



2017-009021

Klamath County, Oregon

08/10/2017 02:44:00 PM

Fee: \$422.00

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**GGD OAKDALE, LLC**  
101 East Vineyard Ave., Suite 201  
Livermore, California 94550  
Attention: Real Estate

*(Space Above for Recorder)*

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RECIPROCAL EASEMENTS**

**COASTAL SHOPPING CENTER**

**KLAMATH FALLS, OREGON**

August 8, 2017

ARTICLE 1	DEFINITIONS.....	2
1.1	Building Area; Building Limit Line.....	2
1.2	Common Area.....	2
1.3	Common Area Maintenance Costs .....	2
1.4	Constant Dollars.....	3
1.5	Exclusive Parking Control Area .....	3
1.6	Floor Area .....	3
1.7	Occupant .....	3
1.8	Owner.....	4
1.9	Parcel.....	4
1.10	Parking Area .....	4
1.11	Person.....	4
1.12	Permittee .....	4
1.13	Proportionate Share.....	4
1.14	Shopping Center.....	4
1.15	Site Plan .....	5
1.16	Utility Facilities .....	5
ARTICLE 2	EASEMENTS .....	5
2.1	Ingress and Egress/Parking .....	5
2.2	Utilities.....	6
2.3	Easements for Construction, Maintenance, and Reconstruction.....	7
2.4	Miscellaneous Common Area Easements.....	8
2.5	Restriction .....	9
ARTICLE 3	CONSTRUCTION.....	9
3.1	General Requirements.....	9
3.2	Common Area .....	11
3.3	Building Improvements. ....	11
ARTICLE 4	MAINTENANCE AND REPAIR .....	12
4.1	Utility Facilities. ....	12
4.2	Operation and Maintenance of the Common Area .....	12
4.3	Payment of Common Area Maintenance Costs .....	15
4.4	Building Improvements. ....	17
4.5	Takeover of Maintenance of Common Area.....	17
4.6	Maintenance of Certain Portions of Common Area within an Owner's Parcel.....	18
ARTICLE 5	OPERATION OF THE SHOPPING CENTER.....	18
5.1	Uses.....	18
5.2	Lighting.....	25
5.3	Signs.....	25
5.4	Common Area Insurance and Indemnity. ....	25
5.5	Building Area Insurance and Indemnity. ....	26
5.6	Common Area and Building Area Construction Insurance .....	26
5.7	ISO "Special Form" Property Insurance.....	27

## Table of Contents

## Page

5.8	Waiver of Subrogation.....	27
5.9	Policy Form.....	28
5.10	Self Insurance.....	28
5.11	Damage or Destruction to Common Area.....	28
5.12	Taxes and Assessments.....	29
5.13	Liens.....	29
ARTICLE 6	MISCELLANEOUS .....	29
6.1	Default.....	29
6.2	Interest.....	32
6.3	Estoppel Certificate.....	32
6.4	Notices.....	32
6.5	Approval Rights.....	33
6.6	Condemnation.....	34
6.7	Binding Effect.....	34
6.8	Singular and Plural.....	34
6.9	Counterparts and Signature Pages.....	34
6.10	Negation of Partnership .....	34
6.11	Not a Public Dedication/Intended Beneficiaries.....	35
6.12	Excusable Delays.....	35
6.13	Severability .....	35
6.14	Amendments .....	35
6.15	Captions and Capitalized Terms .....	35
6.16	Mitigation of Damages .....	35
6.17	Effect of Breach Upon Purchasers and Mortgagees.....	35
6.18	Time of the Essence.....	36
6.19	No Waiver.....	36
6.20	Litigation Expenses.....	36
6.21	Transfers of Interest, Rights, Powers, and Obligations.....	37
6.22	Governmental Compliance .....	39
6.23	Revocation of REA .....	39
ARTICLE 7	RECORDATION AND TERM.....	39
7.1	Recordation.....	39
7.2	Term of Declaration.....	39

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RECIPROCAL EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS (this "**Declaration**") is made as of August 8, 2017 ("**Effective Date**"), by GGD Oakdale, LLC, a California limited liability company, as owner of Parcel 1, Parcel 2 and Parcel 3 as hereinafter defined (the "**Declarant**").

**RECITALS:**

A. Declarant is the fee owner of certain real property referred to herein as the **Coastal Property** (the "**Shopping Center**"), located in the City of Klamath Falls, County of Klamath, State of Oregon, as shown on the site plan as Parcels 1, 2 & 3 attached hereto as **Exhibit A** (the "**Site Plan**") with Parcel 1 comprising 86.65% of the Shopping Center, Parcel 2 comprising 8.74% of the Shopping Center and Parcel 3 comprising 4.61% of the Shopping Center.

B. In connection with the operation of the Shopping Center, Declarant desires to provide for the common use of certain public and common facilities erected on the Shopping Center as the same may exist from time to time and therefore the Declarant hereby declares that all of the Shopping Center shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and approved subject to the easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes set forth in this Declaration for the purpose of uniformly enhancing and protecting the value and attractiveness of the Shopping Center and in furtherance of the general plan for the protection, maintenance and improvement of the Shopping Center.

E. The covenants, conditions, restrictions, rights, reservations, easements and equitable servitudes set forth herein shall run with and burden the Shopping Center and shall be binding upon all persons having or acquiring any right, title or interest in the Shopping Center, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of every portion of the Shopping Center or any interest therein, and shall inure to the benefit of, and be binding upon, and may be enforced by Declarant and each person who acquires a fee interest in the Shopping Center, or any individual Parcel, or any portion thereof and their respective heirs, executors, administrators, successors and assigns.

NOW, THEREFORE, in consideration of the forgoing recitals and the mutual covenants and agreements hereinafter set forth and in furtherance of the parties' understandings and intentions, the Declarant declares as follows:

**ARTICLE 1  
DEFINITIONS**

1.1 **Building Area; Building Limit Line.** "**Building Area**" shall mean the areas of the Shopping Center within which buildings (which for the purpose of this Declaration shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions) may be constructed, placed or located. Buildings may be constructed anywhere within a Building Area and, subject to any "Maximum Building Area" if any, designated on the Site Plan, may be larger, smaller, or differently configured than any building indicated on the Site Plan. The uses indicated for the

Building Areas on the Site Plan, if any, are for the convenience of the Owners (as defined below) and are not intended to be binding.

1.2 Common Area. "**Common Area**" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of buildings and related building canopies, support columns, pilasters, overhangs and footings and appurtenant truck loading or delivery docks or areas, truck tunnels, ramps and wells located within Building Areas or projecting into the Common Area. Common Area shall include, without limitation, all those facilities within or upon the Parcels (as defined below) for the non-exclusive use of Owners, Occupants and Permittees (all as hereinafter defined) in common, including, but not limited to, utility lines and systems, storm drains, sanitary sewers, Exclusive Parking Control Area (as defined below), Exclusive Parking Control Area lighting, storage area for Common Area equipment, fences, common walls, service areas, access roads, driveways, areas of ingress and egress, sidewalk and other pedestrian ways including but not limited to those that are adjacent or contiguous to buildings located on Building Areas, areas within buildings used in connection with the maintenance of the Common Area, roadways, landscaped areas (including planters and sprinkler systems and areas located between sidewalks and buildings or adjacent to exterior building walls), areas containing signs or structures or portions thereof advertising the common name given for the Shopping Center, and all Building Areas prior to construction of buildings thereon. Any enlargement of, or addition to, the Common Area as provided herein shall be included in the definition of Common Area for purposes of this Declaration. Notwithstanding the foregoing, the Common Area shall not include exclusive use areas.

1.3 Common Area Maintenance Costs. "**Common Area Maintenance Costs**" shall mean the total of all monies paid out during a calendar year (or partial calendar year with respect to any partial calendar year following the initial opening of the Shopping Center) by the Declarant (as defined below) or any third party manager for costs and expenses actually incurred for the operation, maintenance, and repair, including replacement of worn-out portions thereof, of the Common Area in fulfillment of the requirements of this Declaration, including, without limitation, the costs and expenses actually incurred by the Declarant or any third party manager in fulfilling its duties under Section 4.2 hereof, and in enforcing the terms of this Declaration should Declarant elect to do so, together with a fee (the "**Management Fee**") equal to fifteen percent (15%) of the total of all such costs and expenses. Declarant, at its option and in its sole discretion, may charge a Management Fee more or less than the foregoing to an Occupant or Owner pursuant to a separate agreement with such Occupant or Owner. The Management Fee shall be retained by the Declarant as reimbursement for administrative, accounting, overhead, legal, and other similar expenses involved with Common Area maintenance and operation (as set forth in Section 4.2), and as compensation for its operation and maintenance of the Common Area. In its sole discretion, the Declarant may, at any time, appoint a third party manager to manage the Common Area.

1.4 Constant Dollars. "**Constant Dollars**" shall mean the present value of the dollars to which such phrase refers. Except as otherwise provided in a lease or agreement, an adjustment shall occur on January 1 of the sixth (6th) calendar year following the date of this Declaration, and thereafter at five (5)-year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "**Base Index Number**" shall be the level of the Index for the month during which this Declaration is dated; the "**Current Index Number**" shall be the level of the Index for the month of September of the year preceding the adjustment year; the "**Index**" shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. City Average, Subgroup "All Items" (Base Year 1982-84 = 100), published by the United States Department of Labor, Bureau

of Labor Statistics, or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Declarant shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.5 Exclusive Parking Control Area. "**Exclusive Parking Control Area**" shall mean and refer to the area shown on Exhibit A-2 which indicates that portion of the Common Area designated for parking of motor vehicles, including, without limitation, incidental and interior roadways, walkways, curbs, gutters, and landscaping within the areas used for such parking, together with all improvements which at any time are erected thereon, but excluding Building Area truck ramps, tunnels, and wells and truck loading or delivery areas located in the Common Area. Any enlargement of, or addition to, the Parking Area shall be included in the definition of Parking Area for purposes of this Declaration. Notwithstanding anything to the contrary contained herein, neither the Owner nor Occupant(s) of Parcel 3 shall be permitted to use the Exclusive Parking Control Area or otherwise park motor vehicles within the Common Area outside of its own Parcel.

1.6 Floor Area. "**Floor Area**" shall mean the actual number of square feet of space contained on each floor within a building, including, without limitation, any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that any mezzanine storage areas not open or accessible to the general public shall not be included in Floor Area. Within thirty (30) days after written request from another Owner, an Owner shall certify to the requesting Owner the amount of Floor Area of each building on its Parcel. If any Owner causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Owner shall, upon written request, furnish a copy of the survey to the requesting Owner for informational purposes only. During any period of rebuilding, repairing, replacement, or reconstruction of a building, the Floor Area of such building shall be deemed to be the same as the Floor Area of such building immediately prior to such period. Upon completion of such rebuilding, repairing, replacement, or reconstruction, the Owner upon whose Parcel such building is located shall cause a new determination of the Floor Area for such building to be made in the manner described above, and such determination shall be furnished to any Owner requesting the same. Declarant shall have the right, at no cost to Declarant and at the sole cost of the applicable Owner, to verify or confirm the Floor Area of any building on another Owner's Parcel from time to time after business hours and upon reasonable advance notice to such Owner for the purpose of determining the Proportionate Share (as defined below) of such Owner.

1.7 Occupant. "**Occupant**" shall mean each Owner and any Person (as defined below) from time to time entitled to the use and occupancy of any portion of a Building Area in the Shopping Center under an ownership right or any lease, sublease, license, concession, or other similar agreement.

1.8 Owner. "**Owner**" shall mean any Person having or acquiring a fee title ownership in any Parcel, or its successors-in-interest, as shown by the Official Records of the County Recorder of the County in which the Shopping Center is located. An Owner may act through any Person designated in writing by such Owner to act on behalf of such Owner in the exercise of the powers granted to such Owner under this Declaration. Each Owner shall be liable for the performance of all covenants, obligations, and undertakings herein set forth with respect to the portion of the Shopping Center owned by such Owner that accrue during the period of such ownership. If a Parcel is owned by more than one Person, the Person or Persons holding at least 51% of the ownership interest in the Parcel shall designate one of their number to represent all owners of the Parcel and such designated Person shall



be deemed the Owner of such Parcel for voting purposes. If a Parcel is owned by more than one Person and the Persons fail to designate a representative, then such Persons' right to vote under this Declaration shall be suspended until such representative is designated. Notwithstanding the foregoing, the owner of Parcel 1 may be permitted to subdivide Parcel 1 into two (2) or more parcels, in which event, each of said newly subdivided parcels shall each become a "Parcel" and the owner of each newly subdivided parcel shall become an "Owner" as set forth herein.

1.9 Parcel. "**Parcel**" shall mean a separate legal lot or parcel within the Shopping Center as shown on any recorded final map or map.

1.10 Person. "**Person**" shall mean and include any individual, partnership, firm, association, joint venture, corporation, trust, limited liability company, other form of business or government entity, or any other legal entities and trustees, heirs, executors, administrators, and other personal representatives.

1.11 Permittee. "**Permittee**" shall mean all Occupants granted any license, permission, easement, or other rights in or to the Shopping Center, and the officers, directors, shareholders, partners, members, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of such parties insofar as their activities relate to the intended use of the Shopping Center. The following activities in the Common Area will not be considered to be intended uses of the Shopping Center, and no Permittee shall be entitled to engage in the following activities: (a) exhibiting any placard, sign, or notice; (b) distributing any circular, handbill, placard, or booklet; (c) soliciting memberships or contributions; (d) parading, picketing, or demonstrating; or (e) failing to follow regulations relating to the use of the Shopping Center.

1.12 Proportionate Share. Until Parcel 2 is developed, whenever an Owner is required to pay a "**Proportionate Share**" hereunder, that Proportionate Share shall be computed by multiplying the amount in question by a fraction, the numerator of which shall be the amount of land area of the applicable Parcel for which Proportionate Share is to be determined, and the denominator of which shall be the total land area of the Shopping Center from time to time. Upon development of Parcel 2 and the issuance of a certificate of occupancy for the building thereon, the Proportionate Share for the Owner of Parcel 1 and Parcel 2 shall thereafter be computed by multiplying the amount in question by a fraction, the numerator of which shall be the amount of square footage in all buildings on the applicable Parcel for which Proportionate Share is to be determined, and the denominator of which shall be the total square footage of all buildings within the Shopping Center from time to time. For purposes of this Section 1.12, Declarant acknowledges that the current building square footage on Parcel 1 is currently 84,540 square feet. Unless and until Parcel 3 is developed, its Proportionate Share shall be set at Two Hundred Forty Dollars (\$240.00) annually. The Owner of Parcel 3 shall be responsible for all repairs, maintenance and replacement of items on its Parcel.

1.13 Shopping Center. "**Shopping Center**" shall mean the neighborhood commercial shopping center known as the Coastal Property located in the city of Klamath Falls, State of Oregon, as depicted on the Site Plan, and as more particularly described in **Exhibit B** attached hereto.

1.14 Site Plan. "**Site Plan**" shall mean and refer to the Site Plan attached hereto as **Exhibit A** depicting the Shopping Center.

1.15 Coastal Lease; Subordination of This Declaration. Parcel 1 is currently subject to that certain Standard Industrial/Commercial Multi-Tenant Lease-Net dated May 2, 2016 by and between

Declarant as landlord and Coastal Farm Real Estate, Inc. as tenant ("Coastal Lease" attached hereto and incorporated by this reference as Exhibit D). This Declaration shall be subject and subordinate to the Coastal Lease and all of the tenant's rights thereunder for so long as the Coastal Lease endures. In no event does this subordination preclude the Owner of Parcel 1 from paying its full Proportionate Share of the Common Area Maintenance Costs hereunder

1.16 Utility Facilities. "*Utility Facilities*" shall mean those facilities and systems for the transmission of utility services, including but not limited to drainage and storage of surface water, relating to or affecting the Shopping Center. "*Common Utility Facilities*" shall mean those facilities and systems that are installed to provide the applicable service to the Common Areas or to Building Areas on more than one Parcel. "*Separate Utility Facilities*" shall mean those facilities and systems that are installed to provide the applicable service to Building Areas solely on a Parcel. For the purpose of this Declaration, the portion of a Utility Facility extending between a Common Utility Facility and a building shall be considered a Separate Utility Facility.

