

**LEASE**

This Lease, dated for reference purposes as of \_\_\_\_\_, 20\_\_, is by and between DANA POINT HARBOR PARTNERS, LLC, a California limited liability company (“Landlord”), and \_\_\_\_\_, a \_\_\_\_\_ (“Tenant”).

**ARTICLE 1**  
**BASIC LEASE INFORMATION**

Each reference in the Lease to any of the Basic Lease Information shall mean the respective information set forth below, and such information shall be deemed incorporated as a part of the terms provided under the particular Lease Section pertaining to such information. In the event of any conflict between any Basic Lease Information and the Lease, the former shall control.

1.1 Project. That certain Project known as the Dana Point Harbor or such other name as Landlord may select now or in the future in the City of Dana Point, County of Orange, and State of California. The Project includes the Land and all improvements thereon, including without limitation the Premises, the Building and other buildings located on the Land, and the Common Areas, all as set forth on the Project Site Plan outlined on Exhibit A.

1.2 Landlord. DANA POINT HARBOR PARTNERS, LLC, a California limited liability company.

1.3 Landlord’s Address for Giving of Notices and Payment of Rent.

DANA POINT HARBOR PARTNERS, LLC  
1100 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Fax No.: (949) 760-0430  
Taxpayer ID No.: \_\_\_\_\_

1.4 Tenant. \_\_\_\_\_.

1.5 Tenant’s Address for Giving of Notices.

Prior to Commencement Date:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

After Commencement Date [To be sent to Premises:

\_\_\_\_\_  
\_\_\_\_\_, Suite \_\_\_\_

Dana Point, CA 90808  
Attn: \_\_\_\_\_

1.6 Premises. \_\_\_\_\_, Suite \_\_\_\_\_, Dana Point, California, consisting of approximately \_\_\_\_\_ (\_\_\_\_\_) square feet of Floor Area (collectively, the “Premises”) (Section 2.2). Within five (5) days following Substantial Completion of Landlord’s Work and delivery of the Premises to Tenant, Tenant shall be entitled to measure the Premises to verify the Floor Area of the Premises. If the Floor Area of the Premises as measured by the parties differs from that set forth in this Lease, the Rent, Tenant's Pro Rata Share and all other calculations based on the Floor Area of the Premises shall be adjusted accordingly.

1.7 Building. That certain building in which the Premises is located, located at the with a street address of \_\_\_\_\_, Dana Point, California, and as shown on Exhibit B.

1.8 Common Areas. All areas and facilities within the Project (exclusive of the Premises and other portions of the Project leased (or to be leased) exclusively to other tenants) that are from time to time made available for the general use, convenience and benefit of Landlord, other persons entitled to occupy space in the Project, and/or their customers, patrons, employees and invitees, including, without limitation, automobile parking areas, cart corrals, driveways, sidewalks, open and enclosed courts and malls, landscaped and planted areas, canopies and gutters. Landlord may, from time to time, adjust the size and configuration of the Common Areas as set forth herein.

1.9 Use of Premises. The retail sale of \_\_\_\_\_. Tenant shall not engage in any of the uses precluded in Exhibit G, and will honor all exclusives granted by Landlord in Exhibit G. (Article 3).

1.10 Anticipated Early Occupancy Date. \_\_\_\_\_. (Section 2.3)

1.11 Anticipated Commencement Date. April 1, 2018. The actual Commencement Date shall be determined as set forth in Section 2.3. The Fixturization Period for purposes of Section 2.3 shall be \_\_\_\_\_ days.

1.12 Lease Term. [Ten (10)] years, commencing on the Commencement Date and expiring on the last day of the [one hundred twentieth (120<sup>th</sup>)] calendar month from and after the Commencement Date (or from and after the first day of the next calendar month if the Commencement Date occurs on a date other than the first day of a calendar month), subject to extension pursuant to Section 2.3(d). (Section 2.3)

1.13 Base Rent. \$\_\_\_\_\_ per square foot monthly, increasing every \_\_\_\_\_ ( ) months during the Term, including any Extension Term(s), by \_\_\_\_\_ percent (\_\_\_\_%) percent.

<u>Months During Term</u>	<u>Monthly Base Rent Amount</u>	<u>Monthly Base Rent PSF</u>
1-24	\$ _____	\$ _____
25-48	\$ _____	\$ _____
49-60	\$ _____	\$ _____
61-120	\$ _____	\$ _____

*121-180	\$	\$
*181-240	\$	\$
*241-300	\$	\$
*301-360	\$	\$

The Monthly Base Rent Amount calculated and set forth above may change upon final confirmation of the actual Floor Area of the Premises. The months referred to above are the full calendar months after any first partial month of the Lease Term. The Base Rent for any such partial month shall be prorated based on the same rents as specified for the first full calendar month when Base Rent is payable. Upon Tenant's execution and delivery of this Lease, Tenant shall deliver to Landlord the total amount of \_\_\_\_\_ (\$\_\_\_\_\_), such amount to be applied to the first monthly installment of Base Rent (\$\_\_\_\_\_), estimated Operating Expenses (\$\_\_\_\_\_), and the Security Deposit (\$\_\_\_\_\_)] due under this Lease. (Section 2.5)

\*Provided the applicable Extension Term is exercised by Tenant.

1.14 Percentage Rent. [Five percent (5%)]. (Section 6.8)

1.15 Tenant's Percentage of Operating Expenses. Approximately \_\_\_\_\_ percent (\_\_\_%) of the Project (which Landlord represents and warrants contains or will contain approximately \_\_\_\_\_ square feet of Floor Area) (such percentage may change upon final confirmation of the actual Floor Area of the Premises and the Project). (Section 6.2)

1.16 Security Deposit. \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00). Tenant shall deliver to Landlord the Security Deposit upon Tenant's execution and delivery of this Lease.

1.17 Guarantor(s) Name and Address. \_\_\_\_\_

1.18 Brokers.

Landlord: \_\_\_\_\_

Tenant: \_\_\_\_\_

1.19 Tenant's Liability Insurance Minimum Coverage. \$2,000,000.00  
Tenant's Liability Insurance Maximum Deductible: \$25,000.00

FOR CONVENIENCE, OTHER DEFINITIONS AND/OR THE LOCATION OF OTHER DEFINITIONS USED IN THIS LEASE ARE SET FORTH IN THE GLOSSARY ATTACHED TO THE END OF THIS LEASE.

**ARTICLE 2**  
**DEMISE AND RENT**

2.1 Demise. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, upon and subject to the terms, covenants, provisions and conditions of this Lease

Agreement (herein called the “Lease”), the Premises shown on Exhibit B (attached hereto and incorporated herein) in the Building outlined on Exhibit B (herein called the “Building”) located on the property described on Exhibit A attached hereto and incorporated herein (“Land”). Landlord hereby grants to Tenant, and Tenant hereby accepts from Landlord, upon and subject to the terms, covenants, provisions and conditions of this Lease, a non-exclusive right to use the Common Areas, subject to the provisions of Sections 5.5 and 5.6 below and the Rules and Regulations attached hereto as Exhibit E and incorporated herein (the “Rules and Regulations”). The “Effective Date” of this Lease is the date that this Lease is fully executed by and delivered to both parties hereto.

2.2 Premises. The Premises (herein called “Premises”) leased to Tenant are described in the Basic Lease Information, and outlined on Exhibit B. The Premises are located in the Project shown on the site plan attached hereto as Exhibit A (the “Project”). The depiction of possible uses, occupants, or locations of buildings on Exhibit A creates no warranty or representation that any or all of such uses, occupants or buildings will ever exist. Tenant acknowledges that Landlord may change the shape, size, location, number and extent of the improvements shown on Exhibit A and eliminate or add any improvements to any portion of the Project. Upon Landlord’s election at any time prior to the commencement of Landlord’s Work (as described in Exhibit C attached hereto), the Premises shall be relocated to comparable space within the Project as mutually agreed upon between Tenant and Landlord. If the parties are unable, despite their good faith effort, to agree upon such comparable relocated space, then either Landlord or Tenant shall have the right, upon written notice to the other, to terminate this Lease, and in the event of such termination Landlord shall return to Tenant the Security Deposit within ten (10) business days. The Premises is a part of the Project, which is the area identified as “Project” on Exhibit A and all improvements at any time existing thereon commonly known as Dana Point Harbor.

2.3 Term and Commencement; Early Occupancy; Extension Options.

(a) Term and Commencement. Unless sooner terminated as provided herein, the term of this Lease (the “Lease Term”) shall be for that period of years and months set forth in the Basic Lease Information, as the same may be extended in accordance with any option or options to extend the Lease Term granted herein, and shall commence (the “Commencement Date”) upon the earlier of (i) the expiration of the Fixturization Period set forth in Section 1.11, which shall commence on the first business day after the date Landlord delivers possession of the Premises to Tenant with Substantial Completion of Landlord’s Work, and (ii) the date Tenant first opens for business in the Premises. When the actual Commencement Date has occurred, Landlord and Tenant shall execute a Commencement Date Memorandum in the form shown in Exhibit D attached hereto. Landlord anticipates delivering the Premises to Tenant with Substantial Completion of Landlord’s Work by the “Anticipated Early Occupancy Date” set forth in the Basic Lease Information, and Landlord and Tenant anticipate that the Lease Term will commence on the “Anticipated Commencement Date” set forth in the Basic Lease Information, but the “Anticipated Commencement Date” shall in no event affect the actual Commencement Date, which shall be determined as set forth in this Section 2.3.

(b) Early Occupancy. Prior to the date Landlord delivers possession of the Premises to Tenant following Substantial Completion of Landlord’s Work (the “Delivery Date”), Tenant and its authorized agents, contractors, subcontractors and employees shall be granted a

license by Landlord to enter upon the Premises, at Tenant's sole risk and expense, during ordinary business hours, for the purpose of constructing the Tenant's Work, installing Tenant's furniture, trade fixtures, equipment and merchandise in the Premises, and commencing Tenant's business operations; provided, however, that (i) the provisions of this Lease, other than with respect to the payment of Rent, shall apply during such early entry, including but not limited to, the provisions of Article 18 relating to Tenant's indemnification and defense of Landlord, (ii) prior to any such entry, Tenant shall pay for and provide evidence of the insurance to be provided by Tenant pursuant to the provisions of Article 11, and (iii) Tenant shall pay all the Utilities, service and maintenance charges for the Premises to the extent attributable to Tenant's early entry and use of the Premises as reasonably determined by Landlord. For purposes of this Lease, "Substantial Completion of Landlord's Work" shall be deemed to have occurred upon Landlord's receipt of a building permit inspection card for Landlord's Work (as described in Exhibit C) with final sign-off from the City of Dana Point, if applicable.

(c) Landlord's Contractor. The parties acknowledge that Tenant may employ Landlord's contractor for Landlord's Work to accomplish some or all of Tenant's Work. In such event, the contractor may construct some of Tenant's Work concurrently with its construction of the Landlord's Work, provided, however, that (i) in the event of any inability or conflict in coordinating the construction of Tenant's Work and Landlord's Work, Tenant's Work shall be subject and subordinate to Landlord's Work, and (ii) in the event that the construction of the Tenant's Work by such contractor results in any interference or delay in the construction of Landlord's Work, such delay shall constitute a Tenant Delay (as described in Exhibit C).

(d) Option to Extend. Tenant is given the option to extend the Lease Term on all the provisions contained in this Lease, except for Base Rent (which shall be adjusted in accordance with this Section), for four (4) five (5) year periods ("Extension Term(s)") following expiration of the initial Lease Term by giving notice of exercise of the option ("Option Notice") to Landlord at least twelve (12) months before the expiration of the initial Lease Term or the applicable Extension Term. Notwithstanding the foregoing, if Tenant is in default beyond the designated cure period on the date of giving the Option Notice, the Option Notice shall be totally ineffective, or if Tenant is in default beyond the designated cure period on the date the Extension Term is to commence, the applicable Extension Term shall not commence, and this Lease shall expire at the end of the initial Lease Term or the then current Extension Term. The Extended Term(s) shall be personal to the original Tenant hereunder and shall terminate and be of no further force or effect following any Transfer under Article 10 below. The Base Rent shall be adjusted in accordance with Section 1.13 above. [The Base Rent shall be adjusted annually during the Extension Term in accordance with Section 2. below. The Base Rent to be paid for the first year of the Extension Term, if exercised, shall be equal to the "Fair Market Rental Rate" for the Premises, determined by the Landlord and Tenant, based on a Base Rent then being paid by tenants of retail spaces of equivalent size in comparable projects similar in size, location, amenities, tenant mix, condition, drawing ability and quality to the Project, provided that notwithstanding anything to the contrary set forth herein, in no event shall be Base Rent for the first year of the Extension Term be less than the Base Rent in effect immediately prior to the Extension Term. In the event Landlord and Tenant are unable to agree on a Base Rent applicable for the first year of the Extension Term, at least ninety (90) days prior to the commencement date of the Extension Term, the Base Rent shall be determined as follows: Landlord and Tenant shall each appoint an independent real estate appraiser with at least five (5) years commercial appraisal experience in

the Dana Point area, and having no financial interest, relationship, or affiliation with either party, or having any business dealings with either party for the previous five (5) years. Within thirty (30) days after their appointment, each appraiser shall provide a written appraisal of Base Rent for the first year of the Extension Term, based upon the above criteria. The Base Rent for the first year of such Extension Term shall be the average of two (2) appraisals. However, if the appraisals differ by more than ten percent (10%), then a third similarly qualified appraiser shall be appointed by the first two (2) appraisers within ten (10) days thereafter, which third appraiser shall also provide a written appraisal of Base Rent. Base Rent shall then be the average of three (3) appraisals, except that any appraisal which differs by more than ten percent (10%) from both of the other appraisals shall be discarded and the Base Rent shall be the average of two (2) remaining appraisals. If no two (2) appraisals are within ten percent (10%) of each other, then the issue of Base Rent shall be submitted to a binding arbitration before the Judicial Arbitration Mediation Services in Orange County, California, whose decision as to Base Rent shall be binding on the parties. Each party shall bear equally, the cost of the foregoing procedures.] Tenant shall have no other right to extend the term beyond the Extension Term.

(e) **Optional: Due Diligence.** Within ninety (90) days following the mutual execution and delivery of this Lease, Tenant shall satisfy itself as to the following contingencies: (a) Tenant's determination in its sole discretion that the zoning of the Premises permits use of the Premises for Tenant's permitted use hereunder; (b) Tenant's determination in its sole discretion that the condition of the Premises, including without limitation, the condition of Landlord's title to the Premises and the physical, including environmental and geotechnical, condition of the Premises are satisfactory; (c) Tenant's franchisor's approval of the Premises, the Building to be constructed, and the proposed improvements and floor plan; (d) receipt of a non-disturbance and attornment agreement from Landlord's lender senior in priority to this Lease, if any and (e) [Tenant's receipt of any and all necessary permits and approvals required by the applicable governmental code and authorities for Tenant's Use of the Premises] (the "Approvals") which Tenant shall use commercially reasonable and diligent efforts to obtain. Landlord shall reasonably cooperate with Tenant to achieve such Approvals at no cost or expense to Landlord. If such conditions are not met and Tenant has not cancelled the lease within the ninety (90) day period, the contingencies will be released and the Lease will be fully binding.]

(f) **Optional: Permits.** Tenant shall submit for permits for Tenant's Work within sixty (60) days of the later of (i) the mutual execution and delivery of this Lease, or (ii) Landlord's delivery to Tenant of building plans with respect to Landlord's Work approved by the City of Dana Point. Thereafter, Tenant shall use commercially reasonable and diligent efforts to obtain any and all customary and necessary permits required by the City of Dana Point for Tenant's Work as set forth on Exhibit C and as necessary for Tenant's Use of the Premises (the "Approvals"). Landlord shall reasonably cooperate with Tenant to achieve such Approvals at no cost or expense to Landlord. If Tenant is unable to obtain the Approvals within such sixty (60) days following Tenant's first submission for such Approvals and such Approvals will not be forthcoming within a reasonable amount of time following such sixty (60) day period, Landlord shall have the right but not the obligation to obtain Tenant's Approvals, with Tenant's full cooperation, on Tenant's behalf and at Tenant's sole cost. If Tenant does not obtain the Approvals within one hundred twenty (120) days following Tenant's first submission to obtain such Approvals and such Approvals will not be forthcoming within a reasonable amount of time following the 120<sup>th</sup> day after submission, then either party may terminate the Lease upon thirty

(30) days' notice to the other party at any time after the passing of the one hundred twenty (120) day period; provided that the Approvals have not yet been received. In the event this Lease is terminated pursuant to this Section 2.3(e), any Rent or any other amounts paid by Tenant to Landlord hereunder shall be returned in full to Tenant and the parties shall have no further obligation to each other except with respect to any obligations accruing prior to termination which specifically survive termination of this Lease such as certain indemnification obligations.]

**2.4 Delay in Commencement.** [Landlord shall give Tenant at least sixty (60) days advance written notice before the proposed Delivery Date.] If the Delivery Date does not occur by the "Anticipated Early Occupancy Date", Landlord shall not be considered in default of this Lease, but, except for *force majeure* or delay due to the fault of Tenant, the Commencement Date shall be deferred for a period equivalent to the period of such delay. If Substantial Completion of Landlord's Work has not occurred by the "Anticipated Early Occupancy Date" due to (i) the failure of Tenant to fulfill any obligation pursuant to the terms of this Lease or any Exhibit hereto, (ii) any delay arising out of Section 2.3(c) above, or (iii) any other Tenant Delay as described in Exhibit C, then the Commencement Date shall be the date which is the number of days set forth in Section 1.12 as the Fixturization Period after the date that Substantial Completion of Landlord's Work would have occurred but for such Tenant Delay. In no event shall the Commencement Date be delayed or extended due to the failure of Tenant to complete Tenant's Work (as described in Exhibit C) during the early occupancy period described in Section 2.3(b), above, it being acknowledged, agreed, and understood that the Commencement Date shall be determined in accordance with Section 2.3(a) hereof, whether or not the Tenant's Work (as described in Exhibit C) has been completed as of such date.

**2.5 Rent.** The rents shall be and consist of a Base Rent (herein called "Base Rent") and Additional Rent (herein called "Additional Rent"). For purposes of this Lease Agreement, Base Rent and Additional Rent are referred to collectively as "Rent." Base Rent shall be the amount indicated in Section 1.13 of the Basic Lease Information. Base Rent shall be payable in equal monthly installments in advance on the first day of each and every calendar month during the term of this Lease (except to the extent otherwise specifically provided elsewhere in this Lease). Additional Rent shall consist of all other sums of money as shall become due from and payable by Tenant to Landlord under this Lease. All Rent shall be paid in lawful money of the United States of America to Landlord at its office or such other place as Landlord shall designate by written notice to Tenant. Tenant shall pay the Base Rent and Additional Rent promptly when due without notice or demand and without any abatement, deduction or offset. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent for that partial calendar month shall be prorated as provided in Section 30.8.

**2.6 Late Charge.** Tenant agrees that if Rent from Tenant to Landlord remains unpaid five (5) days after said amount is due, the amount of such unpaid Rent or other payments shall be increased by a late charge to be paid to Landlord by Tenant in an amount equal to five percent (5%) of the amount of the delinquent Rent or other payment, in no event, however, to exceed any maximum amount permitted by law. The provisions of this Section in no way relieve Tenant of the obligation to pay Rent or other payments on or before the date on which they are due, nor do the terms of this Section in any way affect Landlord's remedies pursuant to Article 22 of this Lease in the event Rent is past due.

2.7 Confidentiality. Tenant shall not disclose and shall instruct its employees and representatives not to disclose the Rent and other terms of this Lease except to the extent disclosure is reasonably necessary in the conduct of Tenant's business or is otherwise required by court order or Applicable Laws.

2.8 **[OPTIONAL]** Percentage Rent. In addition to the Base Rent and Additional Rent hereinabove agreed to be paid by Tenant, Tenant shall and will pay to Landlord at the time and in the manner herein specified an additional rental (sometimes referred to herein as "Percentage Rental") a sum equal to the product of the Percentage Rental Rate specified in Section 1.14 above times the amount of Tenant's gross sales made in, upon, or from the Premises during each calendar year of the term hereof in excess of the Natural Break Point. For purposes of the foregoing, the term "Natural Break Point" shall equal the Base Rent payable during such calendar year divided by the Percentage Rental Rate. The foregoing amount shall be prorated for any partial lease year following the Commencement Date based on the actual number of days in such partial year and 365 days. By the end of the first calendar month after the end of each calendar quarter (*i.e.*, April 30, July 31, October 31 and January 31) during the Term, commencing with the first such date during the Term and ending with the applicable day of the month next succeeding the last month of the Lease Term, Tenant shall furnish to Landlord a statement in the form and content of Exhibit F attached hereto or such modified form as Landlord may from time to time reasonably require, and certified by Tenant to be correct, showing the total Gross Sales made in, upon or from the Premises during the preceding fiscal quarter. Tenant agrees that each such statement shall be and is hereby certified to be true and correct. The term "Gross Sales" as used herein means the entire gross receipts of every kind and nature from sales, services and rentals made in, upon or from the Premises, whether operated by Tenant, its subtenants, licensees or concessionaires, whether upon credit or for cash, whether actually collected or not, in every department operating in the Premises, and including without limitation all sales, services and rentals generated by telephone, Internet, mail order or other communication and booked through or from the Premises or shipped from the Premises, including, but not limited to, sales, leases and services: (i) where the orders therefore originate in, at, from, or arising out of the use in whole or part of any portion of the Premises, whether delivery or performance is made from the Premises or from some other place and regardless of the place of bookkeeping for, payment of, or collection of any accounts; or (ii) made or performed by mail, telephone, or telegraph orders received or filled in, at, or from the Premises; or (iii) made or performed by means of mechanical or other vending machines in the Premises; or (iv) which Tenant, or any subtenant, licensee or concessionaire, in the normal and customary course of its business, would credit or attribute to its operations at the Premises, or any part thereof. Any deposit accepted and retained by Tenant shall be included in Gross Sales. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, irrespective of whether or when Tenant receives payment therefor. Gross Sales shall include any amount allowed upon any "trade-in," the full retail price of any merchandise delivered or redeemed for trading stamps or coupons, and all deposits not refunded to purchasers. Gross Sales shall not include sales taxes, so-called luxury taxes, consumers excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services and collected from customers. Tenant shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions, whether cash or credit, in a cash register(s) or point of sale computer(s), having a cumulative retrievable total and which numbers consecutive purchases. Tenant shall prepare and keep full and accurate books of account, records and all such cash register



receipts or computer records with regard to the Gross Sales, credits, refunds and other pertinent transactions made from or upon the Premises (including the Gross Sales of any subtenant, licensee or concessionaire and including any claimed exclusions or deductions from Gross Sales). Such books, receipts and records shall be kept for a period of five (5) years after the close of each calendar year, regardless of whether the five (5) year period extends beyond the Lease Term, and shall be available for inspection and audit on the Premises by Landlord and its representatives at all times during regular business hours. In addition, upon request of Landlord, Tenant agrees to furnish to Landlord a copy of all of Tenant's (and of Tenant's subtenants, licensees or concessionaires) Sales and Use Tax Returns if required to be filed in the State or County or City where the Project is located and consents to Landlord's right to obtain such returns directly from the taxing authorities. ] [Search for "Percentage Rent" and attempt to include obligation to report Gross Sales if not included.]

2.9 Payment by EFT. If requested by Landlord, Tenant shall pay all Rent due under the Lease by electronic funds transfer ("EFT"). Within five (5) days after receipt of Landlord's written request, Tenant shall furnish to Landlord all information necessary to allow Tenant to make payment by EFT. The payments required of Tenant under the Lease are intended to qualify as rents from real property under Section 512(b)(3) of Title 26 of the U.S. Code and the provisions of the Lease shall be interpreted consistently with such intent.

### **ARTICLE 3** **USE**

3.1 Permitted Use. Tenant shall use the Premises only for the use specified in Section 1.9 of the Basic Lease Information and for no other purpose without Landlord's prior written consent, which shall be in Landlord's sole discretion. If any governmental license or permit, other than a certificate of occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Premises or any part thereof, Tenant, at its expense, shall duly procure and thereafter maintain such license or permit and submit the same to Landlord for inspection. Tenant shall at all times comply with the terms and conditions of each such license or permit. Tenant shall keep the Premises in a clean and wholesome condition, free from any objectionable noise, music volumes, odors and fumes. Tenant shall not do or permit anything to be done in, on, or about the Project or bring or keep anything therein which will: (i) in any way materially obstruct or interfere with the rights of other tenants or occupants of the Project or any neighboring properties to the Project, or injure or unreasonably annoy them; (ii) use or allow the Project to be used for any unlawful purpose; (iii) cause or maintain or permit any nuisance, nor commit or allow the commission of any waste, nor use or permit anything to be done which will in any way conflict with any law, statute, ordinance, or governmental rule or regulation applicable to Tenant now in force or which may hereafter be enacted or promulgated; (iv) at Landlord's reasonable discretion, be inconsistent with the image of a community or family-oriented Project; (v) in any way increase the rate of any insurance upon the Project (unless Tenant agrees to pay the increase) or any of its contents or cause a cancellation of said insurance or otherwise affect said insurance in any materially adverse manner; (vi) violate any covenant respecting radius, location, use or exclusivity contained in any other lease, private restriction, or other agreement related to the Project (provided, however, that if Tenant did not have prior notice of any such covenant, restriction or agreement, then any violation hereunder shall not constitute an Event of Default under this Lease until Tenant has been given written notice of such covenant, restriction or agreement and thereafter fails to cure

such violation within the grace and cure period set forth in Section 21.1.3 below) and/or (vii) which conflicts with the Ground Lease or any recorded document or restrictive use covenant including, without limitation, the Declaration (as defined below) or the restrictive use covenants in the Declaration and in the Ground Lease. Tenant shall not conduct any events or other activities within the waterways of Dana Point Harbor without first obtaining all applicable permits for the same. Tenant shall comply with all of the terms, covenants, and conditions of the Ground Lease applicable to the Premises. Tenant shall, at its sole cost and expense, promptly comply with all Applicable Laws, and with all private restrictions and the requirements of any board of fire underwriters or similar body now or hereafter constituted, relating to or affecting the condition, use, or occupancy of the Premises and the use of the Common Areas (“Other Requirements”), and Landlord shall also comply with all Applicable Laws and Other Requirements. Tenant shall not grant to any person or entity any easement, license or other right to install tile, floor or wall covering, cabling, wiring, conduit, or any other item without the prior written consent of Landlord and otherwise in accordance with the terms of this Lease, including without limitation the provisions of Exhibit C and Article 13 hereof. Tenant shall not be required to make structural changes unless related to or affected by: (a) alterations or improvements made by or for Tenant; or (b) Tenant’s acts. The judgment of any court of competent jurisdiction or the admission of Tenant in an action against Tenant, whether Landlord be a party thereto or not, that Tenant has so violated any such law, statute, ordinance, rule, regulation, or requirement, shall be conclusive of such violation as between Landlord and Tenant. Tenant shall use its best efforts to prevent any violation of Applicable Laws and Other Requirements by its directors, officers, agents, employees, contractors, subsidiaries, affiliates, subtenants, successors and/or assigns (collectively the “Tenant Parties”), and shall use commercially reasonable and good faith efforts to prevent any violation of Applicable Laws and Other Requirements by its customers and invitees.

3.2 [OPTIONAL] [Exclusive Use. From and after the Effective Date of this Lease, Landlord shall not execute any lease for premises located within the Project to any other tenant whose primary use is the operation of a \_\_\_\_\_ (“Competitive Store”) subject to the following terms and the satisfaction of each and all of the following conditions (“Use Protection”):

3.2.1 Tenant dba \_\_\_\_\_, is Tenant under the Lease and has not made a Transfer of the Lease or Tenant’s interest in the Premises which requires Landlord’s prior written consent in accordance with the terms of Article 10.

3.2.2 The Use Protection is not applicable to (i) any premises containing \_\_\_\_\_ thousand (\_\_,000) or more square feet of gross floor area, (ii) any Project leases entered into on or before the Effective Date of this Lease, even if such occupants complete construction and/or open for business after the Effective Date of Lease (“Existing Tenants”), (iii) any new Project leases or extensions of existing leases entered into with Existing Tenants (including, without limitation, their assignees and sublessees), or (iv) any portion of the Project not owned by Landlord.

3.2.3 The Use Protection shall automatically terminate if Tenant fails to continuously operate its business in the entire Premises in accordance with this Lease, excepting “Permitted Closures”, which as used in this Lease shall mean closures for reasonable periods of time for remodeling as permitted under this Lease (not to exceed sixty (60) days in any twelve

(12) month period), closures due to rebuilding and repair after casualty and closures due to *force majeure* which prevents Tenant from operating its business in the Premises.

3.2.4 The Use Protection shall automatically terminate without notice to Tenant and be of no further force or effect effective as of the date which is the earliest of: (i) a Transfer of the Lease which requires Landlord's prior written consent; (ii) a change in the Permitted Use set forth in the Lease Summary; (iii) the effective date of any default by Tenant under the Lease; or (iv) the expiration or earlier termination of the Lease. The Use Protection shall cease to apply to any products that Tenant discontinues selling or services Tenant discontinues providing.

Notwithstanding anything contained herein to the contrary, Landlord shall not be obligated to maintain or enforce the terms of this Section 3.2 or any similar provisions of the Lease to the extent same would be in violation of any anti-trust law. If such anti-trust violation is the basis of a claim or counterclaim against Landlord in connection with Landlord's attempted enforcement of this exclusive, then Landlord shall promptly consult with Tenant regarding Tenant's desire to further pursue enforcement of this exclusive. In addition, Tenant shall defend, indemnify and save Landlord and its employees, agents and assigns harmless from and against any and all losses, damages, actions, causes of action, claims, liabilities, demands, costs and expenses including, without limitation, attorneys' fees, arising out of the Use Protection set forth herein or arising out of the enforcement of the Use Protection. Landlord shall have the right to provide a copy of this Section 3.2 to any tenant or prospective tenant of the Project. ]

3.3 Americans with Disabilities Act. Landlord and Tenant acknowledge that the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA"), establish requirements for business operations, accessibility and barrier removal, and that such requirements may or may not apply to the Premises and the Building depending on, among other things: (1) whether such requirements are "readily achievable", and (2) whether a given alteration affects a "primary function area" or triggers "path of travel" requirements. The parties hereby agree that notwithstanding anything contained in this Lease to the contrary: (a) Landlord shall be responsible for ADA Title III compliance in the Common Areas of the Project except as expressly provided below, (b) Tenant shall be responsible for ADA Title III compliance inside the Premises portion of the Building following the Delivery Date, including any leasehold improvements or other work to be performed inside the Premises portion of the Building under or in connection with this Lease, (c) Landlord may perform, or require that Tenant perform, and Tenant shall be responsible for the cost of, ADA Title III "path of travel" requirements triggered by alterations made by Tenant in the Premises, and (d) Landlord may perform, or require Tenant to perform, and Tenant shall be responsible for the cost of, ADA Title III compliance in the Common Areas of the Project necessitated as a result of Tenant's improvements or alterations to or particular use of the Premises. Tenant shall be solely responsible for requirements under Title I of the ADA relating to Tenant's employees.

