Landlord deems necessary to be done on an emergency basis or which pertains to structural components, the general utility systems for the Shopping Center, or the erection of temporary barricades and temporary signs, during construction. In the event of any dispute relating to Tenant's Work, the certificate of Landlord's architect shall be conclusive as against Tenant.
- (6) All Tenant's Work shall comply with all standards established by Landlord as of the date of execution of this Lease by both parties.
- (7) Prior to the commencement of Tenant's Work if Landlord shall so elect by written notice to Tenant, Tenant shall furnish or cause its contractor to furnish to Landlord a Performance and Labor and Material Payment Bond in the form of AIA Document A 311, Current Edition or other form acceptable to Landlord, in an amount equal to double the total cost of Tenant's Work. Said bond shall name Landlord as an additional beneficiary and shall be issued by a surety authorized to write bonds for the United States Government for no less than \$5,000.00. In the event Tenant shall fail to furnish or fail to cause its contractor to furnish to Landlord said bond, Tenant and/or its contractor will not be given permission to start construction in the Premises, in addition to the same being a default under the Lease.



- (8) Tenant is obligated to verify conditions pertaining to the Premises from time to time prior to and after commencement of construction of the Premises. Tenant shall coordinate its work with the work of Landlord, if any, and other tenants and with existing conditions in, above and below the Premises, and shall make changes from time to time as required to accommodate such work or conditions.
  - (9) All work performed by Tenant shall be performed so as to cause no interference with other tenants and the construction and operation of the Shopping Center. Tenant will take all precautionary steps to protect its facilities and the facilities of others affected by Tenant's Work and properly police same. Construction equipment and materials are to be located in confined areas and truck traffic is to be routed in and from the site, all as directed by Landlord and so as not to burden the construction and operation of the Shopping Center.
  - (10) Upon and from the completion of Tenant's Work in the Premises, a minimum one-year warranty on all work, materials and equipment is hereby provided by Tenant and shall be assigned to Landlord by Tenant's contractors and subcontractors.
  - (11) Landlord shall have the right to order any tenant or Tenant's contractor who willfully violates any of the above requirements to cease work, and to remove himself and his equipment and employees from the Shopping Center.
  - (12) No approval by the Landlord is valid unless in writing, signed by the Landlord.
  - (13) Tenant shall erect reasonable dust barriers and take whatever other steps are necessary to ensure that no dust of any type from construction escapes from the Premises into any common area of the Shopping Center or into any finished tenant space.
  - (14) Tenant shall not cause or permit any items of Tenant's initial construction, re-construction, alterations, additions, improvements, changes and/or remodeling of the Premises and the fixtures and appurtenances therein, and the removal of the same, as well as all items of Tenant's repairs to the Premises and the replacement and repair of fixtures and appurtenances therein to be performed in violation of any labor agreement or collective bargaining agreement to which Landlord, or its contractors or suppliers is a party or which in any way affect the Shopping Center.
- (D) Completion of Construction. Within thirty (30) days following the earlier of opening the Premises for business or completion of Tenant's Work, Tenant shall deliver to Landlord the following: (i) Tenant's affidavit stating the Tenant's Work has been completed in strict compliance with Exhibit B, and waivers of lien executed by Tenant's contractor and by every subcontractor, sub-subcontractor, laborer and material supplier; (ii) Tenant's written acceptance of the Premises stating that Landlord has completed all of Landlord's Work required to be performed by Landlord pursuant to the terms of this Lease, if any, and that Tenant reserves no claims, offsets or backcharges, or stating those claimed; (iii) any monies owing to Landlord for the cost of any of Tenant's Work done for or on behalf of Tenant; and (iv) all certificates and approvals with respect to Tenant's Work that may be required by any governmental authorities as a condition for the issuance of a certificate of occupancy for the Premises, and such certificate of occupancy.

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EXHIBIT B-1

LANDLORD'S WORK

HVAC 1 to 250

Landlord will provide HVAC units directly behind the premises, with an average cooling capacity of 1 ton per 250 SF square feet of leased premises. Landlord will provide two (2) empty conduits from HVAC units to Tenant's premises. Landlord will stub one (1) condensate drain line (per Landlord installed package unit) for Tenant's use for connection by Tenant to Tenant's condensate line. Landlord may provide, at specific locations, a GFCI receptacle for maintenance of equipment required by code. Tenant is responsible for circuiting the GFCI receptacle if it is located above the Tenant's demised premises. Equipment locations shall be per Landlord's plans, with final electrical connections by Tenant. Tenant will be required to hire Landlord's designated Mechanical Contractor to start-up and commission Landlord provided HVAC equipment, at Tenant's expense.



## EXHIBIT C

### RULES AND REGULATIONS

Unless otherwise stated in the Lease, the use of the Common Area by Tenant and Tenant's agents, employees, servants, visitors and invitees shall be subject to the following rules and regulations:

1. Landlord shall have the right and authority to designate specific areas within the Shopping Center or in reasonable proximity thereto in which automobiles and other transportation vehicles owned by Tenant, Tenant's employees, servants, agents, licensees and concessionaires shall be parked. Tenant shall furnish to Landlord upon request a complete list of all license numbers of all automobiles and other transportation vehicles operated by Tenant, Tenant's employees, servants, agents, licensees and concessionaires.
2. Landlord reserves the right to change from time to time the format of the signs or lettering on the signs, and to require Tenant to replace any signs previously approved to conform to Landlord's new standard sign criteria established by Landlord for the Shopping Center.
3. All loading and unloading of goods shall be done only at such times, in the areas and through the entrances as shall be designated from time to time for such purposes by Landlord. In no event, shall delivery trucks be permitted to obstruct driveways, entries, or parking aisles in front of any building within the shopping center.
4. The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the sole discretion of Landlord shall be necessary for the proper operation of the Shopping Center.
5. Tenant shall not use any utility area, truck facility or other area reserved for use in connection with the conduct of business except for the specific purpose for which such area is designated.
6. Except as permitted by Landlord's prior written consent, no person shall within the Common Area:
  - a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever;
  - b) Exhibit any sign, placard, banner, notice or other written material;
  - c) Distribute any circular, booklet, handbill, placard or other materials;
  - d) Solicit membership in any organization, group or association or contribution for any purposes;
  - e) Parade, patrol, picket, demonstrate, or engage in any conduct that might tend to interfere with or impede the use of the Common Area by Landlord or any occupant or any employee, or invitee of any occupant of the Shopping Center, create a disturbance, attract attention or harass, annoy, disparage, or be detrimental to the interests of any business establishments within the Shopping Center;
  - f) Use of the Common Area for any purpose other than employee parking when none of the business establishments within the Shopping Center are open for business or employment;



- g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind;
  - h) Deface, damage or demolish any sign, light, standard or fixture, landscaping material or other improvements within, or property situated within the Common Area or the Shopping Center; or
  - i) Solicit any other business or display any merchandise.
- 7. The outside areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Tenant to the complete satisfaction of Landlord.
  - 8. The Common Area plumbing facilities shall not be used for any purpose other than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.
  - 9. All floor area, including vestibules, entrances and exits, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition by Tenant.
  - 10. No portion of the Common Area shall be used for any lodging or illegal purposes.
  - 11. The sidewalks, hall passages, exits, entrances, elevators, shopping malls and stairways of the Common Area or the Shopping Center shall not be obstructed by any tenant or used by any tenant for any purposes other than for ingress to and egress from their respective premises. The halls, passages, exits, entrances, elevators, shopping malls and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of Landlord shall be prejudicial to the safety, character, reputation and interest of the Shopping Center and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Premises.
  - 12. In the case of any invasion, mob, riot, public excitement or other circumstances rendering such action advisable in Landlord's sole discretion, Landlord reserves the right to prevent access to the Common Area and Shopping Center during the continuance of the same by such action as Landlord may deem appropriate, including closing entrances to the Shopping Center and Common Area.
  - 13. Tenant shall not place or permit any radio or television antenna, loudspeaker, amplifier or other device outside of the Premises, in the Common Area or anywhere that the same can be seen or heard in the Common Area without prior written consent of Landlord.
  - 14. No person shall use any part of the Common Area for any purpose other than those for which the Common Area is intended.
  - 15. Tenant shall not use the Common Area for storing or maintaining any material or property, whether on a temporary basis or otherwise and no action shall be taken in the Common Area which in the exclusive judgment of Landlord would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or unreasonably interfere with their use of their respective Premises



of the Common Area, nor do anything which would tend to injure the reputation of the Shopping Center.