## ARTICLE 2 EASEMENTS

2.1 Ingress and Egress/Parking. Declarant reserves and hereby establishes for the benefit of each Owner, for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive perpetual easement for the passage of vehicles over and across the parking and driveway areas of the Shopping Center, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways, and sidewalk areas of the Shopping Center, as the same may from time to time be constructed and maintained for such use. Except in the event of emergency repairs, there shall be unimpeded access between the parking and driveway areas of the Shopping Center and the buildings in the Shopping Center. No fence, wall, or other partition shall be constructed between the Parcels comprising the Shopping Center, except as set forth on the Site Plan. Declarant reserves and hereby establishes for the benefit of Parcel 1 and Parcel 2, for its use and for the use of its Permittees, in common with others entitled to use the same, a non exclusive perpetual easement for parking of vehicles over and across the parking and driveway areas of the Shopping Center (other than those located on Parcel 3), as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as other provisions contained in this Declaration:

(a) Parking Variances. Following the initial development of Parcel 2, any parking variances applied for by any Owner shall be subject to the prior reasonable consent of the other Owners.

(b) Temporary Closure. Declarant shall have the right to limit or prohibit access to the Common Area for such reasonable period of time as may be legally necessary, in the opinion of Declarant's counsel, to prevent the acquisition of prescriptive rights by any Person; provided, however, that prior to restricting or prohibiting access to any portion of the Common Area, as herein provided, Declarant shall deliver prior written notice to the Owner(s) of its intention to do so, and shall use commercially reasonable and diligent efforts to coordinate such closing with the Owners so that no unreasonable interference in the passage of pedestrians or vehicles shall occur.

(c) Exclusion of Non-Permittees. Declarant shall have the right at any time, and from time to time, to exclude, eject, or restrain any Person who is not a Permittee from using the Common Area.



(d) Maintenance and Repairs. Notwithstanding any provisions to the contrary contained in this Declaration, Declarant shall have the right to restrict or prohibit access to such portions of the Common Area, including drive aisles, for such period of time as may be reasonably necessary in order to maintain or repair such areas in the event of emergency or otherwise. Where reasonably possible, Declarant shall cause such maintenance or repairs to be made so that the disruption to the business of adjacent Owners and Occupants is minimized. Declarant and all Owners and Occupants shall abide by all governmental directives, orders and mandates, including, without limitation, any repair or closure order. Declarant shall not close any driveways nor shall Declarant prevent access to the Shopping Center through any driveway, except to the extent reasonably required by an emergency or by the necessity for repairs, and in such event, the affected driveway(s) shall only be closed or partially restricted to the extent, and for the time required, to resolve such emergency or complete such repair.

## 2.2 Utilities.

(a) Utility Facilities. Declarant reserves and hereby establishes for the benefit of each Owner and/or Occupant non-exclusive perpetual easements in, to, over, under, along, and across those portions of the Common Area (exclusive of any portion located within a Building Area) located in the Shopping Center necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, replacement, relocation, and removal of utilities serving the Shopping Center, including, but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone, and communication lines, vaults, meters, transformers, pipelines, hydrants, sprinkler controls, and conduits. Whenever feasible, Utility Facilities shall be located below the surface of the Common Area, or below the surface of any other above-ground improvements located thereon; provided, however, that in any event, (i) all Utility Facilities that are located above the surface of the Common Area shall be placed so as not to interfere with, restrict, or impede other uses of Common Area provided for herein; and (ii) no Utility Facilities that must be located above the surface of the Common Area shall be installed upon any Parcel without the prior written consent of the Owner of such Parcel. Whenever feasible, and subject to the approval of all applicable governmental authorities, any Utility Facility that is located above the surface of the Common Area and that is visible from the front entrance of any building shall be screened and/or landscaped. A grantee Owner shall be entitled to request from a grantor Owner the right to install a Utility Facility across the Common Area of the grantor Owner's Parcel. Prior to exercising the rights granted herein, the grantee Owner shall first provide the grantor Owner with a written statement describing the need for such easement, shall identify the proposed location of the Utility Facility, and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by this Declaration. Any Owner installing Separate Utility Facilities pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto (including all maintenance and repair costs and expenses in connection therewith), and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible (and in any event within a commercially reasonable time) and in a manner so as to minimize interference with the use of the Common Area. If Common Utility Facilities are installed, all repair, maintenance, replacement, and other work thereon shall be performed by the Declarant as part of Common Area maintenance.

(b) Location and Relocation. The initial location of any Utility Facility shall be subject to the prior written approval of Declarant. The easement area shall be no wider than necessary to reasonably satisfy the requirements of the utility-providing agency, or five (5) feet on each side of the centerline if the easement is granted to an Owner. Upon request from the grantor(s), the grantee

shall provide to the grantor(s) a copy of an as-built survey showing the location of such Utility Facility. The grantor(s) shall have the right at any time to relocate a Utility Facility upon thirty (30) days' prior written notice, provided that such relocation: (i) shall not interfere with or diminish the utility service to the grantee; (ii) shall not reduce or unreasonably impair the usefulness or function of such Utility Facility; (iii) shall be performed without cost or expense to the grantee; (iv) shall be completed using materials and design standards that equal or exceed those originally used; (v) shall be performed so as to cause the least disruption reasonably possible under the circumstances to the business of any Owner or Occupant; and (vi) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereof. Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be at the grantor's expense and shall be accomplished promptly upon the completion of the relocation.

(c) Surface Drainage. Declarant, for the benefit of itself and each Owner and/or Occupant, reserves and hereby establishes the perpetual right and easement to discharge surface storm drainage and/or runoff from each Parcel over, upon and across the Common Area upon the following conditions and terms:

(i) The Common Area grades and the surface water drainage/retention system for the Shopping Center shall be constructed in conformance with plans and specifications approved by Declarant; and

(ii) No Owner or Occupant shall alter or permit to be altered the surface of the Common Area or the drainage or retention system constructed on its Parcel if such alteration would materially increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. In such event, the offending party shall, at its sole cost and expense, restore the Common Area and repair any damage to the adjacent Parcel(s) caused thereby.

The surface water collection, retention and distribution facilities within the Common Area shall be deemed Common Utility Facilities.

### 2.3 Intentionally Deleted.

2.4 Miscellaneous Common Area Easements. The Common Area on each Parcel may also be used only for the following purposes related to the business and activities conducted in the Shopping Center:

(a) Parking. Parking of motor vehicles in the Parking Area; however, in no event shall overnight parking of motor vehicles in the Parking Area be allowed, except that late-shift employees of Owners and Occupants may park their motor vehicles overnight if reasonably necessary in connection with their employment responsibilities.

(b) Ingress and Egress. Ingress and egress by any of the Owners and their Permittees and any motor vehicles of the Owners and their Permittees to and from any portion of the Common Area and access to and from the public streets adjacent to the Common Area.

(c) Pedestrian Traffic. Pedestrian traffic by the Owners and their Permittees between business establishments in the Building Areas, between the Building Areas and Common

Area, and Shopping Center pedestrian access to and from the public streets adjacent to the Common Area.

(d) Temporary Construction Activity. Construction, maintenance, repair, replacement, rearrangement, remodeling of buildings and improvements within Building Areas and Common Area, landscaping, pedestrian walkways, and other improvements in the Common Area, not affecting or changing the Common Area, except as permitted or required herein are permitted under this Declaration. All such work shall be conducted in a manner to minimize interference with use of the Common Area and the conduct of business by the Owners and Permittees, shall be diligently prosecuted to completion, and shall otherwise be performed in compliance with the provisions of Article 3. In connection with a work of construction performed within Building Areas, incidental encroachment upon Common Area may occur as a result of the use of ladders, scaffolding, storefront barricades, temporary staging and/or storage areas, and similar facilities resulting in temporary obstruction of portions of the Common Area, all of which shall be permitted hereunder if prior written consent of the Declarant is obtained and if the use is limited to the reasonable requirements of construction work expeditiously pursued. Common Areas may be utilized (i) for ingress and egress of vehicles transporting construction materials and equipment and persons employed in connection with any work provided for herein, and (ii) for temporary storage of materials and vehicles being utilized in connection with such construction, in each case in areas designated and approved by Declarant, subject to all of the other terms and conditions of this Declaration.

(e) Doors and Exits. The opening onto the Common Area of doors and other exits of buildings located in the Building Areas contiguous to the Common Area.

(f) Foundations, Footings, Overhangs, and Canopies. Installation, repair, replacement, and maintenance of building foundations, footings, columns, overhangs and canopies extending from any portion of the Building Area of any Parcel, over, onto, under, and into the Common Area; provided, however, that the same shall be subject to the approval of Declarant; and such building foundations, footings and columns shall not extend beyond a lateral distance of two feet (2') from the applicable Building Limit Line.

(g) Encroachments. Minor encroachments of building overhangs, canopies, support columns, eaves, signs, pilasters, and other building columns or pillars extending from a Building Area over, into, and onto the Common Area; provided, however, that no such encroachment may in any event extend beyond the vertical plane of the outside edge of a sidewalk in the Common Area adjoining a Building Area perimeter and shall not unreasonably restrict the visibility of, or accessibility to, any building constructed or to be constructed in a Building Area. If necessary, the Owners agree to cooperate in obtaining any lot line adjustment necessary to correct the effect of any such minor encroachments at the cost and expense of the party causing the encroachment. All other costs of any encroachment shall be paid by the encroaching party. Notwithstanding anything to the contrary in this Declaration, Declarant reserves the right, in Declarant's sole and absolute discretion, to exempt from this Declaration any improvement situated upon real property outside the Shopping Center which improvement encroaches upon real property within the Shopping Center, and to encumber property within the Shopping Center with any separate agreement(s) concerning such encroaching improvements.

(h) Repairs, Maintenance, and Replacement. Ingress, egress, and access over, along, and under each Owner's Parcel (other than in buildings) for the purpose of effectuating any necessary repairs, maintenance, or replacements with respect to the common non-exclusive easements

and other rights granted in this Declaration with respect to each Parcel, as permitted in this Declaration. In such event, the party performing the work shall minimize any interference with the other Owners and Occupants and, except in the event of emergency, shall provide reasonable advance notice of such work.

2.5 Restriction. No Owner shall grant any easement for the purpose set forth in this Article 2 for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by an Owner on its Parcel to governmental or quasi-governmental authorities or to public utilities.

### ARTICLE 3 CONSTRUCTION

#### 3.1 General Requirements.

(a) Compliance with Laws. Each Owner agrees that (i) all construction activities performed within the Shopping Center, (ii) any use by such Owner in the Shopping Center, and (iii) all operations by such Owner in the Shopping Center, shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof, including, without limitation, those relating to zoning and Hazardous Materials (as defined in Section 5.1(g)(i)). Each Owner shall use commercially reasonable efforts to cause its Permittees to comply with the requirements of this Section 3.1(a). Every building constructed in the Shopping Center following the effective date hereof, shall be equipped with automatic sprinkler systems if not considered a free standing building pursuant to local building codes or if required to do so by applicable governmental laws and regulations. Each Owner further agrees that its construction activities shall not: (i) cause any unreasonable increase in the cost of constructing improvements upon another Owner's Parcel; (ii) unreasonably interfere with construction work being performed on any other part of the Shopping Center; (iii) unreasonably interfere with the use, occupancy, or enjoyment of any part of the remainder of the Shopping Center by any other Owner or its Permittees; or (iv) cause any building located on another Parcel to be in violation of any law, rule, regulation, order, or ordinance authorized by any city, county, state, federal government, or any department or agency thereof.

(b) Indemnification. Each Owner shall indemnify, defend, and hold the other Owners and their respective Permittees harmless for, from and against any and all liability, loss, costs, damage, injury, expense, allegation, or claim, including, without limitation, reasonable attorneys' fees (collectively, "**Liabilities**") arising by reason of injury to or death of Persons, damage to property or claims of lien for work or labor performed, materials or supplies furnished, arising out of, or in connection with, use by the indemnifying Owner of the easements granted hereunder or the exercise by such Owner of the rights granted in this Declaration, or any breach of the terms of this Declaration or violation of applicable law, provided that such Liabilities are not due to the negligence or intentional act or omission of the indemnitee. Any Owner may contest any lien or claim of lien asserted against such Owner, such Owner's Parcel, or any Parcel affected by such Owner's use of any of the easements granted hereunder or the exercise by such Owner of the rights granted in this Declaration; provided, however, that such Owner shall pay and fully discharge any such claim of lien within five (5) days after entry of final judgment adverse to such Owner in any action to enforce or foreclose the same, which judgment shall be deemed final when the judgment can be enforced by execution or judicial sale, and no such judgment shall be considered final for the purposes hereof during the pendency of a stay of execution in connection with an appeal. If any Owner contests any claim of lien, such Owner



shall, as a condition to such Owner's right so to contest, (i) procure and record a bond of a responsible corporate surety in such amount as may be required to release the lien from the Parcel of any other Owner upon which such lien has been imposed, or (ii) provide such indemnities or adequate assurances to the Owner whose Parcel is affected as may be required to induce the title insurance company insuring the affected Parcel with respect to the proposed transaction to issue its policy of title insurance not showing the lien claim as an exception to title to the affected Parcel.

(c) Temporary License. Each Owner hereby grants and conveys to each other Owner and to its respective contractors, subcontractors, materialmen, and laborers a temporary license for access and passage over and across the Common Area of the grantor's Parcel as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Parcel; provided, however, that such license shall be in effect only during periods when actual construction and/or maintenance is being performed, and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by other Owners or Permittees that are operating in the Shopping Center. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license, and shall furnish a certificate of insurance showing that its contractor has obtained at least the minimum insurance coverage required by this Declaration. Any Owner availing itself of the temporary license shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as reasonably possible, and shall promptly clean the area and restore the affected portion of the Common Area to a condition which is equal to or better than the condition that existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, subcontractors, materialmen, laborers, suppliers, and/or others connected with construction activities, each Owner shall have the right to prohibit the contractors, subcontractors, materialmen, laborers, suppliers, and/or others performing work for another Owner from using the Common Area on the prohibiting Owner's Parcel.

3.2 Common Area. The Common Area of the Shopping Center shall be initially configured as shown on the Site Plan. Notwithstanding any other term or provision of this Declaration, Declarant and/or the Owner of Parcel 1 shall have the right to make changes to the Site Plan so long as the changes do not materially and adversely affect any other Owner or Occupant.

(a) Lighting. The Common Area lighting shall be controlled by Declarant, except as otherwise agreed in a subsequent written agreement between Declarant, or its successor-in-interest, and any subsequent Owner of any Parcel. The type and design of any future Common Area light standards shall be approved by Declarant. Outside metered controls shall be provided for landscape irrigation systems, electrical service to Shopping Center signs and Parking Area lighting. Occupants with lighting requirements that exceed those of other Occupants (such as 24-hour lighting or brighter lights) shall bear such costs of excess lighting, including, without limitation, the cost of separate meters, as more fully set forth in Section 4.2(d) below. Except as otherwise set forth in this Declaration, Declarant shall make a reasonable and equitable allocation among the Owners of all lighting charges relating to the Common Area.

(b) Materials. All sidewalks and pedestrian aisles shall be concrete or other materials approved by Declarant; the Parking Area, drives, and access roads shall be designed in conformity with the recommendations of a registered soils engineer approved by Declarant which shall require the installation of a suitable base and the surfacing with an asphaltic concrete or concrete wearing material.

(c) Underground Utility Facilities. Utility Facilities that are placed underground shall be at depths designated by consultants approved by Declarant. Outside metered controls shall be provided for landscape irrigation systems and electrical service to Shopping Center signs.

### 3.3 Building Improvements.

(a) Limited to Building Areas. Subject to the provisions regarding “Encroachments” and “Foundations, Footings, Overhangs, and Canopies” contained Section 2.4(f) and Section 2.4(g) above, all buildings shall be located only within the Building Areas and Building Limit Lines designated on the Site Plan, and the Maximum Building Area designated for any Building Area shown on the Site Plan shall not be exceeded.