3.4 Certified Access Specialist. Pursuant to Section 1938 of the California Civil Code, Landlord hereby advises Tenant that as of the Effective Date of this Lease, the Premises has not undergone inspection by a Certified Access Specialist (a "CASp") during the Landlord's ownership of the Project, nor, to Landlord's actual knowledge (without any duty of inquiry, as of the Effective Date, prior to Landlord's ownership of the Project. Further, pursuant to Section 1938

of the California Civil Code, Landlord notifies Tenant of the following: “A Certified Access Specialist (CASp) can inspect the Premises and determine whether the Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of any such CASp inspection, the payment of the costs and fees for the CASp inspection and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.” Therefore and notwithstanding anything to the contrary contained in this Lease, Landlord and Tenant agree that (a) Tenant may, at its option and at its sole cost, cause a CASp to inspect the Premises and determine whether the Premises complies with all of the applicable construction-related accessibility standards under California law, (b) the parties shall mutually coordinate and reasonably approve of the timing of any such CASp inspection so that Landlord may, at its option, have a representative present during such inspection, (c) Tenant shall be solely responsible for the cost of any repairs necessary to correct violations of construction-related accessibility standards within the Premises, any and all such alterations and repairs to be performed in accordance with Section 13.1 of this Lease, and (d) if anything done by or for Tenant in its use or occupancy of the Premises shall require repairs to the Building or Project (outside the Premises) to correct violations of construction-related accessibility standards, then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the cost to Landlord of performing such repairs.

3.5 Hazardous Substances. Tenant shall not cause or permit the release, discharge, or disposal nor the presence, use, transportation, generation, or storage of any Hazardous Material (as defined below) in, on, under, about, to, or from the Premises, the Building, the Land, the Project or the Common Areas by either Tenant or any Tenant Parties in violation of Environmental Laws. Tenant further agrees and covenants to Landlord, Master Lessor, their employees, property managers, independent contractors, affiliates, shareholders, directors and officers (collectively the “Landlord Parties”) that:

3.5.1 Tenant and all Tenant Parties shall comply with all Environmental Laws (as defined below) in effect, or that may come into effect, applicable to the Tenant or Tenant’s use and occupancy of the Project;

3.5.2 Tenant shall immediately notify Landlord and Master Lessor, in writing, of any existing, pending or threatened (a) investigation, inquiry, claim or action by any governmental authority in connection with any Environmental Laws relating to the Project of which Tenant receives notice; (b) third party claims relating to the Project of which Tenant receives notice; (c) regulatory actions relating to the Project of which Tenant receives notice; and/or (d) contamination of the Project of which Tenant becomes aware;

3.5.3 Tenant shall, at Tenant’s expense, investigate, monitor, remediate, and clean up any Hazardous Material or other environmental condition on, about, or under the Project which exists as a result of Tenant’s or any Tenant Party’s use or occupancy of the Project;

3.5.4 Tenant shall keep the Project free of any lien imposed pursuant to any Environmental Laws arising out of Tenant's or any Tenant Party's use or occupancy of the Project; and

3.5.5 Tenant shall indemnify, defend, and save Landlord, Master Lessor and all Landlord Parties harmless for, from and against any and all claims (including personal injury, real, or personal property damage), actions, judgments, damages, penalties, fines, costs, liabilities, interest, or attorney fees that arise, directly or indirectly, from Tenant's or any Tenant Party's violation of any Environmental Laws or the presence of any Hazardous Materials on, under or about the Project caused or permitted by Tenant or any Tenant Party in violation of Environmental Laws; provided, however, Tenant shall in no event be responsible for or be required to indemnify, defend or save Landlord, Master Lessor and/or any Landlord Parties harmless from or with respect to existing environmental conditions, if any, or any related Hazardous Materials.

The Tenant's obligations, responsibilities, and liabilities under this Section shall survive the expiration or termination of the Lease.

For purposes of this Section the following definitions apply:

"Hazardous Materials" shall mean: (1) any "hazardous waste" and/or "hazardous substance" defined pursuant to any Environmental Law; (2) asbestos or any substance containing asbestos; (3) polychlorinated biphenyls; (4) lead; (5) radon; (6) pesticides; (7) petroleum or any other substance containing hydrocarbons; (8) any substance which, when on the Project, is prohibited by any Environmental Laws; (9) petroleum; and (10) any other substance, material, or waste which, (i) by any Environmental Law requires special handling or notification of any governmental authority in its collection, storage, treatment, or disposal, or (ii) is defined or classified as hazardous, dangerous or toxic pursuant to any Environmental Laws.

"Environmental Laws" shall mean any and all federal, state and local laws, statutes, codes, ordinances, regulations, rules or other requirements relating to human health or safety or to the environment, including, but not limited to, those applicable to the storage, treatment, disposal, handling and release of any Hazardous Materials, all as amended or modified from time to time.

3.5.6 Notwithstanding the foregoing, Tenant shall have the right, without obtaining prior written consent of Landlord, to utilize within the Premises standard products that may contain Hazardous Materials and which are generally recognized as necessary and appropriate for typical general upkeep and maintenance of the Premises, provided, however, that (i) Tenant shall maintain such products in their original retail packaging, shall follow all instructions on such packaging with respect to the storage, use and disposal of such products, and shall otherwise comply with all Applicable Laws with respect to such products, and (ii) all of the other terms and provisions of this Section 3.4 shall apply with respect to Tenant's storage, use and disposal of all such products.

3.5.7 Landlord represents and warrants that, to Landlord's actual knowledge as of the date this Lease is fully executed and delivered, no Hazardous Materials have been released, discharged or disposed, of on, under or about the Premises, the Building, the Project or the Property

(or off-site of the Property which might affect the Premises, the Building, the Project or the Property) in violation of Environment Law.

3.5.8 If at any time any removal or remediation of any Hazardous Materials is sought or ordered or any liability or penalty is sought or imposed by any person with respect to the Project or by any authority having jurisdiction thereof on account of the presence of any Hazardous Materials at, or any migration thereof from, the Project, whether based on an alleged violation of Applicable Laws, actual damage to persons or property resulting therefrom, or otherwise, Landlord will defend, indemnify (including, but not limited to, causing the remediation and removal of same at Landlord's cost) and hold harmless Tenant from and against all claims, demands, losses, costs and liabilities on account of such contamination. However, with respect to the presence of any Hazardous Materials at the Project attributable to third parties other than Landlord and the Landlord Parties, Landlord's indemnification only covers costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by Applicable Laws and does not extend to any claim by Tenant for loss of business or any other claim. The obligations, responsibilities, and liabilities under this Section shall survive the expiration or termination of this Lease.

3.6 Declaration; Ground Lease. Tenant understands that the Building and the Premises are part of a multi-building Project which covers the area shown on Exhibit A attached to this Lease. The Premises is being leased subject to and with the benefit of a "Declaration of Covenants, Conditions and Restrictions dated \_\_\_\_\_ (collectively the "Declaration") for the mutual benefit of Landlord and its tenants, which imposes certain restrictions, covenants, easements and obligations upon the Premises, Landlord and Tenant. Tenant agrees that this Lease and Tenant's occupancy of the Premises hereunder is subject and subordinate to the Declaration and Tenant agrees to abide thereby. To the extent the obligations imposed by, or services provided by the Operator or Association under, the Declaration are the same obligations imposed upon Landlord under this Lease, they shall be performed by Landlord or the Operator or Association under the Declaration and the cost thereof shall be included as part of Operating Expenses in accordance with the provisions of this Lease; to the extent such obligations are the same obligations imposed upon Tenant under this Lease, such obligations shall be performed by Tenant at Tenant's cost. Notwithstanding anything to the contrary set forth herein, the Lease is subject in all respects to the Declaration and that any failure of the Tenant to comply with each of the provisions of the Declaration shall constitute a default under the Lease. Landlord's title is subject to that certain Master Ground Lease Agreement by and between the County of Orange (the "Master Lessor") and Landlord dated \_\_\_\_\_, 2018 (the "Ground Lease"). Tenant agrees that it will not cause Landlord to be in violation of the terms of the Ground Lease and that this Lease is and shall be subject and subordinate to the Ground Lease, the terms, covenants and conditions thereof, and any amendments and/or modifications thereto, the provisions of which are incorporated herein by this reference. Tenant acknowledges and agrees that Master Lessor is an intended third party beneficiary of Sections 3.1, 3.5, 3.6, 3.8, 3.9, 5.4, 8.2, 8.3, 11.1, 11.8, 18.1, 18.2, 18.3, 28.2 and 30.4 and is entitled to enforce such provisions against Tenant.

### 3.7 Promotion Fund.

3.7.1 Tenant shall pay to Landlord as additional rent, a monthly contribution in the amount of \$0.\_\_\_\_ psf monthly as Tenant's contribution toward the creation and maintenance of

a common Promotion Fund and for the promotion of the Project. The foregoing contribution shall be payable in advance on the first day of each month. The foregoing contributions shall be paid in equal, consecutive, monthly installments unless Landlord shall provide otherwise in a written notice to Tenant.

3.7.2 The Promotion Fund shall be used by Landlord for the promotion or benefit of the Project in such manner and as Landlord may from time to time decide. Without limiting the generality of the foregoing, Landlord may utilize the Promotion Fund for payment of a full-time or part-time director of promotions, the employment of other promotional staff, the purchase of advertising space and time, materials or equipment for decorating and promotional events and activities similar to those undertaken by similar Projects. Landlord may make available for the promotion of the Project part or all of the services of any promotional staff of Landlord, in which case the salary and out-of-pocket costs to Landlord with respect to such staff, or an appropriate portion of such salary and costs determined in proportion to the time spent in rendering services to the Project to the exclusion of any other duties, shall be deducted from any financial contributions to the Promotion Fund that Landlord, may from time to time, commit to provide to the Promotion Fund, but Landlord shall have no obligation to make any such commitment. Any surplus in the Promotion Fund at the end of the fiscal year of the Promotion Fund shall be carried forward for like purposes in the next year, without any reduction in the amount payable by Tenant pursuant to Section 3.6.1. Any shortfall of the Promotion Fund in funding the promotion of the Project shall be passed down to tenants as an Operating Expense.

3.7.3 Tenant shall participate in and support all promotional events, functions and activities sponsored or participated in by the Promotion Fund, at no additional cost or expense to Tenant.

3.7.4 In addition to Tenant's contributions to promotion required elsewhere in this Section 3.5, Tenant shall, during each lease year, expend not less than an amount equal to two percent (2%) of its gross sales for such lease year on a program of media advertising related to the Premises or the Project. Tenant shall promote the Project by designating the location of the Premises by reference to the Project by name in any advertisements or promotional material published or initiated by Tenant in regard to its business from the Premises or the Project. The advertising shall be in newspapers, tabloids, direct mailings or other media covering the trade area served by the Project, and shall be in such style and script as Landlord may reasonably designate. Further, the advertising shall include participation in a majority of the promotions of the Project. Within thirty (30) days following the end of each lease year, Tenant shall supply to Landlord a certified statement showing the amounts expended for advertising to verify compliance with this Section 3.5.5. If it shall be found that Tenant shall not have expended in any lease year the full amount of such percentage of gross sales on advertising as aforesaid, Tenant shall, on demand, pay to the Promotion Fund a sum equal to the amount not expended as aforesaid and such sum shall be in addition to and not in substitution for Tenant's contributions pursuant to Sections 3.5.1 hereof..

### 3.8 Best Management Practices.

3.8.1 Tenant and all of Tenant's, subtenant, agents, employees and contractors shall use commercially reasonable and diligent efforts to conduct operations under this Lease so

as to assure that pollutants do not enter municipal storm drain systems which systems are comprised of, but are not limited to curbs and gutters that are part of the street systems (“Stormwater Drainage System”), and to ensure that pollutants do not directly impact “Receiving Waters” (as used herein, Receiving Waters include, but are not limited to, rivers, creeks, streams, estuaries, lakes, harbors, bays and oceans).

3.8.2 The Santa Ana and San Diego Regional Water Quality Control Boards have issued National Pollutant Discharge Elimination System (“NPDES”) permits (“Stormwater Permits”) to the Master Lessor, and to cities within Orange County, as co-permittees (hereinafter collectively referred to as “Master Lessor Related Entities”) which regulate the discharge of urban runoff from areas within the County of Orange, including the Premises leased under this Lease. The Master Lessor Related Entities have enacted water quality ordinances that prohibit conditions and activities that may result in polluted runoff being discharged into the Stormwater Drainage System and Receiving Waters. For the avoidance of doubt, the Tenant acknowledges that the Master Lessor has retained the right to enter upon the Project to perform such actions as are necessary or desirable for the Master Lessor to comply with the terms, conditions and requirements of the NPDES, Stormwater Permits, and similar water quality rules and regulations promulgated from time to time by federal, state and/or local regulatory agencies and that this Lease is subject to such rights.

3.8.3 To assure compliance with the Stormwater Permits and water quality ordinances, the Master Lessor Related Entities have developed a Drainage Area Management Plan (“DAMP”) which includes a Local Implementation Plan (“LIP”) for each jurisdiction that contains Best Management Practices (“BMPs”) that parties using properties within Orange County must adhere to. As used herein, a BMP is defined as a technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of storm water runoff in a cost effective manner. These BMPs are found within the Master Lessor’s LIP in the form of Model Maintenance Procedures and BMP Fact Sheets (the Model Maintenance Procedures and BMP Fact Sheets contained in the DAMP/LIP shall be referred to hereinafter collectively as “BMP Fact Sheets”) and contain pollution prevention and source control techniques to eliminate non-storm water discharges and minimize the impact of pollutants on storm water runoff.

3.8.4 BMP Fact Sheets that apply to uses authorized under this Lease include the BMP Fact Sheets that are attached hereto as Exhibit “H”. These BMP Fact Sheets may be modified during the term of the Lease; and Landlord shall provide Tenant with any such modified BMP Fact Sheets upon receipt from the Master Lessor. Tenant, its agents, contractors, representatives and employees and all persons authorized by Tenant to conduct activities on the Premises shall, throughout the term of this Lease, comply with the BMP Fact Sheets as they exist now or are modified, and shall comply with all other requirements of the Stormwater Permits, as they exist at the time this Lease commences or as the Stormwater Permits may be modified. Tenant agrees to maintain current copies of the BMP Fact Sheets on the Premises throughout the term of this Lease. The BMPs applicable to uses authorized under this Lease must be performed as described within all applicable BMP Fact Sheets.

3.8.5 Tenant may propose alternative BMPs that meet or exceed the pollution prevention performance of the BMP Fact Sheets. Any such alternative BMPs shall be submitted to the Landlord and Master Lessor for review and approval prior to implementation.



3.8.6 Landlord and Master Lessor may enter the Premises and/or review Tenant's records at any reasonably time during normal business hours to assure that activities conducted on the Premises comply with the requirements of this Section. Tenant may be required to implement a self-evaluation program to demonstrate compliance with the requirements of this Section.

3.8.7 While Tenant is permitted to use the existing sewer and Stormwater Drainage System within the Project for outflows permitted under Applicable Law, Tenant acknowledges that the Master Lessor has reserved the right to require Tenant to participate in a water quality management plan to minimize impacts on harbor and ocean waters on a non-discriminatory basis similar to other retail, commercial, hospitality, restaurant, marina and public park facilities in the County of Orange if required in order to comply with permitting or similar obligations imposed on the Master Lessor and that this Lease is entered into subject to such rights and obligations.

3.9 Public Contract Code Compliance. To the extent required by Applicable Law, Tenant shall comply, and shall cause its contractors and subcontractors to comply, with all County ordinances and public contracting laws regarding public works contracts, including, but not limited to, the bidding requirements under the California Public Contracts Code.

#### **ARTICLE 4**

#### **TENANT'S ACCEPTANCE AND MAINTENANCE OF PREMISES**

4.1 Acceptance of Premises. Subject to any identified punch list items as provided for in Exhibit C, by taking possession of the Premises, Tenant accepts the Premises as being in the condition in which Landlord is obligated to deliver them and otherwise in good order, condition and repair. Except as set forth in Section 4.2 below and any punch list items, or as expressly set forth elsewhere in this Lease, Landlord shall have no obligation to repair or maintain the Premises. Except for Landlord's Work described in Exhibit C, Tenant accepts the Premises in their "AS IS" condition, and Landlord shall have no obligation to alter, remove, improve, decorate, or paint the Premises or any part thereof, provided that Landlord shall cooperate with Tenant to proceed against Landlord's contractor under any available warranties covering Landlord's Work for a period of one (1) year following the Delivery Date. Tenant acknowledges that except as expressly provided herein neither Landlord nor any Landlord Party has made any representations or warranties as to the suitability or fitness of the Premises for the conduct of Tenant's business, including, but not limited to, any representations or warranties regarding zoning or other land use matters, or for any other purpose. Neither Landlord nor any Landlord Party has agreed to undertake any alterations or additions or construct any Tenant Improvements to the Premises except any Landlord's agreements expressly provided in Exhibit C attached to this Lease. No representations respecting the condition of the Premises or the Project have been made by Landlord to Tenant except as expressly provided herein.

4.2 Landlord's Obligations. Landlord shall, subject to Section 4.1, Section 4.3 and Article 19, operate and maintain in good condition and repair the Building and all components thereof, including, but not limited to the Building structure and foundation, roof of the Building (excluding any skylights, but including as needed any replacement thereof, and roof membrane); electrical, plumbing, door locks and doors, interior sprinklers and sprinkler heads, and other

mechanical facilities serving the Building, and maintain and paint the exterior walls of the Building, as and when the same become necessary in Landlord's sole discretion. Landlord shall not be required to make any repairs to the items specified above unless and until Landlord learns or is made aware of (including but not limited to notification by Tenant in writing of the need for such repair) and Landlord shall have a reasonable period of time thereafter to commence and complete said repair, if warranted. The cost of any of the foregoing maintenance and repairs on the part of Landlord provided for in this Section 4.2 (the "Building Expenses") shall be paid by Tenant as part of Operating Expenses set forth in Section 5.2 below except that repairs (including structural repairs) which Landlord deems to arise out of any act or omission of Tenant or any Tenant Parties shall be made at the sole expense of Tenant, and except that costs associated with the Building structure and foundation, roof of the Building (excluding any skylights, but including as needed any replacement thereof, and roof membrane) shall be Landlord's sole responsibility (provided that any repairs to any structural portions of the Premises or Building that are required because of Tenant's use or modifications by Tenant which affect or compromise the structural integrity of the Premises or Building shall be Tenant's sole responsibility). Landlord shall have the right to create different pools of such Building expenses based upon services provided to multiple buildings in the Project, in which event Tenant's Percentage shall be adjusted for purposes of any pool of such Building expenses in which Tenant is included based on the total number of rentable square feet of the tenants or occupants in the Project included in such pool. In addition, in the event a maintenance contractor is called for a repair or maintenance applicable and charged to a particular premises, Landlord shall have the right to require such tenant (including Tenant) to bear such expense directly. In the event any of the foregoing repairs are made on a regular ongoing basis, such as through a maintenance or service contract, Landlord shall have the right to collect such amounts in advance on a monthly basis, in which event Landlord shall furnish Tenant with a written statement setting forth Tenant's Pro Rata Share of the estimated maintenance and service costs on a calendar year basis. Thereafter, Tenant shall pay to Landlord, as Additional Rent on the first day of each calendar month, an amount equal to one-twelfth (1/12) of the amount of Tenant's Pro Rata Share of such annual maintenance and service costs, until Landlord provides a recalculation of such amount to Tenant. In such event, the procedures set forth in Sections 6.4 through 6.8 regarding the treatment of estimating and reconciling Operating Expenses shall apply to the foregoing estimated payments. Landlord's obligation to repair and maintain hereunder shall be limited to the cost of effecting such repair and maintenance, and in no event shall Landlord be liable for any costs or expenses in excess of said amounts, including but not limited to any consequential damages, opportunity costs or lost profits incurred or suffered by Tenant.

Tenant waives the right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, and under all other similar laws, statutes or ordinances now or hereafter in effect.

4.3 Tenant's Obligations. Except for Landlord's obligations stated in Section 4.2 above, Tenant shall, at all times during the term hereof, at Tenant's sole cost and expense, keep the Premises in good order, condition and repair, which obligations shall include, without limitation, the obligation to maintain, repair and replace as necessary: (i) floor coverings; (ii) wall coverings; (iii) paint; (iv) casework; (v) ceiling tiles and roof membrane; (vi) electrical, plumbing, pipes and mechanical fixtures exclusively serving the Premises; (vii) window coverings, casements and glazing; (viii) lights and ballasts; (ix) locks and hardware; (x) all of Tenant's Property (as defined in Section 14.2 herein); (xi) any and all Landlord's Work in the Premises and

Tenant's Work (as defined in Exhibit C) and Alterations (as defined in Section 13.1); (xii) window glass and door glass in the Premises (including plate glass and any replacement thereof and periodic washing of the interior surfaces); (xiii) interior walls, storefront, doors and roll up doors; and (xiv) Tenant's signage. Tenant shall repair any damage caused to any portion of the Premises by natural elements or as a result of any criminal acts such as robbery, burglary or vandalism.

4.4 Tenant Improvements. A description of the improvements to be performed by Landlord ("Landlord's Work") and Tenant ("Tenant's Work") and the terms under which they are to be executed is attached hereto as Exhibit C. For purposes of this Lease, the term "Tenant Improvements" shall mean the Tenant's Work as described in Exhibit C.

## **ARTICLE 5** **COMMON AREA MAINTENANCE; OPERATING EXPENSES AND TAXES**

5.1 Common Area Maintenance. Landlord shall maintain in good condition and repair the Common Areas, including but not limited to, landscaping (including replacement thereof), landscaping sprinkler systems, walkways, parking areas and removal of Common Area trash. Such maintenance shall include restriping of the parking areas and periodic window washing of the exterior windows of the Buildings, as and when the same become necessary in Landlord's sole discretion. Such maintenance shall further include electrical, plumbing, sprinklers and sprinkler heads and other mechanical facilities serving the Building. The cost of any maintenance and repairs on the part of Landlord provided for in Sections 5.1 and 5.2 shall be considered part of Operating Expenses and paid by Tenant in the manner set forth in this Article 5, except that repairs which Landlord deems arise out of any act or omission of Tenant or any Tenant Parties shall be made at the immediate expense of Tenant. Landlord's obligation to repair and maintain hereunder shall be limited to the cost of effecting such repair and maintenance and in no event shall Landlord be liable for any costs or expenses in excess of said amounts, including but not limited to any consequential damages, opportunity costs or lost profits incurred or suffered by Tenant.

5.2 Operating Expenses. For the purpose of this Lease, the term "Operating Expenses" shall mean all expenses paid or incurred by Landlord (or on Landlord's behalf) as reasonably determined by Landlord to be necessary or appropriate for the efficient use, operation, maintenance, repair and replacement of the Project and Common Area of the Project (but not including Building Expenses or Building Systems), together with other expenses as described below, including without limitation:

5.2.1 All costs and expenses to Landlord in maintaining fire and extended coverage insurance including an all risk endorsement on the Building, commercial general liability, fidelity, rent loss insurance for twelve (12) months, difference in conditions and any other insurance maintained by Landlord covering the use and operation of the Project, and the part of any claim required to be paid under the deductible portion of any insurance policies carried by Landlord in connection with the Building (all such insurance shall be in such amounts as Landlord may reasonably determine and with such commercially reasonable deductibles as Landlord may reasonably determine).

5.2.2 All costs and expenses to Landlord in providing standard services and utilities to the Common Areas, including janitorial and day-porter services, together with the costs

of replacement of Common Area lighting and signage bulbs, fluorescent tubes, ballasts and other lighting components and fixtures.

5.2.3 All costs and expenses incurred by Landlord in operating, managing, maintaining, repairing, and/or replacing the Common Areas of the Project as Landlord shall deem necessary, including without limitation: (i) all sums expended in connection with the Project for general maintenance and repairs, resurfacing the parking area serving the Building painting of the Building, restriping, cleaning, sweeping, window washing, maintenance and repair of exterior speaker systems, sidewalks, curbs, Project signs, Project lighting, sidewalks, curbs, landscape sprinkler systems, landscaping plumbing, plumbing serving the Project, planting and landscaping; (ii) cost of all tools, equipment and supplies and personnel to implement such services and to generally monitor and maintain the Project; (iii) rental and/or depreciation of machinery and equipment used in such maintenance and services) security and fire protection services; (v) trash removal and pest control services; (viii) establishment of reasonable reserves for replacements and/or repairs to Common Areas; (ix) with respect to any capital improvements, repairs or replacements partially paid for by reserves, the remaining cost of any such capital repairs and replacements made by or on behalf of Landlord to the Project, net of any reserves applied thereto; (x) the cost of any capital repairs and replacements made by or on behalf of Landlord for which no reserves were collected to the extent of the amortized cost thereof over the useful life thereof calculated at a market cost of funds at the time the expense is incurred, all as reasonably determined by Landlord; (xi) costs incurred in connection with compliance with Applicable Laws (other than building codes or ADA provisions in effect at the time of construction of the Building) or changes in laws applicable to the Project; (xii) premiums and other costs for workers' compensation insurance, salaries, wages, withholding taxes, social security taxes, medical, surgical, union and general welfare benefits (including without limitation, group life insurance) of employees of Landlord or Landlord's property manager engaged in the repair, maintenance and operation of the Project; (xiii) personal property taxes, fees for required licenses and permits, supplies and charges; (xiv) alterations or improvements including, without limitation, repair or replacement of furnishings, fixtures, accessories, floor coverings and painting; (xv) reasonable costs incurred by accountants, attorneys or other experts or consultants incurred in connection with operation, maintenance or management of the Project (including property management and/or administrative fees); (xvi) all other costs incurred by Landlord under Section 4.2 above; (xvii) an administrative fee in the amount of [10%] of Operating Expenses [excluding Taxes and insurance]; (xviii) a management fee of four percent (4%) of gross rents collected; and (xix) all other charges allocable to the operation, maintenance and repair of the Project.

5.3 Exclusions From Operating Expenses. Operating Expenses shall not include: (i) depreciation or amortization of the Project (except as provided above in Section 5.1); (ii) interest on and amortization of debts (except as provided above in Section 5.1); (iii) Tenant Improvements under Exhibit C; (iv) leasing commissions, attorneys' fees and other costs, expenses incurred in connection with this Lease and with leasing, renovating, or improving space for other tenants or prospective tenants; (v) costs associated with the collections of rent under any lease or defense of Landlord's title to or interests in the Project; (vi) refinancing costs; (vii) fines or penalties incurred due to violations by Landlord of Applicable Laws, regulations, orders and the like; (viii) all overhead, costs and expenses associated with the operation of Landlord's business, as distinguished from costs and expenses associated with the operation of the Project, such as, without limitation, corporate accounting and legal fees, costs and expense of defending or

prosecuting litigation not related to the Project, and costs and expense of selling, syndicating, financing or mortgaging Landlord's interest in the Project; (ix) any items of expense to the extent Landlord is reimbursed by means other than Operating Expense payments by tenants of the Project such as through warranties, guaranties, insurance proceeds or litigation against the party who wrongfully caused the expense; (x) costs of restoration or repair of the Building as a result of total or partial destruction or condemnation thereof, such costs to be handled pursuant to Article 19 of this Lease; (xi) cost to maintain and replace the Building and components of the Building, Building Expenses, and Building Systems to the extent reimbursed by Tenant pursuant to other provisions of this Lease; (xii) contributions to charitable organizations (except as provided in Section 3.4); and (xiii) fees, costs, reimbursements and other sums paid to affiliates of Landlord for services provided to the Project to the extent that such fees, costs, reimbursements or other sums are in excess of prevailing market amounts for comparable services provided by unaffiliated third parties.

5.4 Taxes. The term "Taxes" shall include (i) all real property taxes and assessments and personal property taxes, charges, rates, duties, and assessments charged, levied or imposed by any governmental authority with respect to the Project, and any improvements, fixtures and equipment located therein or thereon, and with respect to all other property of Landlord, real or personal, to the extent used in connection with the operation of the Project or any obligation to any governmental entity assessed upon Landlord as a result of its ownership or operation; (ii) any tax in lieu of a real property tax, including any special assessment district tax imposed on any interest of Landlord in the Project, including any landscape maintenance district or community facilities district; (iii) any tax or excise levied or assessed by any governmental authority on the rentals payable under this Lease or rentals accruing from the use of the Project; (iv) any tax or excise imposed or assessed against Landlord which is measured or based in whole or in part on the capital employed by Landlord to improve the Project, or to construct the Project; (v) any assessments, levies or charges imposed by any quasi-governmental authority, association, declarant, or similar entity pursuant to any covenant, restriction or other encumbrance upon or relating to the Project, including without limitation under the Declaration or the Ground Lease; (vi) any taxes, supplemental taxes, assessments, reassessments or other levies arising out of the improvement of the Project, or arising from any revaluation of all or any portion of the Project due to sale or otherwise; (vii) any possessory interest tax levied on the Tenant's interest under this Lease or Landlord's interest in the Project under the Ground Lease; and (viii) all reasonable costs and expenses incurred by Landlord in contesting or negotiating the same with governmental authority if Landlord, in its reasonable discretion, elects to contest or negotiate the same. Notwithstanding the foregoing, Taxes shall not include federal or state corporate or personal income, excess profits, estate, business, inheritance, succession, transfer or franchise taxes or assessments upon Landlord.

Pursuant to California Revenue and Taxation Code Section 107.6, Tenant is specifically informed that the interests created under this Lease are derived from Landlord's interest under the Ground Lease and that Landlord's interest requires the payment of a possessory interest which is levied on such interest. It is understood and agreed that all taxes and assessments (including but not limited to said possessory interest tax) which become due and payable upon the Premises or upon fixtures, equipment, or other property installed or constructed thereon, shall be the full responsibility of Tenant, and Tenant shall cause said taxes and assessments to be paid promptly. In the event such possessory interest taxes are assessed against the Project in connection with the Ground Lease, Tenant's Pro Rata Share of Taxes shall be passed through in accordance with Section 6.2 below.

For the purposes of allocating Taxes, Tenant's Percentage (for purposes of Tenant's Pro Rata Share of Taxes under Section 6.2 below) shall be calculated as a percentage, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area within the tax parcel of which the Premises is a part.