16. Any repairs, maintenance or replacements to the Common Area required to be made by Landlord which are occasioned by the act or negligence of any Tenant, its agents, employees, sub-tenants, licensees and concessionaires, shall be paid for by such Tenant upon demand to the extent not covered by insurance proceeds paid to Landlord therefore.
17. Tenant shall not make any alteration, addition or improvement to or remove any portion of the Common Area, and Tenant shall not make any changes to or paint any portion of the Common Area, or install any lighting, decorations or paintings in or to the Common Area, or erect or install any signs, banners, placards, decorations or advertising media of any type in the Common Area.
18. Landlord may waive any one of more of these rules and regulations for the benefit of any particular tenant or lessee, but no such waiver by Landlord shall be construed as a waiver of such rules and regulations in favor of any other tenant or lessee, nor prevent Landlord from thereafter enforcing any such rules and regulations against any or all of the tenants of the Shopping Center.
19. Landlord shall at all times have the right to change these rules and regulations or to Promulgate other rules and regulations in such manner as may be deemed advisable to the safety, care or cleanliness of the Shopping Center, for preservation or good order therein, or for other purposes, all of which rules and regulations, changes and amendments shall be carried out and observed by Tenant.
20. Tenant shall further be responsible for the compliance with these rules and regulations by the employees, servants, agents, visitors and invitees of Tenant. In the event any provisions of these rules and regulations shall conflict with any specific provisions of the, the provisions of the Lease shall control.

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# EXHIBIT D

## SIGNAGE CRITERIA

### TENANT SIGN DESIGN CRITERIA

The purpose of this section is to define exterior signage criteria for Aspen Grove. Each tenant shall provide signage package for its space as described below:

- Sign shop drawings shall be submitted in triplicate for approval to Landlord's Tenant Coordinator prior to fabrication, permitting or installation.
- All a minimum, such drawings must show locations, sizes, styles of lettering, materials, types of illumination, installation details and logo designs, engineered attachments, weights of signs and methods of attachment.
- If the shop drawings are disapproved by Landlord, Tenant shall resubmit them within fifteen (15) days from date of the notice of any disapproval by Landlord until such plans are finally approved by Landlord.
- The cost of the fabrication, permitting and installation shall be the responsibility of each individual tenant. Sign construction is to be completed in compliance with building code requirements and the sign ordinance of the City of Littleton and the instructions, limitations and criteria contained in this manual.
- Lettering, lettering boxes, etc., shall conform with tenant's corporate signage standards as used in tenant's other locations.
- Registration marks and trademarks are not allowed in any part of tenant's exterior signage or construction.
- All signs must first be reviewed by Landlord to insure that the requested sign meets the approved sign policy and that an equal mix of color and styles within the Shopping Center is maintained.
- Overall signage area shall conform to local ordinances and codes.

NOTE: Signs which are backlit, or illuminated by gooseneck lighting are subject to approval of the City of Littleton and the Landlord. Exposed neon signage and accents shall be subject to approval on an individual basis by City of Littleton and the Landlord.

Awake, reflecting, flashing, or otherwise animated signs are prohibited by the City of Littleton and are not permitted by the Landlord.

#### Sign Size

Allowable size for tenant's signage shall be at the Landlord's discretion, but in no event shall exceed the limitations based on square footage in compliance with local sign ordinance. The City of Littleton sign ordinance limits tenants to a maximum of one (1) square foot of sign area for every thirty (30) square feet of gross floor area with a maximum total sign area of 200 square feet per tenant.

#### Primary Tenant Sign

The preferred signage type for the main tenant sign shall be all individual letters, located within the signage space above tenant's premises. The sign shall be centered within sign space above or in front of tenant's premises. No part of the sign shall be closer than thirty-six inches (36") to the centerline of adjacent demising walls (tenant's sign area).

Each sign letter shall be of a color submitted to and approved by Landlord and the City of Littleton. Secondary colors, which border, accent, or otherwise are incidental to the primary sign colors shall be accepted subject to the approval by Landlord and the City of Littleton. Landlord reserves the right to reject finishes or colors, which it considers inappropriate. Any national chain with specific corporate signage colors will be allowed to use these signage colors provided they are in use at the majority of tenant's other facilities. The main tenant identification sign for the Shopping Center proper will not need Planning Commission approval, but must conform to the signage criteria (this document) as approved by the Commission. A signage permit shall be required.

- Individual letters shall be fabricated from flat, smooth one-eighth inch (1/8") Plexiglas.



- Letter returns shall be fabricated of .090 aluminum with .063 aluminum letter backs.

- Retainers shall be one inch (1") linacap and shall be finished to match the return or the sign face.

- Metallic trim cap is not permitted by the landlord.

- All letters shall be illuminated with neon tubing to be powered by appropriate transformers.

- The return depth of any letters shall be five inches (5").

- The color of returns is suggested to be finished in a contrasting color from sign faces, for best visibility.

- All main signs are to be centered in the signage band.

- All signage letters shall be mounted to the parapet with concealed fasteners.

- Aluminum clip angles shall be attached to each letter using aluminum mounting studs to attach letters to surface.

Design, layout and materials for tenant's signs shall conform in all respects with the sign design drawings provided to Tenant. The maximum height and dimensions for letters in the body of the signs shall be pursuant to approved plans and specifications. All letters shall be flush mounted to masonry sign panel and no signs perpendicular to fascia of exterior canopy are allowed.

All signs and their installation shall comply with all local building and electrical codes and must bear the Underwriters Laboratory label or conform to Underwriters Laboratory specifications. Signage shall meet N.E.P.A. 70 MB, 600 V. Electrical service to all signs shall be on Tenant's meter at Tenant's expense. Tenant shall be responsible for the installation and maintenance of all signs. Tenant shall be liable for the operation of Tenant's sign. Tenant's sign contractors shall repair any damage caused by said contractor's work or by its agents or employees. All conductors, transformers, conduit except raceways, lamps, and other equipment shall be concealed. All penetrations of the building structure required for sign installation shall be sealed in a weathertight condition and shall be polished to match adjacent finish.

### Prohibited Sign Types and Conditions

1. No "SALE" sign, "SPECIAL ANNOUNCEMENTS" sign, or other advertisement of any kind is permitted on the exterior (except as noted below).

2. Advertising devices, including, without limitation, attraction boards, sandwich sign, balloons, posters, banners, and flags are not permitted.

3. Painted, flashing, animated, audible, revolving, or other such signs that create the illusion of animation are not permitted.

4. Exposed bulb signs are not permitted.

5. No exposed junction boxes, lamps, tubing, conduits, raceways or neon crossovers of any type are permitted.

6. The copy of Tenant's sign shall not include the product sold except as part of Tenant's actual name or insignia except registration mark or trademark symbol which are prohibited.

7. Luminous vacuum-formed type plastic letters and panels are not permitted.

8. No floodlighting of Tenant's sign is permitted.

9. No advertising placards, pennants or banners, shall be affixed or maintained upon the glass panes or supports of the display windows and doors, the storefront wall or the exterior walls of any building.

10. Neither exterior changeable letters nor temporary signs are permitted.



#### General

Window graphic lettering will be permitted with Landlord's approval. These will be limited to text or graphics no larger than five percent (5%) of the overall glass area on which they occur. The text or graphics shall be painted in colors matching the sign colors noted above. No other window signs will be allowed.

All cabinets, bollard bases, supports, transformers and other equipment shall be concealed.

Tenant's sign contractor shall repair all damage to any in-place construction caused by its work.

All penetrations of the building structure required for sign installation must be neatly sealed in watertight condition and match the exterior finish.

All electrical and other connections (wall penetrations) must be located in master joints only.

Landlord reserves the right at any time to modify any of the criteria of this exhibit in any manner whatsoever and Tenant agrees to abide fully and timely with any and all such modifications (subject to City of Littleton approval).

#### Sign Times:

Each Tenant is required to install a sign timer to ensure that illuminated signs are operating one (1) hour before, during the open hours, and one (1) hour after the open hours of the center.

#### Blade Sign

Each Tenant will be required to construct and install a Blade Sign. The Blade Sign area is circumscribed within the total Sign Area allowed by the City of Littleton. Blade Signs are to be affixed to Tenant's storefront or construction and are not to be installed on Landlord's owned areas.

#### Storefront Suite Number

Each Tenant shall furnish and install Suite Number on the storefront. Tenant shall conform to Landlord's uniform suite numbering design.

- Numerals must be seven-inches (7") in height per local code

- Numerals are to be White Vinyl Self Adhesive

- Numerals are to be affixed to the interior surface of storefront glazing

- Typography shall be Copperplate Font

#### Rear Door Suite Numerals:

Each Tenant shall furnish and install suite numerals located in a position and area approved by the Landlord. Tenant shall conform to Landlord's uniform Rear Door Tenant Identification design.

- Suite numerals are to be seven inches (7") in height per local code

- Vinyl color on exterior doors is to be white; vinyl color on rear door exiting into an interior corridor is to be black.

- Typography shall be Copperplate font.

- Tenant names are prohibited as is any other graphic or lettering.

- Numerals shall be centered upon width of rear door and shall be mounted at 5'-6" above floor.