(b) Architectural Theme. Declarant has established an architecturally compatible theme for the exterior of all buildings to be constructed, placed, or located within the Shopping Center. In order to ensure compliance with such theme, each Owner shall submit to Declarant detailed plans (“**Plans**”) covering the construction of each building and any additions, remodeling, reconstruction or other alteration that changes the exterior thereof for approval prior to the commencement of any such work on such Owner’s Parcel, such approval not to be unreasonably withheld, conditioned or delayed. Upon the issuance of any disapproval or recommendation for change, the submitting Owner and Declarant shall mutually consult to establish approved Plans for the proposed work. Declarant may, in its reasonable discretion, withhold approval of the Plans or recommend changes in the Plans. From time to time, Declarant may establish design criteria for the exterior of all buildings to be constructed on the Shopping Center. In no event shall Declarant require any other Owner to utilize design standards superior to those utilized by the Declarant in the construction of buildings on its Parcel. Approval of Plans by the Declarant shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws.

## ARTICLE 4 MAINTENANCE AND REPAIR

### 4.1 Utility Facilities.

(a) Maintenance of Separate Utility Facilities. Each Owner shall maintain and repair, or cause to be maintained and repaired, in a good and safe condition, all Separate Utility Facilities utilized exclusively by such Owner regardless of where located. Any maintenance and repair of non-dedicated utilities located on another Owner’s Parcel shall be performed only after thirty (30) days’ notice to the Owner of the Parcel (except in an emergency the work may be initiated with reasonable notice) and shall be performed after normal business hours whenever possible and shall otherwise be performed in such a manner as to cause as little disturbance in the use of the grantor Owner’s Parcel as is practicable under the circumstances. Any Owner performing or causing to be performed maintenance or repair work agrees to promptly pay all costs and expenses associated therewith, to diligently complete such work as quickly as reasonably possible and to promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition that existed prior to the commencement of such work.

(b) Maintenance of Common Utility Facilities. Common Utility Facilities shall be maintained and replaced as part of the Common Area pursuant to Section 4.2 below.



4.2 Operation and Maintenance of the Common Area. Declarant shall manage, maintain and operate the Common Area, including, but not limited to, Exclusive Parking Control Area, roads, sidewalks, landscaping, drainage, Common Utility Facilities, and lighting facilities, in good order, repair and condition, in compliance with all laws, rules and regulations, orders and ordinances of governmental agencies having jurisdiction thereof, and to a level consistent with other retail shopping centers of similar size, quality, and nature within the metropolitan area where the Shopping Center is located. Declarant's obligation to maintain and operate the Common Area shall include, but not be limited to, the following:

(a) Paved Areas. Maintaining all paved surfaces and curbs of the Common Area in a smooth and evenly covered condition, which maintenance work shall include, without limitation, cleaning, sweeping, restriping, repairing, and resurfacing of the Parking Area and curbs, using surfacing material of a quality equal or superior to the original surfacing material.

(b) Debris and Refuse. Removal of all papers, debris, filth, refuse, and sweeping the Common Area to the extent necessary to keep the Common Area in a first-class, clean, and orderly condition; provided, however, that each Owner shall install, operate, and properly maintain, or cause to be so installed, operated, and maintained, on its Parcel, without cost or expense to the other Owners and so as not to be visible to the general public shopping at the Shopping Center, only in areas shown on the Site Plan or otherwise approved by the Declarant, sufficient trash compactors, bailers, and enclosed trash bins, and shall purchase trash receptacles as required for use in connection with storage of all trash, refuse, and waste materials of the Occupants of such Owner's Parcel, unless otherwise set forth in an applicable lease. Each Owner shall take, or cause to be taken, without cost or expense to the other Owners, all necessary measures to keep its respective Parcel(s) free from all debris and rubbish caused by or emanating from such trash compactors, bailers, and enclosed trash bins.

(c) Signals and Markers. Placing, keeping in repair, painting, replacing, and repainting any appropriate directional/traffic signs, markers, curbs, and lines, in Declarant's reasonable discretion.

(d) Parking Area Lighting. Except to the extent otherwise set forth in Section 3.2(a), operating, keeping in repair, cleaning, and replacing when necessary such Common Area lighting facilities as may be reasonably required, including all lighting necessary or appropriate for Common Area security and exterior lights attached to buildings located on Building Areas that are intended to illuminate only the Common Area. Declarant reserves the right to charge any Owner or other Occupant for any excess lighting usage, including, without limitation, for the cost of separate meters and for lighting used during any period beyond the normal hours of operation of a majority of Occupants of the Shopping Center, through the installation of separate meters or other equitable means reasonably selected by Declarant.

(e) Landscaped Areas. Maintaining, cleaning and replacing as necessary all landscaped areas and materials (including landscaping and planters adjacent to exterior walls of buildings and irrigation facilities pertaining thereto) within the Shopping Center, all of which for purposes of maintenance only (and inclusion in Common Area Maintenance Costs) shall be treated as Common Area landscaping for purposes of this Declaration, and the repairing of automatic sprinkler systems or water lines in the Common Area, weeding, pruning, fertilizing, or making replacement of shrubs and other landscaping as necessary.

(f) Common Utility Facilities. Maintaining, cleaning, replacing and repairing any and all Common Utility Facilities, including all common storm drains, utility lines, sewer, and other utility systems and services located in the Common Area that are necessary for the operation of the Common Area and the Building Areas, and any buildings and improvements therein within the Shopping Center.

(g) Obstructions. Use commercially reasonable and diligent efforts to keep the Common Area free from obstructions not required or permitted hereunder, including, but not limited to, keeping the Common Area free from obstructions caused by sale or display of merchandise outside the exterior walls of buildings within the Building Areas.

(h) Shopping Center Signs. In the event any shared signage is installed in the Shopping Center, then the maintenance and repair of such shared signage, including, without limitation, the cost of installing, maintaining, and operating (including power) of any such shared signage. All future signage for the Shopping Center shall comply with applicable law and with the sign criteria established by the Declarant. In the absence of any shared signage, the Owner whose business (or tenant's business) is advertised on any sign shall pay for the entire maintenance cost of such sign (other than power in the event the same is not separately metered).

(i) Common Use Facilities. Maintaining and keeping in good condition any common use facilities.

(j) Sidewalks. Cleaning (including washing and/or steam cleaning), maintenance, and repair of all sidewalks (collectively, "*Sidewalk Maintenance*"), (excluding sidewalks adjacent and contiguous to buildings located on Building Areas) including those situated on the perimeter boundaries of the Shopping Center. Any Occupant who has the right to use an Exclusive Use Area shall clean, maintain and repair any sidewalk within such Exclusive Use Area. In the event any of the foregoing Owners or Occupants shall fail to perform their Sidewalk Maintenance obligations, Declarant shall be entitled, but not obligated, to perform or cause to be performed such obligations on behalf of the Owner or Occupant and to bill the Owner or Occupant for the cost of such services.

(k) Governmental Requirements. Making commercially reasonable and diligent efforts to comply with all applicable requirements of governmental agencies pertaining to the Common Area, including, without limitation, any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about the Common Area under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to the Common Area.

(l) Rules. Making reasonable efforts to enforce rules and regulations established pursuant to this Declaration, which rules and regulations Declarant may establish from time to time.

(m) Oversight of Hazardous Waste Remediation. Management or oversight of any hazardous waste remediation or clean-up undertaken in connection with the Shopping Center, in the sole discretion of Declarant, but without any obligation to do so (unless Declarant shall be under a legal obligation to do so).

(n) Security. If Declarant deems it necessary, provision of security services in the Common Area during days and hours determined by Declarant. In the event Declarant elects to provide security services, neither Declarant nor its members, partners, managers, officers, shareholders, agents,

servants, employees, successors or assigns shall be liable for criminal conduct, intentional misconduct or other acts of third parties not under the control of Declarant or for the failure of any security personnel to prevent any such act.

(o) Supervisory Personnel. Providing of professional supervisory personnel for the Common Area.

(p) Traffic. Supervision of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.

(q) Transportation Management. Supervision and costs of any governmentally-mandated transportation management program.

(r) Equipment and Supplies. Rental or purchase of equipment and supplies.

(s) Depreciation. Depreciation or trade-in allowance applicable to items purchased for Common Area purposes.

(t) Real Property Taxes. Real property taxes and assessments for the land portion of both Parcel 1 and Parcel 2.

(u) Common Area Liability Insurance. Common Area Liability Insurance as required in section 5.4

(v) Other Duties. Performance of other duties required pursuant to any other provisions of this Declaration that obligate Declarant to perform such duties as part of Declarant's obligations for operation and maintenance of the Common Area, and performance of all other duties that are necessary to operate and maintain the Common Area in a first-class manner and condition.

Notwithstanding anything to the contrary contained herein, each Owner or Occupant shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, any drive through area, any "Recycling Center" (i.e., a recycling center for collection of items intended for recycling, such as, but not limited to, newspapers, bottles and aluminum cans) located on its Parcel, any exterior vending machines located on its Parcel or to be used in connection with its Parcel, and any refuse, compactor, or dumpster area and any Exclusive Use Area located on its Parcel. Recycling Centers shall be in locations approved by the Declarant, such approval not to be unreasonably withheld.

4.3 Payment of Common Area Maintenance Costs. Each Owner shall pay to the Declarant in equal monthly payments, in advance, their Proportionate Share of the Common Area Maintenance Costs attributable to such Owner's Parcel.

Declarant shall reasonably estimate each Owner's Proportionate Share of Common Areas Maintenance Costs each year (and, Declarant may make mid-year adjustments), and each Owner shall make its first payment in the month each Owner acquires the applicable Parcel. Within a reasonable period of time after the end of each calendar year, Declarant shall provide each Owner with a statement setting forth the actual Common Area Maintenance Costs for the prior year and such Owner's Proportionate Share (the "**Statement**"). If the amount paid by an Owner for such calendar year shall

have exceeded its Proportionate Share, Declarant shall credit the excess to such Owner upon such Owner's next invoice, or if the amount paid by an Owner for such calendar year shall be less than its Proportionate Share, such Owner shall pay the balance of its Proportionate Share to Declarant within thirty (30) days after receipt of such Statement. In any event, Declarant, in its reasonable discretion, shall be entitled to change the estimate for Common Area Maintenance Costs by providing thirty (30) days' advance notice to all affected Owners. Within one (1) year after receipt of any Statement, each Owner shall have the right to audit Declarant's books and records pertaining to the operation and maintenance of the Common Area for the calendar year covered by such Statement (which books and records shall be retained at Declarant's principal office or at the principal office of the company hired to perform the maintenance and operation of the Common Area to the extent permitted herein), provided that in no event shall any Owner exercise such audit right more than once per calendar year and in no event shall any Owner use contingency fee auditors, and the Owner shall notify Declarant in writing of its intent to audit at least thirty (30) days prior to the designated audit date. In the event such audit shall disclose any error in the determination of the Common Area Maintenance Costs, Management Fee or in the allocation thereof to a Parcel, an appropriate adjustment shall be made. The cost of any audit shall be assumed by the auditing Owner unless such Owner shall be entitled to a refund in excess of five percent (5%) of the amount calculated by Declarant as its Proportionate Share for the applicable calendar year, in which case Declarant shall pay the reasonable costs and expenses of such audit.

Any and all delinquent amounts payable hereunder together with interest shall be a lien and charge upon all of the Parcel or Parcels of such defaulting Owner within the Shopping Center subject to, and junior to, and shall in no way impair or defeat the lien or charge of any bona fide mortgage or deed of trust upon the same or any part thereof existing prior to the recording of such lien or charge. The lien shall attach and take effect only upon the claiming Party's recordation of a claim of lien in the Office of the Recorder of Klamath County, Oregon. The claim of lien shall include the following: (i) the claiming party's name; (ii) the basis for the claim of lien; (iii) an identification of the owner or reputed owner of the interest against which the lien is claimed; (iv) a description of the interest against which the lien is claimed; (v) a statement of the amount owing; and (vi) that the lien is claimed pursuant to this Declaration, reciting the date, book and page of recordation hereof. The notice shall be duly acknowledged and contain a statement that a copy thereof has been served upon the Owner against whom the lien is claimed, by notice as required under this Declaration. The lien shall attach from the date of recordation in the amount claimed thereby and for any amounts subsequently accruing until such claim is released. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the party recording such notice shall record a notice of satisfaction and release of lien. In addition to the foreclosure procedure described below and the other remedies provided in this Declaration, Declarant may enforce delinquent assessments, including delinquent installments, by suing an Owner directly on the debt established by the assessment. No party shall be limited to one form of action in enforcing and collecting said assessments. Each party may commence and maintain a lawsuit directly on the debt without waiving the right to enforce the lien against the Parcel for the delinquent assessments.

#### 4.4 Building Improvements.

(a) Each Owner covenants and agrees to maintain and keep, or cause to be maintained and kept, the building improvements located on its Parcel in first-class condition and state of repair, subject to ordinary wear and tear, and use and conduct its operations in the Shopping Center in compliance with all applicable governmental laws, rules, regulations, orders, and ordinances, and in

compliance with the provisions of this Declaration. Each Owner further agrees to store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the Parking Area, and to arrange for regular removal of such trash or garbage to maintain the required first-class condition.

(b) In the event any of the building improvements are damaged by fire or other casualty (whether insured or not), the Owner upon whose Parcel such building improvements are located shall immediately remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the building improvements so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this Declaration; or (ii) erect building improvements in such location, such construction to be performed in accordance with all provisions of this Declaration; or (iii) pave and/or landscape over the Building Area on its Parcel, which Building Area shall then become part of the Common Area until the Owner later rebuilds on its Parcel in accordance with the provisions of this Declaration. Such Owner shall give notice to each other Owner(s) within ninety (90) days from the date of such casualty of which alternative it elects and shall promptly complete the required work. During the period of any such work, the Owner upon whose Parcel(s) the damaged building is situated shall maintain and operate the Common Area on its Parcel unless Declarant elects to maintain and operate the Common Area on such Owner's Parcel, in the sole discretion of Declarant, in which event, any additional costs of maintaining and operating the Common Area on such Owner's Parcel shall be paid for by such Owner.

4.5 Takeover of Maintenance of Common Area. In the event (i) Declarant sells Parcel 2, or (ii) desires to cease operating and maintaining the Common Area, the Owner of Parcel 1 (or in the event Parcel 1 has been subdivided, the owner of the largest Parcel in the Shopping Center) shall thereafter assume all the rights and duties of the Declarant and Declarant shall execute an assignment of declarant's rights to said Owner, which shall be recorded in the appropriate public record. Such successor shall have, during their period of operation and maintenance of the Common Area, all rights of the Declarant hereunder in connection with the operation and maintenance of the Common Area, including the right to issue statements and receive a management fee as provided herein. Notwithstanding anything to the contrary in this Declaration, an Owner shall maintain or cause its Occupant to maintain any Exclusive Use Area granted in favor of such Owner or such Owner's Occupant (which Exclusive Use Area, if any, shall not be deemed to be part of the Common Area).

4.6 Maintenance of Certain Portions of Common Area within an Owner's Parcel.

Declarant may, from time to time, enter into arrangements with other Owners, in Declarant's reasonable discretion, regarding the obligation to maintain portions of the Common Area and/or pay the costs of such maintenance. Declarant and any Owner may agree that such Owner shall be obligated, at its sole cost and expense, to maintain all or a portion of the Common Area on its Parcel. The building or land area of an Owner that maintains such Common Area shall be excluded from the total building or land area of the Shopping Center (as applicable) for the purpose of calculating the Proportionate Share of the other Owners or Occupants.

Any Owner or Occupant whose use of the Common Area adjacent to its building exceeds normal usage shall pay the cost of additional services, if any, that may be furnished by Declarant or its agents to repair and maintain such adjacent Common Area, including, without limitation, the cost of excess steam cleaning, trash removal and sweeping. In the event any Owner or Occupant shall fail to repair or maintain any portion of the Common Area adjacent to its Building, if



required by the terms of this Declaration or any separate agreement entered into between such Owner or Occupant and Declarant, Declarant shall have the right, but not the obligation, to repair or maintain such portion of the Common Area for and on behalf of such Owner or Occupant. In such event, Declarant shall be entitled to recover from the responsible Owner or Occupant the costs of such repairs or maintenance plus interest at the Interest Rate (as defined in Section 6.2 below) from the date of demand.

## ARTICLE 5 OPERATION OF THE SHOPPING CENTER

### 5.1 Uses.

(a) Permitted Uses. "***Permitted Uses***" shall mean retail sales and services, or other related commercial uses; provided, however, that no Prohibited Use (as defined below) shall be a Permitted Use.

