

## **COVER PAGE**

### **Single Tenant Lease Template**

Taken from  
Foxtail Store 1014; portions are added from:  
Steak N Shake Operations, Inc.;  
Del Taco  
And  
Kyoto Japanese Sushi & Grill

NOTE: THIS LEASE IS USED FOR THE LEASE OF A SINGLE TENANT BUILDING ONLY. THE TENANT DOES NOT LEASE THE UNDERLYING LAND. LANDLORD MAINTAINS AND HAS CONTROL OVER THE PARKING FIELD AND OTHER IMPROVEMENTS EXTERIOR TO THE BUILDING. LANDLORD HOLDS CASUALTY INSURANCE ON THE BUILDING.]

**SINGLE TENANT**  
**TABLE OF CONTENTS**

**ARTICLES**

ARTICLE 1 TERM  
ARTICLE 2 BASE RENT; PERCENTAGE RENT; SECURITY DEPOSIT  
ARTICLE 3 ADDITIONAL RENT  
ARTICLE 4 DELIVERY  
ARTICLE 5 QUIET ENJOYMENT  
ARTICLE 6 USE  
ARTICLE 7 HAZARDOUS MATERIALS  
ARTICLE 8 ASSIGNMENT/SUBLETTING  
ARTICLE 9 CONDITION/ALTERATIONS  
ARTICLE 10 COMPLIANCE WITH LAWS  
ARTICLE 11 AD VALOREM AND PROPERTY TAXES  
ARTICLE 12 SUBORDINATION  
ARTICLE 13A. REPAIRS BY LANDLORD  
ARTICLE 13B. REPAIRS BY TENANT  
ARTICLE 14 DAMAGE OF PREMISES  
ARTICLE 15 LESSOR NOT LIABLE FOR CERTAIN DAMAGE  
ARTICLE 16 BANKRUPTCY OF TENANT  
ARTICLE 17 TENANT'S PROPERTY AND CASUALTY INSURANCE  
ARTICLE 18 LANDLORD'S CASUALTY INSURANCE  
ARTICLE 19 OTHER INSURANCE  
ARTICLE 20 INDEMNIFICATION  
ARTICLE 21 UTILITIES  
ARTICLE 22 MECHANICS LIENS  
ARTICLE 23 CONDEMNATION  
ARTICLE 24 RIGHT OF ENTRY  
ARTICLE 25 DEFAULT; REMEDIES  
ARTICLE 26 HOLDING OVER  
ARTICLE 27 TIME OF ESSENCE  
ARTICLE 28 INUREMENT  
ARTICLE 29 NOTICE  
ARTICLE 30 NO WAIVER  
ARTICLE 31 CONDITION OF PREMISES  
ARTICLE 32 EXPENSES  
ARTICLE 33 LANDLORD'S LIEN AND SECURITY INTEREST  
ARTICLE 34 SIGNS  
ARTICLE 35 BROKERS  
ARTICLE 36 ENTIRE AGREEMENT  
ARTICLE 37 APPLICABLE LAW/VENUE  
ARTICLE 38 COUNTERPART EXECUTION  
ARTICLE 39 CAPTIONS  
ARTICLE 40 RADON GAS  
ARTICLE 41 ESTOPPEL CERTIFICATES  
ARTICLE 42 EXCULPATION  
ARTICLE 43 GUARANTY  
ARTICLE 44 CONFIDENTIALITY  
ARTICLE 45 RADIUS RESTRICTIONS  
ARTICLE 46 EXISTING TENANT

**EXHIBITS**

"A" LEGAL DESCRIPTION  
"B" LANDLORD'S WORK AND TENANT'S WORK  
"B-1" LANDLORD'S WORK AND TENANT'S WORK-EXPENSE  
"C" FORM OF GUARANTY  
"D" SECURITY INTERESTS IN TENANT'S PROPERTY  
"E" ACH AUTHORIZATION FORM

## **SINGLE TENANT LEASE AGREEMENT**

### **Lease Summary**

- A. Date of this Lease: \_\_\_\_\_, 201
- B. Landlord:
- C. Landlord's Address: 1350 Orange Avenue, Ste. 100, Winter Park, Florida 32789
- D. Tenant:
- E. Tenant's Address:
- F. Premises: The Building and Improvements more particularly defined below.
- G. Base Rent:
- |               |                  |
|---------------|------------------|
| Lease Year(s) | \$ per year, NNN |
| Lease Year(s) | \$ per year, NNN |
| Lease Year(s) | \$ per year, NNN |
| Lease Year(s) | \$ per year, NNN |
- Tenant is also obligated to pay Taxes, Insurance and Maintenance Charges as more particularly set forth in the Lease.
- H. Security Deposit: \$
- I. Lease Term: \_\_\_ Years commencing upon the Rent Commencement Date, provided that if the Rent Commencement Date shall occur on a day other than the first day of a calendar month, then the Term shall expire \_\_\_ Years after the first day of the first calendar month following the Rent Commencement Date.
- J. Rent Commencement: Upon the first to occur of (i) Tenant opening for business in the Premises, or (ii) days after Landlord's completion of Landlord's Work.
- K. Expiration Date: On the last day of the month,
- L. Permitted Use of Premises:
- M. Percentage Rent: Percentage Rent shall be assessed at the rate of % on gross sales over a natural breakpoint.
- N. Renewal Terms:

O. Brokers:

**THIS LEASE SUMMARY** is incorporated into and forms a part of the Lease Agreement to which it is attached.

**THIS SINGLE TENANT LEASE AGREEMENT** dated the day of (month) 201 , is made and executed by and between (**LANDLORD**), whose address is 1350 Orange Avenue, Suite 100, Winter Park, Florida 32789, hereinafter called Landlord, and (**TENANT**), whose address is, hereinafter called Tenant.