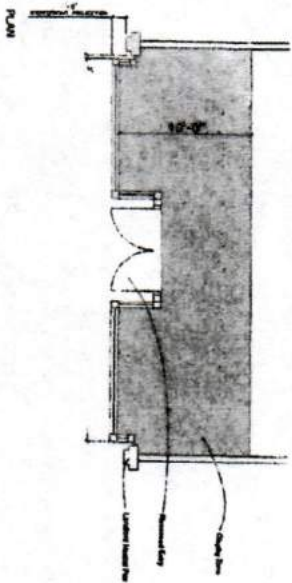
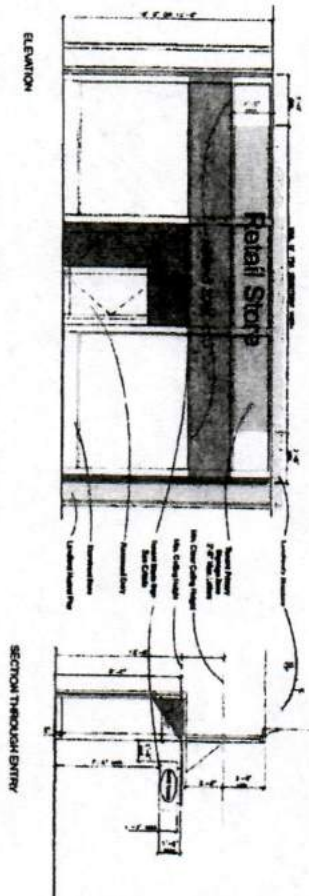
#### Sign Code

A copy of the City of Littleton can be obtained from the Tenant Coordinator.



BR

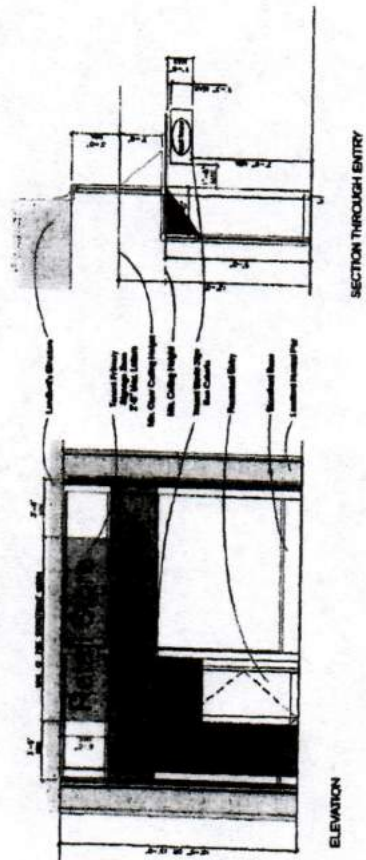
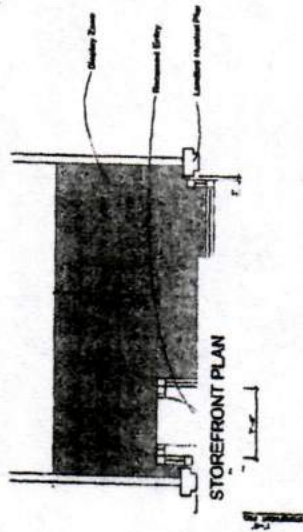
- **Stentorian** and **received entry** to be conducted by **tenet**.
- **Blade Signs** are required. Refer to diagrams and **Sign** **Criticism** section
- **Primary signage** to be placed on **tenet** **Primary** signage zone. Refer to the **Sign** **Criticism** section.





*[Handwritten signature]*

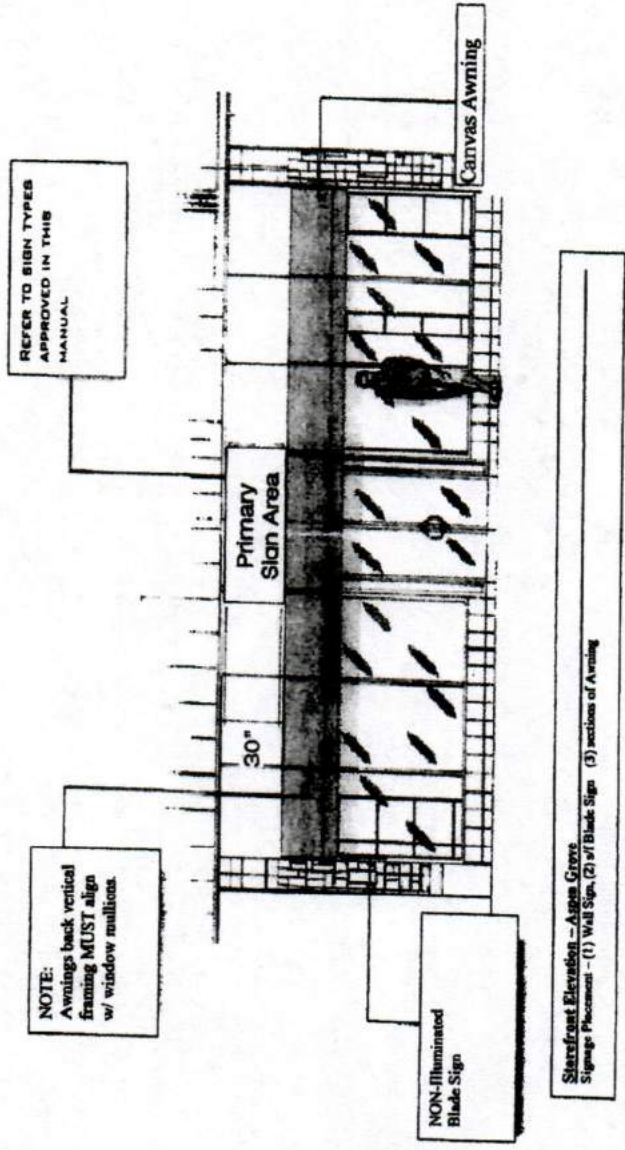
- **Storefront and recessed entry** to be constructed by Tenant. Subject to conformance to these exhibits.
- **Blade Signs** are required. Refer to diagrams and Sign Criteria section.



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25



W/P







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The City of Littleton Sign Ordinance allows for 1 (one) square foot of signage per 30 (thirty) square feet of premises floor area for in-line retail tenants within a shopping center. To determine allowed signage square footage, divide household premises square footage by 30.

Signage Package from Sign Manufacturer must include the following calculation on the drawing package, showing the below table on the elevation drawing. Each sign detail must also show sign area calculation (i.e. square footage area of Primary Sign, of Glazing Copy, of Blade Sign Copy).

Allowed Retail Signage for Premises:

Proposed Primary Signage area: \_\_\_\_\_

Proposed Glazing Copy area: \_\_\_\_\_  
(includes logo copy, hours, suite number)

Proposed Blade Sign Copy area: \_\_\_\_\_  
(calculate letter/copy area, not background)

Excess allowable area not used: \_\_\_\_\_

34 JMM



## EXHIBIT E

### PROHIBITED AND EXCLUSIVE USES

The following is a list of prohibited uses including exclusives, use restrictions, and restrictive covenants and limitations and other use limitations affecting and/or arising in respect of tenants or occupants at the Shopping Center. Tenant hereby covenants and agrees, for the benefit of Landlord and independently also for the benefit of each of the parties below previously having secured the following described exclusive or restriction or other covenants or protections, that, throughout the term(s) of the Lease, including any renewals or extensions, including as the premises may be relocated and including as the lease may be assigned or sublet, the Premises, in whole or in part, will not be used to operate directly or indirectly for any of the business set forth below, and Tenant shall abide by all of, and Tenant shall not violate any of, the following described covenants, restrictions, exclusives or limitations. Tenant further acknowledges that it has carefully studied the following list; and, where any generally stated exclusive or other restriction or limitation or covenant below (which may be a summary rather than the actual quoted language), may reasonably be read to affect Tenant's expected rights or operations or use, it was incumbent upon Tenant to have made inquiry (and Tenant in fact did make such inquiry to the extent it determined was necessary) to learn the precise language from the specific lease at bar and noted below, before entering into this Lease or Lease modification or amendment, so as to best understand and appreciate precisely what shall govern and control Tenant's use and operations. References herein or on the attachments to the trade names of tenants shall not be deemed or construed as a representation or warranty that any such tenancy now or in the future exists or shall continue to exist or be open or operating in the Shopping Center nor shall closures (other than permanent termination of the applicable lease including termination of any surviving continuing restrictions or limitations noted below) operate or be deemed to diminish or impair the full force and effect of Tenant's obligation to abide by and not violate the following. In addition, no tenant whose exclusive or similar lease provisions are set forth in or otherwise referenced or summarized or expressed in this Exhibit, may rely upon this Exhibit as the basis for its own rights or remedies and such tenant shall look (if at all) only and solely and exclusively to its own written lease for the sole and controlling memorialization of the terms and conditions which govern and control such tenant's rights and remedies (any bold text below, if any, is by virtue of emphasis added for this Exhibit without suggesting necessarily that same appears in the source text):



## **PROHIBITED USES:**

### **ALAMO DRAFTHOUSE**

Landlord also agrees not to lease or sell any space in the Shopping Center, situated within three hundred (300) feet of a boundary of the Premises for the following "Restricted Uses": operation of a bowling alley (except that any "high-end" bowling alley, such as Corner Alley or Lucky Strike shall be permitted notwithstanding the foregoing restriction), bingo parlor, bar or lounge (except in conjunction with a restaurant which reasonably anticipates that it will not derive more than fifty percent [50%] of its gross receipts from the sale of alcoholic beverages), post office, liquor store, flea market, "bulk" candy store (such as tenants operating as of the Effective Date as Sweet Factory, this restriction not being intended to preclude Landlord from leasing to a drug store, grocery store, or establishment selling candy and other chocolates such as Rocky Mountain Chocolate Factory), popcorn vendor (i.e., any vendor other than a restaurant selling popcorn prepared on-site for on-premises or off-premises consumption), pool hall (except in conjunction with the operation of a restaurant), adult massage parlor, skating rink, arcade, adult (i.e., pornographic) book store (except that a bookstore such as Borders, Barnes and Noble, or a local operator generally selling books shall be permitted to sell and display material nationally recognized as adult publications such as Playboy or Esquire Magazine on an incidental basis), adult video rental or other business principally renting, exhibiting or marketing pornographic materials.