(b) Prohibited Uses. "***Prohibited Uses***" shall mean any of the following uses:

(i) Any use that constitutes a public or private nuisance or that emits an obnoxious odor, noise, or sound that can be heard or smelled outside of any building on a Parcel (excluding odors normally associated with the operation of a restaurant);

(ii) Any operation primarily used as a distribution facility or for any warehouse, assembling, manufacturing, distilling, refining, smelting, agricultural, mining, processing or rendering operation;

(iii) 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, reconstruction, or maintenance);

(iv) Any dumping, disposing, incineration, recycling or reduction of garbage (exclusive of garbage compactors located near the rear of any building);

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order), liquidation or auction house operation and any going out of business sale;

(vi) Any central laundry or dry cleaning plant, provided, however, this prohibition shall not be applicable to any on-site plant contained within and operated as part of a retail dry cleaning and laundry facility;

(vii) Any automobile, truck, trailer, or recreational vehicle sales, display or storage (as opposed to temporary parking of automobiles or equipment) for so long as the Coastal Lease is in force and effect. Thereafter, subject to local code, vehicle dealerships shall be permitted. Notwithstanding the foregoing, this provision shall not prohibit the sale of tires, batteries, accessories, or auto parts or the conduct of motor vehicle repairs if conducted entirely from the interior of such Owner's building.

(viii) Any hotel or motor inn, living quarters, sleeping apartments, or lodging rooms;



(ix) Animal raising or storage facilities (except that this prohibition shall not prohibit pet stores or a veterinary facility); provided further, that no overnight boarding of any animal or pet shall be permitted unless such overnight stay is required in connection with a surgical procedure;

(x) Any mortuary or funeral home;

(xi) Pornographic book store or store selling or renting pornographic or obscene films, videos, magazines, books, photographs or other material or other immoral uses (provided, however, a video store may sell or rent adult videos as an incidental part of its business, provided (a) such business is not advertised or prominently displayed; and (b) the display area for such adult videos is separately located from the main display area and not readily visible from the exterior of the store;

(xii) Any carnival or amusement park;

(xiii) An off-track betting parlor, gambling or gaming facility;

(xiv) Emission of microwave, radio wave, or other similar electronic, light or noise radiation at levels that are dangerous to health or that interfere with the proper operation of electronic, telephone, computer or other business equipment of Owners or Occupants, provided that the foregoing shall not preclude the operation of a (i) telephone/cellphone store that includes a lawfully-operated satellite dish or antenna to demonstrate and facilitate the sale of cellular phone service, or (ii) a cell site for the transmission and re-transmission of cellular/pager signals; or

(xv) Any use in violation of any zoning regulations of applicable governmental authority.

(c) Exclusive Uses.

(i) General Provisions Regarding Exclusive Use. Except as otherwise set forth in this Declaration, the following general provisions regarding Exclusive Use rights (as hereinafter defined) shall apply. The Occupants and Owners described in **Exhibit C** (individually, the "**Occupant Holding an Exclusive**") and any other successor Owner or Occupant, to whom an Exclusive Use is or has been granted, shall have the right to operate within the Shopping Center, on an exclusive basis as against other Owners and Occupants, as described in **Exhibit C** (the "**Exclusive Use**"), on the following general terms and conditions:

(A) Except as otherwise provided herein, the Occupant Holding an Exclusive shall have the exclusive right in the Shopping Center as now or hereafter constituted, as against other Owners and Occupants, to operate and conduct the Exclusive Use (on the Exclusive Use Parcel, if any), subject to the limitations set forth in this Declaration.

(B) The provisions contained in this Section 5.1(c) shall be deemed to be null and void and of no further force and effect to the extent that these provisions are prohibited by the Federal Trade Commission or by any federal, state or local law, but the Owners expressly agree that in such event and within thirty (30) days after receipt of notice of any violation of any federal, state or local law, ordinance or regulation, the Owners will in good faith renegotiate these provisions to bring the same into conformance with applicable law.

(C) Except as otherwise provided herein, no Owner or other Occupant may change its use to a use that violates the applicable Exclusive Use rights of another Owner or Occupant.

(D) The Exclusive Use rights granted herein shall be of no force or effect in the event the applicable lease or occupancy agreement of an Occupant terminates, or in the event the applicable Exclusive Use is not used for a period of twelve (12) months or longer, unless a shorter period is set forth in the applicable lease or occupancy agreement.

(d) General Restrictions. No merchandise, equipment, or services, including, but not limited to, vending machines, video games, amusement games, children's rides, vendor carts, promotional devices, or similar items, shall be displayed, offered for sale, leased, or stored within the Common Area other than normal outdoor merchandise sales and displays in connection with Coastal; provided, however, that the foregoing prohibition shall not be applicable to (i) the storage of shopping carts in areas adjacent to the entrances of the buildings occupied by Occupants; (ii) sidewalk sales that conform to the requirements of this Declaration and are approved by Declarant; or (iii) the placement of public telephones and drinking fountains in areas approved by Declarant. There shall be no distribution of flyers, circulars, or advertisements in, on, or from the Common Area, nor solicitation therein. There shall be no outdoor loudspeakers used that project amplified sound from any Building Area, except for speakers commonly used in connection with the operation of drive-up or drive-through window(s) by an Occupant. Neither inflatable advertising devices, nor hand-held portable signs, banners, and flags are permitted in the Common Area. All doors and roll-up doors shall be closed when not in use. Other than in connection with the operation of Coastal, no outdoor or overnight storage of any items is permitted.

(e) Employee Parking and Deliveries. Declarant may from time to time establish (i) reasonable, uniform and nondiscriminatory employee parking regulations, and (ii) reasonable, uniform and nondiscriminatory regulations with respect to delivery, service, and Shopping Center use-related vehicles, times of delivery, and places of delivery. All engines of trucks and other delivery vehicles must be turned off when not in use. No stationary refrigeration trucks shall operate earlier than 6:00 a.m. or later than 10:00 p.m., or such other hours as may be prescribed by applicable law. Such regulations shall apply to the entire Shopping Center in order to ensure that the maximum number of convenient parking spaces in the Parking Area are available for use by Permittees. Declarant shall enforce the regulations promulgated hereunder against all Occupants of the Shopping Center in a reasonable and nondiscriminatory manner as part of the operation and maintenance of the Common Area. Each Owner or Occupant shall require its employees and the employees of its tenants, agents, contractors, licensees and concessionaires to use only such sections as are so prescribed for parking on its Parcel or any of the permissible employee parking areas, if any, shown on the Site Plan or designated from time to time by Declarant. Each Owner or Occupant agrees to use reasonable efforts to enforce the provisions hereof. Notwithstanding the prohibition on overnight parking in this Declaration, employees of any Owner or Occupant who are working at night shall be permitted to park in the Shopping Center at night. No employee shall be permitted to park in the Shopping Center for any continuous period exceeding twenty-four (24) consecutive hours.

(f) Parking Area Levies, No Parking Areas. No Owner shall impose or attempt to impose any charge or service fee, or exact any other consideration in exchange for the right of a Permittee to enter or depart from or park a motor vehicle in the Shopping Center or Exclusive Parking Control Area in connection with the use of the Common Area for purposes contemplated therein, unless such charges are lawfully ordered by appropriate governmental authority having jurisdiction over the

Shopping Center. If an appropriate governmental authority imposes a surcharge or regulatory fee on customer or employee parking, or based on the number of parking spaces within the Shopping Center, or any other similar fee or charge, then all Owners and Occupants of the Shopping Center, by mutual agreement, shall use their best efforts to institute a uniform fee collection parking system for the Shopping Center. The Owners of Parcel 1 and Parcel 2 shall work together in good faith to designate "no parking" areas in the Shopping Center from time to time in such locations as are reasonably necessary to preserve smooth traffic flow. Each Owner shall use reasonable efforts to enforce any such no parking areas in the vicinity of its building(s) with respect to its employees, agents, invitees, customers, guests, contractors, licensees and concessionaires. Declarant shall use reasonable efforts to enforce all such no parking areas and Declarant reserves the right to tow and impound any vehicle parked in a no parking area. Designated fire lanes shall be posted with no parking signs

(g) Hazardous Materials.

(i) Definition. "**Hazardous Materials**" shall mean (a) petroleum or petroleum products, or any fractions thereof, oil, grease, natural or synthetic gas, (b) any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any "**Hazardous Materials Laws**" (as defined below), and (c) any other substance exposure to which is regulated under any Hazardous Materials Laws. "Hazardous Materials Laws" shall mean the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 *et seq.*; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 1801 *et seq.*; the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.; § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("**CERCLA**"); and any other federal, state or local law, regulation or interpretation thereof, whether currently in force or enacted in the future, which regulates or proscribes the use, storage, disposal, cleanup, transportation, release or threatened release into the environment or presence of materials or substances that have been determined to be a nuisance or dangerous, toxic or hazardous or a pollutant or contaminant. The term includes any licenses, permits, plans or approvals generated pursuant to any such Hazardous Materials Law.

(ii) Operation. The operation of the Shopping Center shall be subject to the following provisions:

(A) Each Owner and Occupant shall at all times in the conduct of its business in the Shopping Center comply with all applicable Hazardous Materials Laws, including, without limitation, those pertaining to the use, operation, storage, transportation, release or sale of any Hazardous Materials on, under, or about the Shopping Center. No Owner or Occupant shall be permitted to use, store or sell Hazardous Materials in or about the Shopping Center except that the Owner or Occupant of any Parcel may transport, store and sell Hazardous Materials in reasonable quantities from its Parcel of the type typically sold from similar businesses, or typically used in connection with the operation of similar businesses, provided that at all times, the Owner or Occupant complies with all Hazardous Materials Laws then in effect. Such obligations of each Owner and Occupant shall include, without limitation, the obligation to operate in the Shopping Center at all times in compliance with Hazardous Materials Laws;

(B) Each Occupant shall promptly provide each Owner copies of any notices to comply, notices of violation, or citations received by the Occupant, and copies of all reports required to be filed by the Occupant pursuant to Hazardous Materials Laws in connection with or relating to the transport, storage, disposal, cleanup, release, threatened release, and sale of Hazardous Materials on, under, or about the Shopping Center. Following the delivery of such notice, the Occupant shall provide each Owner with such information, reports, proof of compliance, notice of potential liability or other information pertaining to the matters set forth herein as each Owner may reasonably request;

(C) In the event that any Hazardous Materials are released or discharged on, under or about the Shopping Center in violation of the provisions of Hazardous Materials Laws or this Declaration as a result of an Owner's or Occupant's use or occupancy thereof, such responsible Occupant or Owner, at their sole cost and expense, shall take such action as may be required under the Hazardous Materials Laws or any order from any court or other governmental agency with jurisdiction over such matters to achieve remediation that satisfies governmental requirements and such that each Owner shall be reasonably satisfied that (i) the Shopping Center will not be adversely affected by such discharge in any way, and (ii) no Owner (other than the offending Owner or Occupant), shall be subject to any liability for such discharge or contamination. The offending Owner or Occupant shall provide each Owner with copies of any remediation plan on the earlier of the date of submission to any governmental agency or court having jurisdiction over the matters addressed in such plan, or at least twenty (20) days prior to the implementation of such plan, whichever is earlier (except in cases of emergency, in which event such offending Owner or Occupant shall provide each Owner with copies of such plan as soon as reasonably possible following the preparation of such plan); and

(D) All remediation and other work performed at the Shopping Center shall be performed by contractors and/or consultants licensed to perform such work under Hazardous Materials Laws, and shall be performed at such times and in such a manner as to minimize, to the extent commercially reasonable, any interference with the normal conduct of business in the Shopping Center. Any contractor or consultant retained to conduct any remediation at the Shopping Center shall be experienced and qualified to perform the tasks required by the remediation, shall be reputable within such industry, and shall be reasonably approved by Declarant in advance. Any contractors and consultants performing such remediation work at the Shopping Center shall maintain and provide evidence of insurance coverage that, in the reasonable judgment of Declarant, is customary for the performance of such work. At least twenty (20) days prior to the execution of any contract with any consultant or contractor pertaining to the remediation plan, the Owner or Occupant shall provide Declarant with a copy of the proposed contract for review and comment.

(iii) Indemnity. Each Owner and Occupant shall indemnify, defend by counsel reasonably satisfactory to any affected Owner, and hold each Owner and its respective directors, officers, agents, employees, partners, shareholders, affiliates, independent contractors, consultants, and their respective successors and assigns, and any Occupants of the Shopping Center, harmless from and against any and all costs, liabilities, claims, actions, demands, directives, suits, orders, judgments, violations, alleged violations or obligations arising from or relating to:

(A) The generation, processing, use, management, treatment, storage, disposal, cleanup, transportation, decontamination, or release or threatened release of Hazardous Materials on, under, or about or emanating from the Shopping Center, as a result of or in connection with such Owner's or Occupant's use or occupancy of the Shopping Center;

(B) The violation by such Owner or Occupant or its employees, agents, contractors or servants of any Hazardous Materials Laws pertaining to its activities at the Shopping Center; and

(C) All costs and expenses relating to or resulting from the remediation of any Hazardous Materials discharged, deposited, placed, or spilled upon the Shopping Center by such Owner or Occupant or its employees, agents, contractors or servants.

(iv) Breach of Hazardous Materials Obligations. In the event that any Owner or Occupant breaches any of its obligations hereunder, any affected Owner shall have the right, but not the obligation, after giving notice to the breaching Owner or Occupant (and whether or not the breaching Owner or Occupant consents), to:

(A) Enter the applicable portion of the Shopping Center for the purpose of inspecting, testing for and monitoring Hazardous Materials, including, but not limited to, the taking of soil and/or groundwater samples and/or the installation of soil borings;

(B) Perform directly or through agents, contractors, consultants or others any of the work or obligations of such breaching Owner or Occupant under this Section in connection with any remediation of Hazardous Materials;

(C) Charge all reasonable costs and expenses of such Owner's performance under this Section to the breaching Owner or Occupant, who shall pay the same upon written demand. Such costs and expenses shall include all costs of remediation and any payment, settlement or compromise made by such Owner in good faith of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication arising in connection with any remediation, without the approval or consent of the breaching Owner or Occupant.

The rights of any Owner specified herein are intended to be cumulative with all other rights that such Owner may have at law or in equity. The election of an Owner to pursue a right granted herein shall not be deemed an election to waive or forego any other such rights. Any reasonable non-negligent action taken by an Owner in good faith pursuant to this Section 5.1(g) shall be covered by the indemnity given by the Owner and/or Occupant in this Section. No Owner shall have any liability to any Owner or Occupant for any reasonable non-negligent actions taken in good faith pursuant to this Section 5.1(g). In the event that any amount due from an Owner and/or Occupant to another Owner hereunder is not paid when due, interest shall accrue upon such amount from the date of demand until paid at the Interest Rate set forth in Section 6.2 below.

5.2 Lighting. After completion of the Common Area lighting system on its Parcel, each Owner hereby covenants and agrees to keep its Parcel fully illuminated during all non-daylight hours between 6:30 a.m. and 10:30 p.m. Monday through Sunday. [Each Owner further agrees to keep any exterior building security lights on from dusk until dawn. During the term of this Declaration, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one Parcel to incidentally shine on adjoining Parcels.

### 5.3 Signs.

(a) Sign Criteria. All signage on the Shopping Center shall conform to Declarant's reasonable sign criteria in all respects, including, without limitation, style of signs, wording, size,



appearance, color, arrangement of the names of Occupants, materials, lighting and location. No freestanding signs shall be located on the Shopping Center except in the areas designated for the location of such signs in the plans submitted by each constructing Owner and approved by the Declarant and no sign advertising the business of any Parcel may be located on another Owner's Parcel, without the prior written consent of the Owner on whose Parcel such sign is to be located, in such Owner's sole discretion. No signs that deviate from the requirements of such plans shall be erected without the prior approval of the Declarant as to all sign characteristics, including, without limitation, size and appearance, style, priority and arrangement of names, wording and height. All signs on the Shopping Center shall conform to the requirements of applicable law and the sign criteria. Notwithstanding anything to the contrary contained in this Section 5.3, all signage currently located on the Shopping Center as shown on the Site Plan shall be permitted to remain and may be replaced (subject to applicable code requirements) with updated signage and/or the signage of any new business replacing the business currently identified on such sign.

(b) Institutional Signage. Notwithstanding anything above to the contrary, each Owner shall be permitted to place within the Common Area located on its Parcel reasonable directional signs or informational signs such as "Handicapped Parking," or "Drive-Through" areas, the temporary display of leasing information and the temporary erection of a sign identifying each contractor performing a construction job, provided no such sign violates the requirements of applicable law.

