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IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI
21st Judicial Circuit
Associate Judge Division

CAPLACO TWENTY-THREE, INC., a Missouri corporation, and **DIERBERGS OAKVILLE PARTNERSHIP, L.P.** a Missouri limited partnership,	)	
Plaintiffs,	)	Case No.:
vs.	)	Division No.:
OAKVILLE FITNESS MO, LLC,	)	
Serve: Registered Agents Inc. 117 S. Lexington St., Suite 100 Harrisonville, MO 64701	)	
Defendant.	)	

LANDLORD'S AFFIDAVIT AND STATEMENT
FOR RENT AND POSSESSION

State of Missouri)
) SS.
City of St. Louis)

Grant J. Ankrom, being duly sworn upon his oath, states that he is the agent of the above Plaintiffs; that, pursuant to a written lease agreement ("Lease"), the above Defendant rents and occupies, as tenant of Plaintiffs, the premises situated in the County of St. Louis, Missouri described and known as 5670 Telegraph Road, St. Louis, Missouri in the Telegraph Plaza ("Premises"); that said Premises are currently rented to the Defendants at the minimum annual rent of $40,320.00, payable in advance in equal monthly installments of $3,360.00 each, plus additional rent for common area maintenance, real estate taxes, insurance, and late fees; that the sum of

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$24,602.16 is now past due for said minimum rent and additional rent accruing through December 2023; that demand for payment has been made upon Defendant; that payment has not been made; and that the Lease provides for the payment of the Plaintiffs' attorneys' fees by Defendant in connection with efforts to enforce the terms of the Lease. A copy of the Lease is attached as Exhibit 1 and incorporated by reference.

WHEREFORE, Plaintiffs pray for judgment for the minimum and additional rent due under the Lease and possession of the Premises, together with all attorneys' fees and court costs incurred in prosecuting this action.

Respectfully submitted,

DENTONS US LLP

By: _____

Grant J. Ankrom, Mo. Bar # 62053
Grant.ankrom@dentons.com
One Metropolitan Square, Suite 3000
St. Louis, MO 63102
(314) 241-1800 (telephone)
(314) 259-5959 (facsimile)

Attorney for Plaintiffs

Subscribed and sworn to before me this 13th day of December 2023.

_____
Notary Public

My Commission Expires:

TINA BUSCHE
Notary Public - Notary Seal
St. Louis City - State of Missouri
Commission Number 14514897
My Commission Expires May 17, 2026

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EXHIBIT 1

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LEASE

BY AND BETWEEN

Caplaco Twenty-Three, Inc. and Dierbergs Oakville Partnership, L.P., as Lessor

AND

Oakville Fitness MO, LLC, as Lessee

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THIS LEASE ("Lease") is made and entered into as of the Lease Date by and between Lessor and Lessee. In consideration of the rents and covenants hereinafter set forth, Lessor and Lessee agree as follows:

ARTICLE 1: SUMMARY OF FUNDAMENTAL LEASE PROVISIONS

As used in this Lease, the following terms shall have the following meanings:

Lease Date:	April 22, 2019
Lessor:	Caplaco Twenty-Three, Inc. and Dierbergs Oakville Partnership, L.P.
Lessee:	Oakville Fitness MO, LLC
Trade Name:	Orangetheory Fitness
Lease Term:	Ten (10) Years and Six (6) Months
Minimum Annual Rental:	Lessee shall not be required to pay Minimum Annual Rental for the first six (6) months of the Lease Term, provided however, that Lessee shall pay its pro rata share of taxes, common area maintenance and insurance for this six (6) month period. Forty Thousand Three Hundred Twenty & 00/100 Dollars ($40,320.00) per year, payable to Caplaco Management Company – Telegraph Plaza in twelve (12) equal monthly installments during the first five (5) years of the Lease Term after the above free rental period, without any offset or deduction whatsoever. Forty-Four Thousand Three Hundred Fifty-Two & 00/100 Dollars ($44,352.00) per year, payable to Capitol South, Inc. in twelve (12) equal monthly installments during the next five (5) years of the Lease Term, without any offset or deduction whatsoever.
Premises:	A storeroom in the Shopping Center commonly known and numbered as 5670 Telegraph Road, having a width of 36 feet, approximately, front and rear, from center of wall to center to wall, by a depth of 80 feet, approximately, measured from the outside front wall to the outside rear wall, and containing an area of approximately 2880 square feet.
Shopping Center:	The Shopping Center commonly known as Telegraph Plaza and located in the County of Saint Louis and State of Missouri.
Permitted Use:	Lessee shall use and occupy the Premises for a group personal training fitness studio and retail sales of nutritional items, related food, beverages and clothing items ancillary to the Permitted Use; provided, however, Lessee agrees that it shall not use the Premises in violation of the exclusives or prohibited uses granted to other tenants in the Shopping Center, as shown on Exhibit B, attached hereto and made a part hereof. Lessee shall neither use nor occupy the Premises for any other purposes without Lessor's prior written consent, which consent shall not be unreasonably withheld, provided such other purpose does not violate any then existing exclusives in the Shopping Center.

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Exclusive Use:	Provided Lessee shall (i) continuously operate its business in the Premises, (ii) use the Premises solely for the Permitted Use, and (iii) not be in default under this Lease beyond any applicable cure period allowed herein, Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal purpose is a membership based exercise facility offering heart rate based monitored training, cardio fitness training, interval training, indoor/outdoor boot camp style fitness facility, or a big box gym facility, provided however, this exclusive shall not apply to a business whose principal purpose is (a) a yoga studio, (b) a martial arts studio, (c) one on one personal training, or (d) Pilates; the premises currently occupied by Dierbergs; tenants under existing leases, their assigns or successors; or the subtenants of such tenants or assigns or successors. If Lessor violates this Exclusive Use, Lessee shall have the right to pay, in lieu of Minimum Annual Rental, an amount equal to fifty percent (50%) of the Minimum Annual Rental (the "Reduced Rent") until the violation ceases. In the event Lessor's Exclusive Use violation continues for more than twelve (12) months, Lessee shall have the right to terminate this Lease upon thirty (30) days prior written notice to Lessor. After twenty-four (24) months of paying the Reduced Rent, Lessee must elect to either (i) terminate this Lease, or (ii) keep this Lease in effect and to again commence payment of Minimum Annual Rental at the rates provided in this Lease. Nothing contained herein shall be deemed to reduce the amounts payable by Lessee as additional rent during any period that Lessee has the right to pay Reduced Rent. Notwithstanding the foregoing, Lessor shall not be considered to be in violation of this provision if a tenant in the Shopping Center acts as a "Renegade Tenant" (which is defined as another tenant within the Shopping Center who violates this Exclusive Use and such tenant's lease would not allow such violation without Lessor's consent). In such event, Lessor agrees to pursue commercially reasonable efforts to stop the Renegade Tenant's continued operation in violation of this Exclusive Use. Such efforts shall include but not be limited to (i) filing of pleadings in a court of competent jurisdiction and diligently pursuing such litigation to conclusion (however, Lessor shall not be obligated to pursue an appeal of a final decision of the court); and (ii) filing for temporary or permanent injunctive relief asking the court to stop the Renegade Tenant from violating this Exclusive Use.
Address for Notices to Lessor:	11850 Studt Avenue St. Louis, MO 63141
Address for Billing Notices to Lessee:	2020 NW 129th Ave. - Ste #204 Miami, FL 33182
Address for All Other Notices to Lessee:	Same as above
Security Deposit:	Three Thousand Three Hundred Sixty & 00/100 Dollars ($3,360.00)
Lessor's Real Estate Broker:	Capitol Realty Group, Inc.

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Lessee's Real Estate Broker: Pace Properties, Inc.

Lessee's Guarantor: Gerardo M. Guarch

ARTICLE 2: PREMISES

2.1 GENERAL

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises. The outline plans of the Shopping Center have been examined by Lessee and are hereby approved by Lessee and made a part hereof and marked Exhibit A. Exhibit A sets forth the general layout of the Shopping Center and shall not be deemed to be a warranty, representation or agreement on the part of Lessor that the Shopping Center will be exactly as shown thereon or that additional buildings will not be constructed in the Shopping Center.

ARTICLE 3: RENTAL

3.1 MINIMUM ANNUAL RENTAL

Lessee covenants and agrees to pay to Lessor as Minimum Annual Rental the following sums:

(a) Notwithstanding anything to the contrary contained here, Lessee shall not be required to pay Minimum Annual Rental for the first six (6) months of the Lease Term, provided however, that Lessee shall pay its pro rata share of taxes, common area maintenance and insurance for this six (6) month period.

(b) Forty Thousand Three Hundred Twenty & 00/100 Dollars ($40,320.00) payable in advance in equal monthly installments of Three Thousand Three Hundred Sixty & 00/100 Dollars ($3,360.00) each, on the first (1st) day of each month during the first five (5) years of the Lease Term after the above free rental period., at the office or such other place as the Lessor may from time to time designate without any offset or deduction whatsoever.

(c) Forty-Four Thousand Three Hundred Fifty-Two & 00/100 Dollars ($44,352.00) payable in advance in equal monthly installments of Three Thousand Six Hundred Ninety-Six & 00/100 Dollars ($3,696.00) each, on the first (1st) day of each month during the next five (5) years of the Lease Term, at the office or such other place as the Lessor may from time to time designate without any offset or deduction whatsoever.

In the event the Commencement Date, as defined in Section 4.1 hereinbelow, results in a fractional month at the beginning of the Lease Term, Lessee shall pay a prorated amount of Minimum Annual Rental and additional rent for the fractional month on a per diem basis calculated based on a thirty (30) day month, which amount shall be due at the end of said fractional month.

ARTICLE 4: TERM

4.1 GENERAL

The Lease Term shall commence on the earlier to occur of: (i) the one hundred eightieth (180th) day after the Delivery Date, as hereinafter defined; or (ii) the date on which Lessee opens for business in the Premises to the public (the "Commencement Date"), and shall continue thereafter during the Lease Term unless sooner terminated as hereinafter provided in this Lease. Lessor shall deliver the Premises to Lessee upon the waiver or satisfaction of the contingency contained in Article 4.3 below (the "Delivery Date"). All terms and conditions of this Lease shall be applicable on the Delivery Date, except for Minimum Annual Rental and additional rent.

In the event that the Commencement Date does not occur on the first (1st) day of a month, the Lease Term shall begin on the first (1st) day of the first (1st) calendar month following the Commencement Date but shall include the partial month containing the Commencement Date.

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4.2 RENEWAL OPTIONS

Provided Lessee has not been in default at any time during the full Lease Term or any renewals (unless such default has been cured within the applicable cure period and has not reoccurred), Lessee shall have the option to renew this Lease for one (1) additional term of five (5) years upon the expiration of the Lease Term, which option shall be exercised in the following manner: not less than six (6) months before the expiration of the Lease Term, time being of the essence, Lessee shall give Lessor written notice that Lessee exercises said renewal option provided herein, all of the terms and conditions of this Lease for the Lease Term shall apply to such renewal term, except that during such renewal term, the Minimum Annual Rental shall be:

Forty-Eight Thousand Seven Hundred Eighty-Seven & 20/100 Dollars ($48,787.20) payable in advance in equal monthly installments of Four Thousand Sixty-Five & 60/100 Dollars ($4,065.60) each, on the first (1st) day of each month during this first (1st) renewal option, at the office of Lessor or such other place as the Lessor may from time to time designate without any offset or deduction whatsoever.

If Lessee exercises the aforesaid option to renew, Lessee is given a second option to renew this Lease for an additional period of five (5) years upon the expiration of the first renewal term hereof, which option shall be exercised in the following manner: not less than six (6) months before the expiration of the first renewal term hereof, time being of the essence, Lessee shall give Lessor written notice that Lessee exercises said second renewal option provided herein, all of the terms and conditions of this Lease for the Lease Term and first renewal term hereof shall apply to such second renewal term, except that during such second renewal term the Minimum Annual Rental shall be:

Fifty-Three Thousand Six Hundred Fifty-Four & 40/100 Dollars ($53,654.40) payable in advance in equal monthly installments of Four Thousand Four Hundred Seventy-One & 20/100 Dollars ($4,471.20) each, on the first (1st) day of each month during this second (2nd) renewal option, at the office of Lessor or such other place as the Lessor may from time to time designate without any offset or deduction whatsoever.

4.3 CONTINGENCY

This Lease is contingent upon Lessee receiving any and all necessary permits and approvals required by applicable governmental authorities within three (3) months from the date hereof. Lessor shall cooperate with such approval process by providing Lessee necessary documents within ten (10) business days from Lessee's written request for such documents. In the event such Lessee has not notified Lessor that it has received such permits and approvals within such three (3) month period, this Lease shall automatically terminate, and neither party shall have any rights or obligations to the other. In the event the Lease is terminated pursuant to this contingency, Lessee's security deposit and prepaid rent, if any, shall be completely refunded within ten (10) days written notice from Lessee. In the event permits and approvals are pending, but have not yet been issued by the end of the contingency period, Lessor and Lessee may mutually agree in writing to extend contingency period.

ARTICLE 5: POSSESSION, USE AND OPERATION

5.1 POSSESSION AND USE

Possession of the Premises shall be delivered to Lessee free and clear of all tenants and occupants. Lessee shall use the Premises solely for the Permitted Use and only under the Trade Name. Lessee shall not use or permit the Premises to be used for any other purpose or purposes or under any other trade name whatsoever without the prior written consent of Lessor first having been obtained. Lessee shall not use or permit any person or persons to use the Premises or any part thereof for: auction, distress or fire sale or bankruptcy (except pursuant to order of court) or going-out-of-business sale; or lost our lease sale; or for any gambling facilities, operations or machines; or for an amusement or video arcade; or for any use or purpose in violation of the laws of the United States of America, or the laws, ordinances, regulations and requirements of the State, County and City where the Shopping Center is situated, or other lawful authorities. No noise, sound or vibration from the Premises shall be emitted that can be heard or felt in any adjacent premises. No odors shall emanate from the Premises which can be detected in any adjacent premises. Lessee shall promptly and with due diligence abate any such noise, sound, vibration and/or odors emanating from the Premises with evidence of having done so submitted in writing to Lessor. All health and police regulations shall in all respects and at all times, be fully complied with by Lessee.

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5.2 NO EXTERIOR DISPLAY OR SOLICITATION

Lessee shall not display or sell merchandise, allow carts, portable signs, devices or any other objects to be stored or to remain outside the Premises or in the Common Areas. In addition, Lessee will not solicit in any manner in the Common Areas. Lessee shall not use the Common Areas for sales, promotions or any other activities without Lessor's prior written approval. In the event Lessor gives prior written approval for sales, promotions or any other activities, Lessee shall comply with all of Lessor's requirements, including, but not limited to, those related to insurance, indemnification, clean up and repair.

Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to place a kiosk (identified as a moveable table with a four spoke logoed tent) in a mutually agreeable location to assist Lessee in pre-sales, membership and gift card sales prior to opening for a period of up to twelve (12) weeks and four (4) weeks after opening along with promotions throughout the year. The location of the kiosk shall be agreed upon prior to Lease execution. Lessee shall keep this area in a clean, neat, orderly and sanitary condition at all times at Lessee's sole cost and expense, including daily sidewalk cleaning, as necessary.