### **PIER 1 IMPORTS**

Subject to subsections 7.4(b) and (c) below, LANDLORD as to the Shopping Center and TENANT as to the Premises shall not lease space in the Shopping Center or the Premises, as the case may be, for the following uses: (i) bowling alley, (ii) movie theater, (iii) arcade, (iv) tavern or bar, (v) health club, spa or gymnasium, (vi) night club or discotheque, (vii) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction), (viii) any dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located in the rear of any building), (ix) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (x) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located, (xi) any automobile, truck, trailer or R.V. sales, leasing, display or repair, (xii) any skating rink, (xiii) any living quarters, sleeping apartments, or lodging rooms, (xiv) any veterinary hospital, animal raising facilities or pet shop (except that this prohibition shall not prohibit pet shops which



are not adjacent to the Premises), (xv) any mortuary, and (xvi) any establishment renting, selling or exhibiting pornographic materials.

(b) Notwithstanding the foregoing, LANDLORD may lease space in the Shopping Center outside of the Section 7.4 Restricted Areas as cross-hatched on Exhibit B for the following uses: (a) bowling lanes, arcades and a night club/disco provided such uses are incidental to a Dave and Busters, Jillian's or other similar concept, (b) movie theater, (c) health club or spa, (d) skating rink, and (e) tavern or bar which is part of a restaurant.

(c) Notwithstanding the foregoing, the use restrictions set forth in this Section 7.4 shall not apply to tenants in the Shopping Center (the "Excluded Tenants"), including without limitation, The Gap, Inc. or Banana Republic, Inc., their affiliates, successors, assigns and subtenants, which (i) have written and executed leases with LANDLORD as of the date hereof, and (ii) have the legal right to violate such use restrictions pursuant to their existing leases as of the date hereof; provided, however, to the extent LANDLORD has control over any change in use by such Excluded Tenants or any assignment, transfer or subletting of any Excluded Tenants, then LANDLORD shall exercise such control to the extent reasonably possible in order to prevent a violation of such use restrictions.

## **TALBOTS**

LANDLORD covenants and agrees that it will lease space in the Shopping Center only to reputable retail tenants selling quality merchandise and services, (and in no event for the sale of off-price or discount merchandise) and that it will not lease any space within the Shopping Center...or permit any such space to be used for any of the following purposes:

(A) For the purpose of (i) a gambling or betting office; (ii) a massage parlor; (iii) a cinema or bookstore selling or exhibiting material of a pornographic nature (but this shall not exclude general bookstores which may elect to sell material nationally recognized as adult publications such as Playboy or Esquire Magazine); (iv) any illegal or immoral purposes; or (v) for "off price" or discount sales factory outlet store.

(B) In recognition that certain businesses might unduly burden the parking areas at the Shopping Center, LANDLORD may not lease any portion of the Shopping Center for the purposes of a food supermarket (but this will not exclude a delicatessen or gourmet food shop of not more than 10,000 square feet), flea market, or bowling alley. (C) LANDLORD agrees that no establishment with on-site cooking operations will be located in any premises immediately adjoining TENANT'S PREMISES.



## ULTA

The following uses (collectively referred to as "Category I Prohibited Uses") are prohibited during the Term of the Lease in any portion of the Shopping Center: nuisance; use causing loud noises or offensive odors (including any business using exterior loud speakers, except if in connection with an outdoor café and maintained at reasonable decibel levels); manufacturing facility; adult book shop or adult movie house (provided the foregoing restriction shall not prohibit: (a) the operation of a full line video store such as Blockbuster Video, Video Update or Hollywood Video or showing of films with adult content that are released for general commercial distribution to national theater chains; or (b) the sale of adult oriented books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located, such as Half-Price Books and Barnes & Noble, as said stores currently operate); mortuary or funeral parlor; cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant permitted hereunder or an upscale wine bar or an upscale beverage store such as Total Wine & More, or to a tenant otherwise permitted hereunder who sells alcoholic beverages as incidental to its primary use, such as Cost Plus or a grocery store; night club; cinema or theater, any use that produces noise and/or vibrations that can be heard or felt in the Premises and/or unreasonable noise and/or vibrations that can be felt in the Common Areas; dry cleaner (except facilities for drop off and pick up of clothing cleaned at another location); automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks (except if located on an outparcel pad outside of Tenant's Protected Area); massage parlor (except for an operator providing therapeutic massages, such as Massage Envy or Hand and Stone, located at least one hundred (100) feet from the Premises, but subject to Section 4.6 below); place of recreation (including, but not limited to, skating rink, carnival, game arcade, swimming pool, or hot tub); (FOR THIS LEASE AT ASPEN GROVE) or pharmacy.

In addition, the following uses (collectively referred to as "Category II Prohibited Uses") shall not be permitted within the area identified on Exhibit A as the "Prohibited Use Area": coin-operated laundry; bowling alley; church; drive-throughs; children's recreational, educational or day-care facility; restaurants occupying more than 2,500 square feet of Gross Floor Area; offices and professional uses; schools of any nature; and any other use inconsistent with the operation of shopping centers comparable to the Shopping Center (prior to the inclusion of such tenant); provided, however, (FOR THIS LEASE AT ASPEN GROVE) restaurants occupying more than 2,500 square feet of Gross Floor Area and offices shall be permitted in Units 410 through 440 as shown on the Site Plan. As used herein, "school" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers, but shall not include: on-site employee training incidental to the conduct of a tenant's primary business; do-it-yourself workshops conducted by a home improvement warehouse such as Lowe's or Home Depot; animal training or obedience classes associated with a permitted pet store; instruction within a single nutrition center such as Weight Watchers, Jenny Craig, Nutrisystem or LA Weight Loss; or instruction within a permitted health club or spa, or the Genius Bar located within Apple. Each of the Category I Prohibited Uses and Category II Prohibited Uses shall be referred to herein as a "Prohibited Use" and, collectively, as the "Prohibited Uses".



## **EXCLUSIVE USES:**

### **ALAMO DRAFTHOUSE CINEMA**

Provided that Tenant is in possession of the Premises and operating its business therein without default Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant assignee, licensee or concessionaire (collectively "Occupant") whose principal business is the operation of a movie theatre (the "Exclusive Use"). The foregoing Exclusive Use shall not apply to any existing Shopping Center occupant whose lease, as of the Effective Date [July 8, 2011], does not prohibit such occupant's premises from being used in violation of the Exclusive Use ("Existing Tenants"), or the successors and assigns of any such Existing Tenants. For purposes of this Lease, the phrase "does not prohibit" shall mean that such Existing Tenant's lease: (i) expressly allows such occupant to use its premises for movie theatre use; (ii) expressly allows such occupant to use its premises for any lawful retail use or lawful use; (iii) states that such occupant may use its premises for any use or no use and/or (iv) contains no use clause whatsoever.

### **AMY'S HALLMARK**

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") whose Principal Business (as hereinafter defined) is the retail sale of Christmas ornaments, greeting cards, gift wrap and/or party supplies (the "Exclusive Use"). As used herein, the term "Principal Business" shall mean any business devoting more than forty (40) lineal feet of its sales floor area to the display and retail sale of Christmas ornaments, greeting cards, gift wrap and/or party supplies. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to any existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors or assigns, any Occupant of the Shopping Center, which occupies in excess of twenty five thousand (25,000) square feet of gross leasable area, provided such Occupant's Principal Business is not the retail sale of Christmas ornaments, greeting cards, gift wrap and/or party supplies ("Exclusive Use Products"), and Occupant that carries, in the aggregate, less than twenty (20) lineal feet of the Exclusive Use Products (each spinner rack containing any Exclusive Use Product shall be equal to no more than six (6) lineal feet); Hallmark Cards, Inc., or any of its subsidiaries or affiliates; any single price point retail operator (such as, by way of example only and not as a restrictive list, The Dollar Store, Dollar Tree or Dollar General, provided such single price point retail operator shall not carry in excess of forty (40) lineal feet of any Exclusive Use Products); or any Occupant which occupies premises between 15,000 to 24,999 square feet of gross leasable area ("Major Occupant"), provided the display of Exclusive Use Products in such Major Occupant's premises does not exceed thirty-six (36) lineal feet in the aggregate during the months of January through October and sixty (60) lineal feet in the aggregate during the months of November and December, provided that in no event shall the display area of any one category of Exclusive Use Products in the Major Tenant Premises exceed twenty (20) lineal feet.