5.5 Use of Common Areas and Facilities. The Common Areas, including, without limitation, parking areas, lighting facilities, pedestrian sidewalks and ramps, landscaped areas, exterior stairways, restrooms and other areas and improvements shall at all times be subject to the exclusive control and management of Landlord. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ all personnel and, pursuant to Article 12, to establish, modify and enforce reasonable rules and regulations necessary for the proper operation and maintenance of the Common Areas. Landlord shall have the right to close from time to time all or any portion of the Common Areas to such extent as, in the reasonable opinion of Landlord's legal counsel, may be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person (other than Tenant) or the public therein; provided at all times Tenant shall be provided with reasonable access to the Premises, the Building and Tenant's parking to be provided herein. So long as Landlord does not unreasonably impede access to and from the Premises for Tenant and Tenant Parties, parking for Tenant, or visibility of the Premises and Tenant's signs, Landlord shall also have the right at any time, to modify the Common Areas, to change the arrangement and/or location of entrances, lobbies, parking facilities, passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Project or Building and to change the name, number or designation by which the Building or Project is commonly known. If the amount of such Common Areas is diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of Rent, nor shall such diminution of such Common Areas be deemed constructive or actual eviction unless Tenant's business operations are materially adversely affected.

5.6 Parking Facilities. Tenant shall have the right throughout the Lease Term, at no cost to Tenant or Tenant's employees and/or customers, to use non-reserved parking spaces, on a non-exclusive basis jointly with other tenants of the Building, and their employees, agents and invitees, subject to the Rules and Regulations which may, pursuant to Article 12, be changed from time to time. All parking spaces shall be used only for parking by vehicles no larger than full size passenger automobiles, vans, sport utility vehicles, or pick-up trucks. Tenant shall not permit or allow any vehicles that belong to or are controlled by Tenant or any Tenant Parties to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. Employees of Tenant shall not park their vehicles in those parking areas of the Common Area that Landlord may from time to time designate for use by patrons of the Project. Tenant and its employees shall park their vehicles only in those portions of the Common Area, if any, designated for that purpose by Landlord. Parking shall be limited to striped parking stalls, and no parking shall be permitted in any driveways, access ways or in any area which would prohibit or impede the free flow of traffic within the Common Areas. Washing, waxing, cleaning or servicing of vehicles is prohibited in the Common Areas. If Tenant permits or allows any of the prohibited activities described above, then Landlord shall have the right, in addition to such other rights and remedies that Landlord may have, to remove or tow away the vehicle involved.

**ARTICLE 6**  
**PAYMENT OF OPERATING EXPENSES**

6.1 Operating Year. As used in this Article 6, the term “Operating Year” shall mean each calendar year of the Lease Term and in the event this Lease begins or ends on any date other than the first day of the calendar year, the calculations, costs and payments referred to herein shall be prorated for any partial Operating Year as provided in Section 30.8.

6.2 Tenant’s Pro Rata Share. Throughout the entire Lease Term, Tenant shall pay, as Additional Rent, Tenant’s Pro Rata Share of the Operating Expenses and Taxes. If in any Operating Year Tenant occupies the Premises or any portion thereof for less than the full Operating Year, Tenant’s Pro Rata Share of Operating Expenses and Taxes shall be prorated accordingly. “Tenant’s Percentage” of purposes of Taxes shall be determined in accordance with Section 5.4 above. “Tenant’s Percentage” for purposes of Operating Expenses shall mean a percentage, the numerator of which is the Floor Area of the Premises and the denominator of which is the total Floor Area of the buildings in the Project, whether or not such space is actually rented. The initial Tenant’s Percentage is specified in Section 1.15 of the Basic Lease Information. The Tenant’s Percentage (as specified in Section 1.15 of the Basic Lease Information and adjusted as provided herein) may be changed from time to time to reflect any change in the total rentable square footage in the buildings in the Project. “Tenant’s Pro Rata Share” shall mean Tenant’s Percentage multiplied by the total Operating Expenses and Taxes for the applicable Operating Year. Landlord shall have the right to create different pools of Operating Expenses based upon services provided to particular tenants or occupants in the Project (such as allocating costs within tenants in the Building), in which event Tenant’s Percentage shall be adjusted for purposes of any pool of Operating Expenses in which Tenant is included based on the total Floor Area of the tenants or occupants in the Project included in such pool. [Notwithstanding anything to the contrary, in no event shall Tenant’s Pro Rata Share of “controllable” Operating Expenses due and payable for subsequent Operating Years after the first Operating Year increase by more than five percent (5%) per annum on a cumulative basis (“CAM Cap”). For purposes hereof, “controllable” Operating Expenses shall not include amounts paid by Landlord for insurance premiums, utilities serving the Common Areas, Taxes, non-recurring expenses or security. During any Extension Term, if Tenant exercises an Extension Option, the CAM Cap shall not apply during the first Operating Year of any Extension Term and Tenant’s Pro Rata Share of Operating Expenses shall be based upon and reset to the actual Operating Expenses, but the CAM Cap (adjusted to the actual Operating Expenses for the initial Operating Year during the Extension Option and increasing as set forth above thereafter, shall apply with respect to increases in Tenant’s Pro Rata Share of Operating Expenses for each subsequent Operating Year in such Extension Term.]

6.3 Written Statement of Estimate. Prior to each Operating Year during the Lease Term, Landlord shall furnish Tenant with a written statement setting forth Tenant’s Pro Rata Share of the estimated Operating Expenses and Taxes for the next Operating Year. Tenant’s initial estimated “Tenant’s Pro Rata Share” of Operating Expenses for the calendar year of 2019 is \$\_\_\_\_\_ per month (\$\_\_\_\_\_ psf annually) (which amount includes insurance premiums for the insurance Landlord is required to carry pursuant to Article 11 below in the amount of \$\_\_\_\_\_ per month (\$\_\_\_\_\_ psf annually)) and Taxes for the calendar year of 2019 is \$\_\_\_\_\_ per month (\$\_\_\_\_\_ psf annually). Tenant shall pay to Landlord as Additional Rent commencing on January 1 of the Operating Year, and thereafter on the first day of each calendar

month, an amount equal to one-twelfth (1/12) of the amount of Tenant's Pro Rata Share of such Operating Expenses and Taxes. In the event Landlord delivers the written statement late, Tenant shall continue to pay to Landlord an amount equal to one-twelfth (1/12) of Tenant's Pro Rata Share of the Operating Expenses and Taxes for the immediately preceding Operating Year until Landlord furnishes the written statement, at which time Tenant shall pay the amount of any excess of the Tenant's Pro Rata Share for the expired portion of the current Operating Year over the Tenant's actual payments during such time; any excess payments by Tenant shall be credited to the next due payment of Additional Rent from Tenant. The late delivery of any written statement by Landlord shall not constitute a waiver of Tenant's obligation to pay its percentage of the Operating Expenses and Taxes, nor subject the Landlord to any liability, but Landlord shall use reasonable efforts to deliver such written statements of Operating Expenses and Taxes as soon as reasonably possible.

6.4 Re-Estimations. At any time from time to time during the Lease Term, Landlord may furnish Tenant with written notice of a re-estimation of the annual Operating Expenses and Taxes to reflect more accurately Landlord's most recent estimate of the current Operating Expenses and Taxes. Commencing with the first day of the calendar quarter following delivery of such notice to Tenant, and continuing on the first day of each calendar month during the Lease Term (until subsequently re-estimated), Tenant shall pay to Landlord one-twelfth (1/12th) of the Tenant's Pro Rata Share of the estimated Operating Expenses and Taxes, as re-estimated.

6.5 Annual Adjustments. Within a reasonable time following the end of each calendar year during the Lease Term, Landlord shall furnish to Tenant an itemized statement certified by Landlord, setting forth the total Operating Expenses and Taxes for the preceding calendar year, the amount of Tenant's Pro Rata Share of such Operating Expenses, and the payments made by Tenant with respect to such calendar year. If Tenant's Pro Rata Share of the actual Operating Expenses and Taxes for such year exceeds the payment so made by Tenant, based on the Landlord's estimate, Tenant shall pay Landlord the deficiency within thirty (30) days after receipt of said statement. If said payments by Tenant, based on Landlord's estimate, exceed Tenant's Pro Rata Share of the actual Operating Expenses and Taxes, Landlord will credit the amount of such overpayment against Tenant's next Operating Expense and Tax payment due; or, if the Lease has expired or terminated, Landlord will refund such amount to Tenant within thirty (30) days after the date of such estimate, subject to set-off by Landlord against any sums then due Landlord by Tenant.

6.6 Tenant Examination. Tenant may during business hours, upon at least five (5) days' advance written notice to Landlord, examine any invoices, receipts, canceled checks, vouchers or other instruments used to support the figures shown on the statement; provided, however, that Tenant shall only be entitled to such an examination once in each Operating Year. Tenant must provide Landlord with written notice of its intent to conduct an examination within sixty (60) days after receipt of such statement. The examination must be conducted within one hundred twenty (120) days after receipt of such statement, and the examination shall not be conducted by anyone who is engaged on a contingent fee basis to represent Tenant or who is a competitor of Landlord. Property managers and commercial building owners shall be deemed competitors of Landlord. The person conducting the examination on behalf of Tenant shall enter into a confidentiality agreement reasonably satisfactory to Landlord. In the event the examination discovers an overcharge in excess of five percent (5%) of the Operating Expense payments during the Operating



Year covered by the examination, Landlord shall reimburse Tenant for the actual out-of-pocket costs reasonably incurred by Tenant due to the examination. In the event the examination fails to discover an overcharge in excess of five percent (5%) of the Operating Expense payments during the Operating Year covered by the examination, Tenant shall reimburse Landlord for the actual costs reasonably incurred by Landlord due to the examination.

6.7 Disputes. Each statement given by Landlord pursuant to this Section shall be conclusive and binding upon Tenant unless within the earlier to occur of (i) fifteen (15) days after Tenant completes any examination under Section 6.6 above, or (ii) one hundred thirty-five (135) days after the receipt of such statement, Tenant notifies Landlord that it disputes the correctness of the statement, specifying the particular respects in which the statement is claimed to be incorrect. The parties shall seek to mutually resolve and settle such dispute within ninety (90) days after Tenant has delivered notice of such dispute to Landlord; if such dispute shall not have been settled by agreement within such ninety (90) day period, either party may thereafter pursue its available legal remedies. Tenant hereby agrees that a dispute over the statement or any good faith error by Landlord in interpreting or applying Article 5 or in calculating the amounts in the statement shall not be a breach of this Lease by Landlord. If any legal proceeding over the statement is resolved against Landlord, this Lease shall remain in full force and effect and Landlord shall not be liable for any consequential damages, and pending the determination of such dispute, Tenant, within ten (10) days of receipt of such statement, shall pay Additional Rent in accordance with the statement, without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, Landlord shall forthwith pay to Tenant the amount of Tenant's overpayment of Additional Rents resulting from compliance with the statement.

6.8 Payment. If an Operating Year ends after the expiration or termination of this Lease, the Additional Rent in respect thereof payable under this Section shall be paid by Tenant within thirty (30) days of its receipt of the itemized statement for such Operating Year; or, if applicable, Landlord will deliver any excess amount paid by Tenant concurrently with such itemized statement.

## **ARTICLE 7** **SECURITY DEPOSIT**

7.1 Security Deposit. Tenant shall pay to Landlord the sum indicated in the Basic Lease Information as security for the full and faithful performance and observance by Tenant of Tenant's covenants and obligations under this Lease and Tenant shall not be entitled to interest thereon (the "Security Deposit"). Tenant shall deliver to Landlord the Security Deposit upon Tenant's execution and delivery of this Lease. Failure to promptly pay such Security Deposit shall be considered a default under this Lease. Upon the occurrence of an Event of Default by Tenant under this Lease, including without limitation the failure to timely pay Base Rent and Additional Rent, Landlord may (but shall not be required to), and without waiver of any other rights Landlord may have under this Lease, at law or in equity, use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any Base Rent and Additional Rent or any other sums owed to Landlord by reason of such Event of Default or for any such sums which Landlord may expend or may be required to expend by reason of such Event of Default, including, but not limited to, improvement or fixturing costs, leasing commissions, and any damages or deficiency in the re-letting of the Premises, whether such damages or deficiency accrue before or

after summary proceedings or other re-entry by Landlord. To the full extent permitted by then-applicable California law, Tenant hereby waives any restriction on the uses to which the Security Deposit may be applied as contained in California Civil Code Section 1950.7(c) and/or any similar or successor statute. In addition, subject to the rights of Tenant under Section 7.2 below, if Tenant is in default under this Lease (but an Event of Default has not yet occurred), Landlord may apply, in its sole discretion, all or any part of the Security Deposit to the payment of all prepaid expenses by Landlord for which Tenant would be required to reimburse Landlord under this Lease following an uncured Event of Default, including without limitation any unamortized Allowance, cost of Landlord's Work hereunder and leasing commissions; provided, however, that Tenant shall not be required to replenish the Security Deposit as described in Section 7.2, below, unless and until an Event of Default has actually occurred. Landlord shall not be required to keep the Security Deposit separate from its general funds and Tenant shall not be entitled to interest on the Security Deposit.

7.2 Disposition of Security Deposit. If Landlord shall so use, apply or retain the whole or any part of the Security Deposit as provided in Section 7.1 following an Event of Default, Tenant shall upon demand immediately deposit with Landlord a sum equal to the amount so used, applied or retained, as security. If Tenant shall fully and faithfully comply with all of Tenant's covenants and obligations under this Lease, including without limitation Tenant's obligations upon expiration or earlier termination of this Lease, the Security Deposit or any balance thereof shall be returned or paid over to Tenant within the time period prescribed under then-applicable California law after the date on which this Lease expires or sooner terminates. In the event of any sale of Landlord's interest in the Building or any master lease of the Building by Landlord to a third party, whether or not in connection with a sale or leasing of the Land, Landlord shall either transfer the Security Deposit to the vendee or master lessee and the vendee or master lessee shall assume Landlord's obligations under this Lease in respect of the Security Deposit. Upon transfer of the Security Deposit to the vendee or master lessee, Landlord shall thereupon be released by Tenant from all liability for the return or payment thereof; and if the vendee or master lessee expressly assumes Landlord's obligations in respect of the Security Deposit, Tenant shall look solely to the new landlord for the return or payment of the same. Further, the provisions hereof shall apply to every transfer or assignment made of the same to a new landlord. Tenant shall not assign or encumber or attempt to assign or encumber the monies deposited herein as security and neither Landlord nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

## **ARTICLE 8**

### **SUBORDINATION, NOTICE TO SUPERIOR LESSORS AND MORTGAGEES**

8.1 Subordination. At the election of Landlord, or any mortgagee of the Project or the Building, or any deed of trust beneficiary encumbering the Project or the Building (each hereinafter singularly or collectively a "Mortgagee"), this Lease shall be subject and subordinate at all times to any such ground lease, mortgage or deed of trust which may now exist or hereafter be executed (each hereafter a "Mortgage"). Landlord or any Mortgagee shall have the right, at its election, to subordinate or cause to be subordinated any Mortgage to this Lease. This Section shall be self-operative upon the written election of Landlord or any Mortgagee, and no further instrument of subordination shall be required; however, in confirmation of any such subordination, Tenant shall execute, acknowledge and deliver an instrument that Landlord or any Mortgagee may reasonably request to evidence such subordination within fifteen (15) days after written demand therefor,

provided that such subordination further confirms the attornment and non-disturbance protection set forth in Section 8.2 below.

8.2 Non-disturbance and Attornment. If Landlord's interest in the Premises is acquired by any Mortgagee or the Master Lessor, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor-in-interest to Landlord and recognize such successor-in-interest as the Landlord under this Lease. No subordination or attornment shall permit material interference with Tenant's rights under this Lease, and any Mortgagee, Master Lessor or successor-in-interest to Landlord shall recognize Tenant and its permitted successors and assigns as the tenant of the Premises and shall not disturb Tenant's right to quiet possession of the Premises during the Lease Term so long as no Event of Default has occurred and is continuing under this Lease. In the event that a Mortgagee, Master Lessor or any successor-in-interest to Landlord notifies Tenant of a default under the Mortgage or Ground Lease and demands that Tenant pay Rent and all other sums due under this Lease to the Mortgagee, Master Lessor or successor-in-interest to Landlord, Tenant shall honor such demand without inquiry and pay its Rent and all other sums due under this Lease directly to the Mortgagee, Master Lessor or successor-in-interest to Landlord pursuant to such notice and shall not thereby incur any obligation or liability to Landlord in connection with any such payments made. This Section shall be self-operative, and no further instrument of attornment or non-disturbance shall be required; provided, however, in confirmation of any attornment, Tenant shall execute, acknowledge and deliver an instrument that Landlord, Master Lessor or any Mortgagee may reasonably request to evidence such attornment within fifteen (15) days after written demand therefor, provided that such attornment further confirms the non-disturbance protection set forth herein. [Upon request of Tenant and reimbursement of all costs incurred by Landlord in connection therewith together with a fee in the amount of \$1,500.00, Landlord shall use commercially reasonable and diligent efforts to provide Tenant with a commercially reasonable non-disturbance agreement from any existing Mortgagee, Master Lessor or other security holder regarding the Premises. For purposes of the Ground Lease, such form shall be in the form attached hereto as Exhibit "F".]

8.3 Mortgagee Protections. Once Tenant has received written notice identifying the name and address of any Mortgagee, and immediately with respect to the Master Lessor (whose address for purposes of this provision is initially c/o CEO/ Real Estate, ATTN: Chief Real Estate Officer, 333 W. Santa Ana Blvd, 3<sup>rd</sup> Floor, Santa Ana, CA 92701, Facsimile: 714/834-6166, subject to change in the event the County offices are relocated), Tenant agrees to notify such Mortgagee and Master Lessor by certified mail, return receipt requested, with postage prepaid, of any default on the part of Landlord under this Lease, and Tenant further agrees that, notwithstanding any provisions of this Lease, no cancellation or termination of this Lease and no abatement or reduction of the Rent payable hereunder shall be effective unless the Mortgagee and Master Lessor has received notice of the same and shall have failed within the period of time provided under this Lease after receipt of such notice to commence to cure such default and thereafter diligently prosecute such cure to completion, and if the Mortgagee or Master Lessor needs to obtain possession of the Premises to cure such default, to allow the Mortgagee or Master Lessor to obtain possession of the Premises, provided the Mortgagee or Master Lessor commences judicial or non-judicial proceedings to obtain possession within such period and thereafter diligently prosecutes such efforts and cure to completion. It is understood that the Mortgagee and Master Lessor shall have the right, but not the obligation, to cure any default on the part of Landlord. Tenant agrees that if a Mortgagee or Master Lessor shall succeed to the interest of Landlord under this Lease,

neither the Mortgagee, Master Lessor nor its successors or assigns shall be: liable for any prior act or omission of any prior landlord (including Landlord); subject to any claims, offsets, credits or defenses which Tenant might have against any prior landlord (including Landlord) (except that Mortgagee or Master Lessor shall not be relieved from the obligation to cure any defaults which are non-monetary, continuing in nature and reasonably susceptible to being cured); bound by any assignment (except as otherwise expressly permitted hereunder), surrender, release, waiver, amendment or modification of this Lease made without such Mortgagee's or Master Lessor's prior written consent; or obligated to make any payment to Tenant or liable for refund of all or any part of any Security Deposit or other prepaid charge to Tenant held by any prior landlord (including Landlord) for any purpose unless the Mortgagee or Master Lessor shall have come into exclusive possession of such deposit or charge.

8.4 Modifications for Mortgagee. If any Mortgagee or Master Lessor shall reasonably require any modification(s) of this Lease, Tenant upon fifteen (15) days prior written notice of Landlord's request, shall execute and deliver to Landlord such instruments effecting such modification(s) as Landlord shall reasonably require, provided that such modification(s) do not increase any of Tenant's material obligations or diminish any of Tenant's material rights under this Lease.

## **ARTICLE 9** **QUIET ENJOYMENT**

So long as Tenant pays all of the Base Rent and Additional Rent and performs all of Tenant's other obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Premises and its non-exclusive rights in the Common Areas without hindrance, ejection or molestation by Landlord or any person lawfully claiming by, through or under Landlord, subject nevertheless, to the provisions of this Lease and to any Mortgage.

## **ARTICLE 10** **ASSIGNMENT AND SUBLETTING**

10.1 Generally. Tenant shall not sell, assign, sublet, or otherwise transfer by operation of law or otherwise this Lease or any interest herein, or the Premises, its rights in the Common Areas, or any portion of any of them (collectively a "Transfer") without the prior written consent of Landlord (which Landlord shall not unreasonably withhold, condition or delay), nor shall Tenant encumber any of the same, nor shall Tenant permit any lien to be placed on the Tenant's interest by operation of law or otherwise. Any change in effective control of a corporation, partnership, limited partnership, limited liability company, or other entity which is Tenant shall be deemed a transfer of this Lease. Regardless of Landlord's consent, no transfer hereunder by Tenant shall release or discharge Tenant from its obligations or liability under this Lease. This Lease shall bind any assignee, transferee or sublessee. Any sale, assignment, encumbrance, subletting, occupation, lien or other transfer of this Lease which does not comply with the provisions of this Article 10 shall be void. Consent to one transfer, assignment or sublease shall not be deemed consent to a subsequent transfer, assignment or sublease. Any listing on Building directories or other signage using a name other than Tenant's in conjunction with the Premises will not be deemed and it will not substitute for, Landlord's consent, as required by this Lease, to any sublease, assignment or other occupancy of the Premises or any portion thereof.

10.1.1 Tenant shall, by written notice, advise Landlord of its desire from and after a stated date (which shall not be less than thirty (30) days after the date of Tenant's notice), to transfer its interest in the Premises or any portion thereof for any part of the term hereof; and such notice by Tenant shall state the name and address and business of the proposed transferee, and include with said notice a true, complete counterpart of the proposed transfer instrument, financial statements of the proposed transferee, the intended use of the Premises and such other information as the Landlord may reasonably request.

10.1.2 Upon any request by Tenant to transfer all or any part of the Premises, Landlord shall have the right to either: (i) permit the transfer on the conditions referred to in Section 10.2 and any other reasonable conditions Landlord may impose; (ii) reasonably deny Tenant's request, in which event this Lease shall continue in full force and effect and unmodified; or (iii) for an assignment of this Lease or subletting of the Premises in its entirety for the remainder of the Lease Term only, terminate this Lease within thirty (30) days unless Tenant withdraws its proposed transfer within ten (10) days after the date of Landlord's written notice of its intent to terminate. If Tenant fails to timely withdraw its proposed transfer, Landlord may then terminate this Lease with respect to the entire Premises or the portion of the Premises described in Tenant's notice and if Landlord desires, Landlord may then lease such space to any party, including the transferee identified in Tenant's notice, at whatever terms Landlord establishes.

10.1.3 Notwithstanding the foregoing provisions of this Article 10, Landlord's consent shall not be required for (a) the subleasing of all or any portion of the Premises to an entity owned and controlled by Tenant or which owns or controls Tenant, so long as (i) Tenant shall provide to Landlord, prior to such sublease, written notice of such sublease and such sublease documentation and other information as Landlord may request in connection therewith, and (ii) all of the other terms and requirements of this Article 10 shall apply with respect to such sublease, or (b) the assignment or effective transfer of this Lease as a result of a sale of a controlling interest in the stock of Tenant, a sale of substantially all of the assets of Tenant, or a merger by Tenant with or into another entity, so long as (i) the net worth and liquidity of the successor entity of such sale or merger immediately following the sale or merger is at least equal to the greater of the net worth and liquidity of Tenant as of the date of this Lease and the net worth and liquidity of Tenant immediately prior to the sale or merger, evidence of which, reasonably satisfactory to Landlord, shall be presented to Landlord prior to such sale or merger, (ii) Tenant shall provide to Landlord, prior to such sale or merger, written notice of such sale or merger and such assignment documentation and other information as Landlord may reasonably request in connection therewith, and (iii) all of the other terms and requirements of this Article 10 shall apply with respect to such assignment or transfer.

10.2 Conditions of Landlord's Consent. As a condition to Landlord's prior written consent as provided for in this Article 10, Tenant shall pay to Landlord a nonrefundable review fee of \$1,500.00 plus Landlord's reasonable legal fees and costs incurred due to the request to transfer; (ii) the transferee(s) shall agree in writing to comply with and be bound by all of the terms, covenants, conditions, provisions and agreements of this Lease; and (iii) Tenant shall deliver to Landlord, promptly after execution, an executed copy of each transfer instrument and an agreement of said compliance by each transferee. Tenant agrees, by way of example and without limitation, that it shall not be unreasonable for Landlord to withhold its consent to a proposed assignment or subletting if (a) Landlord determines that the proposed assignee's or

sublessee's use of the Premises conflicts with Article 3 or conflicts with any other provision under this Lease; (b) Landlord determines that the proposed assignee or sublessee lacks sufficient business reputation or experience to conduct on the Premises a business of a type and quality equal to that conducted by Tenant measured at the time of signing this Lease; (c) Landlord determines that the proposed assignment or subletting would breach (i) a covenant respecting radius, location, use or exclusivity in any other lease, financing agreement or other agreement relating to the Project, or (ii) a covenant, condition or restriction in any encumbrance, financing agreement or other agreement relating to the Project or this Lease; (d) the proposed assignee or sublessee is an existing or prospective tenant of Landlord; (e) Landlord determines that the proposed assignee's or sublessee's reputation would have an adverse effect upon the reputation of the Project or other business located therein; or (f) an Event of Default under Article 21 has occurred and is continuing at the time of Tenant's request for Landlord's consent, or as of the effective date of such assignment or subletting. Tenant acknowledges that if Tenant has any exterior sign rights under this Lease, such rights are personal to Tenant and may not be transferred to any sublessee of all or any portion of the Premises without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion. Landlord may further require as a condition of granting consent to a transfer that the amount and adjustment structure of Base Rent be changed to reflect current market conditions, or alternatively require Tenant to pay to Landlord all profits from the transfer determined by deducting from the total consideration paid directly or indirectly to or for the benefit of Tenant or its designee for the transferred interest and the reasonable costs of the transfer incurred by the Tenant, and subtracting the remaining rent obligation of the Tenant at such time under this Lease. For purposes of determining all profits from the transfer, substance shall control over form such that Landlord may ignore any attempt by Tenant to inflate the purchase price of any other assets transferred in an attempt to conceal the profit on the transfer of the Tenant's interest in this Lease. Sums payable hereunder shall be paid to Landlord as and when paid by the transferee to Tenant. Notwithstanding any contrary provisions of law, including without limitation California Civil Code Section 1995.310, Tenant shall have no right, and Tenant hereby waives and relinquishes any right, to cancel or terminate this Lease in the event Landlord is determined to have unreasonably withheld or delayed its consent to a proposed transfer.

## **ARTICLE 11** **INSURANCE**

11.1 Insurance Requirements; Commercial General Liability Insurance. Tenant at its expense, shall maintain at all times during the term of this Lease, commercial general liability insurance, contractual liability insurance and property damage liability insurance in respect of the Premises and the conduct or operation of business therein or in the Project, with Landlord, its asset manager and property manager, if any, Master Lessor and any Mortgagee whose name and address shall previously have been furnished to Tenant, as additional insureds, with minimum limits of coverage (per occurrence) and maximum deductibles in the amounts set forth in the Basic Lease Information. Tenant shall have the right to satisfy such minimum insurance coverage requirements through umbrella or excess coverage policies. The limits of such insurance shall not limit the liability of Tenant. All such insurance shall insure the performance by Tenant of the indemnity provisions of Article 18 as to liability for injury to, illness of, or death of persons and damage to property. For insurance required to be maintained by Tenant under Sections 19.1 and 11.2, (i) all such insurance shall be primary and shall provide that any insurance of Landlord, Master Lessor or any Mortgagee shall be noncontributing, and (ii) Tenant shall deliver to Landlord and any

additional insured ACORD Form 27 evidence of insurance, or any other form reasonably requested by Landlord, issued by the insurance company or its authorized agent, at least ten (10) days before Tenant commences occupancy of any portion of the Premises. Tenant shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and Tenant shall deliver to Landlord and any additional insured such renewal certificate at least thirty (30) days before the expiration of any existing policy. For insurance required to be maintained by Tenant pursuant to Sections 11.1 through 11.5, all such policies shall provide that they shall not be amended in any way that would materially adversely affect the interests of Landlord, Master Lessor or any such additional insureds, or cancelled, without at least thirty (30) days prior written notice to Landlord, Master Lessor and such additional insureds.

11.2 Property Insurance. Landlord shall maintain fire and extended coverage insurance on the Project subject to such reasonable deductibles as Landlord may establish. Landlord shall have the right to place on all or any portion of the Project any other insurance Landlord reasonably deems necessary, including without limitation earthquake, flood, and loss of rents not exceeding two (2) years. Tenant shall obtain and bear the expense of casualty insurance insuring (i) Tenant's Property, fixtures, equipment, inventory, merchandise and any other property for which Tenant is responsible on the Premises, (ii) any Alterations constructed by Tenant under Article 13 below, (iii) Tenant's Work, and (iv) plate glass on the Premises, against such risks. Such casualty insurance shall be in an amount not less than one hundred percent (100%) of their full replacement cost, providing protection against any peril included within the classification of "All Risks," including, without limitation, coverage for earthquake, sprinkler and flood damage (including earthquake sprinkler leakage) and theft. As part of the Operating Expenses for the Premises, Tenant shall reimburse Landlord for Tenant's Pro Rata Share of the cost of all insurance maintained by Landlord with respect to the Project as set forth in Section 5.2.1.

11.3 Workers' Compensation. Tenant at its expense shall maintain at all times during the term of this Lease workers' compensation insurance as required by law, including employer's liability coverage.

11.4 Commercial Automobile Liability Insurance. Tenant at its expense shall maintain at all times during the term of this Lease Commercial Automobile Liability Insurance, including the ownership, maintenance and operation of any automotive equipment owned, hired and non-owned in the following minimum amounts: Bodily Injury and Property Damage, each occurrence, combined single limit of One Million Dollars (\$1,000,000).

11.5 Business Interruption Insurance. Tenant at its expense shall maintain at all times during the term of this Lease business interruption insurance in amounts sufficient to cover Base Rent and Additional Rent for twelve (12) months naming Landlord as loss-payee.

11.6 Acceptable Insurance Companies. All insurance policies required to be carried by Tenant hereunder shall be issued by responsible insurance companies authorized to issue insurance in the State of California rated A-:VIII or higher by Best's Insurance Rating Service.