#### 5.4 Common Area Insurance and Indemnity.

(a) Common Area Liability Insurance. In addition to its Common Area maintenance obligations, Declarant shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance covering the Common Area of the Shopping Center with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily injury to, or personal injury or death of, any person and consequential damages arising therefrom, and for property damage, arising out of any one occurrence. Each other Owner shall be a "named insured" under such policy and charged a pro rata share of the expense. Declarant shall adjust and settle all insurance claims relating to the Common Area.

(b) Common Area Indemnity. Declarant, so long as it is operating and maintaining the Common Area, shall, to the extent of available insurance proceeds, indemnify, defend, and hold the Owners harmless from and against any and all claims, expenses, liabilities, losses, damages, and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to, or as a result of the death of any Person or any accident, injury, loss, or damage, arising out of the gross negligence or willful misconduct of the Declarant, its officers, agents, servants or employees in maintaining the Common Area, except for such claims released pursuant to Section 5.8 below.

#### 5.5 Building Area Insurance and Indemnity.

(a) Building Area Liability Insurance. Except to the extent coverage is provided by the insurance otherwise required to be maintained under this Declaration, each Owner (as to its Parcel and as to any Exclusive Use Area or other area under the exclusive control of such Owner or Occupant) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of not less than Two Million Dollars (\$2,000,000.00) for bodily or personal injury or death, and for property damage, arising out of any one occurrence.



(b) Building Area Indemnity. Each Owner shall indemnify, defend, and hold the other Owners harmless from and against any and all claims, expenses, liabilities, losses, damages, and costs, including reasonable attorneys' fees, and any actions or proceedings in connection therewith, incurred in connection with, arising from, due to, or as a result of (i) the death of any Person or any accident, injury, loss, or damage, howsoever caused, to any Person or property as shall occur in or about the buildings located on each Owner's Parcel, or in an Owner's Exclusive Use Area, if any, or caused by the negligence or willful act or omission of such Owner or any Occupant of any such Owner's Parcel, or the agents, servants, or employees of such Owner or Occupant, wherever the same may occur, (ii) violation of any laws, rules, regulations or ordinances, including, without limitation, Hazardous Material Laws, (iii) breach of any of the provisions of this Declaration, except (a) for such claims released pursuant to Section 5.8 below, but only to the extent of such release, and (b) claims resulting from the negligence or willful act or omission of the indemnified Owner or any Occupant of any such Owner's Parcel, or the agents, servants, or employees of such indemnified Owner, wherever the same may occur, or (iv) construction, use, occupancy or operations in the Shopping Center.

5.6 Common Area and Building Area Construction Insurance. Prior to commencing any construction activities on the Shopping Center, each Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

- (a) Workers' Compensation - statutory limits;
- (b) Employers' Liability - \$500,000.00;
- (c) Commercial Liability and Business Auto Liability as follows:
  - (i) Bodily Injury - \$1,000,000.00 per occurrence
  - (ii) Property Damage - \$1,000,000.00 per occurrence
  - (iii) Independent Contractors Liability; same coverage as set forth in (a) and (b) above;
  - (iv) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
  - (v) "XCU" Hazard Endorsement, if applicable;
  - (vi) "Broad Form" Property Damage Endorsement;
  - (vii) "Personal Injury" Endorsements; and
  - (viii) "Blanket Contractual Liability" Endorsement.

If the construction activity involves the use of another Owner's Parcel, then such Owner shall be an additional insured and such insurance shall provide that the same shall not be canceled without at least thirty (30) days' prior written notice to the named insureds and each additional insured. If such insurance is canceled or expires, then the constructing Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained.

5.7 ISO "Special Form" Property Insurance. Effective upon the commencement of construction of improvements on its Parcel, each Owner will carry or cause to be carried with respect to all buildings and improvements constructed upon its Parcel, ISO "Special Form" Property Insurance, for ninety percent (90%) of replacement costs, exclusive of foundations and footings, with such coverage extending to at least the perils identified in the then-current standard ISO "Special Form" policy.

5.8 Waiver of Subrogation. Each Owner (the "**Releasing Owner**") hereby releases and waives, for itself and on behalf of its insurer, any other Owner (the "**Released Owner**"), from any liability for any loss or damage to all property of such Releasing Owner located upon any portion of the Shopping Center, which loss or damage is covered by insurance required to be maintained under this Declaration, irrespective either of any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance required hereunder or actually carried, whichever is greater. Each Owner shall obtain appropriate endorsements to its policies of insurance with respect to the foregoing release. Any lease, license, concession, or other agreement entered into between any Owner and an Occupant of its Parcel after the date hereof shall contain a provision releasing and waiving rights of recovery against the Owners to the same extent as the release and waiver contained in this Section and, if such waiver and release is contained in any such agreement with an Occupant, then the waiver and release by each Owner under this Section shall extend to and benefit such Occupant. The provisions of this Section are intended to restrict each Owner and Occupant (as permitted by law) to recover for loss or damage against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each other Owner and Occupant, any rights and/or claims that might give rise to a right of subrogation in any insurance carrier. Each Owner shall, to the extent such insurance endorsement is lawfully available, obtain or cause to be obtained, for the benefit of the other Owners, a waiver of any such right of subrogation that the insurer of such Owner may acquire against the other Owners by virtue of the payment of any such loss covered by such insurance. Failure to obtain such waiver from its insurance carrier shall not affect the release and waiver given by such Owner to the other Owners.

5.9 Policy Form. All insurance required to be maintained by the Owners shall be procured from companies licensed in the state where the Shopping Center is located and shall be rated by Best's Insurance Reports not less than A-/X. The limits of such policies shall be reviewed by the Declarant at least every five (5) years, and adjusted if necessary to reflect changes in limits adopted by reasonably prudent landlords and managers of similar size and type shopping centers in Klamath County, Oregon. All insurance may be provided under (i) an individual policy covering any applicable building(s) or Parcel(s) located in the Shopping Center, or (ii) a blanket policy or policies that includes other liabilities, properties, and locations of such Owner. Each Owner agrees to furnish to any Owner requesting the same a certificate(s) of insurance evidencing that the insurance required to be carried by such Owner is in full force and effect. The insurance required pursuant to Sections 5.4(a) and 5.5(a) above shall include the following provisions:

- (a) That the policy may not be canceled or materially reduced in amount or coverage without at least thirty (30) days' prior written notice by the insurer to each insured and to each additional insured;
- (b) Severability of interests;

(c) That an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to the other named insureds; and

(d) Contractual liability coverage with respect to the indemnity obligations set forth herein.

5.10 Self Insurance. Subject to the terms and conditions of any applicable lease or agreement, if any Owner or Occupant has in effect for all of its stores at any time during the term of this Declaration a program of self-insurance with regard to risks covered by insurance stated in Sections 5.5(a), 5.6 and 5.7, and the Owner's or Occupant's tangible net worth is at least One Hundred Million Dollars (\$100,000,000.00) in Constant Dollars (the "*Minimum Net Worth Amount*"), the Owner or Occupant shall not be required to carry insurance in independent companies as aforesaid, except for the respective amounts by which the limits set forth above exceed the respective amounts for which the Owner or Occupant shall be self-insured under such program. The Owner or Occupant agrees that if the Owner or Occupant shall self-insure any portion of the insurance that the Owner or Occupant is required to carry hereunder, the Owner or Occupant shall release all proceeds of self-insurance in the same manner as a reputable third-party insurance company would if such third-party insurance were obtained instead of self-insurance.

5.11 Damage or Destruction to Common Area. In the event of any damage or destruction to the Common Area on any Owner's Parcel during the term of this Declaration from any cause (whether or not covered under insurance required to be carried hereunder), such Owner shall, promptly after the occurrence of the event of damage or destruction, proceed to restore, repair, or rebuild such damaged or destroyed Common Area to a condition equal to or better than the condition existing prior to the event of such damage or destruction, to the same general appearance as existed immediately prior to such damage or destruction, and in accordance with the applicable standards of this Declaration for an integrated shopping center pursuant to a uniform general plan. Unless such work is carried out pursuant to the original plans and specifications for the Common Area, any plans or specifications for such work or repair and restoration and the cost of the work pursuant thereto shall be subject to the prior approval of the Declarant. Such Owner shall undertake such work in a manner that will cause as little disruption of, and interference with, the use of the remainder of the Common Area and Building Areas as reasonably possible in accordance with the applicable requirements of this Declaration. Such Owner shall use all due diligence to complete restoration and repair of the Common Area hereunder as expeditiously as possible so that the same may be available for use and operating as part of the Shopping Center with as little delay and as little disruption as circumstances will permit.

5.12 Taxes and Assessments. Subject to Section 4.2(t) above in connection with taxes on the land of each Parcel, each Owner shall pay, or cause to be paid prior to delinquency, all real and personal property taxes and all other general taxes and assessments levied or assessed against its Parcel, the buildings, and improvements located thereon and any personal property owned or leased by such Owner on the Shopping Center; provided, that if the taxes or assessments or any part thereof may be paid in installments, the Owner may pay each such installment as and when the same becomes due and payable. Nothing contained in this Section shall prevent any Owner from contesting at its cost and expense any such taxes and assessments with respect to its Parcel in any manner such Owner elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Owner shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

5.13 Liens. Declarant shall keep the respective Parcels free from any and all liens arising out of any work performed, materials furnished to, or obligations incurred by Declarant in connection with the maintenance and operation of the Common Area under Article 4. Declarant shall, within thirty (30) days after the date of the imposition of any such lien on a Parcel, pay the lien claim in full, unless it desires to contest any such lien claim, in which case Declarant shall, within such thirty (30)-day period and as a condition precedent to Declarant's right so to contest, record a bond of a responsible corporate surety in such amount as may be required to release the lien from the affected Parcel or Parcels.

## ARTICLE 6 MISCELLANEOUS

### 6.1 Default.

(a) Events of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Declaration by the non-performing Owner (the "**Defaulting Owner**"):

(i) The failure to make any payment required to be made hereunder within ten (10) days after written notice by Declarant, the third party manager of the Shopping Center or another Owner (a "**Non-Defaulting Owner**") that a payment required to be made by such Defaulting Owner has not been made; or

(ii) The failure to observe or perform any of the covenants, conditions, or obligations of this Declaration, other than as described in paragraph (i) above, within thirty (30) days after notice by a Non-Defaulting Owner specifying the nature of the default claimed, provided, if the nature of the failure is such that it cannot reasonably be cured within such thirty (30)-day period, no default shall be deemed to have occurred if the Owner receiving such notice commences to cure the failure described in the notice within such thirty (30)-day period, and thereafter diligently prosecutes such cure to completion.

(b) Right to Cure. After the giving of written notice as provided above and the failure of the Owner receiving such notice to cure the failure, which failure constitutes or creates an emergency condition or which materially affects the Non-Defaulting Owner's use and enjoyment of its Parcel or the Shopping Center, the Non-Defaulting Owner shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of, and at the expense of, the Defaulting Owner; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Owner, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstance, or, if necessary, without advance notice, so long as notice is given as soon as practicable thereafter. Any notice of default hereunder shall state in reasonable detail the action the Non-Defaulting Owner proposes to take in order to cure the claimed default. To effectuate any such cure, the Non-Defaulting Owner shall have the right to enter upon the Parcel of the Defaulting Owner (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner. Each Owner shall be responsible for the default of its Occupants. In the event any Non-Defaulting Owner shall cure a default, the Defaulting Owner shall reimburse the Non-Defaulting Owner for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within thirty (30) days after receipt of written demand therefor, together with reasonable documentation supporting the expenditures made.

(c) Lien. Costs and expenses accruing and/or assessed pursuant to this Declaration, together with interest at the "Interest Rate" (as specified hereinafter) and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees pursuant to this Declaration, shall be assessed against and paid by the Defaulting Owner, and to secure such payment, the total of such amounts shall constitute a lien against the Defaulting Owner's Parcel. The lien shall attach and take effect only upon recordation of a claim of lien in the appropriate county recorder's office by the Owner making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Owner;
- (iii) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the work performed that has given rise to the claim of lien and a statement itemizing the amount thereof, together with any other amounts recoverable under this Section; and
- (vi) A statement that the lien is claimed pursuant to the provisions of this Declaration, reciting the date, book, and page of recordation hereof. The notice shall be duly acknowledged, and contain a statement that a copy thereof has been served upon the Owner against whom the lien is claimed, by personal service or by mailing as provided below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including, without limitation, a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State of California. Such lien shall be subordinate to any recorded mortgage, deed of trust, sale-leaseback transaction, lease or ground lease covering any portion of the Shopping Center or the improvements thereon at the time of recording of the lien, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust or lessor or ground lessor upon termination of the leaseback or ground lease, shall take free and clear of any such then existing lien, but otherwise subject to the provisions of this Declaration.

(d) Removal of Lien. If the Owner against whom a lien is claimed posts either (i) a bond executed by an approved corporate surety, or (ii) an irrevocable letter of credit executed by a national banking association, which bond or letter of credit (A) names as the principal or payee the Owner imposing the lien and is in a form satisfactory to such Owner, (B) is equal to one and one-half (1½) times the amount of the lien claim, and (C) unconditionally provides that it may be drawn upon by the Owner claiming the lien in the event of a final judgment entered by a court of competent jurisdiction in favor of such Owner, then the Owner imposing the lien shall record a notice extinguishing the lien or take such action as may be reasonably required by a title insurance company requested to furnish a policy of title insurance on such Parcel deleting the lien as an exception thereto. The Defaulting Owner shall post the bond or letter of credit by delivery to the Owner claiming the lien. All costs and expenses to obtain the bond or letter of credit, and all costs and expenses incurred by the Owner required to extinguish a lien claim hereunder, shall be borne by the Owner against whom the lien is claimed.



(e) Waivers of Default. No waiver by any Owner of any default under this Declaration shall be effective or binding on such Owner unless made in writing by such Owner, and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers of any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Declaration.

(f) Further Remedies. Each Non-Defaulting Owner shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owner hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this Declaration, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

6.2 Interest and Late Fees. Any time an Owner shall not pay any sum payable hereunder to another within ten (10) days after the due date, such delinquent Owner shall pay a Late Fee equal to ten percent (10%) of the amount due and interest on such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the "**Interest Rate**," which shall be the lesser of: (a) ten percent (10%) per annum; or (b) the maximum legal rate.

6.3 Estoppel Certificate.

Any Owner may, at any time and from time to time, in connection with the sale, lease or transfer of the Owner's Parcel, or in connection with the financing or refinancing of the Owner's Parcel by mortgage, deed of trust, or sale-leaseback made in good faith and for value, deliver written notice to the Declarant or other Owners requesting that Declarant and/or such Owners certify in writing that to the best knowledge of the certifying party, (i) this Declaration is in full force and effect and a binding obligation of the Owners, (ii) this Declaration has not been amended or modified, either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting Owner is not in default in the performance of its obligations under this Declaration, or, if in default, describing the nature and amount of any and all defaults (the "**Estoppel Certificate**"). Each Owner receiving such request shall execute and return such Estoppel Certificate within fifteen (15) days following the receipt thereof. In the event an Owner fails to return the Estoppel Certificate within such fifteen (15)-day period, the requesting Owner shall be entitled to deliver a second request. Failure by an Owner so to execute and return an Estoppel Certificate within five (5) days of receipt of such second request shall be deemed an admission on such Owner's part that the Owner requesting the Estoppel Certificate is current and not in default in the performance of such Owner's obligations under this Declaration.

Such Estoppel Certificate shall act as a waiver of any claim by the Person furnishing it to the extent such claim is based upon facts contrary to those asserted in the Estoppel Certificate and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts contrary to those contained in the Estoppel Certificate, and who has acted in



reasonable reliance thereon. Notwithstanding anything to the contrary, the issuance of an Estoppel Certificate shall in no event subject the Person furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Person to disclose correct and/or relevant information; provided, however, such Person shall not have the right to deny the accuracy of the information contained or omitted therein.