(Whenever used herein the terms "Landlord" and "Tenant" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations. Capitalized terms not defined in this Lease Agreement shall have the meanings given them in the Lease Summary.)

**WITNESSETH:**

For and in consideration of the sums to be paid as rent in the manner herein provided, and the Tenant's agreement to faithfully keep and perform the agreements, promises, covenants and conditions hereinafter stipulated, the Landlord has and does by these presents lease, let and demise unto the Tenant the building (the "**Building**") constructed on the land legally described in **Exhibit A** "(the "**Land**"), subject to any declarations, restrictive covenants, or reciprocal easements to which Landlord may, now or hereafter, subject the Land or the Building (collectively, the "**Declaration**") and the building constructed on the Land (the "**Building**"), and all other improvements located in the Building and owned by the Seller including without limitation parking areas, driveways, sidewalks, lighting, landscaped and sodded areas, utility and drainage facilities, equipment, personal property, and fixtures (collectively, the "**Improvements**") (collectively, the Building and Improvements are herein the "**Premises**"). Herein, the Premises and the Land are collectively the ("**Property**"). In furtherance of the foregoing, notwithstanding anything herein to the contrary, Landlord hereby reserves the right to subject the Property to any Declaration which is not inconsistent with the rights and privileges granted to Tenant hereunder; Tenant hereby acknowledges such reservation and agrees that this Lease and all of Tenant's rights hereunder shall at all times be subject and subordinate to the provisions of any Declaration; and Tenant hereby agrees to execute, acknowledge and deliver any such document and to take any such actions as Landlord may reasonably request in order for any such Declaration to take and remain in effect, to be amended or modified, or for Landlord to take any other action with regard thereto, and for any such Declaration, amendment, modification or other document to be recorded in the public records of Orange County, Florida; provided, however, the need for Tenant's consent or approval to any such Declaration, amendment, modification or any other action with regard thereto shall not be deemed necessary as a result of this Section. If Tenant shall fail to deliver any such document within fifteen (15) days after Landlord's written request therefor, Landlord shall be entitled as Tenant's special attorney-in-fact to execute and deliver any such document on behalf and in the name of Tenant. The aforesaid power of attorney is given as security, is coupled with an interest and is irrevocable.

**1. Term.**

- a. Initial Term. The initial term of this Lease (the "**Initial Term**") shall begin on the date that is    days after the execution of this Agreement (the "**Commencement Date**") and continue for a term of    months from and including the Commencement Date or, if the Commencement Date is on a date other than the first day of a calendar month, then from and including the first day of the calendar month following the Commencement Date.

As used in this Lease, the term “**Lease Year**” shall mean each successive twelve (12) calendar months during the Term, beginning on the Commencement Date; provided, however, if the Commencement Date does not occur on the first day of a month, the first Lease Year shall be the period of time from the Commencement Date to the last day of the twelfth full calendar month following the month in which the Commencement Date shall have occurred, and each subsequent Lease Year shall be a consecutive twelve (12) month period.

b. Renewal Term. So long as Tenant is not in default under this Lease at the time of exercise, or at the time the respective renewal option is to commence, and Tenant is operating the Premises under the Trade Name (defined below) for the Permitted Use (defined below), Landlord hereby grants to Tenant two (2) consecutive options to renew the term of this Lease, for a period of five (5) years each, upon the terms and conditions contained in this Lease (each, a “Renewal Option”). To exercise a Renewal Option, Tenant must give written notice to that effect to Landlord at least One Hundred Eighty (180) days prior to the expiration of the then current term, time being of the essence. The Initial Term and each Renewal Option exercised hereunder are collectively referred to herein as the “Term”.

**2. Base Rent; Percentage Rent; Security Deposit.**

a. Base Rent. Tenant agrees to pay to Landlord the total “Base Rent” for the Term of this Lease, plus all applicable taxes thereon, in the amount set forth below to **941 W. Morse Blvd, Suite 315, Winter Park, FL 32789**, or elsewhere as designated from time to time by Landlord’s written notice to Tenant. Landlord, upon execution of this Lease acknowledges payment (subject to collection of any check) to Landlord of the sum of: **Dollars (\$)**, made payable to Landlord, which includes any applicable taxes, representing payment of Base Rent and Tenant’s proportionate share of Real Estate Taxes, Insurance Expenses and Maintenance Charges for the first full calendar month of this Lease. The balance of the annual Base Rent is payable in equal monthly installments, payable without demand, plus all applicable taxes, as specified above on the first day of each and every calendar month hereafter ensuing, the first of which shall be due and payable on the Commencement Date. If Tenant’s occupancy of the Premises commences on any day prior to the Commencement Date, Tenant shall pay Landlord Rent as provided for herein for such early occupancy on a pro-rata basis (such pro-ration to be based on the actual number of days in the early occupancy month), and the first month’s Base Rent paid by Tenant, if any, upon execution of this Lease shall apply and be credited to the Rent due for the first of the month of the Term. Rent for any partial month of occupancy at the end of the term of this Lease will be pro-rated, such pro-ration to be based on the actual number of days in the partial month.