## APPLE

Landlord agrees that it will not enter into a lease, license or other occupancy agreement of any other space or area within the Shopping Center [the "Exclusion Zone"] [entire Shopping Center], or consent to the assignment of any such lease, license or other occupancy agreement or to the sublet or other use and occupancy of any other space or area within the Exclusion Zone, by a tenant, subtenant, assignee, licensee or concessionaire [collectively, "Occupant"] whose Principal Business (hereinafter defined) is the display and/or retail sale of Competing Products [the "Exclusive Use"]; provided, however, that the Principal Business threshold shall not apply to any kiosks RMUs, carts, or other similar sales units or displays located within the Exclusion Zone and Tenant shall not have to demonstrate the same to establish a violation of the Exclusive Use with respect thereto. "Competing Products" shall mean the following: (a) cellular phones (including Apple-branded cell phones), (b) cellular service contracts, (c) computers, (d) computer software, (e) computer peripherals (i.e. keyboards, mice, printers, and other devices that operate by direct or wireless connection to a computer), (e) [sic] audio and/or visual recording and playing devices that are dependent upon computer for downloading or streaming (not including radios, portable dvd players, portable cd players and cameras), and/or (f) Apple branded products. As used herein, the term "Principal Business" shall mean any business devoting more than twenty percent (20%) of its sales floor area to the display and/or retail sale of Competing Products. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to (i) the contiguous unit occupied by any tenant whose gross leasable area in such unit is fifteen thousand (15,000) square feet or more, (ii)

GameStop, or any tenant operating a video game concept similar to GameStop, (iii) any tenant that specializes in the repair, as opposed to the sale or display, of computers that are not Apple branded computers, or (iv) any Shopping Center tenant existing as of the Commencement Date whose lease, as of the Commencement Date, permits such tenant and its successors and assigns to use such tenant's existing premises for the Exclusive Use without Landlord's approval or consent, or any of such tenant's successors and assigns under the lease (provided, however, such tenant, successor or assign must remain in such tenant's existing premises, and further provided that, to the extent any such lease with such tenant gives Landlord the right under such lease to disapprove or withhold Landlord's consent to (a) a sublease, license, concession, assignment or other transfer in which the Occupant's business would violate the Exclusive Use, or (b) a change in the existing tenant's permitted use in which such change in permitted use would violate the Exclusive Use, Landlord will disapprove and withhold Landlord's consent to any such sublease, license, concession, assignment, transfer or change in permitted use, as the case may be). Landlord represents and warrants that all of the tenants described in clause (iv) above are listed on EXHIBIT G hereto. Notwithstanding anything contained herein to the contrary, Landlord shall be permitted to replace the cellular stores existing in the Shopping Center as of the Commencement Date and designate as "Exception to Exclusion Zone" on EXHIBIT A-1 with cellular stores operating similar to the store(s) it is replacing so long as the replacement stores do not exceed the square footage currently occupied by the existing cellular stores and occupy the same premises as the store(s) it is replacing



### **BRILLIANT SKY TOYS & BOOKS**

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") whose Principal Business (as hereinafter defined) is the operation of a children's toy store primarily selling children's toys and children's books (the "Exclusive Use"). As used herein, the term "Principal Business" shall mean any children's toy store or any book store devoting more than twenty percent (20%) of its sales floor area to the display and retail sale of children's toys and children's books (excluding electronic varieties of the foregoing) in the aggregate. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to: (i) the units occupied by tenants whose gross leasable area is 10,000 square feet or more, (ii) children's clothing stores (by way of example only: Carter's, Gymboree, and Children's Place), (iii) electronic and video game retailers (by way of example only: Radio Shack and GameStop), (iv) children's entertainment and recreational centers (by way of example only: Chuck E. Cheese and Discovery Zone), (v) re-sale retailers (by way of example only: Play It Again Sports and Once Upon A Child), (vi) greeting card stores and gift shops (by way of example only: Hallmark), (vii) religious retailers (by way of example only: Lifeway Christian bookstore), (viii) sporting goods stores, (ix) single price point general merchandise stores (by way of example only: Dollar Tree and Five Below), (x) the occupant of any outparcel within and adjacent to the Shopping Center, and (xi) any existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors, assigns or replacements unless said successors, assigns or replacements change the use of said tenant's premises to be in violation of the Exclusive Use and Landlord consents to the change in use. Notwithstanding the foregoing, for clarification purposes, this Exclusive Use shall restrict Landlord from entering into leases with tenants such as (by way of example only and not of limitation) Learning Express, Lakeshore Learning, Timbuk Toys and Barnes & Noble as it is agreed between Landlord and Tenant that these tenants, as they operate as of the Effective Date of this Lease, would violate the Exclusive Use provision.



### **COLD STONE CREAMERY**

Landlord hereby agrees that for the period of time commencing on the Commencement Date and terminating upon the expiration or earlier termination of the Lease for any reason, Landlord will not lease or grant its consent for any portion of Building G of the Shopping Center, other than the Premises, to be used by any tenant, other than Tenant, for the Primary Permitted Use of the display and sale, at retail of ice cream and frozen yogurt ["Exclusive Use"]. For purposes of this provision, "Primary Permitted Use" means that twenty-five percent (25%) or more of the retail floor area of a tenant's premises is designated to be used by said tenant pursuant to its lease with Landlord, for the display and sale of particular goods and/or services. The foregoing notwithstanding, the parties hereby agree that the following will not be a violation of Tenant's rights hereunder:

- (A) Sales by other tenants whose Primary Permitted Use is other than sales of the products and services which are the subject of the Exclusive Use;
- (B) Sales by tenants in the Shopping Center whose leases pre-date this Lease;
- (C) Sales by Anchor tenants ["Anchor Stores" means any individual retail store now or hereafter located in the Shopping Center which contains twenty-five thousand (25,000) square feet, or more, of floor space].

### **EUROPTICS**

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") whose Principal Business (as hereinafter defined) is the retail sale of prescription eyeglasses, contact lenses and hearing aids (the "Exclusive Use"). As used herein, the term "Principal Business" shall mean any business devoting more than fifty percent (50%) of its gross leasable area to the display and retail sale of prescription eyeglasses, contact lenses and hearing aids. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to the units occupied by tenants whose gross leasable area is 15,000 square feet or more, any existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors, assigns or replacements.

### **NEW BALANCE SHOES**

Landlord agrees that it will not enter into a lease, consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire [collectively "Occupant"] whose Principal Business (as hereinafter defined) operation of a full service specialty athletic footwear store [the "Exclusive Use"]. As used herein, the term "Principal Business" shall mean any business devoting more than fifty percent (50%) of its sales floor area to the display and retail sale of name brand athletic footwear, by way of example, Nike Reebok, Adidas and Merrell. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to the operation of a sporting goods store, by way of example, Dick's Sporting Goods and The Finish Line, a general, family footwear retailer, by way of example, DSW, Shoe Carnival, and Famous Footwear, any existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors, assigns, or replacements.



## ORIGINS

Landlord hereby agrees that for the period of time commencing on the Commencement Date and terminating upon the expiration or earlier termination of the Lease for any reason or the occurrence of any of the events set forth in Section 15.32 (E) below, Landlord will not lease or grant its consent for or otherwise permit any portion of the Shopping Center to be used simultaneously by more than one (1) tenant (other than Tenant) whose "primary use" (as defined below) of their premises is the retail sale of any one or more of the following: fragrances, cosmetics, body, bath, skin care and hair care products [the "Exclusive Use"]. Further, Landlord agrees that it will not permit any tenant operating under the trade name Sephora to be located immediately adjacent to Tenant in Building G, as shown on EXHIBIT A.

### *Primary Use:*

For purposes of this Section 15.32 and with respect to existing tenants other than "Exempt Tenants" as defined below and tenants with whom Landlord is currently negotiating leases and who are identified on EXHIBIT G attached hereto, "primary use" means that the lesser of (i) fifty percent (50%) or more of retail floor area; or (ii) at least eight hundred (800) square feet of retail floor area, in the aggregate, is used for the display and sale of any one (1) or more of the products which are the subject of the Exclusive Use.

For purposes of this Section...and with respect to tenants with whom Landlord signs leases after November 15, 2001, other than "Exempt Tenants" as defined below and who are not identified on EXHIBIT G attached hereto, "primary use" means that the lesser of (i) fifty percent (50%) or more of retail floor area; or (ii) at least five hundred (500) square feet of retail floor area, in the aggregate, is used for display and sale of any one (1) or more of the products which are the subject of the Exclusive Use.