#### 6.4 Notices.

(a) Method of Giving Notice. All notices, demands, and requests (collectively "**Notice**") required or permitted to be given under this Declaration must be in writing and shall be deemed to have been given as of the date such Notice is (i) delivered to the Owner intended, whether by delivery service or overnight carrier such as Federal Express, (ii) delivered to the then-current address of the Owner intended, whether by delivery service or overnight carrier such as Federal Express, or (iii) rejected at the then-current address of the Owner intended, provided such Notice was sent prepaid. The initial addresses shall be:

Declarant: GGD Oakdale, LLC, a California limited liability company as to an undivided 86.65% interest in Parcel 1, an undivided 8.74% interest in Parcel 2 and an undivided 4.61% interest in Parcel 3, as tenant's in common  
c/o Pleasanton Fitness, LLC  
101 East Vineyard Avenue, Suite 201  
Livermore, CA 94550  
Attention: Real Estate

Upon at least ten (10) days' prior written Notice, each Person shall have the right to change its address to any other address within the United States of America. All Notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected or, if mailed, three (3) business days after the date of mailing.

(b) Effect of Notice. In no event shall notice be deemed given nor shall an Owner's approval of, consent to, or satisfaction with, the subject matter of a notice be deemed given by such Owner's failure to object or respond thereto if such notice did not fully comply with the requirements of this Section. No waiver of this Section shall be inferred or implied from any act (including conditional approvals, if any) of an Owner, unless such waiver shall be in writing, specifying the nature and extent of the waiver.

(c) Notice to Mortgagees and Right to Cure. Any mortgagee or beneficiary of any Owner ("**Encumbrancer**") shall be entitled to receive notice of any default by the Owner upon whose Parcel it holds an interest, provided that such Encumbrancer shall have delivered a copy of a notice substantially in the form herein contained to each Owner. The form of such notice shall be as follows:

"The undersigned, whose address is \_\_\_\_\_, does hereby certify that it is the holder of a first lien upon the tract of land described in **Exhibit A** attached hereto and made a part hereof, which land is the \_\_\_\_\_ Parcel in \_\_\_\_\_, and is the trustee, beneficiary or mortgagee holding the security interest in said Parcel. In the event that any notice shall be given of the default of the Owner upon whose Parcel this lien

applies, a copy thereof shall be delivered to the undersigned who shall have all rights of such Owner, but not the obligation, to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Owner, but shall make the same invalid as it respects the interest of the undersigned and its lien upon said property.”

Any such notice shall be given in the same manner as provided for in this Declaration. Giving of any notice of default or the failure to deliver a copy to any such Encumbrancer shall in no event create any liability on the part of the Owner so declaring a default. In the event any notice shall be given of the default of an Owner, and such defaulting Owner has failed to cure or commence to cure such default as provided in this Declaration, then any such Encumbrancer that has given notice as above provided shall be entitled to receive an additional notice given in the manner provided for in this Declaration, that the defaulting Owner has failed to cure such default, and such Encumbrancer shall have fifteen (15) days after said additional notice (“***Additional Cure Period***”) to cure any such default. If such cure cannot be effected within the Additional Cure Period, such Encumbrancer must commence to cure within the Additional Cure Period, and thereafter diligently prosecute the same to completion as soon as reasonably practicable.

6.5 Approval Rights. Unless otherwise herein provided, whenever a consent or approval (“***Approval***”) is required, such Approval shall be in writing (unless otherwise stated) and shall not be unreasonably withheld, conditioned or delayed. Unless provision is made for a specific time period, each response to a request for an Approval shall be given by the Owner to whom directed within thirty (30) days of receipt. If the notice specifically states that the failure of the Owner to whom the request for Approval is directed to respond within thirty (30) days after receipt will result in such Owner being deemed to have given its Approval, then if a response is not given within such thirty (30)-day period, the requested Owner shall be deemed to have given its Approval. Each disapproval shall be in writing and the reasons shall be clearly stated.

6.6 Condemnation. In the event any portion of the Shopping Center shall be condemned, the award shall be paid to the Owner owning the land or the improvement taken, except that (i) if the taking includes improvements belonging to more than one Owner, such as Utility Facilities or signs, the portion of the award allocable thereto shall be used to relocate, replace, or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this Declaration, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this Declaration which does not reduce or diminish the amount paid to the Owner owning the land or the improvement taken, then the Owner of such other property interest shall have the right to seek an award for the taking thereof.

6.7 Binding Effect. The terms of this Declaration and all easements granted hereunder shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Owners hereunder. This Declaration is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby. All of the provisions of this Declaration shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. In the event of any conflict between the terms and provisions of this Declaration and any leases or other occupancy agreement affecting the Shopping Center, this Declaration shall control.

It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of each other Parcel and is a burden upon each other Parcel, (ii) runs with each Parcel, and (iii) shall be binding upon each successive Owner during its ownership of each Parcel, or any portion thereof, and each Person having any interest therein derived in any manner through any owner of any Parcel, or any portion thereof, and shall benefit each Owner and its Parcel and each other Person becoming an Owner (or member of an Owner), as specified in Section 6.21, and its interest in its Parcel.

6.8 Singular and Plural. Whenever required by the context of this Declaration, use of the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders.

6.9 Counterparts and Signature Pages. This Declaration may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Declaration may be executed and notarized on separate pages, and when attached to this Declaration shall constitute one complete document.

6.10 Negation of Partnership. None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

6.11 Not a Public Dedication/Intended Beneficiaries. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Parcel or portion thereof to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges, or immunities of any Owner shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

6.12 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, terrorism, inclement weather, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person (collectively, "**Excusable Delays**"), then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Person from the prompt payment of any monies required by this Declaration.

6.13 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

6.14 Amendments. Subject to the further provisions of this Section 6.14, this Declaration may be amended by, and only by, a written agreement signed by the Owners of Parcel 1 and Parcel 2, and shall be effective only when recorded in the county and state where the Shopping Center is located.

6.15 Captions and Capitalized Terms. The captions preceding the text of each article and Section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Declaration. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Declaration.

6.16 Mitigation of Damages. In all situations arising out of this Declaration, all Owners shall attempt to avoid and mitigate the damages resulting from the conduct of any other Owner. Each Owner hereto shall take all reasonable measures to effectuate the provisions of this Declaration.

6.17 Effect of Breach Upon Purchasers and Mortgagees.

(a) No Termination. The breach of this Declaration shall not entitle any Owner or Person to cancel, rescind, or otherwise terminate this Declaration, or any conditions, covenants, easements, or restrictions hereunder.

(b) Mortgagee Protection. This Declaration, and the rights, privileges, covenants, agreements, and easements hereunder with respect to each Owner and Parcel, shall be superior and senior to any lien, lease, or other encumbrance placed upon any Parcel, including the lien of any mortgage or deed of trust, whether made prior to or after the date of recordation hereof, provided that nothing contained in this Declaration shall be deemed to make the holder thereof liable for the performance of any term, covenant, or condition under this Declaration to be performed by the Owner which owns the Parcel in question, but the holder of such mortgage or beneficiary under a deed of trust shall expressly agree that if and when title to such Parcel becomes vested in any Person as a result of a default under said mortgage or deed of trust, then such Person shall so become liable for the performance of any such term, covenant, or condition thereafter to be performed and it shall remain so liable so long as such title is vested in it. Neither the making of such mortgage or deed of trust nor its foreclosure shall release the maker thereof from any liability it would have had under this Declaration had such mortgage or deed of trust not been made.

No breach of this Declaration shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements, and conditions and other provisions, terms and conditions contained in this Declaration shall be binding upon and effective against any Person (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Parcel or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

6.18 Time of the Essence. Time is of the essence of this Declaration.

6.19 No Waiver. The failure of any Owner to insist upon strict performance of any of the terms, covenants, or conditions hereof shall not be deemed a waiver of any rights or remedies which that Owner may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants, or conditions.

6.20 Litigation Expenses.

(a) Payment to Prevailing Owner. If any Owner or the Declarant or third party manager of the Shopping Center shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against any other Owner by reason of the breach

or alleged violation of any covenant, term, or obligation hereof, or for the enforcement of any provision hereof, or to interpret, or otherwise arising out of, this Declaration, the prevailing Owner or the Declarant or third party manager of the Shopping Center in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees which shall be payable whether or not such action is prosecuted to judgment. "***Prevailing Owner***" within the meaning of this Section shall include, without limitation, an Owner or the Declarant or third party manager of the Shopping Center who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action.

(b) Attorneys' Fees in Third-Party Litigation. If any Owner or the Declarant or third party manager of the Shopping Center is required to initiate or defend any action or proceeding with a third party (including, without limitation, any cross-complaint, counterclaim, or third-party claim) because of any other Owner's breach of this Declaration, and such Owner or the Declarant or third party manager of the Shopping Center is the prevailing party in such action or proceeding, then the Owner or the Declarant or third party manager of the Shopping Center so initiating or defending shall be entitled to reasonable attorneys' fees, costs and expenses from such other Owner.

(c) Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action (including, without limitation, any post-petition proceedings and expert witness fees).

#### 6.21 Transfers of Interest, Rights, Powers, and Obligations.

(a) Limitations on Transfer or Assignment. In no event shall the rights, powers and obligations conferred upon any Owner pursuant to this Declaration be at any time transferred or assigned by any such Owner except through a transfer of its interest in its Parcel, and then only to the extent and in the manner hereinafter provided.

(b) Transfer of Entire Interest. In the event of the transfer, conveyance, or termination of the whole of the interest of an Owner in its Parcel(s) (or any leasehold interest in any Parcel) without retaining any beneficial interest therein, other than as beneficiary under the terms of a deed of trust or mortgage or without simultaneously acquiring a new interest by way of leasehold, life estate, or any other similar interest, then the rights and powers conferred upon, and the obligations under this Declaration of, the transferring Owner shall be transferred and assigned with its interest or termination thereof. Upon consummation of any transfer as described above and compliance by the transferee with the requirements of Section 6.21(g), the transferring Owner shall be released from any and all liability which would thereafter arise from or in connection with any term, covenant, or condition under this Declaration to be performed by the transferring Owner, but such Owner shall remain liable for all such liability in respect of events theretofore occurring.

(c) Retention of Interest. In the event that (i) the whole of the interest of an Owner in its Parcel is transferred or conveyed, but a new interest is created in the transferring Owner simultaneously with the conveyance of its previous interest, by way of leasehold, life estate, or any other similar interest, or (ii) the transferring Owner shall convey its interest in its Parcel, or a portion thereof, by deed of trust, mortgage, or other security instrument as security for any obligation or indebtedness of such Owner, then none of the rights and powers conferred upon, or obligations under this Declaration of, the transferring Owner shall be transferred or assigned with the transfer or



conveyance of its interest, but all of the rights and powers conferred upon, and obligations under this Declaration of, the transferring Owner shall remain in such Owner so long as such Owner retains, under clause (i) above, the new interest in and to its Parcel (other than as beneficiary under the terms of a deed of trust or mortgage), or so long as such Owner remains, under clause (ii) above, the beneficial owner of its Parcel. Upon the termination of the new interest created in the transferring Owner as specified in this Section 6.21(c), the rights and powers conferred upon, or the obligations of, such Owner shall vest in accordance with Section 6.21(b) or 6.21(d) hereof, whichever is applicable, as if the new interest created in such Owner had never existed, subject only to the provisions of Section 6.21(f) of this Declaration.

(d) Multiple Ownership. Except as set forth in Section \_\_\_\_ hereof, in the event that an Owner transfers or conveys its interest in its Parcel, or any portion of its Parcel or interest in its Parcel, in such manner as to vest ownership of the Parcel or interest therein in more than one Person, then the Persons owning all of such interest in such Parcel shall be jointly considered a single Owner and such Persons shall designate one of their number to act on behalf of all such Persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed, verified, and acknowledged by each such Person, shall be served upon all the other Owners in accordance with the notice provisions of this Declaration, shall contain a certificate that a copy thereof has been so served, and shall be recorded in the appropriate county recorder's office. In the event the Persons owning an interest in a Parcel shall fail to designate one among them to represent them as the Owner of the Parcel, the Declarant shall be entitled to appoint one of the Persons as the Parcel's representative. Until the Declarant receives notice of a transfer of an Owner's interest, Declarant shall be entitled to deal with the previous Owner as the representative.

(e) Release Upon Sale of Interest. Upon the assignment, conveyance, sale, or other transfer by any Owner of its entire right and interest in its Parcel and compliance by the transferee with the requirements of Section 6.21(g), that Owner shall be released from the obligations of this Declaration as an Owner arising subsequent to the effective date of such sale or transfer (other than those obligations arising from any default by such Owner in the performance of any provision of this Declaration prior to such sale or transfer, including payment of any amounts which may then be due and owing under this Declaration).

(f) Liability of Transferee. In no event shall any transferee of any Owner be liable for any default under this Declaration of the transferring Owner which occurred prior to the effective date of the transfer of any right, title, and interest in the affected Parcel to the transferee unless such default is continuing and remains uncured after the date of the transfer, and then, only as to that portion of the default accruing or continuing after the date of transfer.

(g) Assumption Statement. Concurrently with the transfer of any right, title and interest in any Parcel by any Owner so that the transferee becomes an Owner or member of an Owner pursuant to this Section 6.21, the transferee shall execute and deliver to the other Owners a written statement in which (i) the name and address of the transferee shall be disclosed, and (ii) the transferee shall acknowledge its obligations to be bound by this Declaration and perform all obligations hereunder in accordance with the provisions of this Declaration.

(h) Successors of Declarant; Third Party Managers. Notwithstanding anything to the contrary in this Declaration, but subject to Parcel Two Owner's priority as set forth in Section 4.5 above and the amendment provisions of Section 6.14 above, Declarant shall be entitled, at any time after delivery of written notice to the Owners, to (i) transfer or assign its interest as Declarant hereunder

("Assignment") to any successor or assignee of Declarant ("**Declarant's Successor**") that purchases or otherwise gains possession (through foreclosure or otherwise) of Parcel Two, or (ii) to delegate its duties to manage the Common Area to any third party manager, provided that such manager shall have not less than two (2) years' experience in managing similar center(s) of approximately the same or larger size and general tenant mix as the Shopping Center and shall assume the obligations of Declarant in writing. Following any such Assignment as set forth in (i) above (and the assumption by such party), Declarant shall be released of all further obligations hereunder and shall have no further liability hereunder, including, without limitation, no further liability under Section 5.4(b) as of the date of such Assignment. In the event of any change of Declarant hereunder, the parties agree to file a document in the appropriate deeds records evidencing such change and setting forth the notice address of the new Declarant. In no event shall any third party manager be deemed to be the agent of Declarant.

6.22 Governmental Compliance. The parties acknowledge that this Declaration shall at all times be subject to any and all applicable governmental laws and regulations. To the extent that such applicable governmental laws and regulations are more restrictive than the provisions of this Declaration, the parties shall comply with such more restrictive governmental laws and regulations.

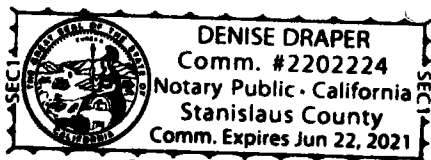
#### ARTICLE 7 RECORDATION, APPLICATION AND TERM

7.1 Recordation. This Declaration shall become effective and binding upon the Owners and their respective successors in interest upon recordation of this Declaration in the Official Records of Klamath County, Oregon.