The Base Rent Rate and monthly installments of Base Rent for the Initial Term shall be as follows:

<b>Lease Period</b>	<b>Monthly Base Rent</b>	<b>Annual Base Rent</b>
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The Term “**Rent**” herein means all Base Rent, Percentage Rent (defined below), Additional Rent (defined below) and any other costs and charges due from Tenant to Landlord as set forth in this Lease.

Tenant is required to make payments of Rent and all other payments to Landlord required by the Lease via Automated Clearing House Transfer (“ACH Payment”); in accordance with the terms and conditions of this Paragraph. Tenant shall, within fifteen (15) days of the date of this Lease, execute and deliver to Landlord a complete Authorization Agreement in the form set forth in Exhibit “E” attached hereto or on such other form as shall be reasonably requested by Landlord, together with a voided check for account verification, establishing arrangements whereby payments of the Rent and other funds are transferred by ACH Payment initiated by Landlord from an account established by Tenant at a financial institution approved by Landlord. Thereafter, Tenant shall continue to pay all rental and other obligations by ACH Payment initiated by Landlord unless otherwise directed by Landlord. Any denial or delay of a scheduled ACH Payment resulting from insufficient funds in the account Tenant designates for the ACH debit or any other delay resulting from Tenant’s actions, subject to any cure period prescribed under this Lease, shall immediately and automatically be, a default of the Lease.

b. Percentage Rent.

In addition to the Base Rent, Tenant shall also pay to Landlord each year percentage rent in an amount equal to the amount of five percent (5%) of all Gross Sales (defined below) over the Percentage Break Point (the “**Percentage Rent**”). “**Percentage Break Point**” shall be, for each Lease Year, One Million and 00/100 Dollars (\$1,000,000.00). The percentage rent shall be paid on or before January 10 following each calendar year in which the Gross Sales made in or from the Premises exceeds the Breakpoint. In no event shall the Rent to be paid by Tenant and retained by Landlord for any calendar year be less than the Base Rent specified in this lease.

If this lease should commence on a date other than the first day of a calendar year or terminate on a date other than the last day of a calendar year, the Breakpoint shall be calculated by reference to the aggregate minimum guaranteed rent payable during such fractional part of the calendar year following the Rent Commencement Date or preceding the termination date as the case may be, and the amount of gross sales used to calculate percentage rent shall be the total gross sales made in or from the Premises during such fractional calendar year. Upon the termination of this lease, Tenant shall make a payment of percentage rent for the final fractional calendar year within ten (10) days after the termination of this Lease. The provisions of this Section shall survive the expiration or termination of this Lease.

Tenant shall deliver to Landlord, and/or any party designated by Landlord, not later than the fifteenth (15<sup>th</sup>) day after the end of each calendar month of the Term, a complete and accurate copy of the State of Florida, Department of Revenue, Sales and Use Tax Return form,

showing the full amount of Tenant's gross receipts from the Premises made during the previous calendar month. If Tenant shall fail to deliver any such requested financial statements within thirty (30) days of Landlord's request therefor, in addition to any other rights or remedies Landlord may have, upon fifteen (15) days' notice to Tenant, Landlord may impose on Tenant a fine in the amount of not more than One Hundred and 00/100 Dollars (\$100) for Tenant's failure to timely deliver any such financial statements, which fine shall be paid upon demand as Additional Rent.

Tenant shall deliver to Landlord, not later than thirty (30) days after the end of each Lease Year and after the expiration or termination of this Lease, a complete and accurate copy of the State of Florida, Department of Revenue, Sales and Use Tax Return form, showing the full amount of Gross Sales made from the Premises during such Lease Year. If Tenant shall fail to deliver any such requested financial statements within thirty (30) days of Landlord's request therefor, in addition to any other rights or remedies Landlord may have, upon fifteen (15) days' notice to Tenant, Landlord may impose on Tenant a fine in the amount of not more than One Thousand and 00/100 Dollars (\$1,000) for Tenant's failure to timely deliver any such financial statements, which fine shall be paid upon demand as Additional Rent.

Tenant acknowledges that Landlord's obtaining a fair and equitable rental is dependent upon Tenant operating its business at the Premises. If Tenant ceases to operate its business in the Premises under the Trade Name during the Standard Operating Days and Hours and no such failure to operate is otherwise permitted herein, then Tenant (in addition to any other rights or remedies Landlord may have) shall pay to Landlord, monthly, Percentage Rent equal to the highest Percentage Rent paid by Tenant hereunder.

The term "**Gross Sales**" as used herein shall mean the actual sales prices of and/or the fair market value of any other consideration received for all goods, wares and merchandise sold or leased (including gift and merchandise certificates, catalog sales or internet sales made in, at or from the Premises) and all services performed by Tenant or by any subtenant, licensee or concessionaire in, at, or from the Premises whether paid by cash, check, credit, barter, layaway or otherwise, without reserve or deduction for inability or failure to collect, including, but not limited to, such sales and services (1) where the orders therefor originate in, at or from the Premises, whether or not delivery or performance is made from the Premises or from some other place, (2) sold pursuant to mail, telephone, telegraph, internet and/or other devices, automated or otherwise, whereby orders are received at, or picked up or distributed from the Premises, whether or not the same are paid for at the Premises, (3) as a result of transactions originating in, at or from the Premises, and (4) which Tenant or any subtenant, licensee or concessionaire in the normal and customary course of its business would credit or attribute to its operations at the Premises or any part thereof. Gross Sales shall also include all deposits not refunded to purchasers. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale shall be made, irrespective of the time when Tenant shall receive payment therefor. The following shall not be included in Gross Sales:

- (i) any exchange of merchandise between stores of Tenant where such exchange is made solely for the convenient operation of Tenant's business and not for

the purpose of consummating a sale made in, at or from the Premises;

(ii) cash or credit refunds to customers on transactions otherwise included in Gross Sales;

(iii) sales of fixtures, machinery and equipment after use thereof in the conduct of Tenant's business in the Premises; and

(iv) amounts collected and paid out by Tenant for any sales tax imposed by any duly constituted governmental authority, provided such tax is both added to the selling price as a separate and distinct amount in addition to the regular price of Tenant's merchandise and paid to the taxing authority by Tenant (but not by any vendor of Tenant). No franchise or capital stock tax and no income, gross receipts or similar tax based upon income, profits or gross receipts as such shall be deducted from Gross Sales.

(v) gratuity/tips collected.

Tenant shall keep at the Premises, a permanent, accurate set of books and records of all Gross Sales and all revenue derived from the business conducted on or in connection with the Premises during the Term. All such records shall be open to inspection and audit of Landlord and its agents during such fifteen (15) month period at all reasonable times during ordinary business hours. In the event there is a dispute as to the amount of Tenant's Gross Sales, then such records shall be kept by Tenant until the dispute is settled.

Landlord shall have the right to make a special audit, by auditors selected by Landlord, of the books and records hereinbefore required to be made and preserved by Tenant. If such audit shall show a deficiency in the Percentage Rent paid or to be paid at any time during the Term, the amount thereof shall be paid within thirty (30) days by Tenant together with interest on the amount of the deficiency at the rate of the lesser of eighteen percent (18%) per annum or the highest rate allowable by law (the "Interest Rate"), and if such audit shall show the Percentage Rent to have been overpaid, then the excess shall be refunded to Tenant. If such audit shall show that the deficiency in this Percentage Rent paid for the period covered is more than three percent (3%) of the total amount payable, then Tenant shall pay all costs for such audit.

c. Security Deposit.

Tenant, contemporaneously with the execution of this Lease, has deposited with Landlord **Dollars (\$)** (the "**Security Deposit**") as security for the full and faithful performance by Tenant of all the terms, covenants and conditions of this Lease upon Tenant's part to be performed. The Security Deposit, to the extent all or any portion thereof is remaining upon the expiration of this Lease, shall be returned to Tenant after the time fixed as the expiration of the Term, provided Tenant has fully and faithfully carried out all of the terms, covenants and conditions on Tenant's part to be performed hereunder, including, without limitation, those relating to the condition in which the Premises are to be surrendered hereunder. Landlord shall have the right, but not the obligation, to apply any

part of the Security Deposit to cure any default of Tenant; and, if Landlord does so, Tenant shall, upon demand, deposit with Landlord the amount so applied so that Landlord shall have the full Security Deposit on hand at all times during the Term. Tenant's failure to pay to Landlord a sufficient amount to restore the Security Deposit to the original sum deposited within ten (10) days after receipt of demand therefor shall constitute a default hereunder. No interest shall be paid by Landlord to Tenant on the Security Deposit. In the absence of evidence satisfactory to Landlord of any assignment by Tenant of the right to receive the Security Deposit, or the remaining balance thereof, Landlord may return the Security Deposit to the original Tenant regardless of one or more assignments of this Lease.

In the event of a sale or other transfer of Landlord's interest in the Premises, Landlord shall have the right to transfer the Security Deposit to the transferee. No holder of a mortgage to which the Premises or any part thereof is subject shall be responsible in connection with the Security Deposit, by way of credit or payment of any rentals or otherwise, unless such mortgagee shall have actually received the Security Deposit.

The Security Deposit may be commingled with other funds of Landlord. It is expressly understood that the reentering of the Premises by Landlord for any default on the part of Tenant prior to the expiration of the Term shall not be deemed a termination of this Lease entitling Tenant to recover the Security Deposit.

### **3. Additional Rent.**

a. Insurance and Real Estate Tax and Maintenance Charges. Tenant shall pay Landlord as Additional Rent, an amount equal to all of the total of the (i) Insurance Expenses (as hereinafter defined) incurred by Landlord for or during each calendar year during the Term of this Lease; (ii) the total Real Estate Taxes (as hereinafter defined) incurred by Landlord for or during each calendar year for each calendar year during the Term; (iii) the total of all Maintenance Charges (as hereinafter defined) with respect to the Premises. "**Insurance Expenses**" means in each calendar year, for the Premises, all costs, charges and expenses payable by Landlord which are attributable to the any insurance policies held by Landlord with respect to the Premises, including but not limited to any hazard or general liability policy with respect to the Premises. "**Real Estate Taxes**" means, in each calendar year, for the Premises: (i) all general and special taxes, assessments, duties and levies, if any, actually paid (adjusted after protest or litigation, if any) for any part of the term of this Lease, including any renewal term, exclusive of penalties, (ii) any taxes which shall be levied on the rentals of the Building in lieu of or in addition to any such Real Estate Taxes in whole or in part; (iii) the reasonable expenses of contesting the amount or validity of any such taxes, charges or assessments, such expenses to be applicable to the period of the item contested. "**Maintenance Charges**" means, the costs of operation, repair, replacement, security, maintenance and management of the Property, whether located in or outside of the Property and shall include Landlord's costs and expenses incurred in connection with the following by way of example and illustration but not limitation: (i) all of Landlord's expenses in maintenance of the Property, whether located within or outside of, the Property; (ii) all costs of maintenance, cleaning, inspection, landscaping, parking lot cleaning or lighting, repair, replacement, or maintenance; (iii) costs