5.3 DELIVERIES AND FREIGHT HANDLING

Lessee shall use its best efforts to complete, or cause to be completed, all deliveries, loading, unloading and services to the Premises according to the schedule and rules established from time to time by Lessor. Lessee shall cause all delivery vehicles to be expeditiously loaded or unloaded at the rear of the Premises and the merchandise and freight promptly removed from the loading docks and other loading areas. All loading and unloading operations shall be conducted so as not to obstruct or hinder the business of other tenants in the Shopping Center. Lessee shall not block or obstruct any street, sidewalk or right-of-way adjacent to or comprising part of the Shopping Center.

5.4 OPERATION OF BUSINESS

Lessee shall, except as herein otherwise provided, from and after the Commencement Date: (a) continuously and uninterruptedly occupy and use the entire Premises for the Permitted Use and conduct Lessee's business therein in a reputable manner; (b) remain open for business during all days, nights and hours required by the franchisor; (c) keep and maintain the Premises and Lessee's personal property and signs therein or thereon and the exterior and interior portions of all windows, doors and all other glass or plate glass in a neat, clean, sanitary and safe condition and free from insects, rodents, termites and other pests; (d) warehouse, store or stock in the Premises only such goods, wares and merchandise as Lessee intends to offer for sale at retail; (e) comply with all ordinances, laws and regulations of all governmental authorities having jurisdiction and to apply for, secure, maintain and comply with all licenses or permits which may be required for the conduct by Lessee of the Permitted Use and pay, if, as and when due all license and permit fees and charges of a similar nature in connection therewith; and (f) use for office or other non-selling purposes only such space as is reasonably required for the conduct of the Permitted Use.

Subject to approval by governmental authorities, Lessee shall be permitted to be open the following hour, provided such hours are subject to change based on membership and franchisor requirements:

Monday – Thursday	5:00 AM up to 9:00 PM
Friday	5:00 AM up to 8:00 PM
Saturday	7:00 AM to 2:00 PM
Sunday	8:00 AM to 2:00 PM
Holiday	Morning Only

5.5 HAZARDOUS MATERIAL

Lessee shall not use, or permit the use of Hazardous Materials on, about, under or in the Premises in violation of any Environmental Laws and its use of the Premises shall at all times be in compliance with all Environmental Laws. Lessee shall indemnify, protect, defend and hold harmless Lessor from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to loss of value or income, costs of investigation, litigation and remedial response, arising out of any Hazardous Materials used or permitted to be used by Lessee.

The terms: (i) "Hazardous Materials" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or

substances listed or identified in, or regulated by, any Environmental Law; and (ii) "Environmental Laws" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

5.6 TRASH

All trash and rubbish of Lessee shall be deposited within a receptacle in the Common Areas in a location designated by Lessor. Lessor shall have the right to approve the company hired by Lessee to pick up its trash and its rubbish receptacle.

ARTICLE 6: UTILITIES

6.1 UTILITY METERS AND PAYMENTS

On the Delivery Date, Lessee shall, at its cost and expense, (i) make application for and arrange for the installation of all utility meters or other devices, and (ii) contract in its own name for any utilities serving the Premises (including, without limitation, water, sewer, gas, electricity and telephone. Commencing on the Delivery Date and continuing throughout the Lease Term (including any extensions or renewals thereof), Lessee shall be solely responsible for and promptly pay, as and when the same become due and payable, all connection charges, deposits, all charges for water, sewer, electricity, telephone and any other utility used or consumed in the Premises imposed by the utility company or authority providing same. Lessor shall not be liable for damages or otherwise for any interruption in the supply of any utility to the Premises nor shall any such interruption constitute any ground for a claim of constructive eviction or for an abatement of any amounts payable hereunder.

ARTICLE 7: INDEMNITY-INSURANCE-WAIVER OF SUBROGATION

7.1 INDEMNITY

The following shall be effective from and after the earlier of (i) the date of delivery of the Premises to Lessee or (ii) the first date of any use or occupancy of the Premises by Lessee or any subtenant, concessionaire, or licensee of Lessee, or any of their respective employees, agents, contractors or invitees:

(a) Lessee shall defend, pay, indemnify and save free and harmless Lessor, and/or any fee owner or ground or underlying lessors of the Shopping Center, from and against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including attorney's fees, resulting from or in connection with loss of life, bodily or personal injury or property damage arising, directly or indirectly, out of or from or on account of any occurrence in, upon, at or from the Premises or occasioned wholly or in part through the use and occupancy of the Premises or any improvements therein or appurtenances thereto, or by any act or omission of Lessee or any subtenant, concessionaire or licensee of Lessee, or their respective employees, agents, contractors or invitees in, upon, at or from the Premises or its appurtenances or any Common Areas of the Shopping Center except claims arising out of the gross negligence or willful act of the persons sought herein to be indemnified against loss;

(b) Lessee and all those claiming by, through or under Lessee shall store their property in and shall occupy and use the Premises and any improvements therein and appurtenances thereto and all other portions of the Shopping Center solely at their own risk and Lessee and all those claiming by, through or under Lessee hereby release Lessor, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or from business interruption, arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof except those claims arising out of the gross negligence or willful act of Lessor;

(c) Lessor shall not be responsible or liable at any time to Lessee, or to those claiming by, through or under Lessee, for any loss of life, bodily or personal injury or damage to property or business, or for business interruption, that may be occasioned by or through the acts, omissions or negligence of any other persons, or any other tenants or occupants of any portion of the Shopping Center; and

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(d) Lessee shall give prompt notice to Lessor in case of fire or other casualty or accidents in the Premises or in the building of which the Premises forms a part or of any defects therein or in any of its fixtures, machinery or equipment.

7.2 WAIVER OF SUBROGATION

Lessor and Lessee hereby waive the rights each may have against the other on account of any loss or damage occasioned to Lessor or Lessee, as the case may be, their respective property, the Premises, or its contents or to other portions of the Shopping Center, arising from any risk generally covered by Special Form (fire and extended coverage) insurance, vandalism, malicious mischief, sprinkler leakage, and flood; and the parties each, on behalf of their respective insurance companies insuring the property of either Lessor or Lessee against any such loss, waive any right of subrogation that it may have against Lessor or Lessee, as the case may be.

7.3 LESSEE'S INSURANCE

Lessee further covenants and agrees that from and after the earlier of (i) the date of delivery of the Premises from Lessor to Lessee or (ii) the first date of any use or occupancy of the Premises by Lessee or any subtenant, concessionaire, or licensee of Lessee, or any of their respective employees, agents, contractors or invitees, Lessee will carry and maintain, at its sole cost and expense, the following types of insurance, in the amounts specified and in the form hereinafter provided for:

(a) COMMERCIAL GENERAL LIABILITY. Bodily injury liability insurance on an occurrence basis with limits of not less than One Million Dollars ($1,000,000.00) per person and One Million Dollars ($1,000,000.00) per occurrence and One Million Dollars ($1,000,000.00) annual aggregate, all of said insurance to insure against any and all liability of the insured with respect to the Premises or arising out of the maintenance, use or occupancy thereof.

(b) PLATE GLASS. Lessee shall be responsible for the maintenance, repair and replacement of the plate glass on the Premises and shall purchase and maintain a policy of plate glass insurance.

(c) FIXTURES. Property insurance written on a special causes of loss form covering all trade fixtures, merchandise and personal property from time to time in, on or upon the Premises, in an amount sufficient to avoid the application of any co-insurance provision, together with insurance against sprinkler leakage, if the Premises are sprinklered, vandalism, malicious mischief, and flood. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall terminate under the provisions of Article 13 hereof. Lessee agrees that any insurance policy it at any time maintains insuring any of its personal properties, fixtures, merchandise, or inventory in, on or upon the Premises, whether required to be carried and maintained under this Article or otherwise, shall contain a waiver of subrogation provision in favor of Lessor.

(d) POLICY FORM. All policies of insurance provided for in this Article 7.3 shall be issued by insurance companies with general policy holder's rating of not less than A and a financial rating of Class VII or better as rated in the most current available Best's Insurance Guide and qualified to do business in the state in which the Shopping Center is located, which policies shall be for the mutual and joint benefit and protection of Lessor, Lessor's designees, Lessor's property manager, Caplaco Management Company (or such other company as Lessor may use for property management), and Lessee and executed copies of such policies of insurance or certificates thereof (such certificates to be ACORD Form 25 and ACORD Form 24) shall be delivered to Lessor within five (5) days after delivery of possession of the Premises to Lessee and thereafter within thirty (30) days prior to the expiration of the term of each such policy. Lessor, Lessor's designees, and Lessor's property manager, Caplaco Management Company (or such other company as Lessor may use for property management), shall be named additional insureds as the owner of the Premises and/or as their interest may appear on a primary and noncontributionary basis. All policies of insurance mentioned in this Article 7.3 shall contain an endorsement that such insurance may not be canceled or amended except upon fifteen (15) days prior written notice from the insurance company to Lessor, sent by certified or registered mail. All policies of insurance provided for in this Article 7.3 shall contain a waiver of subrogation provision in favor of Lessor, Lessor's designees, and Lessor's property manager, Caplaco Management Company (or such other company as Lessor may use for property management),. As often as any such policy shall expire or terminate, renewal or additional

policies shall be procured and maintained by Lessee in like manner and to like extent. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage that Lessor, Lessor's designees, or Lessor's property manager may carry. The minimum limits of any insurance coverage to be maintained by Lessee hereunder shall not limit Lessee's liability under Article 7.1 hereof.

(e) DRAM SHOP OR LIQUOR LIABILITY COVERAGE. Dram Shop or liquor liability coverage in a minimum aggregate of Three Million Dollars ($3,000,000.00) shall be carried by Lessee if alcoholic beverages will be sold, served, or given away on the Premises. The requirement for this coverage includes without limitation clubs, package stores, and other retail stores selling alcoholic beverages for consumption off the Premises as well as on the Premises, manufacturers, wholesalers, and distributors of alcoholic beverages, restaurants, and taverns. Lessee shall name Lessor, Lessor's designees, Lessor's property manager, Caplaco Management Company (or such other company as Lessor may use for property management), and any mortgagee whose name and address are furnished to Lessee as additional insured and shall forward to Lessor and all such mortgagees ACORD Form 75-S certificates, if for any reason certified copies or duplicate originals of policies are not available together with a copy of evidence of current liquor licenses, and Lessee shall furnish promptly to Lessor and all such mortgagees' evidence of annual policy renewals prior to expiration of current coverage.

7.4 LESSOR'S INSURANCE

Lessor shall at all times during the Lease Term maintain in effect a policy or policies of insurance covering the building of which the Premises are a part, but not Lessee's trade fixtures, merchandise, inventory, or other items used in Lessee's trade or business, in an amount sufficient to avoid the application of any co-insurance provision providing protection against any peril generally covered by the Special Form coverage (fire and extended coverage) (or at Lessor's option, other special broad form coverages, including earthquake insurance).

Lessor's obligation to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessor, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance.

Lessee shall pay as additional rent hereunder to Lessor its proportionate share of the cost of all insurance determined by Lessor to be required in connection with the Shopping Center, together with the cost of rent interruption insurance in such sum as shall be determined by Lessor. Lessee's proportionate share shall be the same ratio of the total amount due as the total gross square footage of the Premises bears to the total square footage of all of the gross leasable space in the Shopping Center except for outlots where the owner or tenant pays for its own insurance, which ratio shall be rounded to two (2) decimal places. Lessee shall pay to Lessor on the first day of each month of the Lease Term in advance such amount as shall be estimated to be equal to one-twelfth (1/12th) of the annual Lessee's proportionate share of the anticipated cost of insurance for the ensuing year, at the time and place provided for the payment of rent. Upon receipt of the final insurance bills for any given year, Lessor shall compute the share of said bills due from Lessee, which amount shall be rounded to two (2) decimal places, and a summary shall be furnished to Lessee reflecting the actual amount of insurance expense due. In the event the amounts paid by Lessee during the preceding period shall be in excess of its proportionate share, the excess shall be credited against the next ensuing insurance payments due from Lessee. In the event the amount paid by Lessee shall be less than its proportionate share, then it shall pay the remaining balance within ten (10) days after such notice is furnished. The notice furnished Lessee shall also include a computation of the estimated sums that would be due from Lessee each month for the ensuing calendar year and the monthly insurance payment to be made as aforesaid shall be adjusted accordingly for the ensuing period.

7.5 LESSEE PROHIBITED FROM STOCKING, USING, OR SELLING CERTAIN ITEMS: LESSOR'S REMEDIES

Lessee shall not stock, use or sell or permit or suffer to be stocked, used or sold any article or do anything in or about the Premises which may be prohibited by or violate any of Lessor's insurance policies or the rules and regulations of the fire insurance rating organization having jurisdiction or any similar body, or which will increase any insurance rates and premiums on the Premises, the building of which it forms a part and/or any other buildings or improvements in the Shopping Center. If as a result of any failure of Lessee, or anyone by, through or under Lessee, to comply with the foregoing sentence of this Article 7.5, the insurance rates applicable to any policies of insurance

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carried by Lessor covering the Shopping Center property or the rental income to be derived therefrom shall be increased, Lessee shall pay Lessor within ten (10) days after Lessor's written demand therefor, as additional rent hereunder, the entire portion of the premiums for said insurance that shall be attributable to such higher rates.

ARTICLE 8: ADVERTISING SIGNS

8.1 SIGNS

Lessee shall, at Lessee's sole cost and expense, within thirty (30) days of the Commencement Date, provide, install, erect, and thereafter maintain a proper identifying Sign or Signs on the exterior of the Premises of such sizes, colors and designs as may be usual, but said Signs must be approved in writing by Lessor and any governmental authority having jurisdiction prior to installation. No Signs or lettering shall be installed, placed or painted on the exterior of the Premises or visible from the exterior of the Premises unless first approved by Lessor. Sign criteria are attached hereto as Exhibit C. Within five (5) days of the expiration or sooner termination of this Lease, Lessee shall remove all Lessee's Signs and to repair any damage caused by said removal. Any Signs not removed within said five (5) day period shall be deemed abandoned to Lessor. Lessee shall nevertheless be liable to Lessor for the cost of Sign removal and any repair resulting therefrom.

Subject approval by governmental authorities, Lessee may install a panel on the southern elevation of the Shopping Center Pylon Sign which is located as designated on Exhibit A. Lessee shall have the right to use the panel designated on Exhibit C-1 at no cost to Lessee except that Lessee shall be responsible for the cost of artwork, fabrication, installation and maintenance of its sign panels. All such signs must be approved by Lessor prior to installation.

Subject approval by governmental authorities, Lessee may temporarily install an additional sign panel on the northern elevation of the Shopping Center Pylon Sign. Lessee shall have the temporary right during the Lease Term to use the panel designated on Exhibit C-2 at no cost to Lessee except that Lessee shall be responsible for the cost of artwork, fabrication, installation and maintenance of its sign panels. All such signs must be approved by Lessor prior to installation. The temporary right to such additional panel may be revoked on thirty (30) days written notice from Lessor.

Lessee shall also be permitted to place "Coming Soon" and "Grand Opening" banners in the storefront, as applicable, for twelve (12) weeks each, plus erect similar banners for special promotions during the Lease Term for up to two (2) weeks each, no more than four (4) times per calendar year. All such banners must reviewed and approved by Lessor, which approval shall not be unreasonably withheld, prior to fabrication and installation.

8.2 OTHER ADVERTISING MEDIA

No advertising medium shall be utilized by Lessee that can be heard or experienced outside the Premises, including without limiting the generality of the foregoing, flashing lights, searchlights, loudspeakers, phonographs, radios or television.