7.2 Term of Declaration. This Declaration shall be effective as of the date of recordation as provided above and shall continue in full force and effect until 11:59 p.m. on the date which is sixty (60) years thereafter, unless extended or terminated; provided, however, that the easements referred to in Article 2 hereof which are specified as being perpetual or as continuing beyond the term of this Declaration shall continue in force and effect as provided therein. Upon termination of this Declaration, all rights and privileges derived from, and all duties and obligations created and imposed by, the provisions of this Declaration, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this Declaration shall not limit or affect any remedy at law or in equity that an Owner or Occupant may have against any other Owner or Occupant with respect to any liability or obligation arising or to be performed under this Declaration prior to the date of such termination.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

GGD OAKDALE, LLC,  
A California limited liability company



By: [Signature]  
Sanjiv Chopra, Manager

Date: 8-9-17

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 ALAMEDA

On 8-9-2017 before me, DENISE DRAPER - NOTARY PUBLIC  
(here insert name and title of the officer)

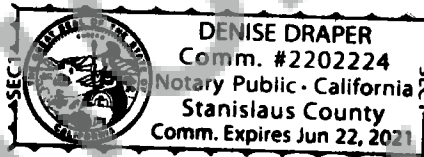
personally appeared SANJIV CHOPRA

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



#### OPTIONAL INFORMATION

Law does not require the information below. This information could be of great value to any person(s) relying on this document and could prevent fraudulent and/or the reattachment of this document to an unauthorized document(s)

#### DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: DECLARATION OF COVENANTS

Document Date: 8-9-2017 Number of Pages: 38

Signer(s) if Different Than Above: \_\_\_\_\_

Other Information: \_\_\_\_\_

#### CAPACITY(IES) CLAIMED BY SIGNER(S)

Signer's Name(s): \_\_\_\_\_

☐ Individual

☐ Corporate Officer

(Title(s)) \_\_\_\_\_

☐ Partner

☐ Attorney-in-Fact

☐ Trustee

☐ Guardian/Conservator

☐ Other: \_\_\_\_\_

SIGNER IS REPRESENTING: Name of Person or Entity \_\_\_\_\_

**EXHIBIT A**

**SITE PLAN**

Unofficial  
Copy

# SHASTA WAY 80' WIDE

FOR GGD OAKDALE LLC

N89°51'43"E 555.07'  
[N89°54'00"E 555.00']  
(555.00' N89°54'00"E)

N89°50'49"E 201.56'  
[[S89°54'W 201.70']]

N89°51'46"E

FOUND 5/8" IR  
PER ROS 1956

FOUND 5/8" IR  
PER ROS 1956

PARCEL 2  
0.72 AC.

PARCEL 1  
7.14 AC.

PARCEL 3  
0.38 AC.

AVALON STREET 100' WIDE

FOUND 1/2" IR  
PER ROS 490  
BEING THE INITIAL POINT

5' POWER EASEMENT  
APPROX. LOCATION  
(VOL.311 PG.40)

N00°02'44"W 647.38'  
(N00°00'30"W 647.38')  
(N00°00'30"W 647.38')

456.81'

N00°08'14"W 27.62'

98.26'

S29°36'25"E 172.04'  
[S29°34'00"E] [172.29']  
(S29°34'00"E)

N89°51'4  
[N89°54'W  
40.2'  
[40.10']

S20°34'15"E 215.78'

143.33'

S59°24'44"E 85.35'

459.82'

S30°35'16"W 536.15'  
[S30°37'00"W]  
(S30°38'30"W)

N30°40'16"E 10.00'

FOUND 5/8" IR  
PER ROS 2063

25' ACCESS  
EASEMENT  
(2008-012523)  
(2008-012526)

S74°58'38"W 137.15'

N30°16'22"E

81.88'

N59°19'44"W 96.37'  
(N59°17'30"W)  
((N59°21'30"W 130.65'))

S30°35'16"W 140.00'  
(S30°37'30"W)  
(S30°38'30"W)

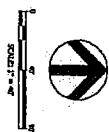
N59°19'44"W 200.21'  
(N59°17'30"W)  
((N59°21'30"W))



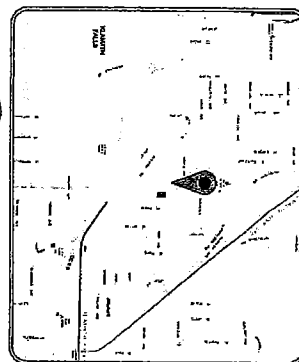
**EXHIBIT A-2**

**EXCLUSIVE PARKING AREA**

Unofficial  
Copy



DOUGLAS, JACQUELINE	64,436 SF	13 SPACES/2,000 SF	114 SPACES (84 SPACES)	31 SPACES
- ALLEGED RECREATION CENTER (OTM)				
FITNESS CENTER	15,000 SF	13 SPACES/2,000 SF		
TOTAL REVENUES			407 SPACES	
TOTAL PROJECTS			324 SPACES	



**GERLITZ**  
Engineering Consultants

**EXHIBIT B**

**LEGAL DESCRIPTION**

Lot 1 of Land Partition 4-17,

Lot 2 of Land Partition 4-17,

Lot 3 of Land Partition 4-17, as recorded in the deed volumes of Klamath County, Oregon.

Unofficial  
Copy

**EXHIBIT C**

**OCCUPANTS HOLDING AN EXCLUSIVE**

**Coastal Farm Real Estate:**

Provided there is no continuing and uncured event of default by Tenant under its Lease, and the Premises is open for business to the public for the use set forth above, no portion of the Center other than the Premises shall be leased for purposes of operating a business primarily engaged as a Farm and Ranch Supply with protected products and services consistent with a typical Coastal Farm and Ranch Store, including sporting goods and firearms. ("Tenant's Exclusive Right").

**EXHIBIT D**

**Coastal Lease**

Unofficial  
Copy





1.1 Parties: This Lease ("Lease"), dated for reference purposes only May 2, 2016

is made by and between GGD Oakdale, LLC a California limited liability company

and Coastal Farm Real Estate, Inc. an Oregon corporation

("Lessee"), (collectively the "Parties", or individually a "Party").

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 1776 Avalon Street located in the City of Klamath Falls, County of Klamath, State of Oregon, with zip code 97603, as outlined on Exhibit A attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): 88,940 square foot building (the "Premises") on approximately 8.23 acres of land with future pad(s) (the "Project")

~~In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)~~

1.2(b) **Parking:** minimum of 250 unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 Term: Fifteen (15) years and 0 months ("Original Term") commencing See paragraph 53 ("Commencement Date") and ending 15 years after commencement ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing See Addendum Paragraph 52 ("Early Possession Date").  
(See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$ [REDACTED] per month ("Base Rent"), payable on the First day of each month commencing Upon term commencement. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph See Addendum

1.6 **Lessee's Share of Common Area Operating Expenses:** One Hundred percent (100 %) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

**1.7 Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** [REDACTED] for the period

(b) Common Area Operating Expenses: \$ \_\_\_\_\_ for the period

(c) **Security Deposit:** \$ None ("Security Deposit"). (See also Paragraph 5)

(d) Other: \$ \_\_\_\_\_ for \_\_\_\_\_

(e) **Total Due Upon Execution of this Lease: \$**

1.8 Agreed Use: The sale of products and services consistent with a typical Coastal Farm & Ranch store including sporting goods and firearms

. (See also Paragraph 6)

1.9 Insuring Party. Lessor is the "Insuring Party". (See also Paragraph 8)

**1.10 Real Estate Brokers:** (See also Paragraph 15 and 25)

PAGE 1 OF 23

INITIALS

INITIALS

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- ☐ \_\_\_\_\_ represents Lessor exclusively ("Lessor's Broker");  
☐ \_\_\_\_\_ represents Lessee exclusively ("Lessee's Broker"); or  
☒ Brock Switzer, HSM Pacific Realty, Inc. represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement (or if there is no such agreement, the sum of \_\_\_\_\_ or \_\_\_\_\_ % of the total-Base Rent) for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by none ("Guarantor"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

- ☒ an Addendum consisting of Paragraphs 51 through 69 ;  
☒ a site plan depicting the Premises;  
☐ a site plan depicting the Project;  
☐ a current set of the Rules and Regulations for the Project;  
☐ a current set of the Rules and Regulations adopted by the owners' association;  
☐ a Work Letter;  
☐ other (specify); \_\_\_\_\_

## 2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises; and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("Applicable Requirements") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of

CS  
INITIALS

PAGE 2 OF 23

BBS  
INITIALS

the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

2.6 **Vehicle Parking.** Lessee shall be entitled to use the number of parking spaces specified in Paragraph 1.2(b) on those portions of the Common Areas designated from time to time by Lessor for parking. ~~Lessee shall not use more parking spaces than said number.~~ Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." ~~Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9.~~ No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

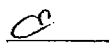
~~(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.~~

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without upon notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.7 **Common Areas - Definition.** The term "Common Areas" is defined in the Addendum, ~~as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.~~

2.8 **Common Areas - Lessee's Rights.** Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers,

  
INITIALS

  
INITIALS



contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

**2.9 Common Areas - Rules and Regulations.** Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

**2.10 Common Areas - Changes.** Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas as provided in the Addendum;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

### 3. Term.

**3.1 Term.** The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

**3.2 Early Possession.** Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such Early Possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.


~~**3.3 Delay In Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 60-day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10-day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.~~

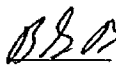
~~**3.4 Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.~~

### 4. Rent.

**4.1 Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

**4.2 Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessee's

  
INITIALS

  
INITIALS

Share (as specified in Paragraph 1.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) "Common Area Operating Expenses" are defined, for purposes of this Lease, as all costs relating to the ownership and operation of the Project, ~~are defined in the Addendum, including, but not limited to, the following:~~

~~(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:~~

~~(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.~~

~~(bb) Exterior signs and any tenant directories.~~

~~(cc) Any fire sprinkler systems.~~

~~(dd) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.~~

~~(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.~~

~~(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.~~

~~(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.~~

~~(v) Real Property Taxes (as defined in Paragraph 10).~~

~~(vi) The cost of the premiums for the insurance maintained by Lessor pursuant to Paragraph 8.~~

~~(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.~~

~~(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.~~

~~(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided; however, that Lessor shall allocate the cost of any such capital improvement over a 12-year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.~~

~~(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.~~

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building, or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same, Lessor already provides the services, or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other

E  
INITIALS

BBD  
INITIALS



outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. Lessor shall upon written request provide Lessee with an accounting showing how that portion of the Security Deposit that was not returned was applied. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use.**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing-eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by

  
INITIALS

PAGE 6 OF 23

  
INITIALS

or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Except as otherwise provided in paragraph 8.7, Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which are suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to the Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.


(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the Premises, without regard to whether said Applicable Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. **Maintenance; Repairs, Utility Installations; Trade Fixtures and Alterations.**

7.1 **Lessee's Obligations.**

  
INITIALS

  
INITIALS

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

**7.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

**7.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, do not trigger the requirement for additional modifications and/or improvements to the Premises resulting from Applicable Requirements, such as compliance with Title 24, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall

C  
INITIALS

B91  
INITIALS



be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialman's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

**7.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Project) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

**8. Insurance; Indemnity.**

8.1 **Payment of Premiums.** The cost of the premiums for the insurance policies required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), shall be a Common Area Operating Expense. Premiums for policy periods commencing prior to, or extending beyond, the term of this Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

**8.2 Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

**8.3 Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance

C  
INITIALS

BBD  
INITIALS

shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the Insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

#### 8.4 Lessee's Property; Business Interruption Insurance; Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements. Such policy shall include a 'Waiver of Subrogation' endorsement. Lessee shall provide Lessor with a copy of such endorsement along with the certificate of insurance or copy of the policy required by paragraph 8.5.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or

  
INITIALS

  
INITIALS

injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. **Damage or Destruction.**

9.1 **Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 **Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 **Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense (subject to reimbursement pursuant to Paragraph 4.2), in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of

C  
INITIALS

BSB  
INITIALS



such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**9.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

**9.5 Damage Near End of Term.** If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

**9.6 Abatement of Rent; Lessee's Remedies.**

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**9.7 Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 9, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

**10. Real Property Taxes.**

**10.1 Definition.** As used herein, the term "Real Property Taxes" shall include any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

**10.2 Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

**10.3 Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other lessees or by Lessor for the exclusive enjoyment of such other lessees. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the

  C    
INITIALS

  B.S.D.    
INITIALS

Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) ~~Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.~~

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

~~(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.~~

~~(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.~~

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

~~(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.~~

(c) Lessor's consent to any assignment or subletting shall not constitute consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone

C  
INITIALS

BBB  
INITIALS

else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 36)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

**12.3 Additional Terms and Conditions Applicable to Subletting.** The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein:

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease; provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to attorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease; provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

(f) Fifty percent (50%) of any assignment or sublease or other transfer rentals or any other economic consideration received by Lessee as a result of any sublease or assignment or other transfer whether denominated rentals under the assignment or sublease or otherwise, which aggregate exceed the total sums which Lessee is obligated to pay to Lessor under the Lease after Lessee first deducts its reasonable costs associated with such transfer shall, provided Lessee is not in default hereunder, be paid to Lessor as Additional Rent.

### **13. Default; Breach; Remedies.**

**13.1 Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee. In the event that Lessee commits waste, a nuisance or an illegal activity a second time then, the Lessor may elect to treat such conduct as a non-curable Breach rather than a Default.

            
INITIALS

BBP  
INITIALS



(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

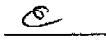
(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

**13.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (iii) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover any damages to which Lessor is otherwise entitled. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of

  
INITIALS

PAGE 15 OF 23

  
INITIALS

the Premises.

**13.3 Inducement Recapture.** Any agreement for free or abated rent or other charges, the cost of tenant improvements for Lessee paid for or performed by Lessor, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

**13.4 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

**13.5 Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due shall bear interest from the 31st day after it was due. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

**13.6 Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

**14. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

**15. Brokerage Fees.**

**15.1 Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.10 above, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the fee schedule of the Brokers in effect at the time the Lease was executed.

            
INITIALS

            
INITIALS

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. **Estoppel Certificates.**

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, ~~plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.~~

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such ~~30~~ 40 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate. ~~In addition, Lessee acknowledges that any failure on its part to provide such an Estoppel Certificate will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, should the Lessee fail to execute and/or deliver a requested Estoppel Certificate in a timely fashion the monthly Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater for remainder of the Lease. The Parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to provide the Estoppel Certificate. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to provide the Estoppel Certificate nor prevent the exercise of any of the other rights and remedies granted hereunder.~~

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17. **Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.


18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. **Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. **Limitation on Liability.** The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. **Time of Essence.** Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. **No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or

  
INITIALS

  
INITIALS



with respect to any default or breach hereof by either Party.

**23. Notices.**

**23.1 Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

**23.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**24. Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

**25. Disclosures Regarding The Nature of a Real Estate Agency Relationship.**


(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction. Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows:

(i) **Lessor's Agent.** A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only. A Lessor's agent or subagent has the following affirmative obligations: To the Lessor: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessor. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) **Lessee's Agent.** An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor. An agent acting only for a Lessee has the following affirmative obligations. To the Lessee: A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Lessee. To the Lessee and the Lessor: (a) Diligent exercise of reasonable skills and care in performance of the agent's duties. (b) A duty of honest and fair dealing and good faith. (c) A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the Parties. An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(iii) **Agent Representing Both Lessor and Lessee.** A real estate agent, either acting directly or through one or more associate licenses, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee: (a) A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either Lessor or the Lessee. (b) Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee, the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

  
INITIALS

  
INITIALS

(b) Brokers have no responsibility with respect to any Default or Breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**


30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees

  
INITIALS

PAGE 19 OF 23

  
INITIALS

reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

37. **Guarantor.**

~~37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.~~

~~37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.~~

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted any option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's

  C    
INITIALS

PAGE 20 OF 23

  BBB    
INITIALS



inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recordation of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of all disputes between the Parties and/or Brokers arising out of this Lease

☐ is ☐ is not attached to this Lease.

49. **Accessibility; Americans with Disabilities Act.**

(a) The Premises: ☒ have not undergone an inspection by a Certified Access Specialist (CASp). ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises met all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq. ☐ have undergone an inspection by a Certified Access Specialist (CASp) and it was determined that the Premises did not meet all applicable construction-related accessibility standards pursuant to California Civil Code §55.51 et seq.

(b) Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH

  e    
INITIALS

PAGE 21 OF 23

  BSA    
INITIALS

IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN CALIFORNIA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Livermore, California

On: 5/26/16

Executed at: Albany, Oregon

On: 5-20-2016

By LESSOR:

GGD Oakdale, LLC  
a California limited liability company

By: [Signature]  
Name Printed: Sanjiv Chopra  
Title: Managing Member

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 101 E. Vineyard Avenue, Suite 201  
Livermore, CA 94450

Telephone: (925) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
Email: schopra5000@gmail.com  
Email: Sandie.FitEvo@gmail.com  
Federal ID No. 27-4005218

By LESSEE:

Coastal Farm Real Estate, Inc.  
an Oregon corporation

By: [Signature]  
Name Printed: Byron G. Baule  
Title: Vice President

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 1355 Goldfish Farm Road SE  
Albany, OR 97322

Telephone: ( ) \_\_\_\_\_  
Facsimile: ( ) \_\_\_\_\_  
Email: \_\_\_\_\_  
Email: \_\_\_\_\_  
Federal ID No. \_\_\_\_\_

BROKER: \_\_\_\_\_

BROKER: \_\_\_\_\_

©  
INITIALS

[Signature]  
INITIALS

Attn: _____	Attn: _____
Title: _____	Title: _____
Address: _____	Address: _____
Telephone: (____) _____	Telephone: (____) _____
Facsimile: (____) _____	Facsimile: (____) _____
Email: _____	Email: _____
Federal ID No. _____	Federal ID No. _____
Broker/Agent BRE License #: _____	Broker/Agent BRE License #: _____
_____	_____
_____	_____

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 500 N Brand Blvd, Suite 900, Glendale, CA 91203. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

©Copyright 1999 By AIR Commercial Real Estate Association.  
All rights reserved. No part of these works may be reproduced in any form without permission in writing.