The foregoing notwithstanding, the parties hereby agree that any sales by the following tenants ["Exempt Tenants"] of the products which are the subject of the Exclusive Use will not be a violation of Tenant's rights hereunder, regardless of the amount of retail floor space devoted to the sale of the products which are the subject of the Exclusive Use:

- a. The Gap, Inc. (or any division or trade name thereof including without limitation Gap Body), its affiliates, successors, subtenants and assigns; Banana Republic, Inc. (or any division or trade name thereof), its affiliates, successors, subtenants and assigns; and/or The Limited, Inc. (or any division or trade name thereof including without limitation Bath and Body Works), its affiliates, successors, subtenants and assigns; provided however, with respect to the successors, subtenants and assigns of the tenants named in this subsection, to the extent Landlord has control over any change in use by such tenants or any assignment, transfer or subletting of any premises occupied by such tenants, then Landlord shall exercise such control to the extent reasonably possible in order to prevent a violation of Tenant's Exclusive Use.
- b. Buth-Na-Bodhaige, Inc. d/b/a The Body Shop;
- c. One (1) hair salon;
- d. One (1) day spa;
- e. One (1) barber shop;
- f. Any Anchor Tenant as defined in Section 15.18 above [ meaning any individual retail store now or hereafter located in the Shopping Center which contains fifty thousand (50,000) square feet, or more, of floor space].



### **PIER 1 IMPORTS**

LANDLORD shall not operate or lease or permit to be leased or operated any other store located within the Shopping Center, for the use or purpose of selling or displaying for sale wicker or rattan furniture, decorative household furnishings of an imported nature and intended to be used in sunrooms, living, dining and kitchen areas and on patios, or housewares imported from the Far East, all being customarily sold in TENANT'S retail stores, unless such use or purpose is incidental, as defined below, to such business. For purposes hereof, the incidental sale of such items in connection with the overall business of another operator or tenant shall not be deemed a violation hereof. As used herein, incidental use or purpose shall mean the sale of such wicker or rattan furniture, decorative household furnishings or housewares which for any one (1) such product line does not occupy greater than twenty-five percent (25%) of any such occupant's floor area in the Shopping Center. Notwithstanding the foregoing, TENANT'S exclusive use right as set forth in this Section 7.5 shall not apply to tenants in the Shopping Center (the "Existing Tenants") which (i) have written and executed leases with LANDLORD as of the date hereof, and (ii) have the legal right to violate such exclusive use right pursuant to their existing leases as of the date hereof, including, without limitation, any premises occupied by The Gap, Inc. or Banana Republic, Inc., their affiliates, successors, assigns and subtenants; provided, however, to the extent LANDLORD has control over any change in use by such Existing Tenants or any assignment, transfer or subletting of any Existing Tenants, then LANDLORD shall exercise such control to the extent reasonably possible in order to prevent a violation of such exclusive use right.

### **POTTERY BARN**

LANDLORD will not allow any kiosk located anywhere within the Shopping Center to sell cookbooks or any kitchen brand names which are the same or similar in price and style as those sold in the PREMISES.

LANDLORD hereby agrees that for the period of time commencing on the Commencement Date and terminating upon the expiration or earlier termination of the LEASE for any reason, LANDLORD will not lease or grant its consent for any portion of the Shopping Center to be operated by any tenant under the trade name Z Gallerie.

### **RICE BISTRO & SUSHI**

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire [collectively "Occupant"] whose Principal Business (as hereinafter defined) is the operation of a restaurant serving sushi cuisine [the "Exclusive Use"]. As used herein, the term "Principal Business" shall mean any Occupant devoting more than twenty percent (20%) of its menu items to the retail sale of items commonly known as sushi, sushi rolls and sashimi. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to the (i) the units occupied by tenant whose gross leasable area is 10,000 square feet or more; (ii) the owner of any outparcel within and adjacent to the Shopping Center; (iii) any existing Shopping Center Tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use; (iv) any tenant operating a Thai-style restaurant, a Chinese-style restaurant or any other Asian-style restaurant in its premises to the extent such restaurant does not devote more than twenty percent (20%) of its menu items to the retail sale of items commonly known as sushi, sushi rolls and sashimi; (v) any tenant operating a Japanese steakhouse to the extent that such restaurant does not devote



more than twenty percent (20%) of its menu items to the retail sale of items commonly known as sushi, sushi rolls and sashimi; or (vi) any of the foregoing's successors, assigns or replacements, provided such replacement tenant uses its premises for the same or substantially similar use as the previous tenant.

### **SLEEP NUMBER**

Landlord agrees that it will not enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively "Occupant") (i) that stocks or sells air-controlled mattresses and air-controlled sleep systems (for the purpose of this Section C, air mattress, and temporary inflatable beds, such as Areobed and Air Bed shall not be considered air-controlled mattresses or air-controlled sleep systems), or (ii) whose Principal Business is the retail sale of mattresses (subsections (i) and (ii) are hereinafter defined as the "Exclusive Use"). As used herein, the term "Principal Business" shall mean any business devoting more than fifty percent (50%) of its sales floor area to the display and retail sale of mattresses. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to the occupant of any outparcel within and adjacent to the Shopping Center, any existing Shopping Center tenant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors, assigns or replacements.

### **SPRINT**

Landlord agrees that it will not, during the Term, enter into a lease or consent to the use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire [collectively "Occupant"] whose Principal Business (as hereinafter defined) is the retail sale of wireless and wireline communication devices, equipment, items and services [the "Exclusive Use"]. As used herein, the term "Principal Business" shall mean any Occupant devoting more than the greater of (i) ten percent (10%) of its horizontal and vertical sales area; or (ii) one hundred (100) square feet to the display and retail sale of wireless and wireline communication devices, equipment, items and services. Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to the (1) any premises in the Shopping Center occupied by The Gap, Inc. and Banana Republic, Inc., or their successors, sublessees, affiliates or assigns; (2) the owner of any outparcel adjacent to the Shopping Center; or (3) any existing Occupant whose lease, as of the date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of their successors, assigns or replacements.

### **STARBUCKS**

Landlord will not lease or grant its consent for any portion of the Shopping Center, other than the Premises, to be used by any tenant, other than Tenant, for the display, sale and advertisement of (a) whole or freshly ground coffee beans; (b) espresso, espresso-based coffee drinks, or coffee-based drinks; or (c) brand-identified brewed coffee ["Exclusive Products"]. The foregoing notwithstanding, the parties hereby agree that the following will not be a violation of Tenant's rights hereunder:

- (A) Sales of the Exclusive Products by tenants in the Shopping Center whose leases were executed prior to the date of this Lease;
- (B) Sales by any tenant of brewed coffee which is not brand-identified;
- (C) Sales by full service restaurants of espresso, espresso-based coffee drinks, coffee-based



drinks and/or brand-identified coffee provided that such brand-identified coffee is advertised only on menus or other similar advertising which is visible only inside such full service restaurants' premises, and such brand-identified coffee is not advertised on signage which is visible from outside such full service restaurants' premises. For purposes of this Section, a "full-service restaurant" is a food service establishment which occupies no less than four thousand (4,000) square feet of floor space and which provides for at least seated lunch and dinner service on the establishment's premises with food brought to the customers by the establishment's employees;

(D) Sales of the Exclusive Products by The Gap, Inc. and Banana Republic, Inc., or their successors, sublessees, affiliates or assigns;

(E) Sales of the Exclusive Products by Breads of the World, L.L.C. d/b/a Panera Bread, its successors, sublessees, affiliates or assigns.

(F) Sales of the Exclusive Products by Barnes & Noble, Inc. or Borders, Inc., or other similar full-service bookstores, their successors, sublessees, affiliates or assigns ["Bookstores"]. However, the exception set forth in this subsection (E) [sic] will be operative only if the Bookstores do not have an entrance into their premises which leads solely and directly into the cafe portion of their premises.

#### **TED'S MONTANA GRILL**

Landlord agrees...that Landlord will not enter into a lease or other agreement with any other person or entity for the use, during the Initial Term, for the operation of a "Gourmet Burger Restaurant" ["Exclusive Use"]. For purposes of this Section 15.32, a "Gourmet Burger Restaurant" is a sit-down, waiter/waitress service restaurant which serves entrée menu items, fifty percent (50%) or more of which, in the aggregate, are "burgers" and/or boneless chicken fare [all such restaurants hereinafter referred to as "Gourmet Burger Restaurants."] For purposes of this Section 15.32, a "burger" is a sandwich made with ground meat. By way of example and not limitation, some Gourmet Burger Restaurants are identified in this Section 15.32 below. Landlord is not bound by this Section 15.32 with respect to restaurants whose leases or sale contracts with Landlord were executed prior to the date of this Lease; or to any premises in the Shopping Center occupied by the Gap, Inc., Banana Republic, Inc., or their affiliates, subtenant, successors or assigns. Landlord represents that leases executed by the Gap, Inc., and Banana Republic, Inc., with Landlord at the Shopping Center limit food sales to 1,200 or fewer square of their premises and limit the sale of beverages to non-alcoholic beverages. Further Landlord shall not be bound by this Section 15.32 if Tenant does not continuously operate the Premises (except as may be permitted in accordance with this Lease), as a "Gourmet Burger Restaurant."