11.7 Increase in Coverage. Landlord may from time to time, but not more frequently than once every three (3) years, require that the amount of insurance to be maintained by Tenant under this Article 11 be increased so that the amount thereof adequately protects the Landlord's

interest based on amounts of coverage required of comparable tenants in comparable buildings, in Landlord's reasonable discretion.

11.8 Waiver of Subrogation. The insurance coverage required by this Article 11 shall contain a clause pursuant to which the insurance carriers waive all rights of subrogation against Landlord, Master Lessor or Tenant, as the case may be, with respect to losses payable under such policies. Tenant and Landlord each waives any and all right of recovery against the other, or against the partners, members, officers, directors, shareholders, employees and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, if and to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage, or which is required to be insured against under the terms of this Lease. Any applicable deductible amount or co-insurance amount shall be treated as though it were recoverable under such policies. Notwithstanding the foregoing, it is agreed that in the event that any loss is due to the act, omission or negligence or willful misconduct of Landlord or any of Landlord Parties, or Tenant or any of Tenant Parties, the applicable party's liability insurance shall be primary and shall cover all losses and damages prior to any other insurance hereunder. The provisions of this Section shall not limit the indemnification provisions elsewhere contained in this Lease.

## **ARTICLE 12**

### **RULES AND REGULATIONS**

Tenant shall faithfully observe and comply and shall cause all Tenant Parties to faithfully observe and comply with the Rules and Regulations and all reasonable and non-discriminatory modifications thereof and additions thereto from time to time established by Landlord by written notice to Tenant. Landlord shall not be responsible for the nonperformance by any other tenant or occupant of the Building of the Rules and Regulations but Landlord shall use commercially reasonable and diligent efforts to enforce the Rules and Regulations applicable to any other Building occupant upon Tenant's written request. Notwithstanding the foregoing, Landlord shall incur no liability in connection with any act or omission of enforcement of the Rules and Regulations applicable to any other Building occupant. Tenant hereby waives and releases any and all claims against Landlord in connection therewith, and Tenant agrees that the provisions of Article 18 shall apply with respect to the foregoing. One or more waivers by Landlord of any breach of the Rules and Regulations by Tenant or any other tenant(s) of the Project shall not be a waiver of any subsequent breach of that rule or any other noncompliance.

## **ARTICLE 13**

### **ALTERATIONS**

13.1 Requirements. Tenant shall not make or suffer to be made any alterations, additions, or improvements ("Alterations") in, on, or to the Project or any part thereof without the prior written consent of Landlord. Subject to the remaining provisions of this Article 13, Tenant shall have the right, without the need of written consent from (but with prior written notice to) Landlord, to make Alterations provided (i) the Alterations are nonstructural, do not impair the strength of the Building or any part thereof, are not visible from the exterior of the Premises, and do not affect the storefront, exterior walls or roof of the Premises; (ii) the Alterations do not affect the proper functioning of the HVAC systems, mechanical, electrical, sanitary or other utilities,



systems and services of the Building; (iii) materials used are consistent with the existing materials in the Premises and comply with Building standards as established by Landlord, and do not include any Hazardous Materials; and (iv) the cost of any such individual Alteration does not exceed \$10,000.00.

Whether or not Landlord's consent is required for any Alterations, (a) Tenant shall provide to Landlord final plans and specifications for the Alterations and (with respect to Alterations for which Landlord has the right of consent) Landlord shall have approved in writing such plans and specifications and all contractors who will perform the Alterations (and, to the extent that such contractors are licensed and bondable, such consent shall not be unreasonably withheld, conditioned or delayed); (b) Tenant pays to Landlord a fee for Landlord's indirect costs, field supervision or coordination in connection with the Alterations equal to a reasonable hourly fee for the time spent on such matters; (c) if requested by Landlord, Tenant shall provide for added security (including without limitation increasing the Security Deposit) as Landlord may reasonably require for any obligations of Tenant to remove such Alterations and repair any damage and accomplish any restoration caused thereby at the expiration or earlier termination of the Lease Term; and (d) before proceeding with any Alteration which will cost more than \$50,000.00, at Landlord's option, Tenant shall obtain and deliver to Landlord a performance bond and/or a labor and materials payment bond for the benefit of Landlord, issued by a corporate surety licensed to do business in California in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of the Alterations and in form satisfactory to Landlord. Unless all of the foregoing conditions are satisfied, Tenant shall not have the right to make such Alterations, and Landlord shall have the right to withhold its consent to the Alterations in Landlord's sole and absolute discretion.

If any governmental entity requires, as a condition to any proposed Alteration, that improvements be made to other portions of the Building or the Common Areas, and if Landlord consents to such other improvements, then Tenant shall, at Tenant's sole expense, make such required improvements in such manner, utilizing such materials, and with such contractors (including, if required by Landlord, Landlord's contractors) as Landlord may require in its sole discretion.

13.2 Removal and Restoration. Upon the expiration or sooner termination of the Lease Term and upon demand by Landlord, in Landlord's sole discretion, either (i) Tenant shall surrender the Premises with any or all of such Alterations and Tenant's Work as Landlord shall determine, in which case, such Alterations and Tenant's Work shall become the property of Landlord, or (ii) Tenant shall remove any or all Alterations and Tenant's Work, as Landlord shall determine, made by or for the account of Tenant, and Tenant shall repair and restore the Premises to their original condition, subject to ordinary wear and tear. Such removal, repair and restoration work shall be done promptly and with all due diligence at Tenant's sole cost and expense.

13.3 Compliance. All Alterations shall comply with Applicable Laws in effect at the time they are made, the other terms of this Lease, the plans and specifications approved by Landlord, and any Landlord standard specifications for improvements to the Project. Landlord shall have no duty to Tenant with respect to the safety, adequacy, construction, efficiency or compliance with Applicable Laws with regard to the design of the Alterations, the plans or specifications therefor, or any other matter related to the Alterations, nor shall the approval by

Landlord of any Alterations be deemed to be a representation as to the safety, adequacy, construction, efficiency or compliance of said Alterations. Tenant shall obtain, at Tenant's sole cost and expense, all permits and approvals required in connection with all Alterations and, upon completion of the installation and construction thereof, shall provide to Landlord "as built" plans and specifications which shall conform to the plans and specifications approved by Landlord, or the approved plans and specifications field-marked to show changes.

13.4 No Liens; Equipment Financing. Tenant, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Alterations, or any other work, labor, services, equipment, or materials done for or supplied to Tenant, or any other person claiming through or under Tenant, which shall be issued by any public authority having or asserting jurisdiction. Tenant shall notify Landlord of, and shall defend, indemnify and save harmless Landlord and any Mortgagee from and against, any and all construction and other liens and encumbrances filed in connection with Alterations, or any other work, labor, services or materials done for or supplied to Tenant, or any person claiming through or under Tenant, including, without limitation, security interests in any materials, fixtures, equipment, or articles so installed in and constituting part of the Premises and against all costs, expenses and liabilities incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon. Tenant, at its expense, shall procure the satisfaction or discharge of record of all such liens and encumbrances within thirty (30) days after the filing thereof. Nothing herein contained shall prevent Tenant from contesting, in good faith and at its own expense, any notice of violation or lien provided Tenant posts for the protection of Landlord security acceptable to Landlord. Notwithstanding anything in this Lease to the contrary, Tenant shall have the right to obtain financing secured by its furniture, fixtures and equipment in the Premises, and Landlord shall sign a commercially reasonable consent and waiver of Landlord's interest in such furniture, fixtures and equipment expressly agreeing to the removal of such items in the event of a Tenant default under such financing, subject to reimbursement for all reasonable costs incurred in connection with reviewing and processing such waiver.

#### **ARTICLE 14** **LANDLORD'S AND TENANT'S PROPERTY**

14.1 Landlord's Property. All fixtures and equipment (other than those described in Section 14.2 below), carpeting, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Lease Term, whether or not by or at the expense of Tenant, shall upon the expiration or earlier termination of the Lease be and remain a part of the Premises, shall be deemed the property of Landlord, and shall not be removed by Tenant, except as provided in Sections 13.2 and 14.2 of this Lease or in Exhibit C, provided that at Landlord's written request, Tenant shall, at its sole expense and upon the expiration or earlier termination of the Lease, remove those items specified by Landlord, including any or all fixtures, equipment, improvements, appurtenances and other personal property, which are deemed herein the property of Landlord, but not including the initial Landlord's Work provided by Landlord pursuant to Exhibit C of this Lease. Tenant's covenant to remove property specified by Landlord shall survive the expiration or earlier termination of this Lease.

14.2 Tenant's Property. All unattached business and trade fixtures, machinery and equipment, computer and communications equipment and office equipment which are installed in

the Premises by or for the account of Tenant without expense to Landlord and which can be removed without structural damage to the Building and all furniture, furnishings (excluding window coverings), signs, inventory, merchandise and other articles of movable personal property owned by Tenant and located in the Premises (herein collectively called "Tenant's Property") shall be and remain the property of Tenant and may be removed by Tenant at any time during the term of this Lease; provided, that if any of Tenant's Property is removed, Tenant shall repair or pay the cost of repairing any damage to the Premises or any other portion of the Project resulting from the installation and/or removal thereof. In addition, any equipment or other property for which Landlord shall have granted any allowance, credit or other type of accommodation to Tenant shall be deemed not to have been installed by or for the account of Tenant without expense to Landlord and shall be removed by Tenant at the expiration or earlier termination of the Lease Term, provided that Tenant shall repair or pay the cost of repairing any damage to the Premises or any other portion of the Project resulting from the removal of such equipment or property. Tenant shall also remove prior to the expiration or earlier termination of the Lease Term, at Tenant's sole cost and expense, all telephone, computer and other electronic wiring and cabling installed for the benefit of Tenant within the Premises and within the common ducts and shafts of the Building. Such removal shall be accomplished by a properly licensed and certified company reasonably approved by Landlord and, at Landlord's election, shall be subject to the oversight and supervision of Landlord. Tenant shall use all necessary care in removing such wires and cables in order to avoid any damage to other tenant's wiring and cabling or any disruption of services and Tenant agrees to be solely liable for any such damage or disruption of service caused by its removal. If Tenant fails to remove such wiring and cabling prior to the expiration or earlier termination of the Lease Term, Landlord may remove such wires and cables and Tenant shall pay the cost of such removal within ten (10) days after delivery of a bill therefor.

14.3 Abandonment. Any items of Tenant's Property may be deemed, at the option of Landlord, to have been abandoned if left in the Premises or at the Project after the Abandonment Deadline (as defined herein), and in such case such items may be retained by Landlord, without accountability, in such a commercially reasonable manner as Landlord shall determine at Tenant's expense. The "Abandonment Deadline" means the earlier of the expiration date of this Lease, or five (5) days following an earlier termination date, or three (3) business days following entry of an order of possession for restoration of the Premises to Landlord; subject however, to the provisions and requirements of any applicable California laws relating to abandoned property in a leasehold.

## **ARTICLE 15**

### **SERVICES; BUILDING SYSTEMS AND UTILITIES**

15.1 Utilities. Landlord agrees that initially it will make available to the Premises facilities for removal of sewage and trash and for delivery of electricity, telephone service and water. The removal of sewage and trash, and delivery of water, electricity (and gas, if provided, in Landlord's sole discretion) and telephone service are collectively referred to herein as "Utilities." Landlord shall provide Tenant with access to the Building's main utility room and fire riser/roof access room to the extent reasonably necessary for Tenant to conduct its obligations hereunder and to monitor utility usage. Tenant shall be responsible, as a part of Tenant's Work and at Tenant's sole cost and expense, for (i) all Utilities hook-up and connection charges and any similar charges (including, without limitation, any sewage hook-up and connection charges and/or front footage charges), and (ii) the distribution of Utilities throughout the Premises. If a separate

meter is provided or required by Tenant for any Utilities, it shall be installed as a part of Tenant's Work and maintained at Tenant's expense throughout the Lease Term. Landlord shall maintain and replace, to the extent reasonably necessary, at Tenant's sole cost and expense, all fire protection systems, fire-life-safety systems, automatic sprinkler systems, lighting systems, and any other utility systems (excepting such systems as Tenant may expressly be required to maintain under the terms of this Lease) servicing the Premises and Building ("Building Systems"). Tenant shall bear all electrical costs in connection therewith, costs of maintenance and replacement, and costs to address or comply with any governmental requirements or reporting requirements regarding energy use and or Building Systems generally, as well as the cost of any maintenance contract for such Building Systems. Landlord shall have the right to allocate the costs pertaining to the operation, maintenance, repair and replacement of such Building Systems in Landlord's reasonable discretion, including but not limited to allocating such costs solely to the Premises to the extent such costs relate to the Building Systems solely serving the Premises, among the tenants within the Building, among all of the tenants in the Project or on such other pooling basis provided that Landlord is consistent in such allocation and the costs are allocated among the tenants benefitting from such usage, maintenance or replacement. Such costs allocated to the Building shall be borne as a percentage, the numerator of which is the number of rentable square feet of the Premises and the denominator of which is the total number of rentable square feet of the Building or such portion of the Building served by such Building System(s). Landlord shall have the right to require Tenant to bear the cost of its own trash removal directly. In the event Landlord elects to construct new or additional utility facilities (such as solar panels) intended to reduce the cost of utilities, Tenant shall either bear its pro rata share of the cost of such improvements, amortized over the useful life of such improvements (not to exceed 15 years) or the amount of the reduction in the utility costs attributable to the Premises as a result of such improvements at the election of Landlord. From and after the Commencement Date, Tenant shall be responsible for the maintenance of the heating and air conditioning system exclusively serving the Premises in good condition, order and repair, and shall contract for such heating and air-conditioning maintenance using a service contract with a heating and air-conditioning contractor reasonably approved by Landlord and meeting any warranty requirements of Landlord. Tenant shall supply Landlord with a copy of such contract prior to the Commencement Date, and, upon request at any time, evidence that such contract or other contract remains in effect. Landlord shall have the right to elect to obtain such maintenance contract at Tenant's sole cost and expense upon thirty (30) days' notice to Tenant. In the event any of the foregoing maintenance or inspections are made on a regular ongoing basis, such as through a maintenance or service contract, Landlord shall have the right to collect such amounts in advance on a monthly basis, in which event Landlord shall furnish Tenant with a written statement setting forth Tenant's Pro Rata Share of the estimated maintenance and service costs on a calendar year basis. Thereafter, Tenant shall pay to Landlord as Additional Rent on the first day of each calendar month, an amount equal to one-twelfth of the amount of Tenant's Pro Rata Share of such annual maintenance and service costs, until Landlord provides a recalculation of such amount to Tenant. In such event, the procedures set forth in Sections 6.4 – 6.8 regarding the treatment of estimating and reconciling Operating Expenses shall apply to the foregoing estimated payments.

15.2 Payment for Utilities. Landlord and Tenant agree that Landlord shall not furnish any Utilities to the Premises and Tenant agrees to directly pay to the appropriate utility company the cost of all such Utilities used upon the Premises from and after Landlord's delivery of the Premises to Tenant. However, in the event any or all Utilities are furnished by Landlord or are

privately metered, Tenant shall pay concurrently with payment of installments of all other rental, monthly (or quarterly at Landlord's election) in advance as Additional Rent, a "Utilities Charge" to reimburse Landlord for Utilities furnished by Landlord, if any, to the Premises, including but not limited to all costs for Utilities, if any, used to operate any Building System. In such event, Landlord shall initially estimate the amount of the Utilities Charge on the basis of a typical store layout comparable to Tenant's proposed use of the Premises and shall thereafter adjust such estimate from time to time as necessary, based on Landlord's experience and reasonably anticipated costs. At the end of each calendar or partial calendar year or quarter during the Lease Term, at Landlord's reasonable discretion, Landlord shall compare the total of all estimated Utilities Charges paid by Tenant during said year or quarter with the total expenses incurred by Landlord in supplying Utilities to the Premises during said year or quarter. If said total expenses, which shall constitute Tenant's actual Utilities Charge, exceed Tenant's total estimated payments thereof, Tenant shall pay Landlord the deficiency within ten (10) days after notice from Landlord. If Tenant's total estimated payments exceed Tenant's actual Utilities Charge, Landlord shall, at its election, return to Tenant the amount of such overpayment or credit such amount against the next Utilities Charge installment(s) coming due. Landlord shall have the right to create different pools of such Building System and expenses based upon services provided to multiple buildings in the Project, in which event Tenant's Percentage shall be adjusted for purposes of any pool of such Building expenses in which Tenant is included based on the total Floor Area of the tenants or occupants in the Project included in such pool. In addition, in the event a maintenance contractor is called for a repair or maintenance applicable and charged to a particular premises, Landlord shall have the right to require such tenant (including Tenant) to bear such expense directly.

15.3 Disclaimer. Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, or by reason of (i) the installation, use or interruption of use of any equipment in connection with the furnishing of the foregoing Utilities and services, (ii) failure of any such Utilities or services, or (iii) the limitation, curtailment, rationing or restriction on use of water or electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or the Project. Furthermore, Landlord shall be entitled to cooperate voluntarily in a reasonable manner with the efforts of national, state or local governmental agencies or utilities suppliers in reducing energy or other resource consumption. Tenant acknowledges that the functioning of HVAC systems is subject to variation from time to time, that such functioning can be affected by, among other things, outside temperature conditions, sunlight through windows at various times during the day, and heat-generating machines, lighting and equipment, and that Landlord cannot be responsible for room temperatures and is not responsible for maintaining any particular temperature in all or any portion of the Premises or Project. Tenant hereby further acknowledges that Landlord shall have no obligation whatsoever to provide guard service or other security measures for the benefit of the Premises or the Project. Tenant waives and releases all claims of responsibility by Landlord for the protection of Tenant, all Tenant Parties and the property of Tenant and of all Tenant Parties from acts of third parties.

15.4 Operation and Maintenance of Common Areas. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ all personnel and to establish, modify and enforce reasonable rules and regulations necessary for the proper operation and maintenance of the Common Areas. Landlord shall have the right to close from time to time all or any portion of the Common Areas to such extent as, in the opinion of Landlord's legal counsel, may be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person

(other than Tenant) or the public therein; provided at all times Tenant shall be provided with reasonable access to the Premises, the Building and Tenant's parking to be provided herein. So long as Landlord does not unreasonably impede access to and from the Premises for Tenant and Tenant Parties, Landlord shall also have the right at any time, to modify the Common Areas, to change the arrangement and/or location of entrances, lobbies, parking facilities, passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Project or Building and to change the name, number or designation by which the Building or Project is commonly known. If the amount of such Common Areas is diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of Rent, nor shall such diminution of such Common Areas be deemed constructive or actual eviction, Tenant shall have the right throughout the Lease Term to use non-reserved parking spaces, on a non-exclusive basis jointly with other tenants of the Building, and their employees, agents and invitees, subject to reasonable rules and regulations which may be changed from time to time, which Landlord may from time to time designate for use by patrons of the Project. If Tenant permits or allows any of the prohibited activities described above, then Landlord shall have the right, in addition to such other rights and remedies that Landlord may have, to remove or tow away the vehicle involved and charge the cost to Tenant, which cost shall be immediately payable upon demand by Landlord.

15.5 Signage. Unless Landlord directs otherwise, Tenant shall, at Tenant's sole cost and expense, erect, install and maintain (with an installation and maintenance contractor approved by Landlord) Tenant's standard building identification signage on the exterior of the Premises prior to the Commencement Date which complies with Landlord's signage program for the Project (the "Project Sign Program"). Tenant shall not have any monument or pylon signage. Except as set forth above, Tenant shall not install or keep any signs in, on or about the Building, Project or Premises which are visible from any public areas, without the prior written consent of Landlord, which Landlord in its sole discretion may give or withhold. Any such sign request shall be made in accordance with the application process in place at the time of the request, and all such signs shall be in compliance with Landlord's Project Sign Program, any covenants and restrictions encumbering the Project, and all conditions and requirements of all applicable governmental authorities. Tenant shall not attach any signage or other materials to the interior or exterior of the windows and acknowledges that the window warranty is voided by the attachment of items or materials to the windows. Tenant shall be responsible for any damages resulting from such unauthorized use and the negation of any window warranty as a result thereof. Prior to Landlord's approval, Tenant shall submit to Landlord all plans and specifications for the installation of any signage. Tenant covenants and agrees to indemnify, defend and hold harmless Landlord against any loss, cost or expense (including reasonable attorneys' fees) which may be sustained or incurred by it, and assume all liability for any property damage or bodily injuries in any manner, related to Tenant's installation, maintenance, operation or removal of any signage. Tenant agrees to pay all taxes, permit fees, insurance premiums, and repairs to the area where any signage has been installed resulting from the installation of such signage. If any sign is placed on or about the Premises or Project without the consent of Landlord, Landlord may remove any such signs and Tenant shall pay Landlord the cost of removal together with interest as set forth in Section 22.2 from date of expenditure until payment is made in full. Tenant shall pay promptly after Landlord invoices Tenant for such costs. Tenant shall pay all costs of permitted signs and all costs and expenses of installation and maintenance of such signs. Tenant shall repair any damage which alteration, renovation or removal of its signs may cause during the Lease Term. Tenant, at its

expense, shall remove its signs from the Premises or Project at the termination or expiration of this Lease and repair any damage and restore the Premises or Project.

15.6 Displays. Tenant shall not without Landlord's prior written consent display or sell merchandise outside the defined exterior walls and permanent doorways of the Premises.

15.7 Nonresidential Building Energy Use Disclosure Requirement Compliance. Tenant hereby acknowledges that Landlord may be required to obtain from utility providers and disclose certain information concerning the energy performance of the Premises' recent historical energy use data (collectively, the "Energy Disclosure Requirements"). Landlord shall not be liable to Tenant for the accuracy or content of the information provided by utility providers pursuant to the Energy Disclosure Requirements. If and to the extent not prohibited by Applicable Laws, Tenant hereby waives any right Tenant may have to receive the Energy Disclosure Information, including, without limitation, any right Tenant may have to terminate the Lease as a result of Landlord's failure to disclose such information. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and/or liabilities relating to, arising out of and/or resulting from the Energy Disclosure Requirements, including, without limitation, any liabilities arising as a result of Landlord's failure to disclose the Energy Disclosure Information to Tenant prior to the execution of this Lease. Tenant further acknowledges that pursuant to the Energy Disclosure Requirements, Landlord may be required in the future to disclose information concerning Tenant's energy usage to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Premises (the "Tenant Energy Use Disclosure"). Tenant hereby (A) consents to all such Tenant Energy Use Disclosures, (B) acknowledges that Landlord shall not be required to notify Tenant of any Tenant Energy Use Disclosure, and (C) agrees that upon request from Landlord, Tenant shall provide Landlord with any energy usage data for the Premises, including, without limitation, copies of utility bills for the Premises. Further, Tenant hereby releases Landlord from any and all losses, costs, damages, expenses and liabilities relating to, arising out of and/or resulting from any Tenant Energy Use Disclosure. The terms of this Section 15.7 shall survive the expiration or earlier termination of the Lease.

## **ARTICLE 16** **ACCESS**

Landlord reserves, and shall at all times have, the right to enter the Premises upon 24 hours' prior written notice to Tenant (except in an emergency, for janitorial services, or for repairs needed to avoid or correct a situation which results in or could lead to damage to property, injury to persons, or inability to use portions of the Premises or Project, and following an Event of Default, in which cases, no notice shall be necessary) to inspect the same, to perform any service to be provided by Landlord to Tenant under this Lease, to show the Premises to prospective purchasers, mortgagees or tenants, to post notices of non-responsibility, and to alter, improve or repair the Premises and any other portion of the Project, without abatement of Rent. For such purpose, Landlord may erect, use and maintain temporary scaffolding, pipes, conduits and other necessary structures in and through the Premises and the Project where reasonably required by the character of the work to be performed, provided that entrance to the Premises shall not be blocked thereby, and further provided that the business of Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises and any other loss

occasioned by Landlord's conduct pursuant to and in compliance with this Section. Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open all doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to any portion of the Premises obtained by Landlord by any such means, or otherwise shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from all or part of the Premises.

**ARTICLE 17**  
**NOTICE OF OCCURRENCES**

Tenant shall give prompt written notice to Landlord of: (i) any known occurrence in or about the Project for which Landlord might be held liable; (ii) any known fire or other casualty in the Premises or the Project; (iii) any known damage to or defect in the Project, the repair of which Landlord might be responsible; and (iv) known damage to or defect in any part or appurtenances of the Building's sanitary, electrical, heating, ventilating, air-conditioning, elevator or other systems.

**ARTICLE 18**  
**NON-LIABILITY AND INDEMNIFICATION**

18.1 Waiver. Neither Landlord, Master Lessor nor any Landlord Parties shall be liable to Tenant for any loss, injury or damage to Tenant or to any other person, or to its or their property, irrespective of the cause of such injury, damage or loss except to the extent caused by or resulting from the intentional torts or willful misconduct of such parties, it being the intent of the parties that it be Tenant's obligation to carry and look to its own insurance policies for coverage of any such item resulting from an accident even if caused by the negligence of Landlord, Master Lessor or any Landlord Party. Further, neither Landlord, Master Lessor nor any Landlord Party shall be liable: (i) for any such injury, damage or loss in, upon or about the Project, or caused by operations in construction of any private, public or quasi-public work; or (ii) in any event for consequential damages, including lost profits, of Tenant or any person claiming through or under Tenant or any Tenant Parties.

Tenant further acknowledges that Landlord has no obligation to provide any security at the Premises, Building or Project, and if any security is so provided at the Building or Project it shall be for the needs and purposes of Landlord only and Landlord may at any time, in Landlord's sole discretion, delete, add or change the type of security, if any, provided to the Building and the Project, and Landlord, Master Lessor and the Landlord Parties shall not be liable for Landlord's failure to provide any security. Tenant shall have no claim against Landlord, Master Lessor or the Landlord Parties for any damage to its business or damage to, loss of and/or theft of any of Tenant's property nor for any death or personal injury to any individual, all as may arise as a result of Landlord's provision or failure to provide any security to the Building and the Project. Neither party shall be liable for any consequential, punitive or special damages of the other.

18.2 Indemnification. Tenant shall defend, indemnify and hold harmless Landlord, Master Lessor and all Landlord Parties and/or Mortgagees for, from and against any and all (i) third party claims for bodily injury and/or property damage arising from or in connection with any accident, injury or damage whatsoever occurring in, at or upon the Premises and Common Area



(except to the extent caused by the intentional torts or willful misconduct of the party seeking indemnity hereunder), and (ii) claims arising from Tenant's or any Tenant Parties' acts, omissions or breach of this Lease; together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorneys' fees and expenses at trial and upon appeal. Landlord shall defend, indemnify and hold harmless Tenant and all Tenant Parties for, from and against any and all (i) third party claims for bodily injury and/or property damage arising from or in connection with any accident, injury or damage whatsoever occurring in, at or upon the Premises if caused by Landlord or any Landlord Party, and (ii) claims arising from Landlord's or any Landlord Parties' gross negligence or breach of this Lease; together with all costs, expenses and liabilities incurred or in connection with each such claim or action or proceeding brought thereon, including, without limitation, all attorneys' fees and expenses at trial and upon appeal.

18.3 Duty to Defend. In case any action or proceeding is brought against Landlord, Master Lessor and/or any Landlord Parties and/or any Mortgagee and such claim is a claim from which Tenant is obligated to indemnify pursuant to Section 18.2, Tenant, upon notice from Landlord, Master Lessor or such Mortgagee, shall resist and defend such action or proceeding (by counsel reasonably satisfactory to Landlord). The obligation of Tenant under this Article 18 shall survive termination of this Lease.

## **ARTICLE 19**

### **DAMAGE OR DESTRUCTION; CONDEMNATION**

19.1 Casualty. If the Premises are damaged by fire or other casualty, Landlord shall forthwith repair the same unless this Lease is terminated as permitted herein. During repair, this Lease shall remain in full force and effect, except the Rent shall be equitably abated during the period of Landlord's repair based on that portion of the Floor Area of the Premises not reasonably useable by Tenant. Landlord shall not be required to repair any damage by fire or other cause to Tenant's Property, any Alterations, Tenant's Work or any specialized improvements of Tenant. If (i) Landlord reasonably determines that the cost of repair is not covered by Landlord's fire and extended coverage insurance or any other applicable insurance coverage of Landlord maintained under Section 11.2 above, plus such additional amounts Tenant elects, at its option, to contribute (which may be the entire cost of repair), excluding however Tenant's Pro Rata Share of any insurance deductible (for which Tenant shall be responsible); (ii) Landlord reasonably determines that the Premises cannot, with reasonable diligence, be fully repaired by Landlord (or cannot be safely repaired because of the presence of hazardous factors, including without limitation Hazardous Materials, earthquake faults, and other similar dangers) within three hundred (300) days after the date of the damage; (iii) an Event of Default by Tenant has occurred and is continuing at the time of such damage; or (iv) the damage occurs during the final nine (9) months of the Term and Tenant has not previously exercised any available option to extend the Lease Term, then Landlord may elect to terminate this Lease. Should Landlord elect not to repair the damage for one of the preceding reasons, Landlord shall so notify Tenant in writing within sixty (60) days after the damage occurs and this Lease shall terminate sixty (60) days after the date of that notice.

19.2 Condemnation. If more than twenty-five percent (25%) of the Premises shall be taken or appropriated under the power of eminent domain or conveyed in lieu thereof, Landlord shall have the right to terminate this Lease. If this Lease is terminated, Landlord shall receive (and

Tenant shall assign to Landlord upon demand from Landlord) any and all income, rent, award or any interest thereon which may be paid or owned in connection with the exercise of such power of eminent domain or conveyance in lieu thereof, and Tenant shall have no claim against the agency exercising such power or receiving such conveyance, for any part of such sum paid by virtue of such proceedings, whether or not attributable to the value of the unexpired term of this Lease. So long as Tenant is entitled to a separate award and Landlord's award is not diminished thereby, nothing contained herein shall be deemed to prevent Tenant from seeking any award against the taking authority for the taking of personal property and fixtures belonging to Tenant, for relocation or business interruption expenses recoverable by Tenant directly from the taking authority, or for loss of Tenant's goodwill. If a part of the Land and/or Building shall be so taken or appropriated or conveyed and Landlord hereto shall elect not to terminate this Lease, Landlord shall nonetheless receive (and Tenant shall assign to Landlord upon demand from Landlord) any and all income, rent, award or any interest thereon paid or owed in connection with such taking, appropriation or conveyance; and if the Premises have been damaged as a consequence of such partial taking or appropriation or conveyance, Landlord shall restore the Premises and this Lease shall remain in full force and effect except that the Rent shall be equitably adjusted according to the remaining rentable area of the Premises. Notwithstanding the foregoing, Landlord's obligation to restore the Premises if this Lease is not terminated shall be limited to the extent of available condemnation proceeds. Landlord will not be required to repair or restore any injury or damage to the property of Tenant or any Tenant Alterations.