8.3 DEFINITION OF "SIGN"

For the purposes of this Lease, the word "Sign" shall be construed to include any signs, advertising placards, names, insignia, trademarks, descriptive material, neon or colored lighting of any kind or shape, or any other such like item or items.

ARTICLE 9: FIXTURES AND PERSONAL PROPERTY

9.1 LESSEE TO EQUIP PREMISES

Lessee shall with due diligence install its fixtures and equipment in a first-class and good and workmanlike manner and in accordance with the laws, rules, regulations and orders of all governmental authorities having jurisdiction thereof and without interference with other work being done in the Premises or the Shopping Center and in compliance with all reasonable rules Lessor may make, and not cause any conflict with any union contract to which Lessor or its contractors or subcontractors may be a party. Lessor shall permit Lessee to do Lessee's work and install Lessee's fixtures while the Premises are under construction, provided the same does not interfere with Lessor's work. Lessor shall have no responsibility for any loss of or damage to any of Lessee's fixtures or property so installed or left

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in the Premises, and Lessee's entry prior to the Commencement Date shall be subject to all of the provisions of this Lease other than the requirement for payment of rental. Lessee shall secure and on request exhibit or furnish to Lessor all certificates, permits and approvals relating to any work or installations done by Lessee that may be required by any governmental authority or regulatory body or agency. Lessee shall diligently prosecute such work to completion.

9.2 OWNERSHIP AND RIGHT OF REMOVAL OF TRADE FIXTURES

Any trade fixtures, Signs and other personal property of Lessee not permanently affixed to the Premises shall remain the property of Lessee and Lessee shall have the right, provided Lessee is not in default under the terms of this Lease, at any time, and from time to time, to remove any and all of its trade fixtures, Signs and other personal property that it may have stored or installed in the Premises, including, but not limited to, counters, shelving, showcases, mirrors and other movable personal property. Lessee at its expense shall immediately repair any damage occasioned to the Premises by reason of the removal of any such trade fixtures, Signs, and other personal property, and upon expiration or earlier termination of this Lease, shall leave the Premises in a neat and clean condition, free of debris.

9.3 LESSEE'S RESPONSIBILITY FOR PERSONAL PROPERTY TAXES ON TRADE FIXTURES

Lessee shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation, as well as upon its trade fixtures, merchandise and other personal property in, or upon the Premises.

ARTICLE 10: ASSIGNING, MORTGAGING, SUBLETTING, CHANGE OF OWNERSHIP

10.1 TRANSFER BY LESSEE, REQUIREMENTS

Lessee shall not transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or Lessee's interest in and to the Premises without first procuring the written consent of Lessor, which approval shall not be unreasonably withheld, provided Lessee is not in default of this Lease beyond any applicable notice or cure period. Any attempted transfer, assignment, subletting, license or concession agreement, change of ownership or hypothecation without Lessor's written consent shall be void and confer no rights upon any third person, and shall constitute an Event of Default, as defined by Article 16.1 hereof. Notwithstanding anything to the contrary contained herein, Lessee shall have the right to assign this Lease to its franchisor or a substitute Orange Theory Fitness ("OTF") franchisee, provided the substitute franchisee meets all financial and business qualifications required of an OTF franchisee. If Lessor approves an assignment to the franchisor or a substitute OTF franchisee, which approval shall not be unreasonably withheld, then Lessee may be released from its obligations under the Lease if such assignee's tangible net worth is in excess of Two Million & 00/100 ($2,000,000.00), determined in accordance with GAAP, excluding, however, from the determination of total assets all assets which would be classified as intangible assets under GAAP including good will, licenses, patents, trademarks, trade names, copyrights and franchises.

10.2 RESTRICTIONS CONCERNING CONSENT TO TRANSFER

Any consent by Lessor to any assignment, subletting, license, or concession shall be held to apply only to the specific transaction thereby authorized and shall not constitute a waiver of the necessity for such consent to any subsequent assignment, subletting, license or concession. If this Lease or any interest therein be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Lessee without Lessor's prior written consent having been obtained thereto, Lessor may nevertheless collect rent from the assignee, sublessee or occupant and apply the net amount collected to the rents herein reserved; but no such assignment, subletting, occupancy or collection shall be deemed a waiver of the covenant herein against assignment and subletting or the acceptance of the assignee, subtenant or occupant as Lessee hereunder, or constitute a release of Lessee from the further performance by Lessee of the terms and provisions of this Lease. If this Lease or any interest of Lessee therein be assigned or if the whole or any part of the Premises be sublet, after having obtained Lessor's prior written consent thereto, Lessee shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Lessee, and Lessee shall not be released therefrom in any manner. Any request by Lessee for Lessor's consent to an assignment or subletting shall be accompanied by a check in the amount of Five Hundred and 00/100 Dollars ($500.00) for Lessor's administrative costs, overhead and fees of counsel in connection with such assignment or subletting.

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10.3 CHANGE OF CONTROL

If Lessee or any guarantor of Lessee's obligations under this Lease is not a natural person, then any change of control of Lessee or such guarantor shall be deemed to be an assignment of this Lease requiring the consent of Lessor.

ARTICLE 11: CONSTRUCTION OF PREMISES

11.1 LESSEE'S WORK

Lessee has inspected the Premises and agrees to accept them in their existing condition. Lessee shall at its cost and expense construct the Premises for Lessee's use and occupancy in accordance with plans and specifications prepared by Lessee's architect and approved by Lessor and Lessee. Lessee shall use a general contractor approved by Lessor to construct the tenant finish alterations, additions, and improvements to the Premises and Lessee shall use, if applicable, brick that matches the Shopping Center's brick and Lessee shall improve and modify, if applicable, the building fire sprinkler system according to the requirements of all municipal and other public authorities having jurisdiction. All such construction of the tenant finish alterations, additions, and improvements shall conform to Article 11.3 below.

Lessor recognizes that the Permitted Use may require, from time to time, commercially reasonable noises within the interior of the Premises due to television, music and/or microphone usage. Lessee's plans and specifications shall include provisions for sound-proofing, additional support or other measures as Lessor deems appropriate to address noise produced within the Premises, and Lessor will have the right to approve all such measures. All such reasonable methods used to address noise produced within the Premises shall be installed at Tenant's sole cost and expense.

Provided that Lessee fulfills its obligations for the construction of the Premises in accordance with this Lease, Lessor agrees to make a contribution to Lessee's cost of constructing the Premises in the amount of Sixty-Five Thousand & 00/100 Dollars ($65,000.00). It is understood that Lessor's contribution is intended only for construction alterations, additions and improvements to the Premises. This construction contribution, as hereinafter set forth, shall be paid to Lessee in three (3) equal installments, as follows, (i) one third (1/3rd) within twenty (20) days of such time as Lessee's architect certifies to Lessor in writing that work to be performed by Lessee is at least thirty-three percent (33%) complete, accompanied by unconditional lien waivers evidencing payment by Lessee to its contractors, subcontractors and materialmen of not less than Twenty-One Thousand Six Hundred Sixty Six & 67/100 Dollars ($21,666.67); (ii) one third (1/3rd) within twenty (20) days of such time as Lessee's architect certifies to Lessor in writing that work to be performed by Lessee is at least sixty-six percent (66%) complete accompanied by unconditional lien waivers evidencing additional payments by Lessee to its contractors, subcontractors and materialmen of not less than Twenty-One Thousand Six Hundred Sixty Six & 67/100 Dollars ($21,666.67); and (iii) one third (1/3rd) within twenty (20) days of such time as Lessee's architect certifies to Lessor in writing that the work to be performed by Lessee is totally completed, provided that at such time the following conditions are satisfied:

(i) Lessee shall not be in default with any of the terms, conditions and provisions of the Lease.

(ii) Lessee shall have furnished evidence satisfactory to Lessor that all Lessee's work has been completed, the work has been paid for in full, and therefore, that any and all liens that have been or may be filed have either been waived or satisfied and removed from record; the phrase "evidence satisfactory" as used herein shall mean the following requirements provided to Lessor, a) a list of all general contractors, sub-contractors and materialmen and their contract amounts who have furnished or supplied any labor and/or material to or at the Premises, b) full, final and unconditional lien waivers from each such general contractor, sub-contractor and materialmen for all Lessee's work to or at the Premises providing at least Three Thousand & 00/100 Dollars ($3,000.00) of labor and/or materials, and c) the date Lessee's work was completed by such general contractors, sub-contractors and materialmen. In no event, shall Lessor disburse any construction contribution without corresponding lien waivers. A copy of Lessor's approved lien waiver is attached hereto as Exhibit D.

(iii) Lessee shall have provided a completed W-9 to Lessor.

(iv) Lessee shall have opened for business to the public and commenced paying rent as required by the Lease and have provided Lessor with acceptable evidence of having done so.

(v) Lessee shall furnish to Lessor a copy of its certificate of occupancy.

(vi) Lessee shall furnish to Lessor a complete set of architectural plans including, but not limited to, mechanical, electrical and plumbing plans.

Nothing contained herein shall be construed as relieving Lessee of its obligations under this Lease to complete the construction of its Premises and nothing shall cause Lessor to be liable for any failure of Lessee to do so.

11.2 CHANGES AND ADDITIONS TO BUILDING

Lessor reserves the right at any time to make alterations or additions to and to build additional stories on the building in which the Premises are contained and to build adjoining the same. Lessor also reserves the right to construct other buildings or improvements in the Shopping Center from time to time and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same.

11.3 ALTERATIONS AND IMPROVEMENTS BY LESSEE

Lessee shall not make or cause to be made any alterations, additions and improvements to the Premises or install or cause to be installed any exterior Signs, exterior lighting, security bars, shades or awnings or make any changes to the store front without first obtaining Lessor's written approval and consent. Any roof penetrations must be inspected by Lessor upon completion of Lessee's improvements, and Lessee shall, at its cost and expense, immediately repair any damage identified during such inspection. Lessee shall present to Lessor plans and specifications for such work at the time approval is sought. All such alterations, additions and improvements made by Lessee shall be made and completed in accordance with the laws, rules, regulations and orders of all governmental authorities having jurisdiction thereof and with least interference to the business and activities of the other tenants in the Shopping Center, and shall not cause any conflict with any union contract to which Lessor may then be a part or cause union pickets at the Shopping Center or cause union pickets at the Shopping Center's property line. In constructing alterations, additions and improvements in the Premises, Lessee or Lessee's contractor shall perform all work at the Premises in such a manner as to avoid any labor dispute which causes or will cause the stoppage or impairment of any ongoing construction projects, work, deliveries or conduct of business in the Shopping Center. In the event that any such stoppage or impairment of work or conduct of business occurs as the result of any such labor dispute, then Lessee shall immediately undertake such action necessary to eliminate such dispute, including, without limitation, removing all contractors from the job site until such time as the dispute no longer exists. Said work shall not be commenced until all requisite licenses and permits required for the doing of such alterations, additions and improvements have been issued by the appropriate authorities.

Lessee agrees to the following procedures regarding loud work, odor, and toxic gasses in connection with construction alterations, additions and improvements:

(a) All loud work (including, but not limited to, jack hammering, sawing, drilling, or banging) shall be performed at the following times so that it does not disturb the contiguous tenants:

(i) In the event there is a contiguous retail tenant to the Premises, then the above work shall be performed before 10:00 am and after 8:00 pm.

(ii) In the event there is a contiguous office or service tenant to the Premises, then the above work shall be performed before 8:00 am and after 6:00 pm.

(iii) In the event there is a contiguous restaurant tenant to the Premises, then the above work shall be performed before they open to the public and after they close to the public.

(b) All odors (including, but not limited to, glue and paint) shall be vented in a manner that such odors cannot be detected by the contiguous tenants.

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(c) Any device or equipment that produces carbon monoxide or other toxic gasses (including, but not limited to, motors and heaters) shall be properly vented to the outside of the building the Premises is located within.

11.4 MECHANICS' LIENS

(a) Lessee shall not have any authority to act as agent or representative of Lessor in contracting for any labor or materials for the Premises or the Shopping Center or to create any liens or other claims for labor or material on Lessor's interest in the Premises or in the Shopping Center. No requirements contained herein for Lessee to cause any remodeling or other work to be done and no approval of Lessor for any plans or specifications for any work on the Premises shall constitute Lessee as agent or representative of Lessor in contracting for labor and materials or any stipulation by Lessor that such work adds value to the Premises. All persons contracting with Lessee for the alteration or repair or other improvements on the Premises, and all materialmen, contractors, mechanics, and laborers, are hereby charged with notice that they must look to Lessee and Lessee's interest only in the Premises to secure the payment for work done or material furnished.

(b) Lessee shall pay when due all sums of money that become due for or purported to be due for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for Lessee or its account, in, upon, or about the Premises and which may be secured by any mechanic's, materialmen's or other lien against the Premises and/or Lessor's interest therein or any claim against Lessor. Lessee will cause each such lien to be fully discharged and released within thirty (30) days after the filing thereof and if not so discharged, Lessor may discharge and release the same at the expense of Lessee, and Lessee shall reimburse any cost to Lessor within five (5) days after a demand therefor. If so requested by Lessor, Lessee shall promptly deposit with Lessor a surety bond, in an amount determined by Lessor, in order to protect and indemnify Lessor from any liability for any such lien or other claim.

11.5 OWNERSHIP OF LESSEE'S IMPROVEMENTS

All installations, betterments and improvements made by Lessee in or about the Premises in compliance with the approved plans and specifications, shall be deemed to be and remain the property of Lessee during the Lease Term; provided however, any and all such installations, betterments and improvements shall become the property of Lessor and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or sooner termination of the Lease Term.

11.6 LOSS OR DAMAGE TO LESSEE'S PROPERTY

Lessor shall not be liable for any damage to property of Lessee, nor for the loss of or damage to any property of Lessee by theft or otherwise. Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, or from breakage, stoppage or leakage of gas, electricity, water, sewer pipes or plumbing, or from rain or snow or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature. Lessor shall not be liable for any such damage caused by other tenants or persons in the Premises, occupants of adjacent property, or of the Shopping Center, or the public, or caused by operations in construction of any private, public or quasi-public work.

ARTICLE 12: REPAIRS AND MAINTENANCE

12.1 LESSEE'S OBLIGATIONS

Lessee shall at all times, from and after delivery of possession of the Premises to Lessee, at its own cost and expense, Repair and maintain in good and tenantable condition the Premises and every part thereof, excluding the roof and structural parts of the Premises, and including without limitation the utility meters, utility lines, pipes and conduits serving only the Premises even though such lines may be located outside the Premises, pipes and conduits, all fixtures, air conditioning and heating equipment serving the Premises, and other equipment therein, the store front or store fronts, all Lessee's signs, locks and closing devices, and all window sash, casement or frames, door and door frames, rear porch metal railings and metal posts outside the rear door serving the Premises, and all such items of Repair, maintenance and improvement or reconstruction as may at any time or from time to time be required by a governmental agency having jurisdiction thereof and any Repairs required to be made to the Premises due to burglary or other illegal entry into the Premises or any damage to the Premises caused by a strike involving Lessee or its employees. Lessee

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shall contract with a service company for the maintenance of the heating and air conditioning equipment with a copy of the service contract to be furnished to Lessor within (10) days after opening for business, and a copy of any subsequent contracts to be furnished from time to time during the Lease Term. All glass, both exterior and interior, are at the sole risk of Lessee, and any glass broken shall be promptly replaced by Lessee with glass of the same kind, size and quality. Should the Premises be used as a business which is required by governmental authority to have a grease trap, Lessee shall, at Lessee's sole cost and expense, install and maintain (i) a grease trap, which is sized and installed per the local jurisdiction code, in the sewer water drain line, and (ii) a grease trap, which is sized and installed per the local jurisdiction code, on the roof top kitchen exhaust vent. Lessee shall, at its sole cost and expense, have each such grease trap cleaned at least once every sixty (60) days, or more frequently as needed to prevent blockage, as may be reasonably requested by Lessor. All of the effluent from the grease traps are to be hauled off site by a licensed carrier to the local sewer district treatment center for proper disposal. Lessee shall maintain records for all pumping and cleaning, and such records shall be available for review upon request of Lessor. Lessor warrants the HVAC system shall be in good working order upon the Commencement Date. Furthermore Lessor agrees to repair and/or replace said equipment should any major mechanical defects occur during the first six (6) months of the Lease Term, provided, however, that said major mechanical defects have not been caused by Lessee.