Landlord may enter into leases or sales contracts with any restaurant ["Permitted Restaurant"] which does not meet the definition of a "Gourmet Burger Restaurant." By way of example and not limitation, some Permitted Restaurants are identified in this Section 15.32 below.

**GOURMET BURGER RESTAURANTS:** Chili's, Red Robin's, Ruby's Diner, Johnny Rockets, Fuddruggers

**PERMITTED RESTAURANTS:** Champps, Friday's, Houlihan's, Ruby Tuesday's



## ULTA

From and after the date of this Lease, Tenant shall have the exclusive right to conduct any portion of Tenant's Primary Business in the Shopping Center, and all other tenants or other occupants of any portion of the Shopping Center shall be prohibited from engaging in any portion of Tenant's Primary Business. For purposes hereof, the term "exclusive right" shall mean any provision that purports to restrict or prohibit, or under which the grantor agrees that it will restrict or prohibit or will not grant the right to engage in, the sale of any product or service or the conduct of any type business, except by or to the party granted such exclusive right. Further, Landlord covenants that it will not lease any space in the Shopping Center to tenants whose primary use is substantially similar to Tenant's Primary Business, such as: Beauty Brands, Beauty First, Pure Beauty, Sephora, or Trade Secret. Notwithstanding the foregoing, Tenant's exclusive right shall not apply to uses associated with (a) existing tenants or occupants in the Shopping Center as of the Effective Date who are entitled to sell such products and/or provide the Services, (b) family hair care such as Great Clips, Vivi Trends, Fantastic Sam's, or other similar value oriented type operations, (c) any national or regional retail tenant in excess of twenty thousand (20,000) square feet such as TJ Maxx, Old Navy, Bed Bath & Beyond, and Ross, that sells the goods and/or provides the Services as a part of its normal business operations, but not as its primary use, (d) a day spa (as hereinafter defined), including one that sells cosmetics, fragrances, hair care products, skin care products, nail care products and body care products as part of its normal business operations (but not in more than three hundred (300) square feet of its premises), provided that any such day spa shall not devote more than the lesser of (i) twenty percent (20%) of its Gross Floor Area, or (ii) five hundred (500) square feet in the aggregate of any such tenant or occupant's Gross Floor Area, to hair services, (e) tanning salons, (f) any tenant who sells the goods and/or provides the Services as incidental to its primary use and in an area not to exceed more than three hundred (300) square feet of such tenant's premises, or (g) the operation of a "Five Below" retail store, provided that (i) no more than five hundred (500) square feet of the sales floor of Five Below's premises may be used for the retail sale of cosmetics, fragrances, health and beauty products, hair care products and accessories, personal care appliances, skin care products, and body care products (in the aggregate); and (ii) Five Below's use in its premises shall be substantially the same as, and with substantially the same product and service mix as, the majority of other locations operating under the trade name "Five Below" as of the date hereof. Furthermore, Tenant's exclusive right to operate a full service beauty salon shall not apply to a tenant whose primary business includes not more than two (2) of the Services. The day spa exception set forth in (d) above and the exception set forth in the immediately previous sentence shall not apply to the area identified on the Site Plan as "Restricted Area" and Landlord shall not permit any day spa or a tenant or occupant whose primary business includes the Services to operate within such Restricted Area. For purposes of this Section 4.6, a "day spa" shall be defined as a facility offering a variety of spa treatments where customers can come for several hours during the day, but overnight accommodations are not available....

Landlord represents and warrants that other than Origins and Tenant, there are no other tenants or occupants of the Shopping Center whose primary use is the retail sale of fragrances, cosmetics, body, bath, skin care and hair care products.



### **WILLIAMS-SONOMA**

Landlord will not allow any kiosk located anywhere within the Shopping Center to sell cookbooks or any kitchen brand names which are the same or similar in price and style as those sold in the Premises.

Landlord hereby agrees that for the period of time commencing on the Commencement Date and terminating upon the expiration or earlier termination of the Lease for any reason, Landlord will not lease or grant its consent for any portion of the Shopping Center to be operated (1) by any other tenant under the trade name Sur La Table; and (2) by any other tenant whose primary use of its premises is the retail sale of kitchenware ["Restrictive Covenant"]. For purposes of this Section 15.31, "primary use" means that fifty percent (50%) or more of the retail floor area of the premises are used for the retail sale of kitchenware. Further for purposes of this Section 15.31, the retail sale of kitchenware does not include food or major appliances.

### **TATTERED COVER**

**Exclusive Use.** Provided that Tenant is in possession of the Premises and operating its business therein without default and Tenant has not defaulted under any of the terms and conditions contained in this Lease more than twice during the Lease Term, Landlord agrees that it will not enter into a lease or consent to the assignment, sublet or other use and occupancy of any other space within the Shopping Center by a tenant, subtenant, assignee, licensee or concessionaire (collectively, "Occupant") whose Principal Business (hereinafter defined) is the operation of a bookstore, or a temporary tenant whose Principal Business is the display and retail sale of calendars (the "Exclusive Use"). As used herein, the term "Principal Business" shall mean any business devoting more than fifty percent (50%) of its sales floor area to the operation of a bookstore, or a temporary tenant that devotes more than fifty percent (50%) of its sales floor area to the display and retail sale of calendars ("temporary tenant" being defined as an Occupant that is under a lease or other occupancy agreement of less than six (6) months). Notwithstanding anything to the contrary contained herein, the foregoing Exclusive Use shall not be applicable to (i) the occupant of any outparcel within and adjacent to the Shopping Center that is not owned by Landlord or an affiliate of Landlord, or (ii) any existing Shopping Center tenant whose lease, as of the Effective Date of this Lease, does not prohibit the subject premises to be used in violation of the Exclusive Use, or any of the successors, assigns or replacements of any of the foregoing. In the event Tenant ceases to operate its business in the Premises, or defaults under the terms and conditions contained in this Lease more than twice during the Lease Term, the Exclusive Use shall terminate as of the date Tenant ceases to operate its business in the Premises or the date of the third default, whichever shall be the case, and thereafter the Exclusive Use shall be null, void and of no further effect.

Landlord and Tenant acknowledge that the Exclusive Use has been included herein at the sole request of Tenant, and in the event the Exclusive Use shall be construed to be or shall be declared to be invalid or unenforceable by the decision of any court or any governmental agency having jurisdiction over such matters or by the enactment of any law, ordinance or regulation, or in the event the Exclusive Use shall be construed to be or shall be declared to be in violation of any law, rule or regulation, including but not limited to any anti-trust laws, rules or regulations, Tenant agrees to either (i) indemnify, defend and hold Landlord harmless from and against any claim, demand, damage, cost or liability, including reasonable attorney fees and court costs, arising from Landlord's grant of the Exclusive Use, or (ii) notify Landlord in writing that Tenant will agree to waive the Exclusive Use provided for in this Article IX.C, in which event, this Article IX.C shall be null and void and of no further force and effect. In addition, in the event that any third party brings any

claim, demand, action or proceedings against Landlord based upon the grant by Landlord of the Exclusive Use, Tenant agrees to either (a) indemnify, defend and hold Landlord harmless against any such claim, demand, damage, cost or liability, including reasonable attorney fees and court costs, or (b) notify Landlord in writing that Tenant will agree to waive the Exclusive Use provided for in this Article IX.C, in which event, this Article IX.C shall be null and void and of no further force and effect.



EXHIBIT F

FORM OF COMMENCEMENT DATE MEMORANDUM

Pursuant to the terms of the Lease, Tenant has agreed to provide this Commencement Date Memorandum ("**Commencement Date Memorandum**") to Landlord within ten (10) days after Landlord's request therefor. This Commencement Date Memorandum is not intended to modify any of the terms of the Lease.

1. Premises. The address of the Premises is \_\_\_\_\_, Littleton, Colorado. Tenant has accepted possession of the Premises which consists of approximately \_\_\_\_\_ square feet. Tenant is the actual occupant in possession of the Premises and has not sublet, assigned or otherwise transferred its interest in the Premises.

2. Lease Term. The Term of the Lease commenced on \_\_\_\_\_, 2\_\_\_\_, which shall be the Commencement Date (as defined in the Lease), is presently in force, and, unless Tenant exercises its renewal option, will expire on \_\_\_\_\_ which shall be the Termination Date (as defined in the Lease). Tenant has \_\_\_\_ ( ) option(s) to renew the term of the Lease for a term of \_\_\_\_ ( ) years [each]. Tenant must exercise its option to renew for the [first] renewal term, if at all, by delivering written notice thereof to Landlord on or before \_\_\_\_\_, 2\_\_\_\_ and for the [second] renewal term if at all, by \_\_\_\_\_, 2\_\_\_\_.