## **ARTICLE 20**

### **SURRENDER AND HOLDING OVER**

20.1 General. On the last day of the term of this Lease, or upon re-entry by Landlord upon the Premises, Tenant shall quit and surrender the Premises to Landlord "broom-clean" and in good order, condition and repair, except for ordinary wear and tear, and in accordance with the restoration provisions of Articles 13 and 14, and Exhibit C of this Lease.

20.2 Surrender. No agreement relating to the surrender of the Premises by Tenant shall be valid unless in writing and signed by Landlord.

20.3 Holding Over. This Lease shall terminate without further notice upon the expiration of the Term, and any holding over by Tenant after the expiration shall not constitute a renewal or extension of this Lease, or give Tenant any rights under this Lease, except when in writing signed by both parties. If Tenant holds over for any period after the expiration (or earlier termination) of the Lease Term without the prior written consent of Landlord, such possession shall constitute a tenancy at sufferance only; such holding over with the prior written consent of Landlord shall constitute a month-to-month tenancy commencing on the first (1st) day following the termination of this Lease. In either of such events, possession shall be subject to all of the terms of this Lease, except that the monthly Base Rent shall be equal to one hundred fifty percent (150%) of the Base Rent for the month immediately preceding the date of termination. If Tenant fails to surrender the Premises upon the expiration of this Lease despite demand to do so by Landlord, Tenant shall indemnify and hold Landlord harmless from all loss or liability, including without limitation, any claims made by any succeeding tenant relating to such failure to surrender. Acceptance by Landlord of Rent after the termination shall not constitute consent to a holdover or result in a renewal of this Lease. The foregoing provisions of this Section are in addition to and

do not affect Landlord's right of re-entry or any other rights of Landlord under this Lease or at law.

**ARTICLE 21**  
**EVENTS OF DEFAULT**

21.1 Events of Default. The occurrence of any one or more of the following events of default ("Events of Default") shall constitute a breach of this Lease by Tenant:

21.1.1 If Tenant shall default in the payment of any Security Deposit, Base Rent or Additional Rent, and such default shall continue for five (5) days after the date of delivery of written notice that such payment was not received when due;

21.1.2 If Tenant shall fail to comply with the provisions of Section 8.1 regarding execution and delivery of subordination agreements, Section 8.2 regarding execution and delivery of attornment agreements, Section 8.4 regarding modifications for Mortgagees, Section 11.1 regarding delivery of insurance certificates, or Section 28 regarding completion and delivery of executed estoppel certificates and/or financials, within the time periods required in each respective Section therefor;

21.1.3 If Tenant shall, whether by action or inaction, be in default of any of its obligations under this Lease (other than under Sections 21.1.1 or 21.1.2 hereof) and such default shall continue and not be remedied within thirty (30) days after Landlord shall have given to Tenant a notice specifying the same, or, in the case of a default which cannot with due diligence be cured within such time period and the continuance of which for the period required for cure will not subject Landlord or any Mortgagee to prosecution for a crime or termination or foreclosure of any Mortgage, if Tenant shall not, (i) within such time period advise Landlord of Tenant's intention to take all steps necessary to remedy such default; (ii) duly commence within such time period, and thereafter diligently prosecute to completion all steps necessary to remedy the default; and (iii) complete such remedy within a reasonable time after the date of said notice of Landlord not exceeding ninety (90) days from the original default;

21.1.4 If any event shall occur whereby this Lease or the estate hereby granted or the unexpired balance of the term hereof would, by operation of law or otherwise, be transferred to any person, firm or corporation, except as expressly permitted by Article 10;

21.1.5 If Tenant or any guarantor of Tenant's obligations shall make a general assignment for the benefit of creditors, or shall be unable to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent or have entered an order for relief under any insolvency or bankruptcy laws, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, or dissolution, or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Tenant or any material part of its properties;

21.1.6 If within thirty (30) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding

shall not have been dismissed or if, within thirty (30) days after the appointment without the consent or acquiescence of Tenant of any trustee, receiver or liquidator of Tenant or of any material part of its properties, such appointment shall not have been vacated; or

21.1.7 If this Lease or any estate of Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) days.

Any written notice given under this Section 21.1 shall be in lieu of, and not in addition to, the notice requirements of Section 1161 et seq. of the California Code of Civil Procedure, any amendment or restatement thereof, or any other or similar statute or law.

21.2 Landlord's Breach of Lease. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord under this Lease within thirty (30) calendar days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) calendar days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) calendar day period and thereafter diligently prosecutes the same to completion. If Landlord shall default in the performance of any of its obligations under the Lease (after notice and an opportunity to cure as provided herein), Tenant shall have the right to pursue any and all remedies available to it as set forth in this Lease, at law, or in equity, subject however to the limitation contained in Section 30.4.

## **ARTICLE 22**

### **REMEDIES UPON DEFAULT**

22.1 Remedies. Upon the occurrence of an Event of Default constituting a breach of this Lease under Article 21, Landlord may exercise any one or more of the remedies set forth in this Article 22 or in Article 25, or any other remedy available under Applicable Laws or contained in this Lease.

22.1.1 Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor; and Landlord may recover from Tenant the following:

(i) The worth at the time of award of any unpaid rent which has been earned at the time of such termination; plus

(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 Tenant proves could have been reasonably avoided; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Lease Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, specifically including, but not limited to, brokerage commissions and advertising expenses incurred, expenses of remodeling the Premises or any portion thereof for a new tenant, whether for the same or a different use, and any special concessions made to obtain a new tenant; and

(v) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Applicable Law.

The term "rent" as used in this Section 22.1 shall be deemed to be and to mean all sums of every nature required to be paid by Tenant pursuant to the terms of this Lease, whether to Landlord or to others. As used in Paragraphs 22.1.1(i) and (ii), above, the "worth at the time of award" shall be computed by allowing interest at the Interest Rate, but in no case greater than the maximum amount of such interest permitted by law. As used in Paragraph 22.1.1(iii) above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%).

22.1.2 Landlord shall have the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover Rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all rent as it becomes due.

22.1.3 To seize and dispose of Tenant's Property (as that term is defined in Section 14.2) in any manner permitted by law.

22.2 Interest on Damages. In addition to any other remedies Landlord may have under this Lease, and without reducing or adversely affecting any of Landlord's rights and remedies under this Article 22, if any Base Rent, Additional Rent or other amounts payable hereunder by Tenant to Landlord are not paid within ten (10) days after demand therefor, the same shall bear interest at the Interest Rate.

22.3 Cumulative Remedies. The remedies provided for in this Lease are cumulative and are not intended to be exclusive of any other remedies to which Landlord may lawfully be entitled at any time.

22.4 Tenant Inducements. Tenant acknowledges that Landlord has granted certain inducements to Tenant in consideration for Tenant's commitment to perform for the entire Term of this Lease, including [the granting of free rent for portions of the Lease pursuant to Section 1.13 and] the providing of the Allowance pursuant to Exhibit C (the "Tenant Inducements"). If Tenant defaults hereunder, in addition to all other remedies to which Landlord may be entitled under law or in equity, Tenant shall reimburse Landlord an amount equal to the unamortized Tenant Inducements amortized over a 150-month period commencing on the Commencement Date.

**ARTICLE 23**  
**TENANT'S CONDUCT OF BUSINESS**

23.1 Operating Covenants. Tenant covenants and agrees that it will, continuously and uninterruptedly from and after ninety (90) days after the delivery of the Premises, open the entire Premises, fully stocked and staffed for the Permitted Use, and remain open and operating for the full term of the Lease, except while the Premises are untenable by reason of casualty, renovation or force majeure, (ii) maintain within the Premises an adequate stock of merchandise together with sufficient personnel and personal property to service and supply the usual and ordinary requirements of its customers, (iii) keep the Premises in a neat, clean and orderly condition, and (iv) maintain and operate its business within the Premises in a first-class manner. In the event that Tenant is not open for business within the Premises for sixty (60) consecutive days, subject to casualty, renovation or force majeure, then Landlord shall have the right to terminate the Lease. In the event of such termination, Tenant shall promptly reimburse Landlord the unamortized portion of the Allowance.

23.2 Operating Days and Hours. Recognizing that it is in the interests of both Tenant and Landlord to have regulated hours of business for all of the Project, Tenant agrees that Tenant shall open for business no later than the expiration of the Fixturization Period after Landlord tenders possession of the Premises to Tenant and that, commencing with the Commencement Date and for the remainder of the Lease Term, Tenant shall be open for business continuously with its window displays, exterior signs and exterior advertising displays adequately illuminated during all hours on all days on which the Landlord, in its sole discretion, determines to open the Project for business to the public. During all periods during which it is open, Tenant agrees (i) to keep the Premises fully stocked with merchandise, and with sufficient sales personnel to care for the patronage and (ii) to maximize Gross Sales. In the event Tenant is open beyond the normal hours of business for the majority of the remaining businesses in the Project and the foregoing hours of operation and requires lighting of the parking area in connection therewith, Tenant shall bear the cost of such after-hours lighting as reasonably allocated and calculated by Landlord. Tenant acknowledges and agrees that, in addition to other reasons Landlord is requiring Tenant to agree to the provisions of this Article: (a) that Tenant being open for business in turn helps increase the amount of business being done by other tenants in the Project and (b) that a closed store has a detrimental effect on the Project and the business of other tenants in the Project. Accordingly, should Tenant fail to operate its business as required by this Article, the Base Rent shall be increased by an amount equal to fifteen percent (15%) of the Base Rent otherwise payable hereunder during the time period that the Tenant shall fail to conduct its business as herein provided. In the event Tenant fails to open for business later than the expiration of the Fixturization Period after Landlord tenders possession of the Premises to Tenant and this Lease grants Tenant any rights of abatement or reduction of Base Rent during the initial months of the Lease Term, Tenant shall pay Base Rent of one hundred fifteen percent (115%) of the Base Rent payable after the expiration of the abatement or reduction commencing upon the Commencement Date through the date Tenant opens for business fully stocked and staffed. Subsequent increases in Base Rent shall continue as scheduled thereafter. The increase in Base Rent shall in no way excuse Tenant from its breach of this Lease nor deprive Landlord of the remedies it may have at law or in equity for such breach. In the event Tenant shall fail to comply with any of the requirements of this Section 23.2, Landlord shall be entitled to a mandatory injunction requiring Tenant to operate continuously as herein provided. It is agreed that the foregoing provisions shall be subject to the

hours of operation prescribed by the Declaration and/or any governmental regulations or labor union contracts which may govern the operation or business of Landlord or Tenant.

23.3 Auctions and Liquidation Sales. Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises or any liquidation sale, whether said auction be voluntary, involuntary, pursuant to any assignment for the payment of creditors, or pursuant to any bankruptcy or other insolvency proceeding. Tenant shall not conduct a fire, bankruptcy or going out of business sale upon the Premises. Any auction or liquidation sale permitted by Landlord in its sole discretion shall in all events comply with Applicable Laws and Other Requirements, including without limitation, any limitations or restrictions contained in the Declaration.

23.4 Reporting of Gross Sales. In the event Tenant is not required to report gross sales in connection with the payment of percentage rent hereunder, Tenant shall be required to report Gross Sales in accordance with this Section 23.4. Within fifteen (15) days after the end of each calendar month of the term hereof, commencing with the fifteenth (15th) day of the month following the Commencement Date, and ending with the fifteenth (15th) day of the month next succeeding the last month of the Lease Term, Tenant shall furnish to Landlord a statement in writing in a form approved by Landlord, certified by Tenant to be correct, showing the total gross sales made in, upon, or from the Premises during the preceding calendar month (or fractional month at the beginning of the term if the Commencement Date is other than the first (1st) day of a month). Tenant agrees that each such statement shall be and is hereby certified to be true and correct. The term "Gross Sales" as used herein means the total gross receipts of all goods, wares and merchandise sold and leased, including the actual charges for all services performed by Tenant and fees charged by Tenant and by anyone, including any subtenant, licensee or concessionaire in, at, from, or arising out of the use of the Premises, whether wholesale or retail, whether for cash or credit, or otherwise, and including the value of all consideration other than money received for any of the foregoing, without reserve or deduction or inability or failure to collect, including, but not limited to, sales, leases and services: (i) where the orders therefor originate in, at, from, or arising out of the use in whole or in part of any portion of the Premises, whether delivery or performance is made from the Premises or from some other place and regardless of the place of bookkeeping for, payment of, or collection of any accounts; or (ii) made or performed by mail, telephone, or telegraph orders received or filled in, at, or from the Premises; or (iii) made or performed by means of mechanical or other vending machines in the Premises; or (iv) which Tenant, or any subtenant, licensee or concessionaire, in the normal and customary course of its business, would credit or attribute to its operations at the Premises, or any part thereof. [DELETE IF PERCENTAGE RENT PROVISION IS INCLUDED.]

23.5 Records for Ground Lease. Tenant shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, true, accurate, and complete records for the current and five (5) prior Lease Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Property separate and apart from those in connection with Tenant's other business operations, if any. The foregoing records shall include all money (including, without limitation, "alternative" currencies, such as cryptocurrency and its equivalent), cash payments, or other things of value paid or provided by Tenant to Landlord, whether for cash or credit, including but not limited to gross charges, sales, rentals, common area

maintenance payments, operating expense or real property tax reimbursements, percentage rent payments, lease payments and fees and commissions paid to Landlord hereunder.

**ARTICLE 24**  
**NO WAIVERS OF PERFORMANCE**

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of the other party under this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations or any other obligations of such other party under this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt by Landlord of Rent with knowledge of a breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

**ARTICLE 25**  
**CURING TENANT'S DEFAULTS**

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent except as otherwise expressly provided in this Lease. If Tenant shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, and such failure shall continue beyond the periods referred to in Article 21 hereof, Landlord may make any such payment or perform any such act on Tenant's part to be made or performed as in this Lease provided but shall not be obligated so to do. Any such payment or performance shall not be a waiver or release of Tenant's obligations. All sums so paid by Landlord and all necessary incidental costs together with interest thereon at the rate specified in Section 22.3 from the date of such payment by Landlord until repaid shall be payable as Additional Rent to Landlord on demand, and Tenant covenants to pay any such sums, and Landlord shall have, in addition to any other right or remedy of Landlord, the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of Rent. Except in an emergency or to prevent imminent threat of injury to persons or damage to the Premises, as reasonably determined by Landlord, Landlord shall provide Tenant with written notice and the appropriate cure period provided in this Lease before performing any act on behalf of Tenant, and will in all events provide Tenant with a written request for any reimbursement payable under this Article 25.

**ARTICLE 26**  
**BROKER**

Tenant and Landlord each covenants, warrants and represents that no broker except as provided in the Basic Lease Information (collectively the "Broker") was instrumental in bringing about or consummating this Lease and that neither party has had conversations or negotiations with any broker except the Broker concerning the leasing of the Premises. Landlord and Tenant agree to indemnify and hold each other harmless against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including without limitation, attorneys' fees and expenses, arising out of any conversations or negotiations had by



Landlord or Tenant with any broker other than the Broker. Landlord shall pay any brokerage commissions due the Broker as per a separate agreement between Landlord and the Broker.

**ARTICLE 27**  
**NOTICES**

Any notice, statement, demand, consent, approval or other communication required or permitted to be given, rendered or made by either party to the other, pursuant to this Lease or pursuant to any Applicable Law, shall be in writing (whether or not so stated elsewhere in this Lease). Notices shall be deemed to have been properly given, rendered or made: upon delivery if delivered in person or by a recognized reputable overnight delivery service to the Landlord or Tenant or if sent postage prepaid by certified mail, return receipt requested, effective upon the earlier of that date actually received or refused as indicated by the attached return receipt, addressed to the other party at the address designated by the party. Either party may, by notice as aforesaid, designate a different address or addresses for notices, statements, demands, consents, approvals or other communications intended for it.

**ARTICLE 28**  
**ESTOPPEL CERTIFICATES; FINANCIALS**

28.1 Estoppel Certificates. Tenant agrees, at any time and from time to time, within ten (10) days following request from Landlord, to execute and deliver to Landlord or Landlord's designee a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), certifying the dates to which the Base Rent and Additional Rent have been paid, stating whether or not, to the best knowledge of the Tenant, the Landlord is in default in performance of any of its obligations under this Lease, and, if so, specifying each such default of which the Tenant shall have knowledge, and stating whether or not, to the best knowledge of Tenant, any event has occurred which with the giving of notice or passage of time, or both, would constitute such a default, and, if so, specifying each such event, it being intended that any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by the Landlord and by others with whom Landlord may be dealing, regardless of independent investigation. Tenant also shall include in any such statement such other information concerning this Lease as Landlord may reasonably request. If Tenant fails to respond within ten (10) days of the giving to Tenant of a written request for such a statement, such failure shall constitute an Event of Default and Tenant shall be deemed to have given such statement and shall be deemed to have admitted the accuracy of any information contained in the request for such statement and that the Lease is unmodified and in full force and effect, that there are not uncured defaults in Landlord's performance, and that not more than one (1) month's Rent has been paid in advance.

28.2 Financials. Tenant shall deliver to Landlord, prior to the execution of this Lease, and within ten (10) days following written request therefor by Landlord at any time during the Lease Term, Tenant's current tax returns and financial statements and, if not previously requested by Landlord, Tenant's tax returns and financial statements for the two (2) years prior to Tenant's current fiscal year, certified to be true, accurate and complete by the chief financial officer of Tenant, including a balance sheet and profit and loss statement (collectively the "Statements"),

which Statements shall accurately and completely reflect the financial condition of Tenant. If Tenant is a publicly traded corporation, the Statements may be in the form of Tenant's two (2) most recent public Form 10-Q Securities and Exchange Commission filings. Landlord agrees that it will keep the Statements confidential, except that Landlord shall have the right to deliver the same to any proposed purchaser of the Building, the Project or any portion thereof, and to any Mortgagee of Landlord or such purchaser or to the Master Lessor. All Statements delivered by Tenant pursuant to this Section are represented and warranted by Tenant to be correct and to accurately and fully reflect Tenant's true financial condition as of the date of submission.

## **ARTICLE 29** **MEMORANDUM OF LEASE**

Tenant shall not record this Lease or any memorandum hereof. If requested by Landlord, Tenant shall execute, acknowledge and deliver to Landlord a memorandum of lease in respect of this Lease sufficient for recording. Such memorandum shall not be deemed to change or otherwise affect any of the obligations or provisions of this Lease.

## **ARTICLE 30** **MISCELLANEOUS**

30.1 Merger. All understandings and agreements heretofore had between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties and which is entered into after full investigation, neither party relying upon any statement or representation not embodied in this Lease.

30.2 Modifications. No agreement shall be effective to change, modify, waive, release, discharge, terminate or effect an amendment of this Lease, in whole or in part, unless such agreement is in writing, refers expressly to this Lease and is signed by the party against whom enforcement is sought.

30.3 Successors and Assigns. Except as otherwise expressly provided in this Lease, the obligations of this Lease shall bind and benefit the successors and permitted assigns of the parties hereto.

30.4 Nonrecourse Lease. Tenant shall look only to Landlord's estate and property in the Land and the Building (including the rent, issues and profits therefrom) for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord or any Landlord Parties, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises or Project. Notwithstanding anything to the contrary contained herein, Master Lessor shall not be liable in any way or to any extent to Tenant under this Lease, including but not limited to in connection with any breach by Landlord hereunder.

30.5 Force Majeure. The obligations of Landlord or Tenant, as the case may be, hereunder shall be in no way affected, impaired or excused, nor shall such party have any liability whatsoever to the other party, because:

30.5.1 such party is unable to fulfill, or is delayed in fulfilling, any of its obligations under this Lease by reason of strike, other labor trouble, governmental pre-emption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, terrorism (whether local, regional or national), inclement weather, national disasters or acts of God, unavailability of materials, delays in governmental processing and issuance of permits and/or inspections, or any other cause, whether similar or dissimilar, beyond such party's reasonable control; or

30.5.2 of any failure or defect in the supply, quantity or character of electricity, water or other utilities furnished to the Project, by reason of any requirement, act or omission of the public utility or others serving the Project with electric energy, steam, oil, gas or water, or for any other reason, whether similar or dissimilar, beyond Landlord's or Tenant's, as the case may be, reasonable control.

The foregoing force majeure provision shall not apply to any payment of any amounts owed by either party to the other.

30.6 Effect of Failure to Consent. Except where a different standard is expressly provided in this Lease, the Landlord may grant or refuse to consent or approve any item in its sole discretion. Where this Lease states that a consent or approval may not be unreasonably withheld, and a party unreasonably withholds or conditions such consent, the other party shall not be entitled to any termination of this Lease for such withholding, it being intended that the sole remedies shall be either (i) to obtain an injunction compelling such consent or approval, or (ii) in connection with a final determination by a court of competent jurisdiction that Landlord unreasonably withheld its consent to a requested subletting or assignment under Article 10 of this Lease only, to obtain such damages as Tenant proves arose solely out of such unreasonable withholding of consent to a requested subletting or assignment, provided however, that in no event shall such damages exceed an amount equal to six (6) months of the Base Rent in effect at the time of such unreasonable withholding of consent.

30.7 Effect of Expiration. Upon the expiration or other termination of this Lease, neither party shall have any further obligation or liability to the other except as otherwise expressly provided in this Lease (including without limitation any indemnity obligations which shall expressly survive such expiration or termination) and except for such obligations as by their nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such expiration or other termination; and, in any event, unless otherwise expressly provided in this Lease, any liability for a payment (including, without limitation, Additional Rent, herein) which shall have accrued to or with respect to any period ending at the time of expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

30.8 Prorations. Any prorations of Base Rent or Additional Rent to be made under this Lease shall be computed on the basis of a three hundred sixty five (365) day year, or the actual number of days in an applicable month, as the case may be.

30.9 Governing Law; Severability. Regardless of the place of execution or performance, this Lease shall be governed by and construed in accordance with the laws of the State of California. If any provision of this Lease or the application thereof to any person or circumstances

shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Lease and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the fullest extent permitted by law. The table of contents, captions, heading and titles in this Lease are solely for convenience or reference and shall not affect its interpretation. Each covenant, agreement, obligation or other provision of this Lease on Tenant's part to be performed, shall be deemed and construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. Time is of the essence of this Lease and all of its provisions.

30.10 Light, Air and View. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or near the Premises shall in no way affect this Lease or impose any liability on Landlord.

30.11 Project Construction. Landlord is contemplating the commencement of construction on portions of the Project to refurbish and reconfigure portions of the Project, which may or may not include the Building, including, but not limited to, making interior and/or exterior repairs; restoring, repairing and/or replacing the exterior stucco; repairing, replacing and/or modifying doors and windows, reconfiguring portions of the Project landscaping and Common Areas, and such other repairs, replacements and/or construction on the Project as Landlord elects in its sole and absolute discretion (the "Work"). Landlord hereby reserves the right to access the Premises to conduct the Work and Tenant hereby grants Landlord and its contractors, subcontractors and materialmen the right to access the Premises to perform such Work as necessary. Tenant also acknowledges that such Work may be disruptive and noisy, may negatively impact Tenant's quiet enjoyment of the Premises, may impair Tenant's access to the Premises, may impair access by customers to the Premises, may produce dust typical of commercial rehabilitation and construction and may have other negative impacts on Tenant, the Premises and Tenant's invitees during the course of such Work. Tenant waives any and all claims against Landlord, its contractors, subcontractors and material men relating to such Work and the impact of such Work on Tenant, the Premises, Tenant's invitees, and Tenant's quiet enjoyment of the Premises and portions of the Project. Landlord shall conduct the Work in such a manner as to mitigate interference with Tenant's business operations in the Premises.

30.12 Tenant Representations. If Tenant is an entity other than an individual, each person executing this Lease on behalf of Tenant does hereby covenant and warrant that:

30.12.1 Tenant is duly organized and validly existing under the laws of its state of formation, and, if such entity is existing under the laws of a jurisdiction other than California, qualified to transact business in California;

30.12.2 Tenant has full right and authority to enter into this Lease and to perform all Tenant's obligations hereunder; and

30.12.3 Each person signing this Lease on behalf of Tenant is duly and validly authorized to do so.

30.13 Defined Terms. Words capitalized other than as the first word of a sentence are defined terms and have the meaning, throughout this Lease, given to them as identified in the Glossary or, if not so identified, then when they are first used with an initial capital or when used in quotation marks.

30.14 Counterparts. This Lease may be executed in one or more counterparts by separate signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding on all parties hereto, even though all parties are not signatories to the original or to the same counterpart. Any counterpart of this Lease that has attached to it separate signature pages, which together contain the signatures of all parties, shall for all purposes be deemed a fully-executed instrument, and in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart.

30.15 Costs and Attorney Fees.

30.15.1 Legal Action. If legal action is instituted to enforce or interpret any of the terms of this Lease or if legal action is instituted in a Bankruptcy Court for a United States District Court to enforce or interpret any of the terms of this Lease, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert the interest of Landlord in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and disbursements, the fees and expenses of expert witnesses in determining reasonable attorney fees, and such sums as the court may determine to be reasonable for the prevailing party's attorney fees connected with the trial and any appeal and by petition for review thereof.

30.15.2 No Suit or Action Filed. If this Lease is placed in the hands of an attorney due to a default in the payment or performance of any of its terms, the defaulting party shall pay, immediately upon demand, all of the other party's costs and expenses associated with enforcing the Lease, including reasonable attorney fees and collection costs even though no suit or action is filed thereon, and any other fees or expenses incurred by the non-defaulting party.

30.15.3 Landlord's Consents. Wherever in this Lease or otherwise the consent of Landlord is required or requested, Tenant shall pay to Landlord its actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' or other consultants' fees) incurred in consideration of, or in response to, the granting or withholding of such consent, including without limitation, consents to an assignment or subletting, waivers or approvals to Tenant equipment or other financing, and the like, Tenant shall pay such costs and expenses to Landlord immediately upon demand; provided, however, that as a condition to considering any request for consent, Landlord may require that Tenant deposit with Landlord an amount reasonably calculated by Landlord to represent the estimated costs and expenses Landlord will incur in considering and responding to such request, and in such event any unused portion of such deposit shall be refunded to Tenant without interest. The foregoing payment of costs and expenses shall be in addition to, and not in lieu of, any other fees or amounts which Landlord may be entitled to under this Lease or at law with respect to its response to or consideration of any request for consent.

30.15.4 Definitions. For purposes of this Lease, the term "attorney fees" includes all reasonable charges of the prevailing party's attorneys and their staff (including without limitation legal assistants, paralegals, and other support personnel) and any post-petition fees in a

bankruptcy court. For purposes of this Lease, the term fees and expenses includes but is not limited to long-distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges, including but not limited to court reporters' charges, appearance fees, and all costs of transcription; and costs incurred in searching records.

30.16 [OPTIONAL – NOT TYPICALLY ACCEPTABLE TO TENANTS.] Substitute Premises. At any time during the term of this Lease, Landlord shall have the right to elect to require Tenant to move to a substitute Premises situated within the Project. The substitute Premises shall contain the same approximate square footage as the Premises as described herein. Landlord shall have the right to relocate the Premises to a substitute Premises in accordance with the following:

30.16.1 The substitute Premises shall be substantially the same in size, dimensions, configuration, decor and nature as the Premises described herein and shall be placed in that condition by Landlord at Landlord's sole cost;

30.16.2 The physical relocation of Tenant's furniture, fixtures and equipment shall be accomplished by Tenant at its sole cost;

30.16.3 Landlord shall give Tenant at least ninety (90) days' prior written notice of Landlord's intention to relocate the Premises as described above;

30.16.4 All incidental costs incurred by Tenant as a result of the relocation, including, but without limitation, costs incurred in changing addresses on stationery, business cards, directories, advertising and other such items shall be paid by Landlord in an amount not to exceed One Thousand Dollars (\$1,000.00);

30.16.5 If the substitute Premises are smaller than the Premises as they existed before the relocation, the Base Rent shall be reduced to a sum computed by multiplying the Base Rent by a fraction, the numerator of which shall be the total number of square feet in the substitute Premises and the denominator of which shall be the total number of square feet in the Premises before relocation; and

30.16.6 The parties shall immediately execute an amendment to this Lease specifying the location of the substitute Premises, the reduction of the Base Rent, if any, and the date the amendment becomes effective. From and after the effective date of the amendment, the term "Premises" as used in this Lease shall mean the substitute Premises.

30.17 Antenna. Unless contrary to applicable California or federal law and unless an exemption has been specifically approved in writing by the Landlord, no antenna or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors above ground by Tenant on any portion of the Project, whether attached to a Building or otherwise, where such antenna, other device or other form of electromagnetic radiation that is greater than 18" in diameter and/or is visible from any street or Common Area.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease Agreement as of the date and year first above written.

LANDLORD

TENANT

DANA POINT HARBOR PARTNERS,  
LLC, a California limited liability company

\_\_\_\_\_  
\_\_\_\_\_

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

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

Name (print): \_\_\_\_\_

Name (print): \_\_\_\_\_

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

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

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

Name (print): \_\_\_\_\_

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

## GLOSSARY

“Abandonment Deadline” is defined in Section 14.3.

“ADA” is defined in Section 3.3.

“Additional Rent” is defined in Section 2.5.

“Allowance” is defined in Exhibit C.

“Alterations” is defined in Section 13.1.

The term “and/or” when applied to two or more matters or things shall be construed to apply to any one or more or all thereof as the circumstances warrant at the time in question.

“Anticipated Commencement Date” is defined in Section 1.11.

“Applicable Laws” shall mean laws and ordinances of any or all of the federal, state, regional, city, and other applicable governments and rules, regulations, orders and directives of any and all departments, subdivisions, bureaus, agencies or offices thereof, and of any other governmental, public or quasi-public authorities having jurisdiction over the Land, Building, Common Areas and/or Premises, and the direction of any public officer pursuant to law, whether now or hereinafter in force.

“Attorney fees” is defined in Section 30.15.4.

“Base Rent” is defined in Sections 1.13 and 2.5.

“Broker(s)” is defined in Section 1.18 and in Article 26.

“Building” is defined in Sections 1.7 and 2.1.

“Declaration” is defined in Section 3.5.

“Commencement Date” is defined in Section 2.3.

“Common Areas” is defined in Section 1.8.

“Environmental Laws” is defined in Section 3.4.5.

“Events of Default” is defined in Section 21.1.

“Extension Term” is defined in Section 2.3(d).

“Floor Area” means the square footage of a space measured from the outside of exterior walls and the centerline of demising walls (approximately \_\_\_\_\_ square feet) and a pro rata share of the Building’s main utility room and fire riser/roof access room (approximately \_\_\_\_\_ square feet) as outlined on the exhibit attached hereto as Exhibit B, if any.