12.2 LESSOR'S OBLIGATIONS

Subject to the foregoing provisions hereof, Lessor shall keep and maintain in good and tenantable condition and Repair, the roof, structural parts of the Premises, pipes and conduits outside the Premises (which serve not only the Premises but also other tenants in the Shopping Center) for the furnishing to the Premises of various utilities (except to the extent that the same are the obligation of the appropriate public utility company) provided, however, that Lessor shall not be required to make Repairs necessitated by reason of the negligence of Lessee or anyone claiming under Lessee, or by reason of the failure of Lessee to perform or observe any conditions or agreements in this Lease contained, or caused by alterations, additions, or improvements made by Lessee or anyone claiming under Lessee. Anything to the contrary notwithstanding contained in this Lease, Lessor shall not in any way be liable to Lessee for failure to make Repairs as herein specifically required of it unless Lessee has previously notified Lessor, in writing, of the need for such Repairs and Lessor has failed to commence said Repairs within a reasonable period of time following receipt of Lessee's written notification. All such Repairs made, whether done by Lessor or Lessee, shall be made and completed in accordance with the laws, rules, regulations and orders of all governmental authorities having jurisdiction thereof and with least interference to the business and activities of the other party thereto, and the party making such Repairs shall not cause any conflict with any union contract applicable to the work in the Shopping Center. Said work shall not be commenced until all requisite licenses and permits required for the doing thereof have been issued by the appropriate authorities.

12.3 LESSOR'S RIGHTS UPON LESSEE'S REFUSAL TO REPAIR AND/OR MAINTAIN

If Lessee refuses or neglects to make Repairs and/or maintain the Premises, or any part thereof, in a manner reasonably satisfactory to Lessor, or to provide the aforementioned heating and air conditioning contract, Lessor shall have the right, upon giving Lessee written notice of its election to do so, to make such Repairs or perform such maintenance on behalf of and for the account of Lessee. In such event such work shall be paid for by Lessee promptly upon receipt of a bill therefor.

12.4 LESSOR'S ENTRY UPON PREMISES

Lessee shall permit Lessor and its authorized representatives to enter the Premises at all times during usual business hours for the purpose of inspecting the same. Lessee further covenants and agrees that Lessor may go upon the Premises and make any necessary Repairs to the Premises and perform any work therein: (i) which may be necessary to comply with any laws, ordinances, rules or regulations of any public authority or of the fire rating bureau or of any similar body or Lessor's insurer, or (ii) that Lessor may deem necessary to prevent waste or deterioration in connection with the Premises (in the event such work is otherwise the obligation of Lessee under this Lease and Lessee has not made or caused such Repairs to be made or performed or caused such work to be performed promptly after receipt of written demand from Lessor). Nothing herein contained shall imply any duty on the part of Lessor to do any such work under any provision of this Lease that Lessee may be required to do, nor shall it constitute a waiver of Lessee's default in failing to do the same. In the event Lessor makes or causes any such Repairs to be made or performed, as provided for herein, Lessee shall pay the cost thereof to Lessor, forthwith, as additional rent upon receipt of a bill therefor.

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Additionally, Lessor or its authorized agents, including contractors, may enter the Premises at reasonable times as may be necessary or convenient to inspect, effect Repairs, maintenance or remodeling of adjacent premises. Adjacent premises for the purpose of this Article are defined to be any store that has any common wall or any common floor-ceiling or ceiling/floor with the Premises. Any such entry shall be so as to cause minimum inconvenience to Lessee and Lessor shall cause any damage to Premises as a result of such Repairs, maintenance or remodeling to be repaired promptly without cost to Lessee.

12.5 "REPAIRS" DEFINED

"Repairs," as used in this Article, shall mean all repairs, replacements, renewals, alterations, additions, improvements and betterments.

ARTICLE 13: DESTRUCTION

13.1 RIGHTS AND OBLIGATIONS OF LESSOR AND LESSEE

If the Premises shall be partially damaged by fire or other casualty insured under Lessor's insurance policies, then upon Lessor's receipt of the insurance proceeds, Lessor shall, except as otherwise provided herein, repair and restore the same (exclusive of Lessee's trade fixtures, decorations, Signs and contents) substantially to the condition thereof immediately prior to such damage or destruction, limited, however, to the extent of the insurance proceeds received in hand by Lessor therefor. If by reason of such occurrence: (a) the Premises is rendered wholly untenantable, or (b) the Premises is damaged in whole or part as a result of a risk which is not covered by Lessor's insurance policies, or (c) the Premises is damaged in whole or part during the last three (3) years of the Lease Term (or at any time during any renewal term exercised prior to such loss) hereof, or (d) the building of which the Premises forms a part or all of the buildings which then comprise the Shopping Center is or are damaged (whether or not the Premises is damaged) to an extent of fifty percent (50%) or more of the then replacement value thereof, or (e) any or all of said buildings or the Common Areas of the Shopping Center are damaged (whether or not the Premises is damaged) to such an extent that the Shopping Center cannot in the sole judgment of Lessor be operated as an integral unit, then or in any of such events, Lessor may elect either to repair the damage as aforesaid, or to cancel this Lease by written notice of cancellation given to Lessee within one hundred eighty (180) days after the date of such occurrence, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in Lessor's said notice were the date herein fixed for the expiration of the Lease Term and Lessee shall vacate and surrender the Premises to Lessor. Upon the termination of this Lease, as aforesaid, Lessee's liability for the rents reserved hereunder shall cease as of the effective date of the termination of this Lease. Unless this Lease is terminated by Lessor, as aforesaid, this Lease shall remain in full force and effect and Lessee shall repair, restore or replace Lessee's trade fixtures, decorations, signs, and contents in the Premises in a manner and to at least a condition equal to that existing prior to their damage or destruction and the proceeds of all insurance carried by Lessee on said property shall be held in trust by Lessee for the purpose of such repair, restoration or replacement. A proportionate part of the rent payable by Lessee shall abate to the extent such damage or destruction renders the Premises untenantable from the date of such damage or destruction until the Premises is repaired or restored.

No penalty shall accrue for a reasonable delay that may arise or occur by reason of adjustment of insurance on the part of Lessor and/or Lessee, and for reasonable delay as a result of strikes, lockouts, "labor trouble," or any other cause beyond the control of the parties.

13.2 TERMINATION

Upon any termination of the Lease under any of the provisions of Article 13, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the Premises to Lessor, except for items which have theretofore accrued and be then unpaid, and the remaining balance of any security deposit made by Lessee pursuant to the provisions of Article 24 hereof shall be returned to Lessee.

ARTICLE 14: COMMON AREAS

14.1 GENERAL

In addition to the Premises, this Lease includes the non-exclusive right of Lessee and its agents, successors, assigns, licensees, invitees, customers and suppliers to use and enjoy throughout the Lease Term, the "Common Areas" of the Shopping Center. The Common Areas include the driveways, entrances, exits, roadways, parking areas,

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sidewalks, landscaping, green and open spaces, malls, truck routes and right-of-ways, and other features and facilities designated by Lessor for the general uses and purposes of all tenants and occupants of the Shopping Center.

Lessor may from time to time designate appropriate portions of the parking areas as areas for the parking of motor vehicles of employees of tenants and occupants of the Shopping Center, and such designated areas shall be so located as not to unduly interfere with the parking of customer's vehicles in the immediate vicinity of Lessee's store. Lessee shall comply with such designations and shall require its employees to comply with such designations made by Lessor from time to time, and Lessor shall require the employees of other tenants and occupants of the Shopping Center to comply therewith.

14.2 LESSOR'S CONTROL OF COMMON AREAS

The Common Areas shall be subject to the exclusive control and management of Lessor, and Lessor shall have the right to establish, modify, change and enforce uniform and nondiscriminatory rules and regulations with respect to the Common Areas, and Lessee shall abide by and conform with such rules and regulations. Lessor shall have the right to close any part of the Common Areas for such time or times as may, in the option of Lessor, be necessary to prevent a dedication thereof or the accrual of any rights of any person, but any such closing or restriction shall be for limited times only and Lessor shall use its best efforts not to interfere with Lessee's use, enjoyment and occupancy of the Premises during normal business hours. Lessor may enter into agreements with adjacent owners for cross easements for parking, ingress or egress. Lessor may from time to time close off any part of the parking areas for such time as Lessor deems necessary for the benefit of all the tenants in the Shopping Center or in the event of any emergency or unusual condition, and Lessor's determination of the need therefor shall be conclusive and binding on all persons whomsoever.

14.3 LESSOR'S CONTROL OF COMMON AREAS OUTSIDE NORMAL BUSINESS HOURS AND EMERGENCIES

Lessor reserves the right to refuse admission outside ordinary business hours to the Shopping Center and the Premises to any person who is not properly identified or who is not known to the watchman or other person who may be in charge at that time; provided, however, that this shall not apply to normal deliveries of merchandise and supplies to Lessee. Lessor also reserves the right without liability to eject any person from the Shopping Center whose conduct or behavior may tend to be harmful to the safety and best interest of the tenants in the Shopping Center or the property therein; and to close the Shopping Center or any part thereof during any riot or similar disturbance where persons or property may be imperiled.

14.4 ITEMS OF OPERATING COST OF THE COMMON AREAS

"Operating Costs" shall mean total costs and expenses incurred in operating, maintaining and repairing the Common Areas, including, without limitation, the cost of all materials, supplies and services purchased or hired therefor, the cost and expense of landscaping, gardening, planting, and maintenance of open spaces, general maintenance and repair, pylon sign maintenance, cleaning, security, sweeping and janitorial services, painting (including line painting), decorating, lighting, utilities, Christmas decorations, energy for lighting all signs and parking lot lighting, sanitary control, removal of snow, trash, garbage and other refuse, fire protection and alarm systems for buildings and Common Areas, water, sanitary, sewerage and storm water charges and costs, the cost of all insurance carried by Lessor covering the Common Areas, including, without limitation, public liability, personal and bodily injury and property damage, liability, and automobile coverage, sign insurance, payment of any insurance deductibles, and any other insurance that may be carried by Lessor covering the Common Areas, all in limits selected by Lessor, maintenance, repair and replacement of utility systems serving the Common Areas, including water, sanitary sewer and storm water lines and other utility lines, pipes and conduits, maintenance, depreciation of machinery and equipment owned and used in the operation, maintenance and repair of the Common Areas or the rental charges for such machinery and equipment, and the cost of personnel (including applicable payroll taxes, workmen's compensation insurance and disability insurance) to implement all of the foregoing, and administrative costs equal to ten percent (10%) of the total Operating Costs. Lessor may, however, cause any or all of said services to be provided by an independent contractor or contractors. Operating Costs shall not include any costs which are treated as capital expenditures on Lessor's income tax return, except to the extent of a reasonable allowance for amortization over the useful life of those capital expenditures or depreciation of equipment used in maintenance of the Common Areas.

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Lessee shall pay as additional rent hereunder to Lessor Lessee's proportionate share of all Operating Costs. Lessee's proportionate share shall be the ratio of the square footage of the Premises to the total square footage of all of the gross leasable space in the Shopping Center except for outlots where the owner or tenant pays its own Operating Costs, which ratio shall be rounded to two (2) decimal places. Lessee shall pay to Lessor on the first day of each month of the Lease Term in advance such amount as Lessor shall estimate to be equal to one-twelfth (1/12th) of Lessee's annual proportionate share of anticipated Operating Costs for the ensuing year, at the time and place provided for the payment of rent. Upon receipt of the final Operating Costs bills for any given quarter, Lessor shall compute Lessee's proportionate share of said bills, which amount shall be rounded to two (2) decimal places, and a summary shall be furnished to Lessee reflecting the actual amount due. In the event the amounts paid by Lessee during the preceding period shall be in excess of Lessee's proportionate share, the excess shall be credited against the next ensuing payments of Operating Costs due from Lessee. In the event the amount paid by Lessee shall be less than Lessee's proportionate share, then it shall pay the remaining balance within twenty (20) days after such notice is furnished. The notice furnished to Lessee for the fourth (4th) quarter Operating Costs shall also include a computation of the estimated sums that would be due from Lessee each month for the ensuing calendar year and the monthly Operating Costs payment to be made as aforesaid shall be adjusted accordingly for the ensuing period.

After the first full calendar year of the Lease term, Lessee's annual obligation for the Operating Costs to maintain the Common Areas shall not increase by more than six percent (6%) per year, (excluding costs for snow and ice removal, utilities and liability insurance, which shall not be subject to any limit) over the amount paid by Lessee during the preceding calendar year. For the purposes of this paragraph, a calendar year shall run from January through December regardless of when the Lease commences.

14.5 LESSOR'S FREEDOM OF CONTRACTUAL LIABILITY FOR DAMAGE FROM MOTOR VEHICLES

Nothing contained herein shall be deemed to create any liability upon Lessor for any damage to or loss of motor vehicles of customers or employees or for loss of property from within such motor vehicles.

ARTICLE 15: TAXES

15.1 PAYMENT OF TAXES

Lessee shall pay as additional rental hereunder to Lessor Lessee's proportionate share of all Taxes, including any and all general or special assessments, which may be levied or assessed by any lawful authority for each calendar year during the Lease Term including those assessed against the land and/or buildings comprising the Shopping Center. Lessee's proportionate share shall be the same ratio of the total amount due as the total gross square footage of the Premises bears to the total square footage of all of the gross leasable space in the Shopping Center except for outlots where the owner or tenant pays its own Taxes, which ratio shall be rounded to two (2) decimal places. Lessee shall pay to Lessor on the first day of each month of the Lease Term in advance such amount as Lessor shall estimate to be equal to one-twelfth (1/12th) of the annual Lessee's proportionate share of the anticipated Taxes for the ensuing year, at the time and place provided for the payment of rent. Upon receipt of the tax bills for any given year, Lessor shall compute Lessee's proportionate share of said bills, which amount shall be rounded to two (2) decimal places, and a summary shall be furnished to Lessee reflecting the actual amount of Taxes due. In the event the amounts paid by Lessee during the preceding period shall be in excess of Lessee's proportionate share, the excess shall be credited against the next ensuing tax payments due from Lessee. In the event the amount paid by Lessee shall be less than Lessee's proportionate share, then it shall pay the remaining balance within ten (10) days after such notice is furnished. The notice furnished to Lessee shall also include a computation of the estimated sums that would be due from Lessee each month for the ensuing calendar year and the monthly tax payment to be made as aforesaid shall be adjusted accordingly for the ensuing period. In the event any tax shall be assessed upon rent by any governmental authority, Lessee shall pay Lessee's proportionate share of said tax. In the event Lessor shall elect to contest any proposed increase in Taxes, any expense incurred in such contest including reasonable attorneys' fees or appraisers' fees shall be considered as tax expenses under the terms of this Article 15.1. In the event the method of taxation applicable to rental property shall be adjusted or amended a modification agreement with respect to this Article 15.1 shall be entered into to equitably apply the principles hereof to said revised tax system.