Unofficial Copy

  C    
INITIALS

  P.L.    
INITIALS



**ADDENDUM TO STANDARD MULTI-TENANT SHOPPING CENTER LEASE – NET**

**Dated May 5, 2016**

**Wherein GGD Oakdale, LLC a California limited liability company is referred to as "Lessor"  
and Coastal Farm Real Estate, Inc. an Oregon corporation is referred to as "Lessee"  
with reference to the Premises located at 1776 Avalon Street, City of Klamath Falls, State of Oregon**

The following provisions of this Addendum are made a part of the foregoing Lease but, in the event of a conflict, this Addendum supersedes any provisions as set forth in the Lease and any prior addendums (and any capitalized terms not defined in this Addendum will have the meanings ascribed to them in the Lease):

**51. DUE DILIGENCE PERIOD**

Lessee shall have a Due Diligence Period of ninety (90) days from the Delivery Date (defined below in Paragraph 52) to review the Premises and obtain all permits and approvals necessary for the operation of a Coastal Farm and Home Supply store on the Premises (which will include an outdoor display area as shown on Exhibit A). Lessee will make diligent efforts to acquire necessary permits and approvals during the Due Diligence Period and shall waive the Due Diligence Period once permits and approvals are granted. If Tenant is not able to get permits and approvals to operate its business and for the outdoor display area, the Lease will automatically terminate upon the expiration date of the Due Diligence Period.

**52. DELIVERY**

Lessor shall deliver the Premises in broom clean condition and with a water tight roof with a 15-year warranty, and with all tile flooring and adhesive removed. HVAC shall be delivered in good working order. The fire sprinkler system shall be delivered fully operational. Upon substantial completion of the above improvements, Lessor shall provide written notice and the date of such notice shall be deemed to be the "Delivery Date". Lessee will be entitled to possession of the Premises on the Delivery Date (without cost or charge and without any change to the Rent and term commencement dates specified below in Paragraph 53).

**53. RENT/TERM COMMENCTMENT**

Rent and the 15 year initial Lease term both shall commence upon the earlier of 120 days after the Delivery Date or Tenant's opening for business.

**54. LESSOR'S MAINTENANCE RESPONSIBILITIES**

Lessor shall be responsible (without passing costs through to Lessee) for: (a) all structural repairs to the Premises, whether interior or exterior, keep the Premises watertight, and shall repair, replace and maintain in good condition the exterior of the Premises including without limitation the roof system (including roof membranes, gutters, downspouts and other components of the systems for drainage of water therefrom), walls, foundations, utility lines (plumbing, gas, electrical and other similar systems) from the point of connection to the Premises to the main line; (b) HVAC replacements during the first 10 years, plumbing, gas, electrical and other similar systems as well as repairs to the same costing in excess of \$3,000.00 per repair; (c) replacement of parking and drive areas as well as repairs to the same costing in excess of \$3,000 per repair; and (d) any replacement, improvement or alteration of the landscaping, including any irrigation, hardscape or plant material, in the Common Area (with the cost of routine maintenance of any such replaced, improved or altered landscape being a Common Area Operating Expense).

**55. LESSEE'S MAINTENANCE RESPONSIBILITIES**

(a) Lessee shall be responsible for non-structural interior repairs, including routine maintenance and repair (\_\_\_\_\_, maximum twice per year per system) for the HVAC, plumbing, gas, electrical and similar systems which are located in and service exclusively the Premises.

180

Lessee will be responsible for their own security. Lessee shall perform routine maintenance and repair (costing less than \$3,000.00 per repair, maximum twice a year) of the parking and drive areas (subject to Paragraph 55(b) below).

(b) It is the intent of this lease for the Lessee to maintain all of the Premises (as provided in Paragraph 55(a) above and subject to Lessor's obligations in Paragraph 54 above) as well as the Common Area unless or until such time as the Lessor develops the Retail Pad. Once Lessor begins the development of the Retail Pad as provided below in Paragraph 58:

(i) the portion of the Project that will constitute Common Area shall be the area not exclusive to Lessee or any other tenant of the Project (as provided below in Paragraphs 58 and 62),

(ii) Lessee's pro rata share will be a percentage with the square footage of the footprint of the Building (i.e., of the ground floor) as the numerator and the denominator equal to sum of the square footage used for the numerator plus the square footage of the footprint of the building(s) on the Retail Pad;

(iii) Lessee may continue maintenance of the Common Area, in which event Lessee will bill Lessor (or the Lessor's tenant(s) of the Retail Pad) for all Common Area Operating Expenses minus Lessee's pro rata share of the Common Area Operating Expenses, or at Lessee's election, Lessor will be responsible for maintenance of the Common Area, in which event Lessor will bill Lessee for Lessee's pro rata share of the Common Area Operating Expenses.

(c) Any provision of the Lease to the contrary notwithstanding Common Area Operating Expenses will consist of (and only of) the following:

(i) Real Property Taxes;

(ii) Premiums for liability insurance under lease Paragraph 8.2(b);

(iii) Premiums for building and improvement insurance under lease Paragraph 8.3;

(iv) The actual costs and expenses incurred in keeping the Common Areas of the Project in a clean, sanitary and safe condition (including but not limited to routine landscape maintenance as provided above in Paragraph 54, and sweeping, removing debris, ice and snow, lighting and routine maintenance of the parking areas, subject to the cost limitations set forth above in Paragraphs 54 and 55); and

(v) A reasonable annual management fee (not to exceed \$7,200 per year) to reimburse Lessor for periodic visual inspections of the Project, coordinated in advance with Lessee's on-site manager and occurring not more frequently than quarterly in any given calendar year and, once the Retail Pad (as defined and described below in Paragraph 58) is developed, an additional 10% administrative fee on Common Area Operating Expenses (excluding Real Property Taxes and insurance).

(d) The provisions of lease Paragraphs 4.2(d) and 10.2 to the contrary notwithstanding, Lessee will pay, or reimburse Lessor for paying, the property taxes and insurance premiums within 14 business days after receipt of Lessor's billing statement therefor.

#### 56. OUTDOOR DISPLAY AND SALES

(a) Lessee shall have the right to maintain and use the outdoor display and sales areas within the parking lot as shown on Exhibit A, including but not limited to the fenced and unfenced outdoor display areas shown on Exhibit A, to the extent such outdoor display and sales are permitted by applicable laws. Lessor agrees to cooperate with Lessee throughout process.

(b) Lessee may give to a third party vendor a license to use up to 144 square feet of space in the Common Area adjacent to Building for the sale of food and beverage items (such license does not constitute an exclusive to food use).

#### 57. SIGNAGE

Lessee shall have the right to existing signs (including pylon and monument signs) formerly used by Building A tenants and shall be allowed signage on the building in accordance with any applicable local code.

58. ALTERATIONS; OBSTRUCTIONS

Lessor will not place or permit to be placed by any person or entity other than Lessee, any building, wall, landscaping, fence or other improvement or make any other alterations or changes to the Premises or the Retail Pad other than improvements shown on the attached site plan without Lessee's prior written approval or permit the Common Areas to be used or changed in such a way which interferes with Lessee's operation of its business from the Premises or reduces the number of parking stalls in the Common Area below 250. Lessor shall create one (1) exterior pad for retail development ("Retail Pad") at the front of the Premises at Lessor's sole discretion in the area designated on Exhibit A. In no event will the Retail Pad interfere with the street access or reduce the parking area on the Project below 250 parking stalls (exclusive of areas of the Project covered by the Building, Lessee's outdoor display and sales area and any improvements placed on the Retail Pad), and the development, possession and use of the Retail Pad will be subject to the same provisions contained in this lease regarding the Retail Pad, Common Area and Common Area Operating Expenses.

59. BASE MONTHLY RENT SCHEDULE:

Years One through Five  
Years Six through ten  
Years Eleven through Fifteen

60. OPTION RENT

First Option  
Second Option  
Third Option

61. TENANT IMPROVEMENTS

Lessor will not make any tenant improvements but Lessee may make Lessee Owned Alterations (as defined in Paragraph 7.3(a) of the Lease) to conform the Premises to a typical Coastal Farm & Ranch store. Lessee accepts Premises "as-is" "where-is" and acknowledges that Lessor has warranted nothing about the Premises except as provided in this Addendum. Lessor shall not be responsible for costs associated with Lessee's opening/operation of business including but not limited to ADA compliance associated with Lessee's specific use of the Premises.

62. CERTAIN DEFINITIONS

Any provisions of the Lease to the contrary notwithstanding, as used in this Lease: (a) the "Premises" consists of the 88,940 square foot building (also referred to as the "Building" and the "Unit") together with Lessee's outdoor display/sales area(s) referenced in lease Paragraph 1.2(a) and as shown on Lease Exhibit A, (b) the "Project" consists of the entire 8.23 acres of land shown on Exhibit A (including the Premises and any subsequent development of the Retail Pad), (c) the "Common Area" will be the portion(s) of the Project (if any) not exclusive to Lessee or any other tenant of the Project, and (d) the definition of "Permitted Size Vehicles" in Lease Paragraph 2.6 includes Lessee's customers' vehicles, including but not limited to the trucks and animal, cargo and equipment trailers and haulers of Lessee's customers.

63. CERTAIN PERMITTED ASSIGNMENTS

The following assignments or transfers are outright permitted transfers under the Lease and Lease Paragraphs 12 and 39.2 will not apply to any of the following assignments or transfers: (a) Lessee may assign or sublet the Premises to its Affiliate, Coastal Farm & Home Supply LLC ("CFHS") without Lessor's consent or approval, as long as CFHS agrees to be bound by Lessee's obligations under the Lease for the initial fifteen (15) year term of the Lease; (b) Lessee and/or CFHS may give collateral assignments of their respective interests to an institutional lender at such time as Lessee or CFHS refinances its existing loans with, or otherwise upon the request of, their respective lenders (in which event Lessor will execute customary and

BSW

usual institutional leasehold financing recognition agreements reasonably approved by Lessor, as long as Lessee or CFHS reimburses Lessor for Lessor's reasonable attorneys' fees incurred in connection with such lender's request); (c) transfers of ownership interests in Lessee and/or CFHS for estate planning purposes may be made without Lessor's consent or approval; and (d) Lessee and/or CFHS may assign their respective rights hereunder, without the consent or approval of Lessor, as a part of any merger, consolidation or other reorganization of Lessee and/or CFHS in connection with the transfer of all or substantially all of Lessee's and/or CFHS's assets to a third party that has a net worth after the merger, consolidation, reorganization or sale that is at least equal to the net worth of the transferor as of the date of the transfer as long as the transferee assumes and agrees to bound by the transferor's obligations under the Lease.

**64. WARRANTY OF TITLE**

Landlord warrants and covenants that it has fee title simple to the Premises.

**65. HOURS OF OPERATION**

Any other provision of the Lease to the contrary notwithstanding, Tenant shall not have the obligation to open for business and/or operate within the Premises on a continuous bases and shall be entitled to determine its own hours of operation.

**66. HAZARDOUS SUBSTANCES**

(a) Any provision of lease Paragraph 6.2 to the contrary notwithstanding, Lessor's consent to a "Reportable Use" is not necessary, and Lessee may generate, possess, use, store, transport or dispose of Hazardous Substances typically or ordinarily used by Coastal Farm and Ranch in its operations as long as such generation, possession, use, storage, transportation or disposal is in compliance with all Applicable Requirements.

(b) In the first sentence of lease Paragraph 6.3, the phrase "in any manner to the Premises" is hereby deleted and replaced with "to Lessee's specific use of the Premises."

**67. INSURANCE**

Lease Paragraph 8.2(b) will apply only once Lessor has developed the Retail Pad, and thereafter liability insurance under Paragraph 8.2(b) will name Lessee as an additional insured and the premium cost for the liability insurance will only be a part of Common Area Operating Expenses to the extent that the insurance covers only the Common Area and not any other portion of the Project. In lease Paragraph 8.3 the "agreed valuation" requirement for property insurance is deleted (so that the insurance will be blanket form limit for both buildings and business personal property, replacement cost with co-insurance). Also in lease Paragraph 8, the amount of Lessee's deductible may not exceed \$25,000 (rather than \$1,000).

**68. ESTOPPEL CERTIFICATES**

Lessee's obligation to deliver financial statements under lease Paragraph 16(c) is subject to the condition precedent that the recipient first execute and return to Lessee Lessee's standard Non-Disclosure and Confidentiality Agreement.

**69. EXCLUSIVITY AND USE**

Lessee may use the Premises for any lawful use. Lessor shall not permit any person or entity other than Lessee either (i) in space within the shopping center or (ii) in space leased directly or indirectly from Lessor within one (1) mile of the shopping center, to sell, rent, service and/or warehouse Lessee's Protected Products, as defined below, without Lessee's prior written consent in Lessee's sole discretion. Lessee's

Protected Products are products and services consistent with a typical Coastal Farm and Ranch store, including sporting goods and firearms.

LESSEE:

COASTAL FARM REAL ESTATE, INC.

An Oregon corporation

By: Byron G. Baul

Name Printed: Byron G. Baul

Title: Vice President

LESSOR:

GGD OAKDALE, LLC

a California limited liability company

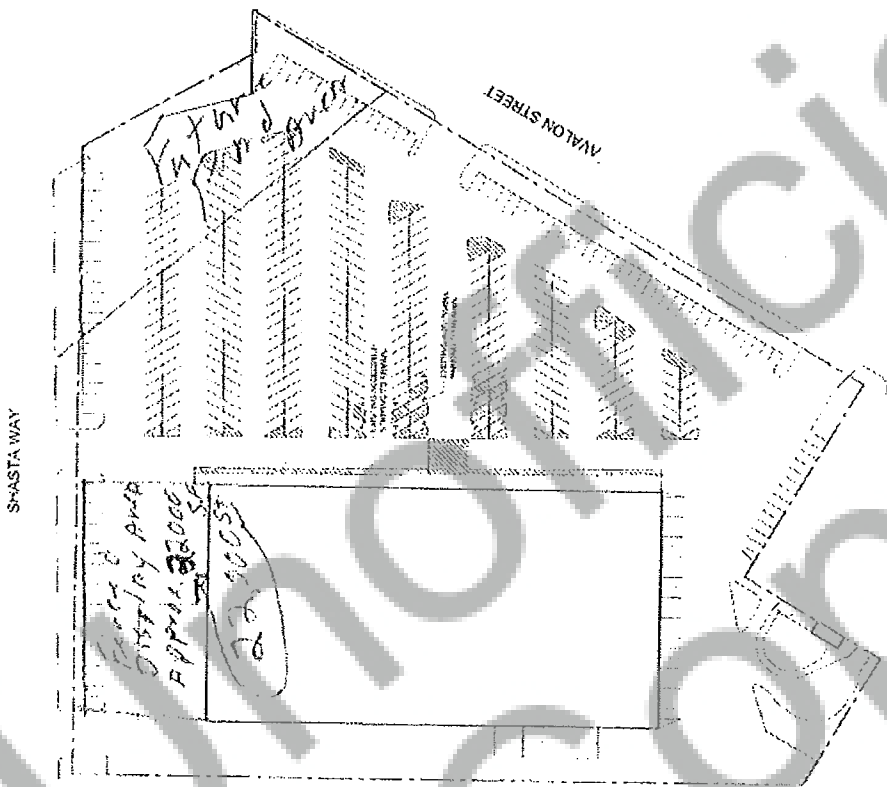
Sanjiv Chopra

Sanjiv Chopra, managing member



EXHIBIT A

SITE PLAN WITH FUTURE PAD AREA AND OUTDOOR DISPLY AND SALESAREA DEPICTED



OVERALL SITE PLAN

1776 Avalon St.  
KLAMATH FALLS, OR

SITE PLAN  
1/11/02

**plus**  
architects inc.

A-1

CR

Handwritten signature/initials