3. Opening for Business. Tenant opened for business in the Premises on \_\_\_\_\_, 2\_\_\_\_.

The information set forth in this Commencement Date Memorandum is true and correct as of the date hereof. This acknowledgment shall be binding upon the successors and assigns of each of Tenant and Landlord.

LANDLORD:

TENANT:



EXHIBIT G

GUARANTY OF LEASE

This GUARANTY given by Creation-By-Lam Inc., an Ohio corporation (collectively, "Guarantor") to ASPEN GRF2, LLC, a Delaware limited liability company ("Landlord").

WITNESSETH:

In order to induce Landlord to demise to AV Nail Spa Aspen Grove LLC, an Ohio limited liability company ("Tenant") certain premises in Landlord's Shopping Center commonly known as Aspen Grove, in Littleton, Colorado, and being described in and pursuant to a certain Lease dated August 1, 2018 (which lease together with any and all modifications, amendments and extensions is hereinafter referred to as the "Lease"), Guarantor does agree as follows:

1. Guarantor does hereby, unconditionally and absolutely guarantee to the Landlord the full, prompt and complete payment by the Tenant of the rent and all other sums which may be payable by the Tenant under the Lease and the full, prompt and complete performance by the Tenant of any and all terms, covenants, conditions and provisions of the Lease required to be performed by the Tenant without regard to any forbearance, delay, neglect or failure on the part of the Landlord in enforcing same.
2. Guarantor does hereby waive notice of acceptance hereof and any and all other notices which by law or under the terms and provisions of the Lease are required to be given to the Tenant, and also waive any demand for or notice of default of the payment of rent and other sums which may be payable by the Tenant under the Lease and the performance of all and singular the terms, covenants, conditions and provisions in the Lease required to be performed by the Tenant; and the Guarantor does further expressly hereby waive any legal obligation, duty or necessity for the Landlord to proceed first against the Tenant or to exhaust any remedy the Landlord may have against the Tenant, it being agreed that in the event of default or failure of performance in any respect by the Tenant under the lease, the Landlord may proceed and have right of action solely against either the Guarantor of the Tenant or jointly against Guarantor and Tenant. Guarantor further agrees that the Landlord may grant relief or indulgence to the Tenant, or otherwise amend or modify the Lease, without such actions being or being deemed to be a release of the Guarantor's liability under this Guaranty. Any delay on the part of the Landlord in enforcing any rights under this Guaranty or under the Lease or in proceeding first against the Tenant shall not operate as a waiver of rights against Guarantor hereunder.
3. In the event of any bankruptcy, reorganization, winding up or similar proceedings with respect to the Tenant, no limitation of the Tenant's liability under the Lease which may now or hereafter be imposed by any federal, state or other statute, law or regulation applicable to such proceedings, shall in any way limit the obligations of Guarantor hereunder, which obligation is co-extensive with the Tenant's liability as set forth in the Lease without regard to any such statutory limitation. If any trustee, receiver or conservator of the Tenant appointed under any federal or state law relating to bankruptcy, insolvency, debtor's relief or corporate reorganizations rejects the Lease pursuant to any right to do so under the provisions of any such law, Guarantor's obligation under this Guaranty shall not be affected thereby, but, to the contrary, shall continue to remain in full force and effect as if the Lease had not been rejected by such trustee, receiver or conservator and was continuing in full force and effect.
4. Guarantor shall not be entitled to make any defense against any claim asserted by the Landlord in any suit or action instituted by the Landlord to enforce this Guaranty or the Lease or to be excused from any liability hereunder which the Tenant could not make or invoke, and the Guarantor hereby



expressly waives any defense in law or in equity which is not or would not be available to the Tenant, it being the intent hereof that the liability of the Guarantor hereunder is primary and unconditional.

5. In the event it shall be asserted that the Tenant's obligations are void or voidable due to illegal or unauthorized acts by the Tenant in the execution of the Lease, the Guarantor shall nevertheless be liable hereunder to the same extent as the Guarantor would have been if the obligations of the Tenant had been enforceable against the Tenant.

6. This Guaranty shall be binding upon the heirs, legal representatives, successors and assigns of the Guarantor, and shall inure the benefit of the heirs, legal representatives, successors and assigns of the Landlord. Guarantor agrees that this contract is performable in Colorado, and waives the right to be sued elsewhere.

7. If Guarantor is a corporation, then the undersigned officer of such corporation personally represents and warrants that the Board of Directors of such corporation, in a duly held meeting, has determined that this Guaranty may reasonably be expected to benefit said corporation.

8. Guarantor hereby waives trial by jury in any action, proceeding or counterclaim brought by the Landlord or the Guarantor against the other as to any matter of any kind or nature arising out of or in any way connected with this Guaranty or the Lease. In the event suit or action be brought upon and in connection with the enforcement of this Guaranty, Guarantor shall pay reasonable attorneys' fees and all court costs incurred by the Landlord.

IN WITNESS WHEREOF Guarantor has executed this Guaranty as of August 1, 2018.

GUARANTOR:

CREATION-BY-LAM INC.,  
an Ohio corporation

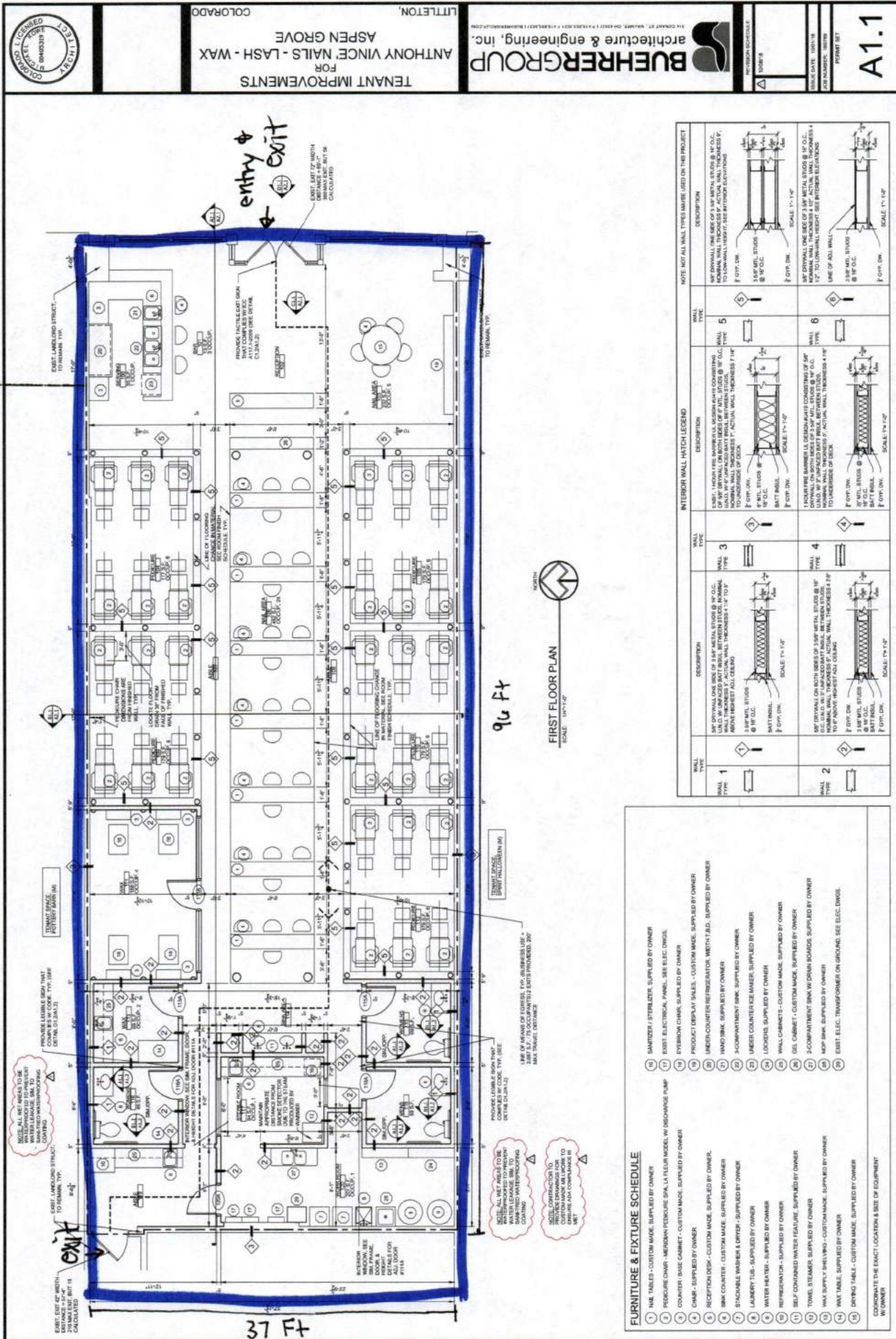
By: 

Name: Yian Hio

Its: President



Alcohol Storage



*Handwritten signature and date: 5/14/14*