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15.2 "TAXES" DEFINED

As used herein, all references to Taxes shall include, without limitation, all charges, impositions, licenses, fees, subdivision assessments, trustee's fees, levy assessments, general assessments, surcharges, and other levies and governmental charges of every kind and nature whatsoever, general and special, extraordinary as well as ordinary and also any tax imposed on the rent payable to Lessor hereunder and any real estate transfer tax imposed on this Lease.

15.3 TAXES ON LESSEE'S PERSONALTY

Lessee shall pay, prior to delinquency, any and all Taxes and assessments levied or assessed during the Lease Term upon or against all furniture, fixtures, equipment and any other personal property installed or located within the Premises. If at any time during the Lease Term any such Taxes or assessments mentioned in this Article 15.3 are levied or assessed upon or against the building containing the Premises and/or the land underlying said building, Lessee shall pay to Lessor the amount thereof.

15.4 FUTURE TAX COLLECTIBLE BY LESSOR

Should any governmental authority require that a tax or levy other than the taxes above mentioned, be paid by Lessee, but collected by Lessor, for and on behalf of said governmental authority, the same shall be paid by Lessee to Lessor, and be collectible by Lessor, and payment thereof enforced in the same fashion as provided for the enforcement of payment of rent hereunder; and for the purpose of enforcing payment thereof, shall be deemed additional rent hereunder, payable monthly upon the first day of the next month following demand.

ARTICLE 16: DEFAULT BY LESSEE

16.1 GENERAL

An "Event of Default" by Lessee shall occur if:

(a) Lessee shall fail to pay when due any rental or other sum hereunder and such failure shall continue for five (5) days after notice of same shall have been sent to Lessee;

(b) Lessee fails to commence and diligently pursue the abatement of noise, sound, vibration and/or odors emanating from the Premises within five (5) days after written notice to Lessee;

(c) Lessee shall default with respect to any other obligation or covenant of Lessee under this Lease and such default shall continue for fifteen (15) days after written notice of same shall have been sent to Lessee; provided that with respect to a non-financial default which is not reasonably susceptible of cure within such period of fifteen (15) days, an Event of Default shall not occur if within such period of fifteen (15) days Lessee shall have commenced appropriate curative procedures and shall thereafter prosecute the same to completion without hiatus;

(d) Lessee shall default with respect to any obligation or covenant of Lessee, which creates a hazardous condition, and Lessee does not immediately cure such default upon notice of same being sent from Lessor;

(e) The interest of Lessee in this Lease shall be levied upon under execution or other legal process;

(f) Any voluntary petition in bankruptcy or for reorganization or any similar relief shall be filed by Lessee;

(g) Any involuntary petition in bankruptcy or for reorganization or other similar relief shall be filed against Lessee and shall not have been dismissed within forty-five (45) days following the date of filing thereof;

(h) A receiver shall be appointed for Lessee or any property of Lessee by any court and such receiver shall not have been discharged within forty-five (45) days from the date of appointment;

(i) Lessee shall make a general assignment for the benefit of creditors;

(j) Lessee shall admit in writing Lessee's inability to meet Lessee's debts as they mature, or

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(k) Lessee abandons the Premises or vacates the Premises for a period in excess of four (4) consecutive days.

Should Lessee default in the payment of rental or other charges under this Lease or with respect to any other obligation or covenant of Lessee under this Lease and any such default shall continue or be repeated for two (2) consecutive months or for a total of four (4) months during any calendar year, or as to non-financial defaults more than twice in one (1) calendar year, then an Event of Default shall immediately occur upon the occurrence of the next ensuing default and Lessor shall have no obligation to give Lessee notice of such default and an opportunity to cure before such default shall become an Event of Default.

Upon the occurrence of an Event of Default, Lessor, in addition to any other remedy available to Lessor at law or in equity, may, with or without notice to Lessee, exercise the following remedies:

(i) Lessor may terminate this Lease, in which event Lessor may immediately repossess the Premises and be entitled to recover in a lump sum, in addition to any other sum or damages for which Lessee may be liable to Lessor, as damages, an amount equal to the rental which would have been payable during any period of rent-free occupancy provided to Lessee by this Lease, the cost of all leasing commissions paid by Lessor in connection with this Lease, the cost to Lessor of the initial leasehold improvements or construction allowance given by Lessor for improvements to the Premises, and all other amounts paid to or on behalf of Lessee in connection with Lessee's entry into this Lease (including, without limitation, any moving cost allowances, payments on leases assumed by Lessor, payment for preparation of floor plans and the like), together with full rent and additional rent for the period of time necessary to release the Premises to another tenant and to prepare the Premises for occupancy by another tenant, together with a sum of money equal to the then present value of all agreed rental for the balance of the Lease Term less the fair rental value.

(ii) Lessor may terminate Lessee's right of possession and may repossess the Premises by unlawful detainer suit, by taking peaceable possession, or otherwise, without terminating this Lease, in which event Lessor may, but shall be under no obligation to, relet the same as agent for the account of Lessee. For the purpose of such reletting, Lessor is authorized to decorate, repair, remodel or alter the Premises. If Lessor shall fail to relet the Premises, Lessee shall pay to Lessor a sum equal to an amount equal to the rental which would have been payable during any period of rent-free occupancy provided to Lessee by this Lease, the cost of all leasing commissions paid by Lessor in connection with this Lease, the cost to Lessor of the initial leasehold improvements or construction allowance given by Lessor for improvements to the Premises, and all other amounts paid to or on behalf of Lessee in connection with Lessee's entry into this Lease (including, without limitation, any moving cost allowances, payments on leases assumed by Lessor, payment for preparation of floor plans and the like), together with the amount of the rental for the balance of the Lease Term as such rental shall become due.

If the Premises are relet and a sufficient sum shall not be realized from such reletting, after payment of an amount equal to the rental which would have been payable during any period of rent-free occupancy provided to Lessee by this Lease, the cost of all leasing commissions paid by Lessor in connection with this Lease, the cost to Lessor of the initial leasehold improvements or construction allowance given by Lessor for improvements to the Premises, and all other amounts paid to or on behalf of Lessee in connection with Lessee's entry into this Lease (including, without limitation, any moving cost allowance, payments on leases assumed by Lessor, payment for preparation of floor plans and the like), together with the costs and expenses of all decoration, repairs, remodeling, alterations and additions and the expenses of such reletting (including broker's fees), to satisfy the rental provided for in this Lease, Lessee shall satisfy and pay the same upon demand therefor from time to time as such rental becomes due. Lessor may file suit to recover any sums falling due from time to time and no suit or recovery of any portion due Lessor hereunder shall be any defense to any subsequent action brought for any amount not previously reduced to judgment in favor of Lessor.

No waiver of any default by Lessee shall be implied from any omission by Lessor to take any action on account of said default if such default persists or shall be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. No failure of Lessor to exercise any power given Lessor hereunder or to insist upon strict compliance with any obligation

hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Lessor's right to demand exact compliance with the terms hereof. The provisions of this Article 16 shall survive any termination of this Lease.

16.2 LATE CHARGES AND OTHER FEES

In the event Lessee fails to pay to Lessor when due any installment of rental, additional rental, or other sum to be paid to Lessor which may become due hereunder, Lessor will incur additional expenses in an amount not readily ascertainable and which has not been elsewhere provided for between Lessor and Lessee. Accordingly, if any installment of rental, additional rental or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within five (5) days after such amount shall be due, Lessee shall pay to Lessor a late charge equal to five percent (5%) of said amount (with a minimum charge of One Hundred Dollars ($100.00) in any one month). Lessee shall pay a late charge equal to five percent (5%) of said amount (with a minimum charge of One Hundred Dollars ($100.00) in any one month) on the first day of each month thereafter so long as such rental, additional rental or other sum shall be unpaid. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Failure to pay such late charge upon demand therefor shall be an Event of Default hereunder. Provision for such late charge shall be in addition to all other rights and remedies available to Lessor hereunder or at law or in equity and shall not be construed as a penalty or as liquidated damages or limiting Lessor's remedies in any manner. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from declaring an Event of Default and exercising any of the other rights and remedies granted hereunder. Any payments received by Lessor shall, at Lessor's sole discretion, first be applied to the oldest outstanding balance on the account of Lessee.

In the event any installment of rental, additional rental, or other sum to be paid to Lessor which may become due hereunder is paid by means of a check and such check is returned unpaid, for whatever reason, then Lessee agrees to pay Lessor, promptly upon demand by Lessor, the sum of Twenty-Five & 00/100 Dollars ($25.00) as a reasonable amount to defray Lessor's administrative and handling expenses caused by such returned check. In the event any single check is not paid upon presentation for payment, Lessor shall have the right to require all subsequent amounts payable under this Lease to be paid in the form of Cashier's Check or Money Order.

16.3 ATTORNEYS' FEES

In the event that Lessor shall be required to engage legal counsel for the enforcement of any of the terms of this Lease, whether such employment shall require institution of suit or other legal services required to secure compliance on the part of Lessee, Lessee shall be responsible for and shall promptly pay to Lessor all reasonable attorneys' fees and expenses incurred by Lessor in such event.

16.4 WAIVER OF TRIAL BY JURY

The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee created hereby, Lessee's use or occupancy of the Premises, and/or any claim for injury or damage.

ARTICLE 17: DEFAULT BY LESSOR

In the event Lessor shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on its part to be performed or observed within thirty (30) days after written notice of default (or if more than thirty (30) days shall be required because of the nature of the default, if Lessor shall fail to proceed diligently to cure such default after notice), then in that event Lessor shall be responsible to Lessee for any and all damages sustained by Lessee as a result of Lessor's breach; further, after such notice Lessee shall have the right to cure any such default at Lessor's expense including in such expenditure all reasonable costs and reasonable attorneys' fees incurred to cure such default or breach of Lease. Lessee shall have no right to terminate this Lease except as herein otherwise specifically provided.

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ARTICLE 18: INSOLVENCY

18.1 BANKRUPTCY OR INSOLVENCY

If at any time a petition under any state bankruptcy or insolvency laws shall be filed by or on behalf of Lessee, or against Lessee and shall remain undismissed for a period of sixty (60) days after such filing, such event shall constitute an Event of Default and Lessor shall be entitled to immediately exercise such rights and remedies it may elect under this Lease (without regard to the cure periods provided thereunder) or applicable law.

18.2 DEFAULTS

In addition to the occurrence of the filing of a petition under state bankruptcy or insolvency laws by or on behalf of Lessee or against Lessee, the occurrence of any of the following shall constitute an Event of Default and Lessor shall be entitled to immediately exercise such rights and remedies it may elect under this Lease (without regard to the cure periods provided thereunder) or other applicable law: (a) a general assignment for the benefit of creditors; (b) the appointment under applicable state law of a trustee or receiver to take possession of substantially all of Lessee's assets or of Lessee's interest in this Lease; (c) the attachment, or other judicial seizure of substantially all of Lessee's assets or of Lessee's interest in this Lease; or (d) insolvency of Lessee.

As used in this Article 18, the term "Lessee" shall include Lessee named herein, as well as any assignee or subtenant, and any surety or other guarantor of this Lease.

ARTICLE 19: EMINENT DOMAIN

19.1 GENERAL

In the event the Premises or any part thereof be taken by condemnation or otherwise, the following provisions shall be controlling:

(a) If the whole of the Premises shall be acquired or condemned by eminent domain, then and in that event the Lease Term shall cease and terminate from the date of title vesting in such proceeding and Lessee shall have no claim against Lessor for the value of any unexpired Lease Term.

(b) If any part of the Premises shall be acquired or condemned by eminent domain and such partial taking or condemnation shall render the Premises unsuitable for the business of Lessee, then and in such event the Lease Term shall cease and terminate from the date of title vesting in such proceeding, and Lessee shall have no claim against Lessor for the value of an unexpired Lease Term. In the event the partial taking or condemnation is not extensive enough to render the Premises unsuitable for the business of Lessee, then Lessor shall promptly restore the Premises to a condition reasonably comparable to its condition at the time of such condemnation less the portion taken in such condemnation, and the Lease shall thereafter continue in full force and effect.

(c) If thirty three percent (33%) or more of the total of the parking spaces in the Shopping Center have been condemned either with or independent of the condemnation of the Premises, and if Lessor is unable to substitute for the parking spaces so taken and condemned, a parking area in a location relatively accessible to the Premises so that the total of the parking areas will permit the parking of four (4) automobiles for each one thousand (1,000) square feet of gross leasable area of the Shopping Center, Lessee, upon one hundred twenty (120) days written notice given to Lessor, shall have the option to terminate this Lease, and if prior to the effective date set forth in said notice of termination said substituted parking spaces shall not have been provided for, this Lease shall terminate and come to an end and rentals shall be adjusted to the date of such termination. If such substituted parking spaces are provided, the notice of termination shall be considered canceled and has no further force or effect.

(d) In the event of any condemnation or taking, either whole or partial, Lessee shall not be entitled to any part of the award as damages or otherwise for such condemnation and Lessor is to receive the full amount of such award, Lessee hereby expressly waiving any right or claim to any part thereof; except that Lessee shall be entitled to receive and retain only any amounts which may be specifically awarded to it in such condemnation proceedings for relocation expenses or because of the taking of its trade furniture or

fixtures. It is understood that in the event of the termination of this Lease as aforesaid, neither Lessor nor Lessee shall have any claim against the other for the value of any unexpired Lease Term and Lessee shall have no right or claim to any part of the award on account thereof.

19.2 VOLUNTARY SALE UNDER THREAT OF CONDEMNATION

For the purposes of this Article 19, a voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, shall be deemed an appropriation or taking under the power of eminent domain.

ARTICLE 20: SALE OF PREMISES BY LESSOR

In the event of any sale or exchange of the Premises by Lessor and assignment by Lessor of this Lease, Lessor shall be and is hereby entirely freed and relieved of all liability under any and all of its covenants and obligations contained in this Lease from and after the date of such sale or exchange and assignment.

ARTICLE 21: SUBORDINATION, ATTORNMENT, POWER OF ATTORNEY

21.1 SUBORDINATION

Lessor and Lessee agree that this Lease shall be subject and subordinate at all times to all covenants, agreements, restrictions, easements and encumbrances now or hereafter affecting the fee title of the Shopping Center property and to all ground and underlying leases and Mortgages or any other method of financing or refinancing in any amounts, and all advances thereon, which may now or hereafter be placed against or affect any or all of the land and/or the Premises and/or any or all of the buildings and improvements now or at any time hereafter constituting a part of the Shopping Center, and to all renewals, modifications, consolidations, participations, replacements and extensions thereof. The term "Mortgages" as used herein shall be deemed to include trust indentures and deeds of trust. The provisions hereof shall be self-operative and no further instrument of subordination shall be necessary unless required by any such ground or underlying lessors or mortgagees. Should Lessor or any ground or underlying lessors or mortgagees desire confirmation of such subordination, then Lessee, within ten (10) days following Lessor's written request therefor, shall execute and deliver, without charge, any and all documents (in form acceptable to Lessor and such ground or underlying lessors or mortgagees) subordinating this Lease and Lessee's rights hereunder. However, should any such ground or underlying lessors or any mortgagees request that this Lease be made superior, rather than subordinate, to any such ground or underlying leases and/or Mortgages, then Lessee, within ten (10) days following Lessor's written request therefor, shall execute and deliver, without charge, any and all documents (in form acceptable to Lessor and such ground or underlying lessors or mortgagees) effectuating such priority.