in erecting, maintaining, repairing and replacing pylon and/or monument signs identifying the Building (iv) salaries, wages and other amounts paid or payable for all personnel involved in the repair, maintenance, administration, operation, security, gardening, landscaping, supervision, painting or cleaning of the Property, said costs shall also include such fees as may be paid in connection with same, such as management fees; (v) auditing and accounting fees and costs; (vi) any parking charges, utilities surcharges, or any other costs levied, assessed or imposed by, or at the direction of, or resulting from statutes or regulations, or interpretations thereof, promulgated by a governmental authority in connection with the use or occupancy of the Property or the parking facilities serving the Property; (vii) any fees assessed by a property owners' association; (viii) an administrative fee of \_\_\_\_% of Maintenance Charges for the Property; (ix) a management fee paid to a third party management company; and (x) any and all expenses Landlord incurs as the owner of the Property under any Declaration.

b. Payment of Estimated Insurance and Real Estate Tax. In order to provide for current payments on account of Insurance Expenses, Real Estate Taxes, Maintenance Charges or any other expenses payable by Tenant pursuant to this Paragraph 3, Tenant shall, at Landlord's request, pay as Additional Rent, an amount equal to such expenses due for the ensuing 12 months, as estimated by Landlord from time to time, in 12 equal monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount. If the Commencement Date shall be other than the first day of a calendar year or the last day of the Term (the "**Termination Date**") shall be other than the last day of a calendar year, all Insurance Expenses, Real Estate Taxes, Maintenance Charges and other expenses payable under this Paragraph 3 that are applicable to such year in which the Commencement Date or the Termination Date shall occur shall be prorated on the basis of the number of calendar days within such year as are within the Term of this Lease including any Renewal Term. If a credit is due from Landlord on the Termination Date, Tenant shall be entitled to receive the amount of the credit in the form of payment from Landlord, provided, however, that Landlord may, in lieu of such payment, apply the credit against any Base Rent which is due but not paid on said date. No interest or penalties shall accrue on any amounts which Landlord is obliged to credit or pay to Tenant by reason of this Paragraph. The obligations of Tenant and Landlord to make payments or credits required by this Paragraph shall survive the Termination Date. Each statement given by Landlord pursuant to this Paragraph 3 shall be conclusive and binding upon Tenant unless within 30 days after the receipt of such statement Tenant shall notify Landlord that it disputes the correctness of the statement, specifying the particular respects in which it is claimed to be incorrect. Notwithstanding such dispute, Tenant shall nevertheless pay Additional Rent in accordance with such statement and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor, Landlord shall forthwith credit Tenant the amount of Tenant's overpayment of Additional Rent resulting from compliance with Landlord's statement.

c. Tenant's Equipment Costs. Tenant shall pay for all costs, including reasonable financing costs (actual or imputed), of any equipment, device or capital improvement installed at Tenant's request after the Commencement Date and that primarily

benefits Tenant.

d. Late Charges and Fees. Any Rent payment made more than seven (7) days after due date shall be accompanied by a late charge equal to five percent (5%) of the amount due ("Late Charge"). It is agreed that the Late Charge is a fair and reasonable charge under the circumstances and shall not be construed as interest. In the event any charge imposed hereunder or under any other provision of this Lease is either stated to be construed as interest, then no such interest charge shall be calculated at a rate which is higher than the maximum rate which is allowed under the usury laws of the State of Florida, which maximum rate of interest shall be substituted for the rate in excess thereof, if any, computed pursuant to this Lease. Tenant will also pay to Landlord, on demand, interest at the highest rate permitted by applicable law, on all monthly installments of Rent more than thirty (30) days delinquent, in each case from the date due until paid in full. The provisions herein for a Late Charge and interest shall not be construed to extend the date for payment of any sums required to be paid by Tenant hereunder or to relieve Tenant of its obligation to pay all such sums at the time or times herein stipulated. Notwithstanding the imposition of such Late Charge and interest pursuant to this Paragraph, Tenant shall be in default under this Lease if any and all payments required to be made by Tenant are not made at the time herein stipulated, and neither the demand for nor collection by Landlord of such Late Charge and/or interest shall be construed as a cure for such default on the part of Tenant. If any check delivered by Tenant is dishonored by Tenant's bank, the amount due shall be automatically deemed a late payment and treated accordingly as set forth herein. In addition thereto, for each dishonored check Tenant shall pay to Landlord a service charge covering administrative expenses as provided in Section 68.065(3), Florida Statutes, as same may be amended from time to time. If during the Term of this Lease more than two (2) of Tenant's checks are dishonored, then Landlord, in Landlord's sole discretion, may require all future Rent of Tenant to be paid by cashier's check or money order only. Tenant shall also pay to Landlord any applicable sales or use tax on the charges levied under this Paragraph. No right contained in this Paragraph shall be construed as a waiver of Landlord's rights in the event of default, as otherwise provided in this Lease.