“Guarantors” is defined in Section 1.17.

“Hazardous Materials” is defined in Section 3.4.5.

The terms “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Lease as a whole, and not to any particular Article, Section or subsection, unless expressly so stated.

“Interest Rate” shall mean ten percent (10%) per annum.

“Land” is defined in Section 2.1.

“Landlord” is defined in Section 1.2. “Landlord” shall mean only the owner at the time in question of the Building, so that in the event of any transfer or transfers of title to the Building, the transferor shall be and hereby is relieved and freed of all obligations of Landlord under this Lease accruing after such transfer, and it shall be deemed without further agreement that such transferee has assumed and agreed to perform and observe all obligations of Landlord herein during the period it is the holder of the Landlord’s interest under this Lease.

“Landlord Parties” is defined in Section 3.4.

“Landlord’s Address” is defined in Section 1.3.

“Landlord’s Work” is defined in Section 4.4 and in Exhibit C.

“Lease” is defined in Section 2.1.

“Lease Term” is defined in Sections 1.12 and 2.3.

“Mortgage” is defined in Section 8.1.

“Mortgagee” is defined in Section 8.1.

“Operating Expenses” is defined in Section 5.2.

“Operating Year” is defined in Section 6.1.

“Other Requirements” is defined in Section 3.1.

“Payment Request” is defined in Exhibit C.

The term “person” shall mean a natural person or persons, a partnership, a corporation, a limited liability company, a trust, and any other form of business or legal association or entity.

“Premises” is defined in Sections 1.6 and 2.2.

“Project” is defined in Section 1.1.

“Promotion Fund” is defined in the Declaration.

“Promotion Fund Charge” is defined in the Declaration.

“Rent” is defined in Section 2.5.

“Required Coverage” is defined in Exhibit C.

“Rules and Regulations” is defined in Section 2.1 and in Exhibit E.

“Security Deposit” is defined in Sections 1.16 and 7.1.

“Statements” is defined in Section 28.2.

“Substantial Completion of Landlord’s Work” is defined in Section 2.3(b).

“Taxes” is defined in Section 5.4.

“Tenant” is defined in Section 1.4. “Tenant” shall mean the Tenant herein named or any assignee or other successor-in-interest (immediate or remote) of Tenant herein named, which at the time in question is the owner of Tenant’s estate and interest granted by this Lease; but shall not be construed to permit any assignment of this Lease or to relieve Tenant herein named or any assignee or other successor in interest (whether immediate or remote) of Tenant herein named from the full and prompt payment, performance and observance of the covenants, obligations and conditions to be paid, performed and observed by Tenant under this Lease.

“Tenant Delays” is defined in Exhibit C.

“Tenant Improvements” is defined in Section 4.4.

“Tenant Parties” is defined in Section 3.1.

“Tenant’s Address” is defined in Section 1.5.

“Tenant’s Percentage” is defined in Section 6.2.

“Tenant’s Percentage of Operating Expenses” is defined in Section 1.15.

“Tenant’s Pro Rata Share” is defined in Section 6.2.

“Tenant’s Property” is defined in Section 14.2.

“Tenant’s Work” is defined in Exhibit C.

“Utilities” is defined in Section 15.1.

“Utilities Charge” is defined in Section 15.2.

EXHIBIT A

PROJECT SITE PLAN

This exhibit is for reference only and is not a representation as to size, dimension, or location of any tenant in the Project. All buildings, improvements, their occupants and the uses as shown on this site plan are subject to modification at Landlord's sole discretion without notice.

EXHIBIT B

BUILDING AND PREMISES

## EXHIBIT C

### CONSTRUCTION PROVISIONS

**[Highlighted language is replacement language and used for Restaurants only]**

LANDLORD AGREES to complete the following in the Premises (“Landlord’s Work”):

**1. STOREFRONT:** Exterior storefronts shall include storefront door(s) with lock. All doors will be provided with closures and cylinder lock keys. The storefront shall be delivered in its “as-is” condition.

**2. FLOOR:** As-is. Slab is already in place.

**3. WALLS:** Demising walls to be metal studs shall be in gauge required to span floor to bottom of structure above.

**4. HEATING, VENTILATING AND AIR CONDITIONING:** None. Tenant to provide.

**5. PLUMBING:**

(a) 1-1/2” domestic cold water line, with sub-meter at Landlord’s discretion, stubbed within the Tenant space. This size restricts the Tenant to install “flush tank” type water closets with either conventional or pressure assist features (“flush valve” type water closets are not permitted). If Landlord determines in its sole and absolute discretion, Landlord may install a remote reading water submeter in a location within the Premises or the main utility room that can be easily read by Landlord.

(b) Access to existing 4” sanitary sewer within the Premises; connection by Tenant per Tenant’s Plans as approved by Landlord.

(c) Landlord shall install a 4” grease line, to within the Premises, terminating into a common use grease trap located by Landlord in a Landlord approved location.

**6. FIRE PROTECTION:** As-is. Tenant shall make modifications as required to adjust heads to specific interior space requirements. If required by code, the Landlord shall install a fire alarm system for the shell space. Tenant shall make any necessary modifications as required to provide protection for the interior space modifications. Tenants are responsible for fire alarm compatible with shell design.

**7. ELECTRICAL:** Landlord shall provide empty conduits for electrical power lines extending from the main utility room into the Premises. Landlord shall provide a meter socket, as may be separately metered by Landlord’s installation of an Emon Demon meter for purposes of spaces which are not separately metered, for a maximum service of 200 amps, 3 phase, 4 wire, 277/480 volts. Tenant shall provide all necessary cabling extending from the main utility room within the Landlord supplied conduits into the space and place

Tenant's own electrical panel within the space. Tenant shall make arrangements with the local utility to provide an electrical meter for the space within the main utility room, at Tenant's sole cost and expense. Tenant shall be responsible for all electrical distribution within the Premises. Tenant shall be responsible for providing temporary power until such time that its meter is set. Tenant is responsible for timing of and cost of setting of meters.

**8. FIRE ALARM:** If required by code, the Landlord shall install a fire alarm system for the shell space. Tenant shall make any necessary modifications as required to provide protection for the interior space modifications.

**9. TRASH ENCLOSURE:** Landlord will provide a non-exclusive trash enclosure for the tenant and other occupants of the Building.

**10. LANDSCAPING:** Landlord will be responsible for installation of all Landscaping and Hardscapes for the surrounding area of the space.

**11. GAS:** Landlord will provide a 2½" natural gas line stubbed to the Premises). Notwithstanding the foregoing, should gas service be provided, it shall be at Tenant's sole cost and responsibility to procure its respective gas meter.

**12. TELEPHONE/INTERNET:** Landlord shall provide an empty conduit and pull-string for telephone and internet from the main utility room to the boundary of the Premises per Landlord's plans. Landlord will provide the main telephone backboard for the building. Tenant shall be responsible for all telephone and internet cabling from the main telephone backboard into and throughout the Premises. Communication for data and phone is \_\_\_\_\_ provided by \_\_\_\_\_ with a max speed of 500/500. Cable is not available and is exempt from Landlord provisions.

**13. MISCELLANEOUS:** Tenant shall arrange for all service including any assessments, connection or usage fee, hook-up, etc. all at Tenant's expense, except that the Landlord will be responsible for all base building connection charges.

TENANT AGREES to complete the Premises in the following manner ("Tenant's Work"):

**1.** To contract for the construction of (and pay for) all work not set forth as part of Landlord's Work above and to also pay for any additional expenses (e.g., revisions to plans to architect, changes to Building occasioned by Tenant or governmental codes, etc.) not included as part of Landlord's original contract cost for said Building of which Tenant's Premises are a part.

**2.** To provide fixtures for the Premises in a manner comparable with stores of a similar nature, including installation of all interior fixtures and appropriate floor covering and wall treatment.

**3.** To provide, install, connect and maintain all signs at Tenant's expense prior to the Rent Commencement Date. Said sign plans shall be approved by Landlord prior to fabrication and installation and shall conform to the sign criteria of the Shopping Center provided by Landlord.

4. To meet all other requirements necessary to open said Premises for the business herein authorized.

5. Plan approvals.

i. Landlord's Construction Drawings.

1. *Preliminary Construction Drawings.* By no later than (date-tbd), Landlord will provide Tenant with a copy of the preliminary construction drawings for Landlord's Work (the "**Landlord's Preliminary Construction Drawings**"). Within ten (10) days after Tenant's receipt of the Landlord's Preliminary Construction Drawings, Tenant shall either approve or disapprove the same in writing (provided, however, that Tenant shall only have the right to disapprove the same to the extent that they are inconsistent with the specifications set forth in this Exhibit "C").

2. *Final Construction Drawings.* Once Tenant has approved (or is deemed to have approved) the Landlord's Preliminary Construction Drawings, Landlord shall issue final construction drawings (the "**Landlord's Final Construction Drawings**"). Within ten (10) days after Tenant's receipt of the Landlord's Final Construction Drawings, Tenant shall either approve or disapprove the same in writing (provided, however, that Tenant shall only have the right to disapprove the same to the extent that they are inconsistent with the Landlord's Preliminary Construction Drawings).

ii. Tenant's Plans and Drawings.

1. *Preliminary Plans.* Within forty-five (45) days after the receipt of Final Construction Drawings, Tenant shall submit its preliminary, schematic or design development level plans for Tenant's Work (the "**Tenant's Preliminary Plans**") to Landlord for review and approval. Within ten (10) days after Landlord's receipt of the Tenant's Preliminary Plans, Landlord shall either approve or disapprove the same in writing.

2. *Construction Drawings.* Within twenty (20) days after Tenant's receipt of Landlord's approval of the Tenant's Preliminary Plans, Tenant shall submit construction drawings and any other supplementary documents reasonably required by Landlord for the Tenant's Work (collectively, the "**Tenant's Construction Drawings**") to Landlord for Landlord's review and approval. The Tenant's Preliminary Plans and the Tenant's Construction Drawings shall be prepared in conformance with the Tenant's Design Criteria, as defined, described and illustrated in the Tenant Criteria Manual, dated July 2008, previously provided to Landlord. Within ten (10)

days after Landlord's receipt of the Tenant's Construction Drawings, Landlord shall either approve or disapprove the Tenant's Construction Drawings in writing. Tenant shall not commence Tenant's Work until: (1) Landlord has completed Landlord's Work; and (2) Tenant has provided to Landlord a copy of its building permit.

iii. Deemed Approval. Landlord's and Tenant's approvals as contemplated in subparagraphs (i) and (ii) above shall not be unreasonably withheld or conditioned. If Landlord or Tenant fails to approve or disapprove the applicable plans or drawings within the timeframes set forth in subparagraphs (i) and (ii) above, then the applicable plans or drawings shall be deemed approved by such party.

6. Tenant agrees to execute a contract(s) for Tenant's Work (the "Contract") with contractors and subcontractors reasonably satisfactory to Landlord (collectively, the "Tenant's Contractors"). Prior to execution of the Contract, Tenant will provide a copy to Landlord for its review and approval. Landlord will review the Contract for compliance with the requirements of this Exhibit "C" (the "Requirements") within five (5) business days after receipt thereof and advise Tenant of any objections thereto. If Landlord objects to the Contract, Tenant will cause the same to be corrected, so that it is in compliance with the Requirements and resubmit the same to Landlord for approval. The parties will continue the procedure set forth above until Landlord's approval is obtained. Following such approval, Tenant will promptly commence and proceed diligently to complete Tenant's Work.

7. Landlord has no obligation to Tenant or Tenant's Contractors in connection with Tenant's Work except as set forth herein.

8. Tenant will cause Tenant's Contractors to: (i) cooperate with contractors employed by Landlord who are completing work anywhere in the Shopping Center ("Landlord's Contractors") so as to not interfere with Landlord's Contractors, (ii) conduct work so as not to unreasonably interfere with other tenants in the Shopping Center, (iii) reach agreement with Landlord or Landlord's Contractors as to the terms and conditions for hoisting, systems interfacing, and use of temporary utilities; and (iv) deliver to Landlord such evidence of compliance with the provisions of this paragraph as Landlord may reasonably request.

9. Tenant assumes full responsibility for Tenant's Contractors' performance of all work including, without limitation, compliance with all Applicable Laws and for all Tenant's Contractors' property, equipment, materials, tools or machinery placed or stored in the Premises during the completion thereof. All such work is to be performed in a good and workmanlike manner consistent with first class standards. Tenant shall require its general contractor to place a refundable security deposit in the amount of Five Thousand and No/100 (\$5,000.00) with the Landlord. Such deposit shall be used only to repair any damage done by the Tenant's contractors



to the Landlord's property, or, to complete any Landlord issued punch-list items not completed by Tenant.

**10.** In the event Tenant's Work includes any work involving in any manner the roof, fire sprinkler and/or fire alarm, Tenant agrees to only use Landlord's Contractors for any such work, at Tenant's cost.

**11.** Tenant will indemnify, defend and hold harmless Landlord, Landlord's mortgagee, Shopping Center and/or Building manager, and Landlord's Contractors from and against any and all liabilities, claims, demands, damages, expenses, fees (including, without limitation, attorney's fees), fines, penalties, suits, proceedings, actions and causes of action of any and every kind or nature arising out of, or resulting from the performance of Tenant's Work, including, but not limited to, mechanics' or other liens or claims (and all costs associated therewith). Notwithstanding the preceding and without diminishing Tenant's obligations set forth above, Landlord reserves the right to select its own counsel in defending any such lien, claim, action or proceeding, and Tenant shall immediately reimburse Landlord upon demand for all fees and expenses incurred in connection therewith. Tenant will also immediately repair or cause to be repaired at its expense all damage caused to the Premises and/or the Shopping Center by Tenant's Contractors. Further, Landlord shall have the right to post and maintain any notices of non-liability.

**12.** Following construction of the Tenant's improvements, Tenant will submit PDF "As-Built" drawings, certified by the architect, to the Landlord for its records.

**13.** Tenant shall require Tenant's Contractors to execute lien waivers acceptable to Landlord, as further described in the Tenant Criteria Handbook, contemporaneously with their receipt of payment, copies of which will be immediately delivered to Landlord.

**14.** Tenant designates and authorizes \_\_\_\_\_, E-Mail:  
Phone #: \_\_\_\_\_ to act for Tenant in connection with construction matters concerning this Exhibit C.

**15.** Tenant designates and authorizes \_\_\_\_\_, E-Mail:  
Phone #: \_\_\_\_\_ to act for Tenant in connection with architectural matters concerning this Exhibit C.

**16.** Landlord designates and authorizes \_\_\_\_\_ and \_\_\_\_\_ to act for Landlord in connection with matters concerning this Exhibit C.

**17.** All notices required hereunder will be in writing in accordance with the terms and provisions for notices set forth in the Lease.

**18.** Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Lease.]

The capitalized terms used and not otherwise defined herein shall have the same definitions as set forth in the Lease. The provisions of this Exhibit shall supersede any inconsistent or conflicting provisions of the Lease.

2. **LANDLORD'S WORK.** Except as herein provided, the Premises are leased to Tenant on an "as-is" basis. The Premises shall be delivered by Landlord to Tenant in Standard Shell Condition, as defined below. The cost and installation of all other improvements to the Premises shall be the sole responsibility of Tenant. If an improvement or work to be done is not specifically identified below as part of the Standard Shell Condition, then Tenant, not Landlord, is solely responsible for the same and the definition of Standard Shell Condition shall be construed in favor of Landlord to specifically limit the improvements to be constructed or installed by Landlord. Without limiting any provision in this Lease, upon the delivery of the Premises in Standard Shell Condition to Tenant, or upon the commencement of Tenant's Work, Tenant shall be deemed to have accepted the Premises in "as is" condition.

For purposes of this Lease, the "Standard Shell Condition" of the Premises shall be as follows:

1. **Building shell.** Landlord shall provide the structural frame of the building, exterior walls, roof structures and membrane, concrete slab, glass storefront and front entrances. Exterior storefronts shall include storefront door(s) with lock. All doors will be provided with closures and cylinder lock keys. The storefront shall be delivered in its "as is" condition.
2. **Demising Walls.** Interior demising walls between tenants shall be metal studs. All demising walls shall be minimum 6" metal studs in gauge to span floor to structure above. Tenant to install 5/8" GWB full height on existing metal studs and shall install 6" sound batt insulation within wall cavity Tenant to provide all finishes including taping and sanding (if required) on these walls. Optional plywood or steel mesh is allowed at no additional cost to Landlord.
3. **Fire Protection.** As-is. Tenant shall make modifications as required to adjust heads to specific interior space requirements. If required by code, the Landlord shall install a fire alarm system for the shell space. Tenant shall make any necessary modifications as required to provide protection for the interior space modifications. Tenant is responsible for fire alarm compatible with shell design.
4. **HVAC.** Landlord shall provide refrigerated air conditioning per Landlord's building design, adequate for a typical retail business at a standard rate of one (1) ton for each 300 sf of interior space. Landlord shall place the electrical (or gas, if applicable, in Landlord's sole discretion) air conditioning unit(s) with duct main only and provide conduit penetration through roof membrane, Tenant to supply power, disconnect switch, controls and all interior ducting.

5. Water and Sewer. Landlord shall provide 4" minimum sewer line and a 1" minimum water line to the Premises to be confirmed pursuant to Landlord's as-built plans. If Landlord determines, in its sole and absolute discretion, Landlord may install a remote reading water submeter in a location within the Premises or the main utility room that can be easily read by Landlord. Should Tenant require a grease trap interceptor, Tenant shall install an appropriately sized grease trap interceptor to the Premises in a Landlord approved location.
6. Electrical Service Main: Landlord shall provide empty conduits for electrical power lines extending from the main utility room into the Premises. Landlord shall provide a meter socket, as may be separately metered by Landlord's installation of an Emon Demon meter, for a maximum service of 200 amps, 3 phase, 4 wire, 277/480 volts. Tenant shall provide all necessary cabling extending from the main utility room within the Landlord supplied conduits into the space and place Tenant's own electrical panel within the space. Tenant shall make arrangements with the local utility to provide an electrical meter for the space within the main utility room, at Tenant's sole cost and expense.
7. Electrical Service Distribution: Tenant shall be responsible for all electrical distribution within the Premises. Tenant shall be responsible for providing temporary power until such time that Tenant's meter is set. Tenant shall be responsible for the timing of and cost for setting of the meter.
8. Lighting Fixtures: Not included within the Premises. Tenant shall provide breaker/circuiting to exterior lighting other than that indicated to Landlord house panel.
9. Telephone / Internet: Landlord shall provide an empty conduit and pull-string for telephone and internet from the main utility room to the boundary of the Premises per Landlord's plans. Landlord will provide the main telephone backboard for the building. Tenant shall be responsible for all telephone and internet cabling from the main telephone backboard into and throughout the demised space. Cable is not available.
10. Gas service: No gas service provided (unless otherwise determined by Landlord in Landlord's sole discretion); all mechanical services provided are electric.
11. Miscellaneous. Landlord shall provide an address sign and trash enclosure as depicted on the Site Plan. Tenant shall arrange for all service including any assessments, connection or usage fee, hook-up, etc. all at Tenant's expense, except that the landlord will be responsible for all base building connection charges.

### 3. TENANT'S WORK

"Tenant's Work" as used in this Lease, shall mean all work, other than Landlord's Work specified in Section 1 of this Exhibit C, which shall be necessary to complete the Premises to a finished condition from which business can be conducted. Tenant will be required to build Tenant's most current design prototype in a good and workmanlike manner, consistent with Tenant's flagship or "A" level stores, in accordance with this Exhibit C, the provisions of the Lease, the Project's architectural standards, and all federal, state and

local codes. Tenant acknowledges receipt of a space outline plan for the Premises and the Tenant Sign Program adopted by Landlord for the Dana Point Harbor retail project. All of Tenant's Work shall be performed in accordance with the provisions of the "Final Working Drawings" (as hereinafter described) for Tenant's Work. Tenant shall perform or cause to be performed Tenant's Work at Tenant's expense.

Tenant's Work shall include, but not be limited to, the following:

1. To contract for the construction of (and pay for) all work not set forth as part of Landlord's Work above and to also pay for any additional expenses (e.g., revisions to plans to architect, changes to building occasioned by Tenant or Applicable Laws, etc.) not included as part of Landlord's original contract cost for said Building of which Tenant's Premises are a part.
2. To provide fixtures for the Premises in a manner comparable with stores of a similar nature, including installation of all interior fixtures and appropriate floor covering and wall treatment.
3. To provide, install, connect and maintain all signs at Tenant's expense prior to the Rent Commencement Date. Said sign plans shall be reasonably approved by Landlord prior to fabrication and installation of signs and shall conform to the sign criteria set forth in Landlord's Project Sign Program.
4. To meet all other requirements necessary to open said Premises for the business herein authorized.
  - (a) Floors: Tenant shall provide all floor coverings in the Premises. Floor and/or wall penetrations may require prior review and x-rays, the cost of which shall be borne by Tenant. No penetrations into or through any shelf building walls, floors and/or structural grade beams shall be made without Landlord's prior written approval. All floor slab and shell building wall reinstatement work must be performed by Tenant in strict accordance with Landlord's specifications.
  - (b) Walls: Tenant is to provide all interior partitions and wall coverings in the Premises.
  - (c) Ceiling: Penetrations through and/or attachments to roof structure must have prior written approval from Landlord and comply with all of Landlord's roof specifications and installation procedures.
  - (d) Electrical: Any additional electrical work shall be at Tenant's cost, and shall not be performed without Landlord's prior written approval.

- (e) Plumbing: No penetrations of the foundation shall be made for plumbing lines without Landlord's prior written approval.
- (f) Signs: Tenant shall provide signs in accordance with the Tenant Sign Program, including all structural modifications, electrical connections to Landlord provided J-box, attachment to Landlord's building and all patching, sealing and repainting. Tenant shall provide appropriate access and/or temporary catwalks for Tenant's sign installation.
- (g) Service/Fire Exit Doors: If required by Applicable Laws (including code requirements and/or changes or additions to Landlord's Work triggered by Tenant's use or exiting requirements, or Tenant's interior floor plan layout), Tenant shall provide additional service doors and/or fire exit doors which shall conform with Landlord's requirements and state and local codes.
- (h) Code-Related Items: Tenant shall be responsible for complying with any code requirements applicable to its type of business or its operation in the Premises, including code requirements and/or changes or additions to Landlord's Work triggered by Tenant's use or exiting requirements or Tenant's interior floor plan layout
- (i) Fire Alarm System: If Tenant is required or desires to have a fire alarm monitoring system or life safety system, Tenant shall be responsible for all hook-ups and connections to Landlord's fire alarm monitoring and life-safety systems, including the installation of designated phone lines and monitoring equipment, as required by Landlord, Landlord's designated fire alarm contractor and state and local codes.
- (j) Compactors: For restaurant premises only, Tenant shall provide within Tenant's Premises wet/dry trash compactor(s) with capacity adequate to service Tenant's daily trash output. Any required floor mat wash down area shall be contained within the Premises. Wet trash or debris generated from the preparation of food or general restaurant operations, must be stored in sealed containers within Tenant's Premises and disposed of in accordance with Landlord, waste disposal and sewer district requirements.

- (k) Exhaust and Makeup Air Systems: For restaurant premises only, Tenant's kitchen exhaust and make up air duct systems must be constructed in fire rated shaft enclosures in accordance with all governmental and local code requirements. Any proposed shaft enclosures penetrating adjacent tenant or Common Area spaces, either above or next to the Premises, are subject to Landlord's prior written approval of Tenant's detailed plans and equipment specifications for such penetrating shaft enclosures. At Landlord's option, Landlord may designate dedicated shaft locations for Tenant's exhaust and make up air systems. Tenant shall be responsible for bringing all necessary ductwork and fire rated enclosures for its equipment to the designated shaft location, as well as completing its ductwork and the shaft enclosure at the designated location.
- (l) Rooftop Equipment: For restaurant premises only, Landlord, at its option, may allow Tenant to install additional rooftop mechanical and/or kitchen equipment on the roof area above the Premises, subject to Landlord's prior written approval of Tenant's detailed plans and equipment specifications (which approval may be given or withheld in Landlord's sole discretion). Any rooftop penetrations and/or roof repairs required shall be made using Landlord's designated subcontractor and complying with all of Landlord's roof specifications. Tenant must engage Landlord's roofing consultant for all Tenant roof penetrations. Any necessary roof structure modifications to accommodate Tenant's rooftop equipment will be performed by Landlord, with all associated engineering and construction costs being at Tenant's expense (which costs shall be paid by Tenant within thirty (30) days following Tenant's receipt from Landlord of reasonable evidence of such costs). The location of Tenant's rooftop equipment will be subject to Landlord's requirements for equipment screening and kitchen exhaust air purification systems, as deemed necessary in Landlord's sole discretion.
- (m) Outdoor Dining Areas: For restaurant premises only, if Tenant's Premises includes the use of an Outdoor Dining Area, Tenant may at Tenant's sole cost and expense, install heaters with Landlord's prior written approval. Such heaters shall be connected to Landlord's provided point of connection (POC), all in compliance with Landlord's criteria. All

work shall be performed using Landlord's approved contractor.

#### 4. DESIGN APPROVAL PROCEDURE

(a) Preliminary Drawings:

- (i) Due to the special nature of the Project, prior to preparing any drawings, Tenant's architect shall perform a field inspection of the conditions on-site and in and around the Premises prior to submittal of the "Preliminary Drawings" (as hereinafter defined).
- (ii) Within sixty (60) days following written notice from Landlord, Tenant shall submit to Landlord's representative three (3) sets of blueline prints and one (1) set of reproducible prints showing intended design character and finishes of the Premises ("Preliminary Drawings").
  - (1) Key plan showing location of the Premises within the Project.
  - (2) Preliminary floor and reflected ceiling plans (scale 1/4" = 1'-0") indicating interior design concept.
  - (3) Typical interior elevations (scale 1/4" = 1'-0").
  - (4) Storefront elevation and section, including any graphics, lighting and signage and indicating all materials and finishes (scale 1/4" = 1'-0"). Elevations shall be rendered in color. Elevations should include existing context (i.e., partial elevations of retail spaces) and should be drawn full height to top of building.
  - (5) Preliminary finish schedule including all colors and materials to be used.
  - (6) All exterior signage is considered integral to the design and is required to be submitted with preliminary elevations.
- (iii) Preliminary Drawings shall include the following:
  - (1) Key plan showing location of the Premises within the Project.
  - (2) Preliminary floor and reflected ceiling plans (scale 1/4" = 1'-0") indicating interior design concept.
  - (3) Typical interior elevations (scale 1/4" = 1'-0").
  - (4) Storefront elevation and section, including any graphics, lighting and signage and indicating all materials and finishes (scale 1/4" = 1'-0"). Elevations shall be rendered in color. Elevations should include existing context (i.e., partial elevations of retail spaces) and should be drawn full height to top of building.
  - (5) Preliminary finish schedule including all colors and materials to be used.
  - (6) All exterior signage is considered integral to the design and is required to be submitted with preliminary elevations.
- (iv) Within fifteen (15) days after receipt of the Preliminary Drawings, Landlord's representative will return to Tenant's architect/designer one (1) set of prints of the Preliminary Drawings with any required modifications or with approval. If Tenant wishes to take exception to any required modifications, Tenant may do so only by written notice received by Landlord within ten (10) days from the date of receipt by Tenant's architect/designer of the required modifications. Unless exception is so taken, it will be deemed that all comments are acceptable to and approved by Tenant.

- (v) If the Preliminary Drawings are returned to Tenant with required modifications and Tenant does not take (or is deemed not to have taken) exception to such modifications as provided above, the Preliminary Drawings must be revised and resubmitted to Landlord for approval within thirty (30) days of their receipt by Tenant's architect/designer.
  - (vi) If Tenant properly takes exception to any required modifications as provided above, Landlord will discuss the objections with Tenant and will work with Tenant to achieve Final Working Drawings that are acceptable to Landlord. If Tenant and Landlord are unable to agree on Preliminary Drawings, Landlord may terminate this Lease.
  - (vii) If the Preliminary Drawings are returned "Approved as Noted" and Tenant does not take exception, Tenant's architect shall incorporate Landlord's modifications into the Final Working Drawings.
- (b) Final Working Drawings:
- (i) Tenant must engage an architect licensed in the State of California for the purpose of preparing the Final Working Drawings. Final Working Drawings must adhere to the Preliminary Drawings as approved by Landlord.
  - (ii) Final Working Drawings shall be prepared in a CADD reproducible format and shall include, but not be limited to, the following:
    - (1) Key plan showing location of the Premises within the Project.
    - (2) Floor plans (scale 1/4" = 1'-0") indicating storefront construction materials, colors and finishes as well as sliding door track location (if required), location of partitions and type of construction, placement of merchandising fixtures and toilet room locations indicating placement of plumbing and fixtures.
    - (3) Storefront elevation and section, including any graphics, lighting and signage. Indicate all materials and finishes (scale 1/4" = 1'-0").
    - (4) Interior elevations, sections and details sufficient for construction (scale 1/4" = 1'-0").
    - (5) Complete interior finish schedule.
    - (6) Samples and color chips of the actual materials or charts firmly attached to illustration boards and clearly labeled.



- (7) Sign details (scale 1-1/2" = 1'-0"), indicating elevation and section views, letter style and size, all colors and materials, methods of illustration, color of illuminate and voltage requirements.
  - (8) Electrical and/or mechanical drawings must indicate total connected electrical loads and panel schedules, AC cooling requirements, water service capacity requirements and natural gas service requirements (if needed). Mechanical plans must indicate the operating weights and locations of any additional Tenant provided rooftop mechanical equipment.
  - (9) Specifications not shown on drawings should be submitted on 6-1/2" x 11" paper, four sets.
  - (10) Landlord reserves the right to require mock-ups of any materials, finishes, colors, special signs or lighting.
- (iii) The Final Working Drawings must be submitted in the form of one (1) set of reproducible prints and three (3) sets of black or blue line prints to Landlord's representative for approval within thirty (30) days from Landlord's approval of the Preliminary Drawings. Final Working Drawings with incomplete or inadequate information or dimensional discrepancies will be rejected.
  - (iv) Within fifteen (15) days after receipt of the Final Working Drawings, Landlord's representative will return to Tenant's architect/designer one (1) set of prints of the Final Working Drawings with any required modifications or with approval. If Tenant wishes to take exception to any required modifications, Tenant may do so only by written notice received by Landlord within ten (10) days from the date of receipt by Tenant's architect/designer of the required modifications. Unless exception is so taken, it will be deemed that all comments are acceptable to and approved by Tenant.
  - (v) If the Final Working Drawings are returned to Tenant with comments and Tenant does not take exception to the comments as provided above, the Final Working Drawings must be revised and resubmitted to Landlord for approval within fifteen (15) days of their receipt by Tenant's architect/designer.
  - (vi) If Tenant properly takes exception to any required modifications as provided above, Landlord will discuss the objections with Tenant and will work with Tenant to achieve Final Working Drawings that are acceptable to Landlord. If Tenant and Landlord are unable to agree on Final Working Drawings, Landlord may terminate this Lease.