21.2 ATTORNMENT

In the event of a sale, transfer or assignment of Lessor's interest in the Shopping Center or any part thereof, including the Premises, or in the event any proceedings are brought for the foreclosure of or for the exercise of any power of sale under any mortgage made by Lessor covering the Shopping Center or any part thereof, including the Premises, or in the event of a termination of any ground or underlying lease covering the Shopping Center or any part thereof including the Premises, Lessee shall attorn to and to recognize such transferee, purchaser, ground or underlying lessor or mortgagee as Lessor under this Lease.

21.3 POWER OF ATTORNEY

Lessee hereby irrevocably appoints Lessor as attorney-in-fact for Lessee with full power and authority to execute and deliver in the name of Lessee any instruments or certificates to carry out the intent of Article 21. If fifteen (15) days after the date of a written request by Lessor to execute such instruments, Lessee shall not have executed the same, Lessor may, at its option, terminate this Lease without incurring any liability on account thereof, and the Lease Term is expressly limited accordingly.

ARTICLE 22: QUIET ENJOYMENT

Lessee, upon paying the rents herein reserved and performing and observing all of the other terms, covenants and conditions of this Lease on Lessee's part to be performed and observed hereunder, shall peaceably and quietly have, hold and enjoy the Premises during the Lease Term, subject, nevertheless, to the terms of this Lease and to any Mortgages, ground or underlying leases, agreements and encumbrances to which this Lease is or may be subordinated.

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ARTICLE 23: MERCHANT'S ASSOCIATION

Intentionally deleted.

ARTICLE 24: SECURITY DEPOSIT

24.1 GENERAL

Lessee, contemporaneously with the execution of this Lease, has deposited the Security Deposit with Lessor, receipt of which is hereby acknowledged by Lessor. The Security Deposit shall be held by Lessor, without liability for interest, as security for the faithful performance by Lessee of all of the terms, covenants, and conditions of this Lease by Lessee to be kept and performed during the Lease Term.

24.2 USE AND RETURN OF DEPOSIT

In the event of the failure of Lessee to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Lessee, then at the option of Lessor, Lessor may appropriate and apply the entire Security Deposit or so much thereof as may be necessary to compensate Lessor for all loss or damage sustained or suffered by Lessor due to such breach on the part of Lessee. Should the entire Security Deposit or any portion thereof, be appropriated and applied by Lessor for the payment of overdue rent or other sums due and payable to Lessor by Lessee hereunder, then Lessee shall, upon the written demand of Lessor, forthwith remit to Lessor a sufficient amount in cash to restore the Security Deposit to the original sum deposited and Lessee's failure to do so within five (5) days after receipt of such demand shall constitute a breach of this Lease. Should Lessee comply with all of said terms, covenants and conditions and promptly pay all of the rental herein provided for as it falls due and all other sums payable by Lessee to Lessor hereunder, the Security Deposit shall be returned in full to Lessee at the end of the Lease Term, or upon the earlier termination of this Lease.

24.3 TRANSFER OF DEPOSITS

Lessor may transfer the Security Deposit to the purchaser of Lessor's reversionary interest in the Premises in the event that such reversionary interest be sold, and thereupon Lessor shall be discharged from any further liability with respect to the Security Deposit.

ARTICLE 25: TENANT'S CERTIFICATE

Within ten (10) days after request therefor by Lessor, or in the event that upon any proposed sale, assignment or hypothecation of the Premises and/or the land thereunder by Lessor a statement should be required from Lessee, Lessee shall deliver to any proposed mortgagee or purchaser, or to Lessor, a certificate in recordable form, certifying, if such be the case, that this Lease is in full force and effect and that there are no defenses or offsets thereto, or stating specifically those that are then claimed by Lessee.

ARTICLE 26: FINANCING

Lessor shall not be obligated to proceed with the construction of the Premises unless and until financing (both construction and permanent) acceptable to Lessor is obtained. Should such financing not be obtainable within six (6) months after completion of final plans and specifications, Lessor may, at Lessor's option, so notify Lessee in writing, and this Lease shall thereupon terminate and each of the parties hereto shall be released and discharged from any and all liability and responsibility hereunder. If Lessor can obtain financing only upon the basis of modifications of the terms and provisions of this Lease, Lessor shall have the right to terminate this Lease if Lessee refuses to approve in writing any such modification within thirty (30) days after Lessor's request therefor. If such right to terminate is exercised, this Lease shall thereafter be null and void, the Security Deposit shall be returned to Lessee, and neither party shall have any liability to the other by reason of such termination.

ARTICLE 27: ACCESS TO PREMISES

Lessor and its authorized representatives shall have the right to enter upon the Premises during all regular business hours for the purpose of exhibiting the same to prospective purchasers, mortgagees and tenants. In the event

of an emergency when Lessee or Lessee's employees shall not be personally present to permit an entry into the Premises, Lessor may enter the same by use of force or otherwise without rendering Lessor liable therefor and without in any manner affecting Lessee's obligations under this Lease.

ARTICLE 28: FORCE MAJEURE

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage. The provisions of this Article shall not apply to the payment of the rental or other charges payable by Lessee hereunder.

ARTICLE 29: RECORDING

Lessee shall not record this Lease or any memorandum thereof without the prior written consent of Lessor.

ARTICLE 30: NO OFFSET

Anything in this Lease to the contrary notwithstanding, Lessee shall not have the right to offset any claims of Lessee against Lessor against rent or additional rent payable hereunder, nor shall Lessor have the right to offset any claims it may have against Lessee against any sums of money, if any, payable by Lessor to Lessee hereunder.

ARTICLE 31: SURRENDER OF PREMISES

Upon the expiration or sooner termination of the Lease Term, Lessee shall quit and surrender the Premises, in good condition and repair and reasonable wear and tear excepted, together with all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, except personal property installed at Lessee's expense including but not limited to counters, shelving, showcases, mirrors, and all interior and exterior signage, all of which shall be removed by Lessee and Lessee shall repair any damage occasioned to the Premises by reason of the removal. Before surrendering the Premises, Lessee shall remove all of Lessee's personal property including but not limited to counters, shelving, showcases, mirrors, and all interior and exterior signage. If the Premises be not so surrendered, Lessee shall indemnify Lessor against all loss or liability resulting from the delay by Lessee in so surrendering the same, including, without limitation, any claims made by any succeeding occupant founded on such delay. Lessee's obligations under this Article shall survive the expiration or sooner termination of this Lease. Personal property, including but not limited to counters, shelving, showcases, mirrors, and all interior and exterior signage not removed upon expiration or earlier termination of this Lease shall be deemed abandoned by Lessee and become the property of Lessor. Lessee shall nevertheless be liable to Lessor for the cost of personal property removal and any repair resulting therefrom and in no event shall the abandonment or surrender of such personal property to Lessor be deemed to be payment of rent or in lieu of any rent reserved hereunder.

ARTICLE 32: HOLDING OVER

Should Lessee remain in possession of the Premises after the expiration of the Lease Term (or any renewal term hereof) with or without the consent of Lessor, express or implied, such holding over shall, in the absence of a written agreement to the contrary, be deemed to have created and be construed to be a tenancy at sufferance terminable in accordance with law, subject to all the terms, covenants and conditions of this Lease, except that Lessee shall pay for each day that Lessee holds over rent at double the rate of the Minimum Annual Rental hereinbefore provided to be paid.

ARTICLE 33: RELATIONSHIP OF PARTIES

Nothing contained in this Lease shall be deemed to constitute or be construed to create the relationship of principal and agent, partnership joint venturers or any other relationship between the parties hereto, other than the relationship of Lessor and Lessee.

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ARTICLE 34: NO WAIVER

The failure of Lessor to insist upon the strict performance of any provision of this Lease, or the failure of Lessor to exercise any right, option or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Lessor of any act by Lessee requiring Lessor's consent or approval shall not be construed to waive or render unnecessary the requirement for Lessor's consent or approval of any subsequent similar act by Lessee. The receipt by Lessor of rent with knowledge of a breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Lessor. No payment by Lessee or receipt by Lessor of a lesser amount than the rents and/or other charges hereby reserved shall be deemed to be other than on account of the earliest rents and/or charges then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment by Lessee be deemed an accord and satisfaction and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rents and/or other charges due or Lessor may pursue any other remedy in this Lease provided, and no waiver by Lessor in favor of any other tenant or occupant of the Shopping Center shall constitute a waiver in favor of Lessee herein.

ARTICLE 35: WAIVER OF LIABILITY

Anything contained in the Lease to the contrary notwithstanding, Lessee shall look solely to the estate and property of Lessor in the land and buildings comprising the Shopping Center for the collection of any judgment (or other judicial process) requiring the payment of money by Lessor in the event of any default or breach by Lessor with respect to any of the terms and provisions of this Lease to be observed and/or performed by Lessor; subject, however, to the prior rights of any ground or underlying tenants or the holder of any Mortgage covering the Shopping Center, and no other assets of Lessor shall be subject to levy, execution or other judicial process for the satisfaction of Lessee's claim.

ARTICLE 36: NOTICES

36.1 FORM OF NOTICE

Every notice, demand, request, consent, approval or other communication which may be or is required to be given under this Lease or by law shall be in writing and shall be delivered by hand delivery by courier, by United States certified mail return receipt requested, or by nationally recognized overnight delivery service. Either party may designate, by such written notice to the other party, any other addresses for such purposes.

36.2 DATE OF NOTICE

All notices, demands, requests, consents, approvals or other communications which may be or are required to be given under this Lease or by law shall be deemed given on the earlier to occur of (i) the date of the first attempt to deliver or (ii) the date of actual delivery, as shown on the records of the carrier. Each of the parties hereto waive personal or any other service than as provided in this Article.

ARTICLE 37: RELOCATION

Lessor reserves the right to change the location of the Premises at any time during the Lease Term. If Lessor elects to exercise this option, Lessor shall provide Lessee with a minimum of thirty (30) days' prior written notice. Lessee agrees to be bound by such election, and execute, upon receipt from Lessor, whatever documents may be necessary to reflect the relocation. Lessor shall, at its sole cost and expense, (i) renovate the relocated premises so that the leasehold improvements therein are substantially in the same condition as they were in the original Premises, and (ii) move and reinstall Lessee's trade fixtures and storefront signage.

ARTICLE 38: ENTIRE AGREEMENT, ETC.

This Lease, including the attached Exhibits, Riders and/or Addenda, if any, sets forth the final and complete agreement of the parties with respect to the leasing of the Premises. All prior negotiations, understandings, correspondence, brochures and discussions pertaining to the leasing of the Premises (including, but not limited to, any

assurances or representations, whether oral or written, made by any employees, agents, contractors, brokers or representatives of either party) have been merged into, and are extinguished by, this Lease. This Lease shall not be modified except by an instrument in writing subscribed to by all parties, nor may this Lease be terminated by Lessee or the Premises surrendered except with the written consent of Lessor, unless otherwise specifically provided herein. The submission by Lessor of this Lease for execution by Lessee and the actual execution and delivery thereof by Lessee to Lessor shall have no binding force and effect unless and until Lessor shall have executed this Lease and a duplicate original thereof shall have been delivered to Lessee. If any provision contained in any Riders or Addenda hereto is inconsistent with any printed provisions of this Lease, the provision contained in such Riders or Addenda shall govern.

ARTICLE 39: PROVISIONS BINDING

Except as otherwise expressly provided in this Lease, all covenants, conditions and provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Each provision of this Lease to be performed by Lessee shall be construed to be both a covenant and a condition, and if there shall be more than one Lessee, they shall all be bound, jointly and severally, by the provisions of this Lease. Notwithstanding the foregoing provisions, Lessor shall be entirely freed of all liability under its obligations under this Lease arising out of any act, occurrence or omission occurring after the sale of the Premises.

ARTICLE 40: PARTIAL INVALIDITY

It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Lease and it is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

ARTICLE 41: CAPTIONS AND TERMS

The index and the captions of Articles and Sections of this Lease are for convenience only, are not a part of this Lease and do not in any way limit or amplify the terms and provisions of this Lease. Except as otherwise specifically stated in this Lease, the phrase "Lease Term" shall include the original Lease Term and any extension, renewal or holdover thereof.

If more than one person or corporation is named as Lessor or Lessee in this Lease and executes the same as such, then and in such event, the words "Lessor" or "Lessee" wherever used in this Lease are intended to refer to all such persons or corporations for compliance with and performance of all terms, covenants and provisions of the Lease shall be joint and several. The masculine pronoun used herein shall include the feminine or the neuter as the case may be, and the use of the singular shall include the plural. Likewise, terms that may be defined herein or are used in a particular context are meant to have the same meaning when used in other places in this Lease whether or not such terms are identified by capitalization in their subsequent use.

ARTICLE 42: ENTITY OR INDIVIDUAL LESSEE

If Lessee is or will be a legal entity such as a corporation, a limited liability company, a limited liability partnership, a general partnership or a limited partnership, the persons executing this Lease on behalf of Lessee hereby covenant and warrant that Lessee is a duly organized or duly qualified (if foreign) entity and is authorized to do business in the State in which the Shopping Center is located; and that the person executing this Lease on behalf of Lessee is an authorized representative of Lessee and is of legal age for execution of contracts in the state in which the Shopping Center is located, and that he, she or they are as such representatives duly authorized to sign and execute this Lease. If the person executing this Lease is executing as an individual, said person covenants and warrants that he or she is of legal age for execution of contracts in the state in which the Shopping Center is located.

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ARTICLE 43: GOVERNING LAW

The laws of the State of Missouri shall govern the validity, performance and enforcement of this Lease. Should either party institute legal suit or action for the enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be, at the option of Lessor, in St. Louis County, Missouri and Lessee expressly consents to Lessor's designating the venue of any such suit or action.

ARTICLE 44: RIGHT TO CHANGE SHOPPING CENTER NAME

Lessor reserves the right to change the name of the Shopping Center from time to time during the Lease Term.

ARTICLE 45: REAL ESTATE BROKERS

Lessor's Real Estate Broker represents only Lessor and the interests of Lessor. Lessee's Real Estate Broker represents only Lessee and the interests of Lessee. Lessor and Lessee acknowledge receipt by them of all disclosures required by the real estate brokerage laws of the state in which the Shopping Center is located prior to execution of this Lease. Lessor or an entity related to Lessor, in whole or in part, owns Lessor's Real Estate Broker. Lessor and Lessee represent to each other that no person other than Lessor's Real Estate Broker and Lessee's Real Estate Broker have participated in this transaction and no person other than such brokers has a claim to any brokerage commission or fee as a result of this transaction. Each party hereby indemnifies the other party from and against any breach of these foregoing representations by the indemnifying party.