#### 4. Delivery.

Except for the work to be performed by Landlord as specifically set forth in **Exhibit B** attached hereto and incorporated herein ("Landlord's Work"), Landlord shall deliver the Premises to Tenant in its "as is, where is" condition. The latter of (i) or (ii) the date on which Landlord tenders delivery of the Premises to Tenant with Landlord's Work substantially complete is the "**Delivery Date**". Tenant taking possession of the Premises for any purpose whatsoever shall be conclusive evidence against Tenant that the Premises and Landlord's Work are in satisfactory condition and acceptable to Tenant. Any work (other than Landlord's Work) which is done by Landlord at the Premises at Tenant's request shall be at Tenant's expense and shall be paid for by Tenant in such manner as Landlord may reasonably require (including prepayment).

#### 5. Quiet Enjoyment.

The Landlord covenants that the Tenant is entitled to the quiet and peaceful

enjoyment and use of the Premises during the Term, so long as the Tenant shall faithfully keep and perform all covenants, promises and agreements of this Lease.

## **6. Use.**

a. **Use Generally.** The above Premises are leased to the Tenant solely for use as an establishment selling at retail (i) [fill in as applicable], (ii) for on-premises consumption only; [fill in as applicable] and (iii) [fill in as applicable] (the "Permitted Use") under the trade name "—" (the "Trade Name"). No other use of the Premises may be made without the prior written consent of the Landlord. Tenant shall continuously operate its business under the Trade Name for the Permitted Use in the entire Building during the Term and shall conduct its business at all times in a high class and reputable manner, maintaining at all times, a full staff of employees. Tenant shall keep its business open to the public at least during the hours of 8:00 am and 6:00 pm on Monday through Sunday (collectively, the "**Standard Operating Days and Hours**"). Notwithstanding the above, Tenant may, in its sole discretion, close its business on holidays. In no event shall Tenant conduct or advertise any auction, fire, going out of business or bankruptcy sale in, on or about the Premises without Landlord's prior written consent in each instance, which consent may be withheld by Landlord in its sole and absolute discretion. Tenant shall conduct its business on the Premises in a lawful manner. If any governmental license(s) or permit(s) shall be required for the proper and lawful conduct of Tenant's business or other activity carried on in the Premises, or if a failure to procure such a license or permit might or would in any way, adversely affect Landlord or the Premises, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such license(s) and/or permit(s) and deliver copies of the same to Landlord. Tenant, at Tenant's expense, shall at all times, comply with the requirements of such license(s) and/or permit(s). Tenant shall open for business in the Premises to the public within \_\_\_\_\_ (\_\_\_\_) days after the Delivery Date, and shall thereafter diligently conduct its regular business operations in the Premises under the Trade Name during the Standard Operating Days and Hours, unless the failure to do so is expressly permitted hereunder.

b. **Uses Prohibited.** Tenants shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein that is not within the Permitted Use of the Premises which will in any way increase the existing rate of or affect any fire or other insurance upon the Building or any of its contents, or cause cancellation of an insurance policy covering said Building or nay part thereof or nay of its contents. Tenant shall not do or permit anything to be done in or about the Premises that will use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or allow to be committed any waste in or upon the Premises.

c. **[Food Service Use.]** Tenant shall maintain the highest standards in presentation, quality and preparation of food items. In the event that any applicable jurisdictional authority shall institute a form of sanitary rating for restaurants, Tenant shall maintain a rating in the top 10% of such rating system. Tenant agrees, at Tenant's own cost and expense: (i) to install dry chemical extinguishing devices (such as Ansul) approved by

the local fire insurance rating organization and Landlord's insurance carriers, and to keep such devices in good working order and repair and regularly serviced under a maintenance agreement as may be required by Landlord or by such fire insurance rating organization or carriers; (ii) to install a grease guard, exhaust ducts and filters within or outside the Premises, as may be required by Landlord or governing codes, and to keep and maintain the same (whether located within or outside the Premises) in a clean and sanitary condition and in good working order and repair; (iii) if required by governing codes, to install a grease trap and all lines leading thereto of a pattern and make approved in writing by Landlord within or outside the Premises as may be required by Landlord or by governing codes, and to keep and maintain the same (whether located within or outside the Premises) in a clean and sanitary condition and in good working order and repair and, at no less than three (3) month intervals, cause such trap to be cleaned and the lines therefor to be routed. In the event gas is used in the Premises, Tenant agrees to install a proper gas cut-off valve. If Tenant shall fail to install any such devices referred to in this section and/or to subscribe to the servicing thereof, or maintain the same, all as required herein, Landlord shall have the right to enter upon the Premises to make such necessary installations, servicing or maintenance; and, upon demand, Tenant shall pay to Landlord, as Additional Rent, all charges incurred by Landlord in connection therewith, together with a sum equal to twenty five percent (25%) of said charges for overhead and administration.]

## 7. **Hazardous Materials.**

a. **No Hazardous Materials.** Tenant covenants that Tenant will not use, generate, store or dispose of Hazardous Materials, as hereinafter defined, upon the Premises and agrees to save harmless and indemnify Landlord against, and compensate and reimburse Landlord for, all loss and damage resulting from Tenant's breach of this covenant, including but not limited to court costs, attorney fees, fines, forfeitures, clean up expenses, repairs, loss of use of property, and all similar or dissimilar losses. This indemnity agreement shall continue in full force and effect after termination of this Lease and any renewal term hereof. Tenant, at Tenant's sole cost, must comply with all Environmental Laws, as hereinafter defined, in connection with Tenant's use of the Premises. "**Environmental Laws**" means any federal, state, or local statute, ordinance, order, rule, or regulation of any type relating to the storage, handling, use, or disposal of any Hazardous Materials, as hereinafter defined, the contamination of the environment, or any removal of such contamination, including, without limitation those statutes referred to in subsection (b) below.