- (vii) Approved Final Working Drawings will be so stamped and returned to Tenant's architect/designer who made the submittal.
- (c) Final Plans: The approved Final Working Drawings will be considered the "Final Plans." All construction on the Premises must be in conformity to the Final Plans. The improvements may be inspected by Landlord or its architect who shall have the right to require all work which does not comply with the Final Plans to be corrected by Tenant, or by Landlord at Tenant's cost. Construction may not begin until Final Plans are at the job site. No changes, modifications or alterations to the Final Plans may be made without the written consent of Landlord.
- (d) Failure to Submit Plans: If Tenant fails to submit Preliminary Drawings or Final Working Drawings or revisions thereto as and when required, the period allowed for construction of the Premises as set forth in this Lease as "Time to Complete Tenant's Work" will be reduced by the total number of days equal to the number of days the Preliminary Drawings or Final Working Drawings or the revisions thereto were delivered after they were required to be delivered. In addition, Landlord, at its option, may elect to terminate this Lease.
- (e) Building Code Compliance and Non-Responsibility of Landlord: Landlord will not check Tenant's drawings for building code compliance. All Tenant drawings shall, however, be subject to the same engineering and safety review as described in Section 4 below respecting Tenant's Work, and such review shall be subject to the same limitations and other provisions set forth in Section 4. Approval of Final Working Drawings by Landlord is not a representation that the drawings are in compliance with the requirements of governmental authorities, and it shall be Tenant's responsibility to (i) meet and comply with all Federal, state and local code requirements, (ii) secure issuance of a building permit (and all other necessary permits) required to be obtained in connection with Tenant's Work, and (iii) pay for all fees assessed in connection with the permits obtained by Tenant in connection with Tenant's Work. Approval of Final Working Drawings does not constitute assumption of responsibility by Landlord for their accuracy, sufficiency or efficiency and Tenant shall be totally responsible for such matters. Tenant at all times shall maintain at the Premises the Final Plans as approved by the local governing agencies and Landlord, and all inspection cards with respect to Tenant's Work.
- (f) Design Fees: All of Tenant's design fees (including, without limitation, Tenant's architect and sign designer) must be paid by Tenant.
- (g) Changes to Landlord's Construction: In the event Tenant desires to make any changes to the shell building construction or any aspect of Landlord's Work as described in Section 1 of this Exhibit C or otherwise shown on Landlord's plans, Tenant shall first submit to Landlord for Landlord's review and approval plans and specifications as appropriate for the desired change prepared by Tenant's

architect and, if applicable, Tenant's engineer. Tenant shall reimburse Landlord for all necessary and reasonable architect's, engineer's and other consultants' fees incurred by Landlord in connection with the review of any such plans and specifications within thirty (30) days following receipt of an invoice therefor. Landlord may condition its review of any such changes on Tenant's agreement in writing to the estimated or, if known, actual reimbursement amount.

## 5. CONSTRUCTION OF PREMISES

- (a) Commencement of Construction: Tenant shall commence construction of Tenants Work in accordance with the provisions of this Lease and shall carry such construction to completion with all due diligence.
  - (i) Prior to the commencement of Tenant's Work, Tenant shall cause an inspection of the Premises to confirm that Tenant's Plans have been prepared in accordance with the as-built condition of Landlord's building shell.
  - (ii) Tenant's contractor shall obtain and keep in full force throughout the construction of Tenant's Work general liability, worker's compensation and "all risks" builder's insurance as outlined below ("Required Coverage"). The Required Coverage shall be issued by insurance companies with general policy holder's rating of not less than A- and a financial rating of not less than Class X, as rated in the most current available "Best's Key Rating Guide," and which are qualified to do business in the State of California. Certificates evidencing said insurance shall be provided to Landlord at least five (5) days prior to the commencement of Tenant's Work. Tenant shall not commence construction of Tenant's Work until evidence that the Required Coverage is in place.
    - (A) general liability insurance with coverage limits of not less than Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury, personal injury, death and property damage liability per occurrence;
    - (B) worker's compensation coverage as required by law, including employer's liability coverage; and
    - (C) "all risks" builder's risk insurance in an amount acceptable to Landlord.
- (b) General Requirements:
  - (i) Tenant shall only engage contractors who are bondable, licensed contractors, possessing good labor relations, capable of performing quality workmanship and working in harmony with Landlord and other

contractors on the job. All work shall be coordinated with other Project work.

- (ii) Tenant shall perform or cause to be performed Tenant's Work in all respects with Applicable Laws. All required permits, approvals, licenses, authorizations and other permits in connection with the construction and completion of the Premises including, without limitation, building permits and conditional use permits, shall be obtained and all fees (both one-time and recurring) required in connection with the construction and completion of the Premises shall be paid for by Tenant.
- (iii) Tenant shall apply and pay for all utility services including, but not limited to, temporary utilities.
- (iv) Tenant shall cause its contractor to provide warranties for not less than one (1) year against defects in workmanship, materials and equipment, commencing upon Landlord's acceptance of Tenant's Work.
- (v) Tenant acknowledges that Tenant's Work shall be subject to (1) the inspection and approval of Landlord for the purpose of determining Tenants compliance with the Final Working Drawings, and (2) an engineering and safety review by Landlord for the purpose of making an assessment regarding the potential safety impact of Tenant's Work on other portions of the Project, which review may include, without limitation, the examination of (A) any penetrations through the roof or other structural elements of the Premises, (B) the transition points from the Common Areas to the Premises, and (C) any flooring, common walls or similar surfaces which may constitute a potential for leakage into other portions of the Project. Any such inspection, approval, or review shall not constitute an approval of architectural or engineering design, a review to determine the structural safety of Tenant's Work or Tenant's compliance with any building codes or other legal requirements, or otherwise constitute any assumption of liability or responsibility by Landlord or its agents or contractors. Tenant hereby expressly acknowledges that no such inspection, approval or review shall in any way limit the obligations of Tenant or the rights of Landlord under this Lease, and, without limitation on the foregoing, Tenant's obligations under that provision in the Lease regarding indemnity of this Lease shall apply to any claims, etc. (as more fully indicated in such indemnity provision) arising or alleged to have arisen in connection with the Premises, Tenants Work or the safety or structural integrity thereof. Tenant shall, at its sole cost and expense, perform any corrective measures required by Landlord or its agents or contractors in connection with any such inspection, approval or review.
- (vi) Tenant shall be responsible for having a superintendent from its general contractor's office on site during all Tenant's Work. Tenant's general

contractor's superintendent or other responsible representative shall be on the job-site to receive all deliveries of materials, fixtures or merchandise. Landlord reserves the right to turn away any delivery arriving at the job-site when Tenant's general contractor's superintendent or other responsible representative is not present. Tenant shall stage its construction equipment and materials only in the staging area designated for such purpose by Landlord.

- (vii) Tenant shall cause its general contractor and subcontractors during the construction of Tenants Work to maintain the Premises and the job-site in a clean condition and to provide daily removal, cleanup and proper disposal of all trash, rubbish, refuse and construction debris and spoils generated by Tenant's general contractor and subcontractors in dumpsters and other appropriate facilities, and not by depositing any such trash, refuse and construction debris and spoils within other tenant spaces or the job-site common areas. If Landlord incurs costs to clean up the job-site and/or adjacent tenant spaces due to the failure of Tenant's general contractor and subcontractors to comply with the foregoing requirements, Landlord shall deduct such costs from the Allowance (defined in Section 6 below) in the event the costs of such work exceeds any remaining funds in the Allowance, Tenant agrees to promptly reimburse such costs (or Tenant's proportionate share of such costs, which Landlord shall determine as a flat per-square-foot rate based on the Floor Area of the Premises) upon receipt of an invoice reasonably detailing such costs.

Tenant and Tenant's general contractor and subcontractors shall be responsible for the daily removal, cleanup and proper disposal of their own rubbish, trash and construction debris, and for providing adequate dumpster(s) for such purpose (to be located in only areas designated by Landlord). Tenant shall contract with a disposal company to provide daily removal of its rubbish, trash and construction debris. if Landlord provides dumpsters for common use, or if Tenant's contractors use Landlord's dumpsters for disposal of rubbish, trash and/or construction debris, Tenant shall pay its proportionate share of the cost of such trash service, including dumpster rental and hauling fees and charges, which Landlord shall determine as a flat per-square-foot rate based on the Floor Area of the Premises.

- (viii) Tenant shall at all times cause its general contractor and subcontractors to comply with the requirements of Landlord's general contractor and/or on-site construction manager with respect to protection of Landlord's construction work in the Project which has been completed or is in progress, including paths of access within the Project for construction materials, equipment and labor, and coordination of sequencing of work. Tenant shall be responsible for any and all damage done by Tenant's general contractor and/or subcontractors to any of Landlord's buildings, other tenant premises, or the Project Common Areas. Costs for such

repair shall be deducted from the Allowance (defined in Section 6 below). In the event the costs exceed any remaining funds in the Allowance, Tenant agrees to promptly reimburse Landlord for all costs incurred by Landlord to repair (including repatching and repainting) any and all damage done by Tenant's general contractor and/or subcontractors to any of Landlord's buildings, other tenant premises, or the Project Common Areas upon receipt of an invoice reasonably detailing such costs.

- (ix) Tenant's general contractor shall provide its own temporary toilets within the Premises or in an area designated by Landlord. Any temporary toilets located by Tenant or Tenant's general contractor or subcontractors other than in areas designated by Landlord may be removed at Tenant's expense. Temporary toilets placed on-site by Landlord's general contractor shall not be available for use by Tenant's general contractor, subcontractors or other personnel.
  - (x) Tenant shall arrange and pay for its own temporary power and telephone services from locations designated by Landlord.
  - (xi) Tenant and/or Tenant's general contractor shall be responsible for providing all security deemed necessary by Tenant to protect Tenant's Work, including furniture, fixtures and inventory, during the conduct of Tenant's Work. Neither Landlord nor Landlord's general contractor shall provide or be responsible for any such security or protection.
- (c) Landlord's Right to Perform Work: Landlord shall have the right, but not the obligation, to perform on behalf of and for the account of Tenant, subject to reimbursement of the cost thereof by Tenant, any and all of Tenant's Work which Landlord determines, in its sole discretion, should be performed immediately and on an emergency basis for the best interest of the Project, including, without limitation, work which pertains to structural components, mechanical, sprinkler and general utility systems, fire alarm systems, roofing and, removal of unduly accumulated construction materials and debris.
- (d) Notice of Completion: Within ten (10) days following the completion of Tenant's Work, Tenant shall deliver to the Landlord, a fully executed and recorded Notice of Completion in a form acceptable to Landlord. The Notice of Completion is to be executed by Tenant and Tenant's general contractor.
- (e) As-Built Drawings: Tenant, at its expense, shall have prepared a complete set of the Final Plans marked 'As-Built Drawings' which fully indicate Tenant's Work as constructed, such drawings delivered to Landlord no later than thirty (30) days after the completion of Tenant's Work.
- (f) Within ten (10) days after the approval of the Final Working Drawings in accordance with Section 3 above, Tenant shall submit to Landlord for its review and approval (i) copies of all proposed construction contracts between Tenant

and all contractors and between such contractors and all subcontractors for Tenant's Work, together with such background information on such contractors and subcontractors as Landlord may require; (ii) a listing of the make, model, type, grade and all other characteristics requested by Landlord, of all materials, equipment and fixtures which Tenant proposes to install in or use in connection with Tenant's Work; and (iii) a budget setting forth in itemized fashion the costs of all materials, equipment, fixtures, contractors, subcontractors, laborers, permits, fees, licenses, and all other costs and expenses Tenant proposes to incur in connection with the construction of Tenant's Work, specifically also including a construction management supervision fee described in Section 4(g) below to be paid to Landlord in connection with its review, oversight and related functions under this Exhibit C (hereafter collectively the "Tenant's Work Costs"). All such matters shall be subject to the approval of Landlord prior to the commencement of construction of Tenants Work, in Landlord's reasonable discretion.

- (g) Tenant shall pay to Landlord an architectural review fee in the amount of One Thousand Five Hundred Dollars (\$1,500.00) together with Tenant's submission to Landlord's representative of the Preliminary Drawings. In addition, to the extent Tenant requests Landlord's supervision, assistance, administration or any other involvement in connection with Tenant's Work, Tenant shall pay Landlord the amount of One Hundred Seventy-Five and 00/100 Dollars (\$175.00) per hour spent by Landlord's personnel, plus reimbursement of all costs incurred by Landlord in connection with such involvement.

## 6. ALTERATIONS

Tenant shall not perform any Alterations without the prior written approval of Landlord. Approval shall be obtained by using the procedure set forth in Part III above; provided, however, the initial date for delivery of the Preliminary Drawings shall not be thirty (30) days from the date of this Lease, but shall instead be thirty (30) days prior to the date Tenant desires to commence the Alterations. The Preliminary Drawings and the Final Working Drawings shall consist of the appropriate drawings in relation to the intended Alterations.

## 7. ALLOWANCE FOR TENANT'S WORK

- (a) Landlord agrees to provide Tenant a tenant improvement allowance in the amount of \_\_\_\_\_ [Calculate based on usable square footage and not including pro rata share of utility rooms] (the "Allowance") for the construction of Tenant's Work. The Allowance shall be applied by Tenant against the Tenant's Work Costs incurred in the construction of Tenants Work which have been approved by the Landlord in Tenant's proposed budget pursuant to Section 4(f) above, and the provisions for disbursement set forth below. In no event shall any portion of the Allowance be used for any purpose other than the approved costs in the budget for Tenant's Work Costs. Any and all costs in excess of the Allowance required to complete the construction of Tenant's Work shall be the sole and exclusive obligation and responsibility of Tenant.

Upon completion of Tenant's Work, Tenant shall submit to Landlord for its review and approval AIA Form No. G702 and No. G703 invoices (or comparable invoices acceptable to Landlord) for all work performed and materials furnished to the Premises in connection with the construction and completion of Tenant's Work ("Payment Request"). The Payment Request shall be accompanied by a certification signed by the Tenant's general contractor and the Tenant's architect showing that the work reflected in such Payment Request was performed in accordance with the approved Final Plans and the terms of all approved construction contracts; and the total Tenant's Work Costs. In addition, the Payment Request shall be accompanied by final lien release waivers from all contractors, subcontractors and materialmen to be paid through such Payment Request, all in form and content acceptable to Landlord. The Payment Request shall be approved or disapproved by Landlord within ten (10) business days after receipt by Landlord. If disapproved, Tenant shall correct the disapproved portions of the Payment Request and resubmit the revised Payment Request to Landlord for review. The foregoing process shall continue until the Payment Request has been approved by Landlord. Within ten (10) business days after the later to occur of (i) Landlord's approval of the Payment Request, (ii) the issuance of an unqualified Certificate of Occupancy for the Premises by the City of Dana Point and Tenant's opening for business at the Premises, (iii) the Commencement Date (including commencement of payment of Rent); and (iv) forty-five (45) days after completion of Tenant's Work and the presentation to Landlord of all final unconditional lien release waivers in statutory form and content from all such contractors, subcontractors and materialmen, and close-out documents, Landlord shall cause to be disbursed to Tenant the approved amount of the Payment Request; provided, however, such amount shall in no event exceed the amount of the Allowance.

## 8. RIGHTS OF LANDLORD

Throughout the course of construction of Tenant's Work, Landlord shall have the unconditional right to review and inspect such construction by and through its agents and employees, including without limitation Landlord's Architect. If at any time Landlord disapproves of the materials or workmanship of Tenant's Work by Tenant, Landlord shall promptly give Tenant written notice thereof, specifying the deficiencies or defects therein. Upon receipt of any such notice, Tenant shall immediately commence correction of the defect or deficiency in a manner and to a condition acceptable to Landlord. Should Tenant fail to commence or complete any such correction as herein provided, or should Landlord deliver to Tenant three (3) or more such notices during the course of construction of Tenant's Work, Landlord shall have the immediate right to order the discontinuance of any further construction of Tenant's Work by or on behalf of Tenant, and Landlord may, but shall not be obligated to, complete the construction of such Tenant's Work in accordance with the Final Plans. Should Landlord elect to complete Tenant's Work as herein provided, Landlord shall be entitled to any and all funds remaining in the Allowance to pay for the costs of completing said construction, and any additional costs incurred in connection therewith shall be the obligation of and shall be paid by Tenant within ten (10) days after



written demand by Landlord. In addition, Landlord shall be entitled to a construction fee for the costs of administering and completing Tenant's Work in an amount equal to five percent (5%) of all costs incurred by Landlord in completing Tenant's Work, which fee shall not be part of the Allowance or the development review fee incorporated into the Tenant's Work Costs.

9. CHANGE ORDERS

Tenant may from time to time request and obtain change orders during the course of construction of Tenant's Work provided that (i) each such request shall be reasonable, shall be in writing and signed by or on behalf of Tenant, and shall not result in any structural change in the Building, as reasonably determined by Landlord; (ii) all additional charges and costs, including without limitation architectural and engineering costs, construction and material costs, processing costs of any governmental entity, and increased construction, construction management and supervision fees, together with an administrative fee to Landlord to cover its change order processing costs of \$300.00 per occurrence, shall be the sole and exclusive obligation of Tenant; and (iii) any resulting delay in the completion of Tenant's Work or Landlord's Work shall be deemed a Tenant Delay (as defined below) and in no event shall extend the Commencement Date of the Lease. Upon Tenant's request for a change order, Landlord shall as soon as reasonably possible submit to Tenant a written estimate of the increased or decreased cost and anticipated delay, if any, attributable to such requested change. Within three (3) days of the date such estimated cost adjustment and delay are delivered to Tenant, Tenant shall advise Landlord whether it wishes to proceed with the change order, and if Tenant elects to proceed with the change order, Tenant shall remit, concurrently with Tenant's notice to proceed, the amount of the increased cost, if any, attributable to such change order. Election by Tenant to not proceed with any change order shall not relieve Tenant from its obligation to pay to Landlord its administrative processing charge of \$300.00. Unless Tenant includes in its initial change order request that the work in process at the time such request is made be halted pending approval and execution of a change order, Landlord shall not be obligated to stop construction of Landlord's Work, whether or not the change order relates to the work then in process or about to be started.

10. TENANT DELAYS

In no event shall the Commencement Date of the Lease be extended or delayed due or attributable to delays due to the fault of Tenant ("Tenant Delays"). Tenant Delays shall include, but are not limited to, delays caused by or resulting from any one or more of the following:

- (a) Tenant's failure to promptly cooperate with the architects and furnish information for the preparation of the Preliminary Drawings and Final Working Drawings within the applicable time periods required under this Exhibit C;
- (b) Tenant's failure to timely review and reasonably approve the Preliminary Drawings and/or Final Working Drawings by the applicable approval dates;

- (c) Tenant's request for or use of special materials, finishes or installations which are not readily available, provided that Landlord shall notify Tenant in writing that the particular material, finish, or installation is not readily available promptly upon Landlord's discovery of same;
- (d) Change orders requested by Tenant;
- (e) Interference by Tenant or by any Tenant Parties with Landlord's construction activities;
- (f) Tenant's failure to approve any other item or perform any other obligation in accordance with and by the dates specified herein or in the Construction Contract;
- (g) Requested or required changes in the Preliminary Drawings, Final Working Drawings or any other plans and specifications after the approval thereof by Tenant or submission thereof by Tenant to Landlord;
- (h) Tenant's failure to approve written estimates of costs or to timely pay excess costs in accordance with this Exhibit C; and
- (i) Tenant's obtaining or failure to obtain any necessary governmental approvals, certificates or permits for Tenant's permitted use of the Premises.

If the Commencement Date of the Lease is delayed by any Tenant Delays, whether or not within the control of Tenant, then the Commencement Date of the Lease and the payment of Rent shall be accelerated by the number of days of such delay. Landlord shall give Tenant written notice within a reasonable time of any circumstance that Landlord believes constitutes a Tenant Delay.

Notwithstanding the foregoing rights of Landlord for a Tenant Delay, any failure of Tenant to comply with any of the provisions contained in this Exhibit C within the times for compliance herein set forth shall be deemed a default under the Lease. In addition to the remedies provided to Landlord in this Exhibit C upon the occurrence of such a default by Tenant, Landlord shall have all remedies available at law or equity to a landlord against a defaulting tenant pursuant to a written lease, including but not limited to those set forth in the Lease.

EXHIBIT D

COMMENCEMENT DATE MEMORANDUM

DATE: \_\_\_\_\_, 2018

RE: Lease dated \_\_\_\_\_, 2018, by and between DANA POINT HARBOR PARTNERS, LLC, a California limited liability company, as “Landlord”, and \_\_\_\_\_, as “Tenant”, for the Premises known as Suite \_\_\_\_\_, Bldg. \_\_\_\_\_ of Dana Point Harbor, Dana Point, California,

Agreement

The undersigned hereby agree as follows:

1. The Tenant Improvements (as defined in the Lease) to the Premises have been substantially completed in accordance with the terms and conditions of the Lease, subject only to “punchlist” items agreed to by Landlord and Tenant pursuant to the terms of the Work Letter.

2. The Commencement Date, as defined in and determined in accordance with the Lease, is hereby stipulated for all purposes to be \_\_\_\_\_, 201\_. Unless sooner terminated pursuant to the terms of the Lease, the expiration date of the Lease is \_\_\_\_\_, 202\_ (i.e., the last day of the 120<sup>th</sup> full calendar month following the Commencement Date).

3. Pursuant to Section 2.3 of the Lease, the last day for Tenant to exercise each option to extend the Term is \_\_\_\_\_, 202\_ for the first option, \_\_\_\_\_, 203\_ for the second option, \_\_\_\_\_, 203\_ for the third option, and \_\_\_\_\_, 201\_ for the fourth option.

“LANDLORD”

DANA POINT HARBOR PARTNERS, LLC,  
a California limited liability company

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

Name (print): \_\_\_\_\_

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

Date: \_\_\_\_\_

“TENANT”

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

Name (print): \_\_\_\_\_

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

EXHIBIT E

LEASE

RULES AND REGULATIONS

The capitalized terms used and not otherwise defined herein shall have the same definitions as set forth in the Lease. The provisions of this Exhibit shall supersede any inconsistent or conflicting provisions of the Lease.

The following rules and regulations shall apply to the Project and the use and occupancy thereof. All capitalized terms used in these rules and regulations and in any amendments or additions thereto shall, unless otherwise defined, have the same meanings as given in the Lease to which these rules and regulations are attached.

A. The sidewalks, entries, passages, corridors and stairways of the Project shall not be obstructed or used for any purpose other than ingress or egress to and from the buildings in the Project. Further, Tenant shall not misuse or in any manner damage the landscaped or other Common Areas. No furniture, equipment, or picnic tables or chairs may be placed on such areas.

B. Furniture, equipment or supplies will be moved in or out of the Premises only via the facilities designated by Landlord. In the event Tenant or any Tenant Parties damage any parts of a Building or the Project during any such move, Tenant shall forthwith pay to Landlord the amount required to repair said damage.

C. No safe or article, the weight of which may, in the opinion of Landlord, constitute a hazard or damage to the Premises or a Building or its equipment, shall be moved into the Premises without the prior written consent of Landlord. If such consent is granted, such article may be moved into the Premises and located in the Premises only in the manner designated by Landlord.

D. Tenant shall not do or permit anything to be done in the Premises, or bring or keep anything therein which would in any way increase the rate of fire insurance on the Premises or on property kept therein, or constitute a nuisance or waste or conflict with the laws relating to fire, or with any regulations of the fire department or with any insurance policy upon the Premises or any part thereof, or conflict with any of the rules or ordinances of the Department of Health of the County in which the Premises is located.

E. Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended, and any damage resulting to the same from misuse on the part of Tenant or any Tenant Parties shall be paid for by Tenant. No person shall waste water by tying back or wedging the faucets or by any other means.

F. No person shall disturb the occupants of adjoining buildings or premises by the use of any radio, sound equipment or musical instrument or by making loud or improper noises.

G. There shall be no obstruction of sidewalks, entrances, common roadways or drives, or truck loading areas of the Common Areas. Further, no unlicensed vehicles may be parked in any common parking or drives, or truck loading areas of the Common Areas, and no vehicles or bicycles may be stored in any Common Areas, except where designated.

H. Tenant shall not allow anything to be placed on the outside of the Premises, other than permitted signs approved by Landlord, and then only to the extent expressly provided in the Lease, nor shall anything be thrown by Tenant or any Tenant Parties out of the windows or doors or down the corridors of any Building. Landlord shall have the right to remove all non-permitted signs, or any furniture, equipment or supplies located in any Common Areas without notice to Tenant and at the expense of Tenant.

I. No additional lock(s) shall be placed by Tenant on any exterior door in any Building unless expressly approved in writing by Landlord. A reasonable number of keys to the Premises will be furnished to Tenant by Landlord, and neither Tenant nor any Tenant Parties shall have any duplicate keys made. Additionally, Tenant shall not alter any existing lock(s) without the prior written approval of Landlord. At the termination of the Lease, Tenant shall promptly return to Landlord all keys to offices, warehouse space or vaults.

J. No awning shall be placed over the windows, except with the prior written consent of Landlord.

K. If any tenant desires telegraphic, telephonic, heavy equipment or other electric connections utilizing other than standard 110-volt connections, Landlord or its representatives will direct the electricians as to where and how the wires may be introduced, and without such directions, no boring or cutting for wires will be permitted. Any such installation and connection shall be made at Tenant's expense.

L. Landlord shall at all times have the right, by its officers or representatives, to enter the Premises and show the same to persons wishing to lease them, and may at any time within nine (9) months immediately preceding the termination of this tenancy place upon the Project the notice "For Rent", which notice shall not be removed by Tenant.

M. Tenant shall comply with all Applicable Laws affecting the Project or the use thereof, and correct at Tenant's expense any failure to comply created through Tenant's or any Tenant Party's fault or by reason of Tenant's or any Tenant Party's use.

N. Except with the prior written consent of Landlord, Tenant shall not conduct any retail sales in or from the Project, or any business other than that specifically provided for in the Lease.

O. Landlord reserves the right to prohibit personal goods and services vendors from access to the Project except upon reasonable terms and conditions, including but not limited to the payment of a reasonable fee and provision for insurance coverage, as are related to the safety, care and cleanliness of the Project, the preservation of good order thereon, and the relief of any financial or other burden on Landlord occasioned by the presence of such vendors or the sale by them of personal goods or services to Tenant or any Tenant Parties. If reasonably necessary for the accomplishment of these purposes, Landlord may exclude a particular vendor entirely or limit the

number of vendors who may be present at any one time in the Project. The term “personal goods or services vendors” means persons who periodically enter the Project for the purpose of selling goods or services to Tenant or any Tenant Parties, other than goods or services which are used by Tenant only for the purpose of conducting its business on the Premises. “Personal goods or services” include, but are not limited to, drinking water and other beverages, food, barbering services, and shoe shining services.

P. The sashes, sash doors, windows, glass lights, and any lights or skylights that reflect or admit light into the halls or other places of the Buildings shall not be covered or obstructed. The toilet rooms, water and wash closets and other water apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substances of any kind whatsoever shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by Tenant.

Q. In order to maintain the outward professional appearance of the Project, all window coverings to be installed at the Premises shall be subject to Landlord’s prior approval. If Landlord, by a notice in writing to Tenant, shall object to any curtain, blind, shade or screen attached to, or hung in, or used in connection with, any window or door of the Premises, such use of such curtain, blind, shade or screen shall be forthwith discontinued by Tenant.

R. No cooking shall be done or permitted by Tenant on the Project other than (i) in a cafeteria operated in compliance with law and applicable covenants affecting the Premises, or (ii) the use of a microwave oven for food or Underwriter’s Laboratory approved equipment for brewing coffee, tea, and similar beverages, provided that the use is in compliance with law. Offices in the Premises shall not be used for lodging.

S. Tenant shall not lay linoleum or other similar floor covering so that the same shall be affixed to the floor of the Premises in any manner except by a paste or other material which may easily be removed with water, the use of cement or other similar adhesive materials being expressly prohibited. The foregoing shall not apply to ceramic tile or hardwood flooring so long as the same is installed in a typical commercial manner. The method of affixing any such linoleum or other similar floor covering to the floor, as well as the method of affixing carpets or rugs to the Premises, shall be subject to reasonable approval by Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by Tenant

T. Tenant shall see that the windows and doors of the Premises are closed and securely locked before leaving the Project.

U. Smoking is prohibited in all areas of the Buildings, and smoking will be permitted only in those outdoor areas of the Project specified as smoking areas by Landlord from time to time.

Landlord may reasonably amend, modify, delete or add new and additional rules and regulations regarding the use and care of the Premises and Project. Tenant and Tenant Parties shall comply with all such rules and regulations upon notice thereof to Tenant from Landlord. Any breach by Tenant or Tenant Parties of any rules and regulations herein set forth or any amendments, modifications or additions thereto, shall, after expiration of applicable notice and cure periods,

constitute a default by Tenant under the Lease and Landlord shall have all rights and remedies set forth therein.



EXHIBIT F

FORM OF STATEMENT OF GROSS SALES

ANNUAL GROSS SALES VOLUME REPORT

ANNUAL GROSS SALES VOLUME REPORT FOR \_\_\_\_\_

<u>Month</u>	<u>Sales</u>		
JANUARY	\$ _____	\$ _____	\$ _____
FEBRUARY	\$ _____	\$ _____	\$ _____
MARCH	\$ _____	\$ _____	\$ _____
APRIL	\$ _____	\$ _____	\$ _____
MAY	\$ _____	\$ _____	\$ _____
JUNE	\$ _____	\$ _____	\$ _____
JULY	\$ _____	\$ _____	\$ _____
AUGUST	\$ _____	\$ _____	\$ _____
SEPTEMBER	\$ _____	\$ _____	\$ _____
OCTOBER	\$ _____	\$ _____	\$ _____
NOVEMBER	\$ _____	\$ _____	\$ _____
DECEMBER	\$ _____	\$ _____	\$ _____

TENANT: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

NOTE: Signature constitutes certification that the information contained in this statement is true, accurate and complete. If Tenant is a corporation, this statement must be signed by an authorized officer of Tenant

EXHIBIT G

EXISTING EXCLUSIVE AND PROHIBITED USES

Tenant shall not engage in the sale, or operation of any of the following uses or activities:

## EXHIBIT “H”

### BEST MANAGEMENT PRACTICES (“BMPs” Fact Sheets)

Best Management Practices can be found at: <http://ocwatersheds.com/default.aspx> which website may change from time to time.