ARTICLE 46: CONFIDENTIALITY

In order to induce Lessor to enter into this Lease on the terms and conditions embodied in this Lease, Lessee shall keep strictly confidential the terms and conditions and rental set forth in this Lease and to cause all persons working for Lessee to do likewise, provided that Lessee may disclose such information to lawyers and accountants working for Lessee who have a need to know and on tax returns filed with required governmental authorities.

ARTICLE 47: INTERPRETATION

Although this Lease was prepared by Lessor, this Lease shall not be construed for or against Lessor or Lessee, but this Lease shall be interpreted in accordance with the general tenor of the language in an effort to reach the intended result.

ARTICLE 48: TIME

Time is of the essence of this Lease.

ARTICLE 49: COUNTERPARTS

This Lease may be signed in two or more counterpart copies with the same effect as of the signature to each counterparty copy were on a single instrument. Each counterpart shall be deemed original as to any party whose signature it bears and all such counterparts shall constitute one document.

ARTICLE 50: SURVIVAL

All obligations hereunder which have accrued but have not been performed prior to the expiration or sooner termination of this Lease or which by their sense apply to time periods after termination or expiration of this Lease, as well as all indemnities made herein by Lessee, shall survive the termination or expiration of this Lease.

ARTICLE 51: FACSIMILE SIGNATURE AND ELECTRONIC TRANSFER

"Facsimile Signatures," as that term is commonly used with reference to facsimile machines used in transmitting documents, signatures, photocopies, etc., will be and hereby are declared by all parties to this Lease to be

the same as an original signature to this Lease. A facsimile of this Lease, including the signature portion thereof, will be treated and relied upon by all parties hereto as an original Lease and an authentic signature with the same legal effect as though the facsimile were an original document to which a genuine signature has been affixed.

"Electronic Transfer" (e.g.: pdf, tif, etc.) as that term is commonly used with reference electronic scanning and transmission via the internet. Documents, signatures, photocopies, etc. will be and hereby are declared by all parties to this Lease to be the same as an original signature to this Lease. An electronic transfer of this Lease, including the signature portion thereof, will be treated and relied upon by all parties hereto as an original Lease and an authentic signature with the same legal effect as though the electronic were an original document to which a genuine signature has been affixed.

IN WITNESS WHEREOF, the undersigned have caused this Lease to be signed and accepted on the latter of the dates written below.

LESSOR

CAPLACO TWENTY-THREE, INC.
(a Missouri corporation)

By George K Capps
George K. Capps, President

DIERBERGS OAKVILLE PARTNERSHIP, L.P.
(a Missouri limited partnership)

By: DIERBERGS OAKVILLE, INC.
(a Missouri corporation)
as a General Partner of
DIERBERGS OAKVILLE, L.P.

By Robert J Dierberg
Robert J. Dierberg, Chairman

Date 4-22-19

LESSEE

OAKVILLE FITNESS MO, LLC
(a Florida limited liability company)

By [signature]

Print Name G.M. GUARCH

Title MANAGER

Date 4-16-19

Not an Official Court Document

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EXHIBIT A

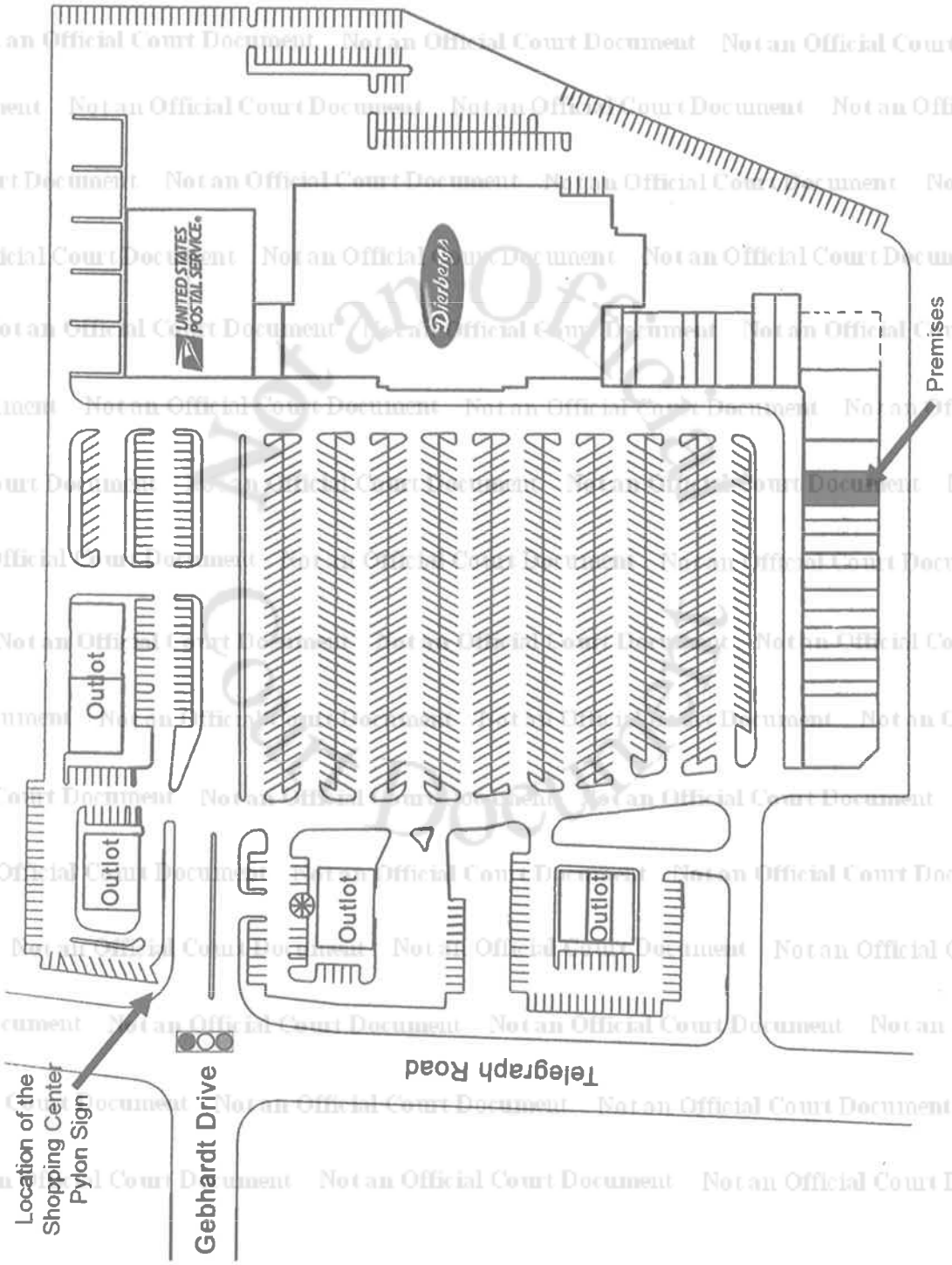

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EXHIBIT B

Exclusives & Prohibited Uses

Commerce Bank

Lessee shall have the exclusive right to operate a retail banking facility within the Shopping Center. See Section 18.17 – exclusive banking rights.

Custom Cuts

Lessor covenants and agrees that during the term of the Lease, Lessor shall not lease space in the Shopping Center (such space being referred to as the "Prospective Hair Facility") to a person or entity who, at the time of its execution of a Lease with Lessor: a) provide hair care services and b) either (I) is owned, operated or controlled (by franchise agreement or otherwise) by a person or entity that owns, operates, or controls (by franchise agreement or otherwise), in addition to the Prospective Hair Facility, more than three (3) other facilities providing hair care services; or (ii) owns, or operates or controls (by franchise agreement or otherwise), in addition to the Prospective Hair Facility, more than three (3) other facilities providing hair care services. For example: Lessor has the right to Lease a space in the Shopping Center to a person or entity who owns three or fewer other locations or other similar agreement.

Dierbergs Market

Landlord covenants and agrees that it will not permit any part of the Shopping Center (except the premises leased hereby to Tenant) shown on Exhibit "A" to be used as a supermarket or as a convenience food store (such as 7-11 or Majik Market), or other store specializing in the sale of packaged milk and/or packaged bread products, or as a meat market or butcher shop, or for a store which devotes over 25% of its floor space to the sale of packaged liquor, or as a theater which is located within six hundred fifty (650) feet of Tenant's store, or as a store where prescription drugs are sold, or as a florist shop, or as a store specializing in the sale of rental of video cassettes.

Landlord shall have no right to lease any portion of the Shopping Center cross-hatched in green on Exhibit A hereto as a restaurant without the prior written consent of Tenant; provided however that the limitations imposed hereby shall not apply to an ice cream shop (such as a Baskin Robbins) not serving sandwiches or meals anywhere in the Shopping Center. Tenant's consent may, among other matters, be based on its determination concerning the impact of any proposed restaurant on the operation of Tenant's business including the number of parking spaces that any proposed restaurant might utilize.

Edward Jones

Provided Lessee shall (i) continuously operate its business in the Demised Premises, (ii) use the Premises solely for the Permitted Use, and (iii) not be in default under this Lease beyond any applicable cure period allowed herein, Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal purpose is investment brokerage , provided however, this exclusive shall not apply to the outlots labeled on Exhibit A as Blockbuster Video, Commerce Bank and Jack in the Box, the premises currently occupied by Dierbergs, the premises currently occupied by the United States Postal Services, tenants under existing leases, their assigns or successors, or the subtenants of such tenants or assigns or successors.

Prohibited Uses

The Lessor shall not lease or sell the adjacent units to the Leased Premises to the following user:

a) Bars, taverns, billiard halls;
b) Pawn shops;
c) Dance studios or Karate studios;
d) Beer or wine-making stores;

e) Adult video/Adult entertainment stores;
f) Off-track betting establishments;
g) Abortion/drug rehabilitation offices/facilities;
h) Alcohol/drug rehabilitation offices/facilities;
i) Psychological counseling offices/facilities;
j) Unemployment or Social Security offices;
k) Liquor stores;
l) Nail Salons; or
m) any other non-professional use similar to those listed above.

Expedia CruiseShip Centers

Provided Lessee shall (i) continuously operate its business in the Premises, (ii) use the Premises solely for the above use, and (iii) not be in default under this Lease beyond any applicable cure period allowed herein, Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal purpose is a travel agency, provided however, this exclusive shall not apply to the premises currently occupied by Dierbergs, tenants under existing leases, their assigns or successors, or the subtenants of such tenants or assigns or successors. However, if an existing tenant requests a change in use that violates this Exclusive Use, Lessor shall reject such change in use by the existing tenant if it has the right to do so.

First Watch

Subject to the rights of tenants under existing leases and renewals thereof, Tenant shall have the right, during the term to be the only restaurant in the Center with table service or a buffet format serving breakfast and/or brunch items (as defined below) during the hours of 7:00 a.m. through 2:30 p.m. For purposes of the foregoing, "breakfast and brunch items" shall be defined as eggs (whether service separately or as a primary ingredient in dishes such as crepes eggs Benedict, skillets and burritos, pancakes of any type, omelettes of any type, and waffles of any type. The foregoing shall not prohibit another restaurant from selling such items as an incidental part of its business at 11:00 a.m. For purposes of the foregoing, the sale of breakfast and brunch items shall be deemed to be an incidental part of a restaurant's business only if such items constitute less than five percent (5%) of such restaurant's menu items and the sale of such items constitutes less than five percent (5%) of such restaurant's gross sales. The foregoing exclusive rights shall not apply to any spaces in the Shopping center consisting of more than 15,000 leasable square feet of space, or to St. Louis Bread Company, Panera, LLC or Panera Bread Company as long as St. Louis Bread Company, Panera, LLC or Panera Bread Company or the successor or assignee of any of them is a tenant in the Shopping Center and occupying the space designated on the Site Plan as "St. Louis Bread Company" or expansion thereof as a St. Louis Bread Company, Panera Bread store or a use substantially similar thereto. In addition, the foregoing exclusive rights shall not apply to any fast food restaurant provided that the fast food restaurant does not have table service or a buffet format. For purposes of the foregoing, a fast food restaurant shall not be deemed to have table service if food orders are taken at the restaurant's order counters, and, as a general practice, filled at the restaurant's order counters but, if one or more food items are temporarily not available to fill a customer's order at the order counters, such food items, when they have been prepared, are delivered to the customer's table by staff whose primary work assignments are behind the order counters.

Great Lengths

Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal permitted use is the retail sale of health and beauty products including cosmetics, skin, hair and nail care products. This exclusive shall not apply to Dierbergs, or any future occupants thereof, Custom Cuts or any future occupants thereof, Queen Nail or any future occupants thereof, or any outlots.

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	Nothing herein shall prohibit Lessor from leasing space in the Shopping Center to a business whose principal purpose is a beauty salon.
H & R Block	Lessee shall have the exclusive right in the Shopping Center to operate a tax return preparation business during its tenancy, provided that this exclusive does not apply to the premises occupied by Dierbergs, Commerce Bank, the Post Office, or any future occupant of any of said premises.
Icing Café	Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal purpose is the sale of fresh baked custom cakes (including birthday cakes, event cakes and wedding cakes) and fresh baked cupcakes, provided however, this exclusive provision shall not apply to tenants under existing leases, or the premises occupied by Dierbergs. For the purposes of this document, principal purpose shall be defined as fifty percent (50%) or more of a tenant's gross sales in any twelve (12) month period.
Jack In The Box	During the term of this Lease and any renewal term hereof, if any, Lessee shall have the exclusive right to operate a fast-food drive-through restaurant in the Shopping Center specializing in the sale of hamburgers; provided, however, that the rights granted pursuant to this Section shall be applicable only to the real estate comprising the Shopping Center, the provisions hereof being inapplicable with respect to any real estate owned by the United States Postal Service and provided further that the existence on the Shopping Center of reciprocal parking rights and ingress and egress rights with an adjacent parcel used as a restaurant shall not be construed to constitute a violation of the foregoing exclusive right.
Marshall Wireless	Provided Lessee shall (i) continuously operate its business in the Premises, (ii) use the Premises solely for the Permitted Use, and (iii) not be in default under this Lease beyond any applicable cure period allowed herein, Lessee shall have the exclusive right on the outlot where the Premises is located to operate a business whose principal purpose is the sale of cellular telephones and accessories, provided however, this exclusive shall not apply to tenants under existing leases, their assigns or successors, or the subtenants of such tenants or assigns or successors, provided the authorized uses under such existing leases and subleases under such existing leases shall not hereafter be expanded by Lessor to allow uses in conflict with the Permitted Use.
Monroe Muffler	Lessee shall have the exclusive right to operate a business whose principal purpose is the sale of tires and auto repair products. Nothing contained herein shall prevent Lessor from leasing to an auto parts store.
Oakville Health & Rehab	principal purpose is that of a physical therapy clinic, provided, however, that this exclusive provision shall not apply to the Dierberg premises, the outlots (or any subtenant, assignee or successor therein) or the Post Office premises.
Pizza Hut	If the leased premises are part of a larger tract of land owned or controlled by Lessor, Lessor agrees that other improvements located thereon will not be leased directly to persons not currently tenants or purposes of operating a restaurant or delivery business engaged in the sale of pizza.
Smoothie King	Provided Lessee shall (i) continuously operate its business in the Premises, (ii) use the Premises solely for the Permitted Use, and (iii) not be in default under the Lease beyond any applicable cure period allowed herein, Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal purpose is smoothie drinks or blended drink products normally found in smoothies, provided however, this exclusive shall not apply to a business whose

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principal purpose is the sale of coffee related beverages (by way of example only, Starbucks or Kaldi's Coffee), the premises currently occupied by Dierbergs, tenants under existing leases, their assigns or successors, or the subtenants of such tenants or assigns or successors.