b. . "Hazardous Materials" means any substance, material, or waste that is or becomes regulated by any local governmental agency, the State of Florida, or the federal government, including, but not limited to, any material or substance that is (i) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251 et seq., or listed pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317, (ii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq., (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (iv) petroleum, (v) asbestos, and (vi)

polychlorinated biphenyls.

c. Delivery of Notices. Tenant must promptly supply Landlord with copies of all notices, reports, correspondence, and submissions made by Tenant to the United States Environmental Protection Agency, the United States Occupational safety and Health Administration, Florida Department of Environmental Protection, or any other local, state, or federal authority that requires submission of any information concerning environmental matters or hazardous materials pursuant to hazardous materials laws. Tenant must promptly notify Landlord in advance of any scheduled meeting between Landlord and any of the foregoing agencies.

d. Environmental Liens. Tenant must promptly notify Landlord as to any liens threatened or attached against the Premises pursuant to any Environmental Law. If an environmental lien is filed against the Premises, Tenant must, within 30 days from the date on which the lien is placed against the Premises, and at any rate before the date on which any governmental authority begins proceedings to sell the Premises pursuant to a lien, pay the claim and remove the lien from the Premises.

#### **8. Assignment/Subletting.**

This Lease and the Tenant's rights hereunder are not assignable by either the act or deed of the Tenant or by operation of law without the prior written consent of the Landlord, which may be withheld in Landlord's sole discretion. The Tenant may not sublet the Premises or any portion thereof without the prior written consent of Landlord, which may be withheld in Landlord's sole discretion.

#### **9. Condition/Alterations.**

The Tenant, by and through its duly authorized agents, has inspected the Premises and determined, without representation or warranty on the part of the Landlord, the suitability of the Premises for Tenant's Permitted Use and accepts the same in their present condition, subject to completion of Landlord's Work as set forth herein.

Excepting Tenant's Work in accordance with the provisions of Exhibit "B", Tenant shall not add partitions or ceilings, do any painting, make modifications to concrete floors, alter, remove or replace doors, alter or add any lighting or do any electrical, mechanical or plumbing work, or make any other alterations or additions to the Premises without the written consent of Landlord. In addition, no such work shall be performed unless and until Landlord shall have approved all plans and specifications (or if plans and specifications are not necessary, a scope of work) therefor; and Tenant shall be responsible for any architectural costs incurred by Landlord in connection with the review of any such plans and specifications or scope of work, as applicable. Any and all such alterations and additions shall remain for the benefit of Landlord after the Term unless Landlord shall direct that the same be removed, in which event Tenant shall remove the same and restore the Premises to its original condition.

All contractors and subcontractors performing any work in, on or about the Premises

or providing any materials, supplies or equipment therefor on behalf of Tenant, as a part of Tenant's Work or otherwise, shall be subject to the prior written approval of Landlord. Prior to the commencement of any such work or the delivery of any materials, supplies or equipment to the Premises, Tenant shall have furnished Landlord evidence that all such contractors and subcontractors have complied with the insurance requirements of Landlord. Promptly upon completion of construction of each improvement or work performed by Tenant or at Tenant's direction, Tenant shall also deliver to Landlord executed originals of the following documents (i) a waiver and release of lien upon final payment in the form provided under Florida Statutes § 713.20(5) from each direct contractor and each other lien or who has given a notice to owner under Florida Statutes Chapter 713; (ii) a contractor's final payment affidavit from each direct contractor in accordance with Florida Statutes § 713.06(3)(d); and (iii) a notice of termination in recordable form and in compliance with Florida Statutes § 713.132.

Tenant shall, at Tenant's sole cost and expense, obtain all necessary permits and approvals from any governmental authority or agency having jurisdiction which are required in connection with any work performed by or on behalf of Tenant in, on or about the Premises, as a part of Tenant's Work or otherwise; provided, however, no such permits or approvals shall be applied for or submitted unless and until Landlord has approved all plans and specifications or the scope of work therefor, as applicable. Any approval of any plans and specifications or scope of work by Landlord or Landlord's architect shall not relieve Tenant of the responsibility to comply with the requirements of applicable codes, ordinance and regulations.

Tenant shall and does hereby defend, indemnify and hold Landlord harmless from and against any claims, actions, or damages resulting from the performance of any work performed by or on behalf of Tenant in, on or about the Premises, as a part of Tenant's Work or otherwise.

#### **10. Compliance With Laws.**

The Tenant shall at Tenant's expense promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the federal, state, county, and city governments and of any and all their departments and bureaus which are applicable to said Premises or to Tenant's property, including inventory, located on the Premises or to Tenant's Permitted Use, and Tenant shall be solely responsible for compliance with the same as to any use made of the Premises and for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said Premises during said Term; and shall also promptly comply with and execute all rules, orders and regulations of the Southeastern Underwriters Association for the prevention of fires.

#### **11. Ad Valorem and Property Taxes.**

a. **Ad Valorem Taxes.** Landlord shall be solely responsible and liable for all ad valorem taxes and other assessments levied against the Premises; provided, however, that as provided in paragraph 3 above, Tenant shall reimburse Landlord for all Real Estate Taxes

assessed against the Premises.

b. Personal Property Taxes. The Tenant shall be solely responsible and liable for all taxes levied against personal property placed in the Premises by the Tenant, including but without limitation, the Tenant's trade fixtures, shelves, counters, appliances and inventory.