Tenant shall be responsible for implementing and complying with all BMP Fact Sheet requirements that apply to Tenant’s operations within the Project. Tenant is to be aware that the BMP clause within this Lease, along with all related BMP Exhibits, may be revised, and may incorporate more than what is initially being presented in this Lease. Although the Dana Point Harbor is not the Tenant’s Premises, BMPs apply to the Tenant’s defined Premises and BMPs also apply to the Tenant in their conducting business operations throughout the Dana Point Harbor.

Suggested BMPs Fact Sheets may include, but may not be limited to, the following list shown below and can be found at:

<http://ocwatersheds.com/IndustrialCommercialBusinessesActivities.aspx> (which website may change from time to time):

[IC3 Building Maintenance](#)

[IC4 Carpet Cleaning](#)

[IC6 Contaminated or Erodible Surface Areas](#)

[IC9 Outdoor Drainage from Indoor Areas](#)

[IC10 Outdoor Loading/Unloading of Materials](#)

[IC12 Outdoor Storage of Raw Materials, Products, and Containers](#)

IC14 Painting, Finishing, and Coatings of Vehicles, Boats, Buildings, and Equipment

[IC17 Spill Prevention and Cleanup](#)

[IC21 Waste Handling and Disposal](#)

[IC22 Eating and Drinking Establishments](#)

[IC23 Fire Sprinkler Testing/Maintenance](#)

[IC24 Wastewater Disposal Guidelines](#)

EXHIBIT "I"

FORM OF NON-DISTURBANCE AGREEMENT

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Attn: \_\_\_\_\_

(Space above this line for Recorder's use)

SUBORDINATION, ATTORNMENT,  
AND NON-DISTURBANCE AGREEMENT

This Subordination, Attornment and Non-Disturbance Agreement (this "Agreement"), made as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by and between \_\_\_\_\_ ("Landlord"), as landlord under the Lease hereinafter described, \_\_\_\_\_ ("Tenant"), tenant under the Lease hereinafter described, and COUNTY OF ORANGE, a political subdivision of the State of California ("Ground Lease Lessor"), as Lessor under the Ground Lease hereinafter described.

WITNESSETH:

A. Ground Lease Lessor is the owner of certain real property consisting of \_\_\_\_\_ located in the City of Dana Point, County of Orange, State of California, (the "Property"), as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. Pursuant to that certain Master Ground Lease Agreement dated \_\_\_\_\_, 2018 by and between Ground Lease Lessor and Landlord (the "Ground Lease"), Ground Lease Lessor demised to Landlord a leasehold estate in and to the Property, together with all rights and privileges appurtenant thereto.

C. Pursuant to that certain Lease dated \_\_\_\_\_ by and between Landlord and Tenant (the "Lease"), Landlord has leased to Tenant that certain portion of the Property consisting of \_\_\_\_\_ (the "Premises").

D. The parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interest, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. Subordination. The Lease shall be, and shall at all times remain, subject and subordinate to the Ground Lease, the terms, covenants and conditions thereof, and any amendments,

modifications, renewals and/or extensions thereof. For such purposes, notwithstanding the termination of the Ground Lease as between Ground Lease Lessor and Landlord, the provisions of the Ground Lease shall be deemed to continue to apply to, and shall continue to be incorporated by reference into, the Lease, and Tenant shall continue to comply with such provisions, to the same extent that such provisions were incorporated into, and Tenant was required to comply with such provisions pursuant to the terms of, the Lease prior to the termination of the Ground Lease.

2. Consent. Ground Lease Lessor consents to and approves the terms and conditions of the Lease made by and between Landlord and Tenant.

3. Non-disturbance, Recognition and Attornment. In the event Ground Lease Lessor succeeds to the interest of Landlord under the Lease by reason of the termination of the Ground Lease, or by any other manner, it is agreed that, notwithstanding the subordination of the Lease provided for hereinabove:

3.1. If the Lease is in full force and effect, Tenant is then in actual possession of the Premises and Tenant is not then in default under the Lease beyond any applicable notice and cure periods, then subject to the limitations set forth in this Agreement, when and if Ground Lease Lessor takes over the Lease: (a) Ground Lease Lessor shall not terminate or disturb Tenant's quiet possession of Tenant's Premises under the Lease, except in accordance with the terms of the Lease and this Agreement; (b) Ground Lease Lessor shall be bound to Tenant under all remaining terms and conditions of the Lease (except as provided in this Agreement); (c) Tenant shall recognize and attorn to Ground Lease Lessor as Tenant's direct landlord under the Lease as effected by this Agreement; and (d) the Lease shall continue in full force and effect as a direct lease, in accordance with its terms (except as provided in this Agreement), between Ground Lease Lessor and Tenant.

3.2. The provisions of this Article shall be effective and self-operative without any need for Ground Lease Lessor or Tenant to execute any further documents. Tenant and Ground Lease Lessor shall, however, confirm the provisions of this Article in writing upon request by either of them.

4. Protection of Ground Lease Lessor. Notwithstanding anything to the contrary in the Lease or this Agreement, Ground Lease Lessor shall not be liable for or bound by any of the following matters:

4.1. Claims Against Landlord. Any claim that Tenant may have against Landlord relating to any event or occurrence before the date of attornment, including any claim for damages, indemnity obligations, offsets, defenses, credits or other claims of any kind whatsoever as the result of any act, omission or breach by Landlord that occurred or accrued before the date of attornment.

4.2. Prepayments. Any payment of rent that Tenant may have made to Landlord more than thirty days before the date such rent was first due and payable under the Lease with respect to any period after the date of attornment other than, and only to the extent that, the Lease expressly required such a prepayment.

4.3. Payment; Security Deposit. Any obligation: (a) to pay Tenant any sum(s) that Landlord owed to Tenant or (b) with respect to any security deposited with Landlord, unless such security was actually delivered to Ground Lease Lessor.

4.4. Surrender, Etc. Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant, unless effected unilaterally by Tenant pursuant to the express terms of the Lease.

4.5. Amendment, Modification or Waiver. Any modification, amendment or extension of the Lease, or any waiver of the terms of, or claims of the landlord under, the Lease, made without Ground Lease Lessor's prior written consent, which consent shall not be unreasonably withheld.

4.6 Pre-Existing Obligations. Any obligations of Landlord arising or accruing under the Lease prior to the date of attornment.

4.7 Warranties. Any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise.

4.8 Waste; Condition of Premises. Any waste committed on either the Premises or the Property by any party prior to the date of attornment, or any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of either the Premises or the Property prior to the date of attornment.

4.9 Repairs; Restoration. Any repairs to the Premises or to restore the Premises as a result of fire or other casualty or by reason of condemnation.

4.10 Capital Improvements. Any capital improvements to the Premises or the Property which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the Premises.

4.11 Confidentiality. Any confidentiality obligations of Landlord under the Lease.

For purposes of this Section 4, all references to "Landlord" shall mean and refer to Landlord and any successors or assigns thereof prior to the date of attornment.

5. No Exercise of Remedies Against Tenant. So long as Tenant is not then in default under the Lease beyond any applicable notice and cure periods, Tenant shall not be named or joined as a party defendant or otherwise in any proceeding to enforce any rights under the Ground Lease, unless the cause of action in such proceeding relates to or arises from an act or omission by Tenant, or unless Tenant is a necessary party thereto under law.

6. Additional Covenants.

6.1. Amendments. Tenant shall submit to Ground Lease Lessor for approval, which approval shall not be unreasonably withheld, a copy of any amendments, modifications or extensions to the Lease made by and between Landlord and Tenant.

6.2. Rent Payments. From and after Tenant's receipt of written notice from Ground Lease Lessor that the Ground Lease has been terminated (a "**Rent Payment Notice**"), Tenant shall pay all rent and additional rent under the Lease to Ground Lease Lessor or as Ground Lease Lessor shall direct in writing. Tenant shall comply with any Rent Payment Notice notwithstanding any contrary instruction, direction or assertion from Landlord. Landlord irrevocably directs Tenant to comply with any Rent Payment Notice,

notwithstanding any contrary direction, instruction, or assertion by Landlord. Tenant shall be entitled to rely on any Rent Payment Notice. Landlord hereby releases Tenant from, and shall indemnify and hold Tenant harmless from and against, any and all loss, claim, damage, liability, cost or expense (including payment of reasonable attorneys' fees and disbursements) arising from any claim based upon Tenant's compliance with any Rent Payment Notice. Landlord shall look solely to Ground Lease Lessor with respect to any claims Landlord may have on account of an incorrect or wrongful Rent Payment Notice.

6.3 Limitation of Liability. Tenant acknowledges and agrees that Ground Lease Lessor shall have no obligation, nor incur any liability, beyond Ground Lease Lessor's interest in the Premises, and Tenant shall look exclusively to such interest of Ground Lease Lessor in the Premises for the payment and discharge of any obligations or liability imposed upon Ground Lease Lessor under this Agreement or the Lease.

6.4 Ground Lease Lessor Cure and Enforcement Rights. Tenant agrees that, in the event of a default under the Lease by Tenant prior to the date of attornment, Tenant shall provide written notice of such default to Ground Lease Lessor concurrently with its notice to Landlord, and Ground Lease Lessor shall have the right, but not the obligation, to cure such default, and Tenant will accept Ground Lease Lessor's cure of such default (if the default by Landlord is curable) tendered within the notice and cure period to cure such default as provided to Landlord under the Lease plus (a) thirty (30) days if the same can be cured by the payment of money, or (b) sixty (60) days if the same cannot be cured by the payment of money; provided, however, if such default cannot be cured or remedied within such cure period, such cure period shall be extended so long as Ground Lease Lessor commences the cure or remedy within such period and prosecutes to completion thereof with diligence and dispatch.

6.5 No Assumption of Lease. Except to the extent specifically provided under this Agreement, Tenant acknowledges and agrees that Ground Lease Lessor as a result of this Agreement shall have no liability or obligation to Tenant relating to Tenant's occupation of the Premises under the Lease, and Ground Lease Lessor does not assume any of the obligations of Landlord set forth therein.

6.6 Ground Lease Lessor's Proprietary Capacity. Tenant agrees that in Ground Lease Lessor's execution of this Agreement and all of the agreements of Ground Lease Lessor contained in this Agreement, Ground Lease Lessor is acting and shall be deemed to be acting solely in Ground Lease Lessor's proprietary capacity for all purposes and in all respects, and nothing contained in this Agreement shall be deemed directly or indirectly to restrict or impair in any manner or respect whatsoever any of the governmental powers of County of Orange, or the rights or obligations or the exercise thereof by Ground Lease Lessor, with respect to the Premises or otherwise, including, without limitation, the power of eminent domain. It is intended that Tenant and Landlord, as applicable, shall be obligated to fulfill and comply with all such requirements as may be imposed by any governmental agency or authority having or exercising jurisdiction over the Premises in its governmental capacity.

## 7. Miscellaneous.

7.1. Notices. All notices required or permitted under this Agreement to Ground Lease Lessor shall be in writing and given by certified mail (return receipt requested) or by a nationally

recognized overnight courier service that regularly maintains records of items delivered or via electronic mail. Such notices shall be sent to Ground Lease Lessor at the following address:

If to Ground Lease Lessor:

CEO/ Real Estate  
ATTN: Chief Real Estate Officer  
333 W. Santa Ana Blvd, 3<sup>rd</sup> Floor  
Santa Ana, CA 92701  
Facsimile: 714/834-6166

With a copy to:  
Office of County Counsel  
Hall of Administration  
333 W. Santa Ana Blvd., 4th Floor  
Santa Ana, California 92701  
Attn: Senior Deputy

If to Tenant:

Attn:  
Facsimile or Electronic Mail:

With a copy to:

Attn:  
Facsimile or Electronic Mail:

or to such other address as Ground Lease Lessor may hereafter notify Tenant in writing by notice sent to Tenant as aforesaid at Tenant's address at the Tenant's Premises, or such other address as Ground Lease Lessor may hereafter be advised of in writing by notice sent to Ground Lease Lessor as aforesaid.

7.2. Successors and Assigns. This Agreement shall bind and benefit the parties, their successors and assigns, any successor Ground Lease Lessor, and its successors and assigns.

7.3. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subordination of the Lease to the Ground Lease and the rights and obligations of Tenant and Ground Lease Lessor as to the subject matter of this Agreement.

7.4. Interaction with Lease and Ground Lease. If this Agreement conflicts with the Lease, then except as set forth in the last sentence of this Section 7.4, this Agreement shall govern as between the parties and any Ground Lease Lessor, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for delivery of non-disturbance agreements by the Ground Lease Lessor. For the avoidance of doubt, and notwithstanding anything to the contrary contained in this Agreement, the Lease or otherwise, nothing in this



Agreement or the Lease shall be deemed to modify the Ground Lease or to modify or affect the rights and obligations of Ground Lease Lessor and Landlord thereunder in any way.

7.5. Interpretation; Governing Law. The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the internal laws of the State of California, excluding its principles of conflict of laws.

7.6. Amendments. This Agreement may be amended, discharged or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

7.7. Execution. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

NOTICE: THE SUBORDINATION PROVIDED FOR IN THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE GROUND LEASE DESCRIBED HEREIN AND ANY AMENDMENTS, MODIFICATIONS, RENEWALS OR EXTENSIONS THEREOF.

DATE:

**GROUND LEASE LESSOR:**

COUNTY OF ORANGE  
a political subdivision of the State of California

By: \_\_\_\_\_  
Chief Real Estate Officer

Approved as to Form:

County Counsel

By: \_\_\_\_\_  
Senior Deputy

[SIGNATURES CONTINUED]

DATE:

\_\_\_\_\_

**TENANT:**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

DATE:

**LANDLORD:**  
\_\_\_\_\_

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

EXHIBIT "A" to Non-Disturbance Agreement

LEGAL DESCRIPTION

## LEASE GUARANTY AGREEMENT

This Lease Guaranty Agreement (this “Guaranty”), made by \_\_\_\_\_ (“Guarantor”), whose address for purposes hereof is \_\_\_\_\_, in favor of DANA POINT HARBOR PARTNERS, LLC, a California limited liability company (“Landlord”), whose address for purposes hereof is 1100 Newport Center Drive, Suite 200, Newport Beach, CA 92660, is dated as of \_\_\_\_\_, 2018.

### RECITALS

A. Landlord and \_\_\_\_\_ (“Tenant”), have agreed to enter into a Lease of even date herewith (the “Lease”) wherein Landlord shall lease to Tenant and Tenant shall lease from Landlord those certain premises known as \_\_\_\_\_, Suite \_ of the Dana Point Harbor retail project located in Dana Point, California, which premises are more particularly described in the Lease (the “Premises”).

B. In consideration of and as a condition and inducement to Landlord to enter into the Lease with Tenant, Landlord has required that Guarantor execute and deliver to Landlord a guaranty of the Lease in the form of this Guaranty.

C. Capitalized terms not otherwise defined herein shall have the meanings given to them in the Lease, and Guarantor acknowledges that it has read and fully understands the terms, provisions, covenants, conditions, and obligations of Tenant under the Lease.

NOW, THEREFORE, incorporating the above Recitals by reference, and in consideration of, and as an inducement for, the execution and delivery to Tenant of the Lease by Landlord, Guarantor hereby agrees as follows:

#### 1. Obligations Guaranteed.

1.1 Obligations. Guarantor hereby absolutely and unconditionally guarantees to Landlord and its legal representatives, successors and assigns, and independently assumes liability to Landlord and its legal representatives, successors and assigns, without any requirement whatsoever of resort by Landlord to any other party, for (a) the payment of all Rent and any and all other payments, costs or expenses (including but not limited to indemnifications, interest charges and attorneys’ fees), however designated, required to be paid by Tenant pursuant to the terms of the Lease, and (b) the performance of each and every other term, provision, covenant, condition or obligation of Tenant under the Lease in accordance with the terms of the Lease (collectively, the payment and performance obligations set forth in (a) and (b) above are hereinafter called the “Obligations”).

1.2 Default. Upon an Event of Default by Tenant under the Lease, Landlord may, but need not, at its sole option, proceed directly against Guarantor, without proceeding against Tenant or any other person or entity, and without foreclosing upon, selling or otherwise disposing of or collecting or applying any collateral or other property, real or personal, which Tenant may have

theretofore delivered to Landlord as security for the payment and performance of the Obligations. Guarantor hereby waives the right to require Landlord to proceed against Tenant or any other person or entity, or to pursue any other remedy, and Guarantor further waives the right to have any other property of Tenant or any other person or entity first applied to the discharge of any Rent or other obligations of Tenant under the Lease.

2. Nature of Guarantor's Liability; No Exoneration or Subrogation Until All Obligations Fully Satisfied.

2.1 Guaranty Unconditional. The guaranty by Guarantor provided for in this Guaranty is an absolute and unconditional guaranty of payment and performance, and (i) is not a guaranty of collection, regardless of the absence of any action to enforce the same by Landlord, or (ii) Landlord's obtaining any judgment against Tenant or taking any action to enforce same. The liability of Guarantor under this Guaranty is independent of the obligations which are hereby guaranteed and of the liabilities of any other guarantors of the Obligations.

2.2 Waiver of Formalities. Guarantor hereby fully waives all requirements, if any, of notice, demand for payment, diligence, filing of claims with a court in the event of the bankruptcy of Tenant, and all other notices of every kind or nature (including those of any action or inaction on the part of Tenant, Landlord or anyone else) in respect of the Obligations.

2.3 Guarantor's Consent. Guarantor hereby consents to the following:

(a) any and all changes, modifications, amendments, alterations, renewals, extensions, increases, reductions, releases and cancellations which may hereafter be made to the Lease or any of the Obligations (collectively, the "Modifications");

(b) any and all alterations, impairments, suspensions, terminations and expirations (including, without limitation, all such as might result from the Modifications or from any action or inaction of the type described in paragraph (c) below) of the remedies or rights of Landlord against Tenant or any other person in respect of any of the Obligations; and

(c) any and all action or inaction on the part of Landlord (including, without limitation, election of remedies, amendment, substitution, surrender, release, forfeiture, enforcement, foreclosure and sale, under power of sale or otherwise), in its sole and unfettered discretion, in respect of any security (or any part thereof) now held or hereafter acquired by Landlord for the performance of the Obligations,

even though any rights or defenses which Guarantor may otherwise have, by subrogation, reimbursement, indemnification or otherwise, against Tenant, Landlord or others may be diminished, destroyed or otherwise adversely affected by any such alteration, impairment, suspension, termination, expiration, action or inaction, all to the end that Guarantor shall be not exonerated, released or discharged any law, rule, arrangement or relationship now or hereafter existing, or otherwise, from its absolute, unconditional and independent liability hereunder by any such alteration, impairment, suspension, termination, expiration, action or inaction.

2.4 Further Waivers. Guarantor waives any right pursuant to any law, rule, arrangement or relationship now or hereafter existing, or otherwise, to require or compel Landlord to (a) proceed against Tenant or any other guarantor; (b) proceed against or exhaust any security for the Obligations; or (c) pursue any other remedy in Landlord's power whatsoever; and failure of Landlord to do any of the foregoing shall not exonerate, release or discharge Guarantor from its absolute, unconditional and independent liability to Landlord hereunder. Guarantor waives any right pursuant to any law, rule, arrangement or relationship now or hereafter existing, or otherwise, in the event that any property of Guarantor is or may be hypothecated with property of Tenant, as security for any of the Obligations, to have such property of Tenant first applied to the discharge of such Obligations. Guarantor further waives (a) any right to plead or assert any election of remedies, and (b) the defense of the statute of limitations in any action to enforce this Guaranty, and (c) all suretyship, subrogation and other rights and defenses which Guarantor may otherwise have under California law, including without limitation under California Civil Code Sections 2809, 2810, 2819, 2845, 2848, 21349, 2850, 2787 through 2856, inclusive, and 3433.

2.5 Separate Action. Landlord may bring and prosecute a separate action against Guarantor to enforce Guarantor's liability hereunder, whether or not any action is brought against Tenant or any other person and whether or not Tenant or any other person is joined in any such action or actions. Nothing shall prohibit Landlord from exercising its rights against Guarantor, Tenant, the security, if any, for the Obligations, and any other person simultaneously, jointly and/or severally. Guarantor shall be bound by each and every ruling, order and judgment obtained by Landlord against Tenant in respect of the Obligations, whether or not Guarantor is a party to the action or proceeding in which such ruling, order or judgment is issued or rendered.

2.6 No Exoneration. Guarantor shall not be discharged, released or exonerated, in any way, from its absolute, unconditional and independent liability hereunder, even though any rights or defenses which Guarantor may have against Tenant, Landlord or others may be destroyed, diminished or otherwise affected by any of the following:

(a) Any declaration by Landlord of a default in respect of any of the Obligations.

(b) The exercise by Landlord of any rights or remedies against Tenant or any other person.

(c) The failure of Landlord to exercise any rights or remedies against Tenant or any other person,

(d) The sale or enforcement of, or realization upon (through judicial foreclosure, power of sale or any other means) any security for any of the Obligations, even though (i) recourse may not thereafter be had against Tenant for any deficiency, or (ii) Landlord fails to pursue any such recourse which might otherwise be available, whether by way of deficiency judgment following judicial foreclosure, or otherwise.

2.7 No Subrogation. Until all the Obligations have been performed in full, Guarantor shall have no right to subrogation, and Guarantor waives (a) any right pursuant to any law, rule, arrangement or relationship now or hereafter existing, or otherwise, to enforce any remedy which

Landlord now has or may hereafter have against Tenant, and (b) any benefit of, and any right to participate in any security now or hereafter held by Landlord.

2.8 No Discharge. Guarantor shall not be discharged, released or exonerated, in any way, from its absolute, unconditional, and independent liability hereunder, or by the voluntary or involuntary participation by Tenant in any settlement or composition for the benefit of Tenant's creditors, either in liquidation, readjustment, receivership, bankruptcy or otherwise.,

2.9 Bankruptcy. Guarantor understands and acknowledges that by virtue of this Guaranty, it has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to Tenant. As an example and not by way of limitation, a subsequent modification of the Lease in any reorganization case concerning Tenant shall not affect the obligation of Guarantor to discharge the Obligations in accordance with the original terms of the Lease.

3. Representations and Warranties. Guarantor makes the following representations and warranties which shall be continuing representations and warranties until this Guaranty expires in accordance with the provisions contained herein:

3.1 Existence and Rights. Guarantor is a corporation duly incorporated and validly existing under the laws of the State of \_\_\_\_\_ without limitation as to the duration of its existence and is in good standing. Guarantor has corporate powers and adequate authority, rights and franchises to own its property and to carry on its business as now owned and carried on and is duly qualified and in good standing in each jurisdiction in which the property owned by it or the business conducted by it makes such qualification necessary, and Guarantor has the corporate power and adequate authority to make and carry out this Guaranty.

3.2 Guaranty Authorized and Binding. The execution, delivery and performance of this Guaranty are duly authorized and do not require the consent or approval of any governmental body or other regulatory authority; are not in contravention of, or in conflict with, any law or regulation or any term or provision of the Articles of Incorporation or Bylaws of Guarantor, and this Guaranty is a valid and legally binding obligation of Guarantor enforceable in accordance with its terms.

3.3 No Conflict. The execution and delivery of this Guaranty are not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which Guarantor is a party or by which it or any of its property is or may be bound or affected and do not, and will not cause any security interest, lien or other encumbrance to be created or imposed upon any such Property.

3.4 Financial Condition. Guarantor's financial statements, which have heretofore been submitted in writing by Guarantor to Landlord in connection herewith, are true and correct and fairly present the financial condition of Guarantor for the period covered thereby. Since the date of said financial statements, there has been no materially adverse change in Guarantor's financial condition. Guarantor has no knowledge of any liabilities, contingent or otherwise, as of the date of said financial statements which are not reflected in said financial statements; and, other than in the ordinary course of its business, Guarantor has not entered into any commitments or contracts

which are not reflected in said financial statements or which may have a materially adverse effect upon its financial condition, operations or business as now conducted.

3.5 Solvency. The execution and delivery of this Guaranty will not (i) render Guarantor insolvent under generally accepted accounting principles or render it Insolvent (as defined below), (ii) leave Guarantor with remaining assets which constitute unreasonably small capital given the nature of Guarantor's business, and/or (iii) result in the incurrence of Debts (as defined below) beyond Guarantor's ability to pay them when and as they mature. For the purposes of this Paragraph 3.5, "Insolvent" means that the present fair salable value of assets is less than the amount that will be required to pay the probable liability on existing Debts as they become absolute and matured. For the purposes of this Paragraph 3.5, "Debts" includes any legal liability for indebtedness, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

3.6 Financial or Other Benefit or Advantage. Guarantor hereby acknowledges and warrants that it has derived or expects to derive a financial or other benefit or advantage from the Lease.

4. Subordination of Guarantor's Claims. Any indebtedness of Tenant now or hereafter held by Guarantor is hereby subordinated to the Obligations; and such indebtedness of Tenant to Guarantor, if any default occurs under any of the obligations and Landlord so requests, shall be collected, enforced and received by Guarantor as trustee for Landlord and be paid over to Landlord on account of the Obligations but without reducing or affecting in any manner the absolute, unconditional and independent liability of Guarantor under this Guaranty.

5. Costs of Enforcement. Guarantor agrees to indemnify Landlord for all costs and expenses, including, without limitation, all reasonable attorneys' fees whether or not legal action be instituted, incurred or paid by Landlord in enforcing this Guaranty.

6. Benefit. This Guaranty may be assigned or transferred in whole or in part by Landlord, and the benefit of this Guaranty shall automatically pass with a transfer or assignment of the Premises (or any portion thereof) to any subsequent owner thereof. All references to Landlord herein shall be deemed to include any successors or assignees or any subsequent owners of the Premises (or any portion thereof) or any of them. This Guaranty is also made for the benefit of any person claiming by, through or under Landlord and any purchaser of any security or any portion thereof at foreclosure or otherwise as a result of the exercise of any right or remedy.

7. Notices. All notices and other communications, demands or payments required or permitted under this Guaranty shall be in writing, served personally on, or mailed by certified or registered United States mail to, the party to be charged with receipt thereof. Notices and other communications given by personal service shall be deemed given upon receipt and if served by mail shall be deemed given hereunder 72 hours after deposit of such notice or communication in a United States post office as certified or registered mail with postage prepaid and duly addressed to the party to whom such notice or communication is to be given, to the applicable address set forth above. Any party may change its address for purposes of this Paragraph 7 by giving to the party intended to be bound thereby, in the manner provided herein, a written notice of such change.



8. Successors. All of the terms and provisions of this Guaranty shall be binding upon, and inure to the benefit of and be enforceable by, the respective successors and assigns of the parties hereto, whether so expressed or not.
9. Entire Agreement. This Guaranty embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings related to the subject matter hereof.
10. Headings. The headings in this Guaranty are for the purpose of reference only and shall not limit or otherwise affect the terms or provisions hereof.
11. Changes, Waivers, Etc. Neither this Guaranty nor any term or provision thereof may be changed, waived, discharged or terminated except by an instrument in writing executed by an instrument in writing executed by the party against which enforcement of the change, waiver, discharge or termination is sought.
12. Disclosure. Guarantor assumes full responsibility for being and remaining informed of the financial condition of Tenant and all other circumstances bearing upon the risk of nonpayment or nonperformance of any of the Obligations, and Landlord shall have no duty to advise Guarantor of information known to Landlord regarding such condition or any such circumstance.
13. Governing Law. This Guaranty is being delivered in, and shall be construed in accordance with and governed by the laws of, the State of California.
14. Jurisdiction and Service of Process, Venue, Immunity. Any suit, action or proceeding against Guarantor with respect to this Guaranty may be brought in (a) the courts of the State of California, (b) the United States District Court for the Central District of California, or (c) the courts of the residence of any party comprising Guarantor, as Landlord may elect in its sole discretion, and Guarantor hereby submits to any such suit, action, proceeding or judgment and waives any other preferential jurisdiction by reason of domicile. Guarantor hereby agrees that service of all writs, processes and summons in any suit, action or proceeding brought in the State of California may be made upon Tenant at the Premises (the "Process Agent"), or to Guarantor as set forth in Paragraph 7 hereof. Guarantor hereby irrevocably appoints the Process Agent its agent and true and lawful attorney-in-fact while any of Guarantor's obligations under this Guaranty remain unsatisfied, in its name, place and stead only to accept such service of any and all such writs, processes and summons, and agrees that the failure of the Process Agent to give any notice of any such service of process to Guarantor shall not impair or affect the validity of such service or of any judgment based thereon. Guarantor hereby further irrevocably consents to the service of process in any suit, action or proceeding in the above specified courts by the mailing thereof by Landlord by registered or certified mail, postage prepaid, to Guarantor at the address specified in the introductory paragraph of this Guaranty. Nothing herein shall in any way be deemed to limit the ability of Landlord to serve any writs, processes or summons in any other manner, as may be permitted by Applicable Laws. Guarantor irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Guaranty brought in the courts of the State of California or of the United States District Court for the Central District of California, or the courts in the country of Guarantor's residence,

and also irrevocably waives any claim that any such suit, action or proceeding brought in any of those courts has been brought in an inconvenient forum.

15. Joint and Several Liability. The obligations of all parties comprising Guarantor under this Guaranty shall be joint and several and all words used herein in the singular shall be deemed to have been used in the plural as the context and construction so require. If for any reason this Guaranty is held to be unenforceable against any of the parties comprising Guarantor, such unenforceability shall not affect the obligations of the remaining parties comprising Guarantor, and each party comprising Guarantor hereby agrees a suit may be brought against each party independently to enforce the terms and conditions of this Guaranty.

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

GUARANTOR

\_\_\_\_\_

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

Name (print): \_\_\_\_\_

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

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

Name (print): \_\_\_\_\_

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

LEASE  
FOR  
DANA POINT HARBOR RETAIL

BY AND BETWEEN

DANA POINT HARBOR PARTNERS, LLC,  
a California limited liability company,

“Landlord”

and

\_\_\_\_\_,

a \_\_\_\_\_

“Tenant”

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GLOSSARY

EXHIBIT A	Project Site Plan
EXHIBIT B	Premises
EXHIBIT C	Building and Construction Provisions
EXHIBIT D	Commencement Date Memorandum
EXHIBIT E	Rules and Regulations
EXHIBIT F	Form of Statement of Gross Sales
EXHIBIT G	Existing Exclusive and Prohibited Uses
EXHIBIT H	Best management Practices Sheets