South Hunan II

Lessee shall have the exclusive right to operate a business whose principal purpose is Oriental cuisine. This exclusive shall not apply to Dierbergs premises and the United States Post Office.

St. Louis Bread

Lessor shall not, during the term of this Lease, directly or indirectly use any portion of the Shopping Center or permit any Lessee, sublessee, assignee or other occupant of any portion of the Shopping Center to use any portion of the Shopping Center other than Lessee for a store or restaurant: (a) which receives more than twenty percent (20%) of its gross sales in any twelve (12) month period from the sale of fresh baked goods prepared on the premises (e.g., breads, muffins, danish and croissants); (b) which received more than twenty percent (20%) of its gross sales in any twelve (12) month period from the sale of coffee, cappuccino and coffee-type beverages sold by the drink; or (c) which receives more than thirty percent (30%) of its gross sales in any twelve (12) month period from: (1.) the sale of fresh baked goods prepared on the premises (e.g., breads, muffins, danish and croissants); and (2.) the sale of coffee, cappuccino and coffee-type beverages sold by the drink. The parties agree that this will not restrict the rights of any existing tenants or Dierbergs or of any future use of the premises in the Shopping Center occupied by Dierbergs or of any additions to the premises in the Shopping Center used by Dierbergs.

St. Louis Tan (Change In Latitude)

During the term of this Lease, Lessee shall have the exclusive right to operate a business in the Shopping Center whose principal purpose is that of a tanning salon, provided, however, that this exclusive shall not apply to the Dierberg Premises or any future occupants or assignees or any of the outlots.

Treats Unleashed

Provided Lessee shall (i) continuously operate its business in the Premises, (ii) use the Premises solely for the Permitted Use, and (iii) not be in default under this Lease beyond any applicable cure period allowed herein, Lessee shall have the exclusive right in the Shopping Center to operate a business whose principal purpose is the sale of pet food and treats, pet supplies and accessories, and pet grooming services, provided however, this exclusive shall not apply to any tenant whose premises is greater than 10,000 sf, the outlots (excluding the outlot containing the Premises), the premises currently occupied by Dierbergs, tenants under existing leases, their assigns or successors, or the subtenants of such tenants or assigns or successors.

Dr. Welker

Lessee shall have the exclusive right to operate a business whose principal purpose is an office which provides general dentistry. This exclusive shall not apply to Dierbergs or United States Post Office premises. It shall not apply to a provider of orthodontics or pedodontistry.

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EXHIBIT C

Identification Sign Criteria

A. **GENERAL REQUIREMENTS**

1. Prior to awarding a contract for fabrication and installation of any signage, Lessee or Lessee's sign company shall submit two copies of detailed drawings showing the size, layout, design, color, section drawing and a color photograph of the store front showing the location of the proposed sign to Lessor for written approval. In addition such drawings shall clearly state, in writing, Lessee's site-verified sign band height at the Premises, Lessee's site-verified span of the building fascia associated with the Premises, the span of the proposed sign stated as a percentage of the building fascia associated with the Premises, maximum height of both upper and lower case letters, and maximum length of ascenders and descenders. In the event that Lessor's approval is granted based on inaccurate data provided by Lessee or Lessee's sign company, then Lessor's approval shall be null and void.

2. All governmental permits and all approvals for signs shall be obtained by the sign company or Lessee. Signs installed without first receiving governmental permits and all approvals shall be promptly removed at the expense of Lessee.

3. All signs shall be constructed, installed, maintained in first class condition and removed by Lessee at Lessee's expense.

4. Lessee's sign must be illuminated between dusk and 10:00 p.m.

5. Lessee shall be responsible for the fulfillment of all requirements of these criteria.

6. Lessee shall be fully responsible for any damage or injury caused by its sign company or contractor. All sign installations must be coordinated with the Lessor prior to its installation by Lessee, by its sign company and contractor.

7. Under no circumstances shall Lessee contract signage without first obtaining written approval from Lessor's authorized representative. Compliance with this Identification Sign Criteria does not constitute Lessor's approval.

8. The sign installation company must be a local Missouri or Illinois company.

B. **STIPULATIONS**

1. All vinyl overlays applied to sign faces shall full digital print on translucent vinyl 3M Premium laminated with UV protectant laminate.

2. No animated, flashing, moving or audible signs or floodlight illumination will be permitted.

3. No exposed bulbs, lamps or exposed luminous tubing (including but not limited to neon, argon, fluorescent, L.E.D.) will be permitted for such identification signage, and no luminous tubing (including but not limited to neon, argon, fluorescent, L.E.D.) or lighting of any kind or shape shall be permitted on the store front interior or exterior unless approved in writing by Lessor.

4. All signs and their installations shall comply with all local building and municipal codes and zoning requirements. In the event that said municipal guidelines and ordinances shall conflict with the criteria set forth herein, the more restrictive guidelines shall dictate. However, in no event shall municipal approval constitute Lessor approval or Lessor approval constitute municipal approval.

5. All transformers, conductors, junction boxes, conduits and other equipment shall be concealed behind sign fascia, out in view by the public and installed on wood blocking or metal bracing. In no event, shall such transformers, conductors and junction boxes be attached to the building

structure (the metal or wood truss system or framing). No raceways allowed, except where specified by Lessor. In certain installations where the back of the sign parapet wall is exposed to the weather (in Lessor's sole judgment), the sign transformers, conduits and penetrations, etc. are required to be concealed in an aluminum cabinet painted to match the attached wall and sealed with EPDM or compatible products as specified by Lessor.

6. No signs shall exceed the maximum brightness of two hundred foot (200') Lamberts.

7. Painted lettering or painted sign face will not be permitted. The finish on all backs and sides of signs shall be a baked enamel exterior finish or porcelain. Color faded sign faces are not permitted (vinyl, plexiglass, acrylic) and shall be replaced or repaired by Lessee at Lessee's expense. Lessor shall determine if such sign faces are faded and need to be replaced or repaired. All signs shall be maintained in first class condition.

8. All caulk applied to EIFS and masonry penetrations is to be "One-Part Nonsag Urethane Sealant for Use on Non-Traffic Surfaces"; type S (single component), NS (Non-sag for vertical surfaces). All caulk for MDO penetrations is to be painter's acrylic latex, except where specified.

9. Holes in the sign fascia for letter installation should be a maximum of 1 ¼" in diameter. In no event shall any hole be drilled into structural wood or metal framing behind the sign fascia. When required, wood blocking or metal bracing should be added by Lessee's sign company for sign installation. All sign fasteners (i.e. angle bracket) shall be concealed within the sign and not visible.

10. After erecting the sign, clean all dirty finger and hand marks around and on the canopy hatch and sign fascia.

11. All attaching bolts shall be of non-corrosive metal. All penetrations and the top of each letter where it meets the sign fascia must be sealed or caulked with appropriate caulk specified herein to prevent the weather from entering inside the sign fascia. Any sign fascia damage during the term of the Lease caused by the sign installation shall be repaired by Lessee at Lessee's expense or repaired by Lessor at Lessee's expense.

12. All signs shall be fabricated and installed in compliance with all building and electrical codes and bear a U.L. label.

13. Within five (5) days of the expiration or sooner termination of the Lease, Lessee agrees to remove all Lessee's signs and to repair all holes in fascia and any damage caused by said removal in the following manner:

    a. MDO Sign Fascia – repair with an exterior wood non-shrink spackling product and paint sign fascia the width of the Premises to match the color of the sign fascia. Do not use caulk.

    b. Masonry Sign Fascia – repair with masonry mortar to match the masonry sign fascia.

    c. EIFS Sign Fascia – repair with a qualified EIFS professional using industry acceptable products and paint fascia the width of the Premises to match the EIFS fascia.

In certain installations where the back of the sign parapet is EPDM, repair with EPDM products. Any signs not removed within said five (5) day period shall be deemed abandoned by Lessee and become the property of the Lessor. Lessee shall nevertheless be liable to Lessor for the cost of sign removal and any repair costs resulting therefrom.

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C. **DESIGN REQUIREMENTS**

1. Each Lessee's store front identification sign, in Lessor's sole judgment, shall be designed to be compatible in character and scale with the overall store front concept and shall be centered on the sign fascia.

2. (i) The top of each letter or logo on the building sign fascia must be minimum of 3" below: a) the bottom of the top wood trim on the building sign fascia, or b) the bottom of the gutter, whichever is lowest.

   (ii) The bottom of each letter or logo must be a minimum of 3" above: a) the top of the bottom wood trim on the building sign fascia or b) the bottom of the sign fascia, whichever is higher.

   (iii) The width of the entire store identification sign cannot exceed 80% of the store frontage.

3. The square footage, height and width of the sign will be in compliance with all local building and municipal codes and zoning requirements, provided however, Lessor shall have the right to a final approval of such dimensions.

4. Signs shall be composed of individual illuminated letters. Sign boxes, cabinets, wireways and raceways will not be permitted, except where specified by Lessor.

5. Letters are to be channel type with 3/16" plexiglass (acrylic) faces lighted behind with luminous tubing (neon, argon or L.E.D.). Letters to have one (1) inch jewelite trim (or equivalent), 040" aluminum returns and .063" aluminum backs or .090" aluminum backs for letters three feet (3') or larger, metal-ply is not acceptable. Minimum return depth is to be 5" for even dispersion of the illumination.

6. Any module, logo, or other variation, in conjunction with individual channel type signage, will be reviewed on an individual basis and in Lessor's sole discretion may or may not be approved.

7. The name and/or stamp of neither the sign contractor nor sign company shall be exposed to view.

D. **BRICK INSTALLATION**

Lessor, in its sole discretion, shall decide the type of sign installation method to be used for Lessee's sign (individual letters, wireway, raceway, module).

In addition to the requirements and stipulations herein, the following shall be required for brick installations:

Individual letters, wireways, raceways or modules applied directly to the face of the masonry wall surface are to be mounted with a 3/16" diameter Tapcon brand concrete screw pre-drilled through the back of the sign directly into a mortar joint. The sign can be spaced off the surface with a spacer or applied directly to the wall. Great care must be taken to locate the fastener in the head or bed mortar joints and not into the brick itself. Each letter should have three (3) to four (4) fasteners minimum and more if the letter still shows the ability to twist on the wall, each raceway, wireway or module should have adequate fasteners for its size.

E. **EIFS INSTALLATION**

Lessor, in its sole discretion, shall decide the type of sign installation method to be used for Lessee's sign (individual letters, wireway, raceway, module).

In addition to the requirements and stipulations herein, please see the attached "EIFS Mounting Instructions" for EIFS installations.

Any deviations from this sign criteria are strictly subject to prior written approval by the Lessor.

EXHIBIT C-1

SOUTH ELEVATION

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EXHIBIT C-2

NORTH ELEVATION

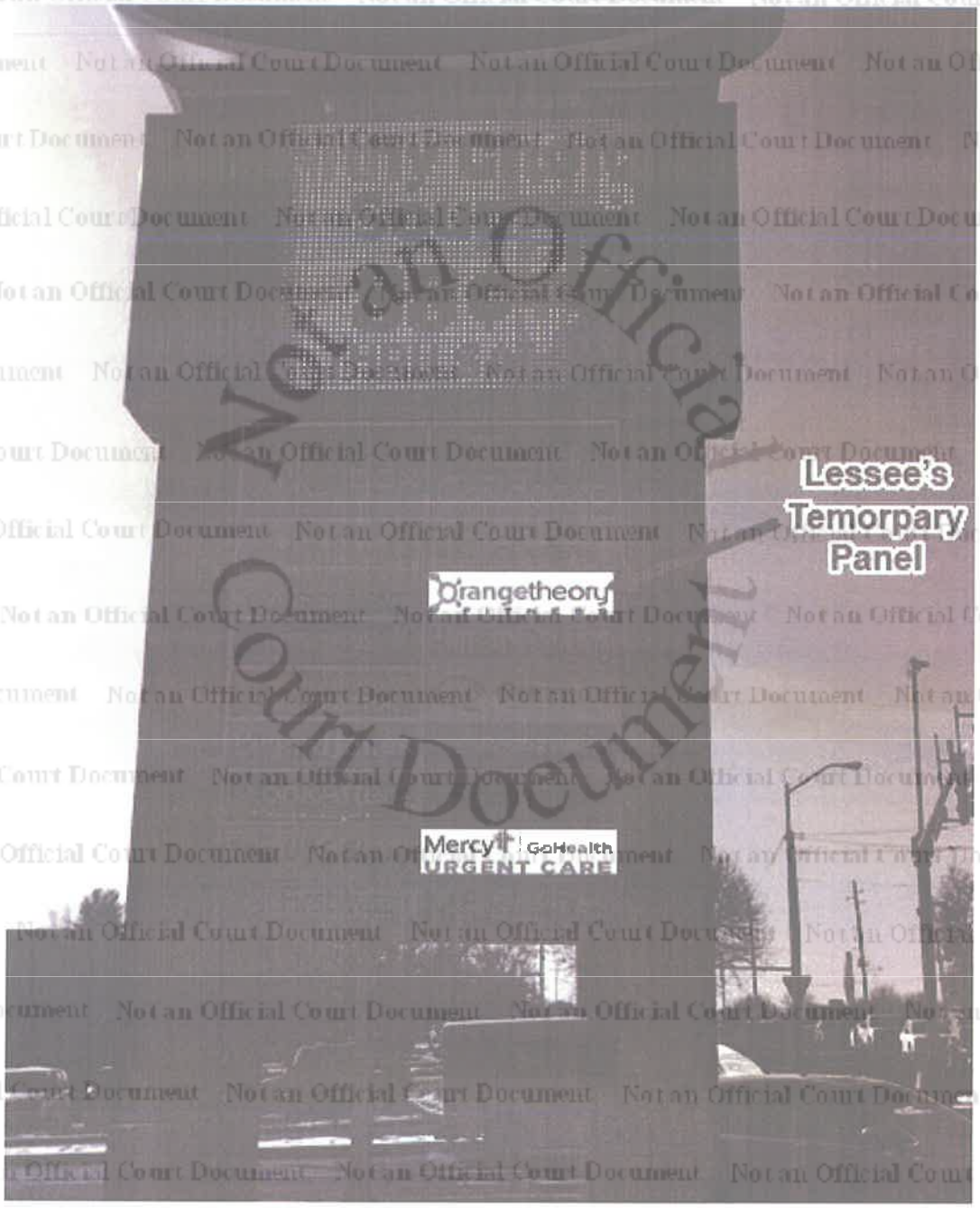

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EXHIBIT D

FULL AND FINAL
UNCONDITIONAL WAIVER OF LIEN
LABOR AND MATERIALS

State of _____)
) §
City of _____)

_____
DATE

To All Whom It May Concern:

WHEREAS, the undersigned has been employed by _____

to furnish _____

for the premises with an address of _____

NOW, THEREFORE, the undersigned for and in consideration of the sum of _____ _____ _____Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien, and claim or right to lien, on said above described building and real estate under the Statutes of the state where the premises is located, relating to Mechanics' Liens, on account of labor or materials, or both, heretofore furnished by the undersigned for said building and real estate.

Given under our hands this _____ day of _____

Witness:
Signature: _____
Print Name: _____

Company Name: _____
Signature: _____
Print Name: _____
Title: _____