## **12. Subordination.**

The Tenant covenants and agrees that this Lease and the Tenant's rights hereunder shall be and is hereby made subject to and subordinate to all existing mortgages, deeds of trust, security interests and other rights of the Landlord's creditors secured by the Premises, as well as any such mortgages, deeds of trust, security interest and other rights of Landlord's creditors, which may hereafter be created. The provisions of this paragraph shall be self-operative, but the Tenant covenants and agrees that it will, upon request of the Landlord, execute a statement in writing for the purpose of confirming that this Lease is subordinate to any such instrument and for the purpose of certifying that this Lease is unmodified and in full force and effect at the date thereof and that the Landlord, if such be the fact, is not in default in performance of any covenant, agreement or condition contained in this Lease or otherwise specifying such defaults, if any there be.

**13A. Repairs by Landlord.** Within a reasonable period after receipt of written notice from Tenant, Landlord shall make necessary structural repairs to the roof, structural supports and exterior walls of the Building. Landlord shall not be required to make any repairs where same were made necessary by any act or omission or negligence of Tenant, any subtenant or concessionaire, or their respective employees, agents, invitees, licensees, visitors or contractors, or by fire or other casualty or condemnation, except as otherwise provided herein below.

**13B. Repairs by Tenant.** Tenant shall make and pay for all repairs to the Premises and all equipment and systems serving the Premises exclusively and shall replace all things which are necessary to keep the same in good state of repair and operating order, such as (but not limited to) all slabs, floors, heating, ventilating and air conditioning, plumbing, mechanical fire suppression, and other building systems, lighting, drainage facilities, electrical, carpeting, wallcoverings and other interior improvements, all doors (including plate glass), storefront, windows, any other component or portion of the Building or Premises which Landlord is not required to maintain pursuant to Section 13A above, and fixtures, furnishings, lighting and signs of Tenant. Tenant shall at all times keep the Premises and all exterior entrances, exterior walls, glass and show moldings, partitions, doors, floors surfaces, fixtures, equipment and appurtenances thereof in good order, condition and repair and in a reasonably satisfactory condition of cleanliness and Tenant shall make such other necessary repairs in and to the Premises not specified in Paragraph 13A hereof as being the responsibility of Landlord. Tenant shall at its expense replace all broken or damaged glass or substitutes therefore, as the case may be. If (a) Tenant does not repair property as required hereunder and to the reasonable satisfaction of Landlord, or (b) Landlord, in the exercise of its sole discretion, determines that

emergency repairs are necessary or (c) repairs or replacements to the Premises are made necessary by any act or omission or negligence of Tenant, its employees, subtenants, assignees, concessionaires, contractors, invitees, licensees or visitors, then in any of such events Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's cost for making such repairs plus twenty percent (20%) for overhead, upon presentation of a bill therefore as additional rent. Said bill shall include interest from the date such repairs were billed by the contractor(s) making such repairs. Landlord shall not be responsible for any permits or fees of any nature and kind that may be required by the City or County in which the Premises is located for operation of Tenant's business. Tenant shall keep the Premises in a clean and satisfactory condition and shall comply with all applicable laws, rules and regulations with respect to the Premises or Tenant's use thereof, including but not limited to all building codes, health department and fire department regulations.

#### **14. Damage of Premises.**

In the event the Premises are damaged by fire or other perils covered by extended coverage insurance, Landlord agrees to forthwith repair same, and this Lease shall remain in full force and effect, except that Tenant shall be entitled to a proportionate reduction of the Base Rent from the date of damage and while such repairs are being made, such proportionate reduction to be based upon the extent to which the damage and making of such repairs shall materially interfere with the business carried on by the Tenant in the Premises, as determined by the Landlord in its reasonable discretion. If the damage is due to the fault or neglect of Tenant or its employees, there shall be no abatement of Rent.

In the event the Premises are damaged as a result of any cause other than the perils covered by fire and extended coverage insurance, then Landlord shall have the option to: (1) repair or restore such damage, this Lease continuing in full force and effect, but the Base Rent to be proportionately reduced as herein above in this Section, or (2) give notice to Tenant at any time within 60 days after such damage, terminating this Lease as of the date specified in such notice, which date shall be no more than 30 days after the giving of such notice. In the event of giving such notice, this Lease shall expire and all interest of the Tenant in the Premises shall terminate on the date so specified in such notice and the Base Rent, reduced by a proportionate reduction based upon the extent, if any, to which such damage interfered with the business carried on by the Tenant in the Premises, and Additional Rent shall be paid up to date of said such termination.

#### **15. Landlord Not Liable For Certain Damage.**

Notwithstanding anything to the contrary contained in this Lease, Landlord shall not have any obligation whatsoever to repair, reconstruct or restore the Premises when the damage resulting from any casualty covered under this Section occurs during the last twenty-four months of the Term of this Lease or any extension or renewal term thereof. Landlord also shall not be required to repair any injury or damage by fire or other cause, or to make any repairs or

replacements of any Improvements, fixtures, or other personal property of Tenant.

## **16. Bankruptcy of Tenant.**

In the event Tenant, voluntarily or involuntarily, becomes subject to the jurisdiction of a bankruptcy court:

(a) All rents and other sums payable under this Lease which have accrued prior to date Tenant is declared a bankrupt shall be deemed secured by the landlord's lien provided in paragraph 34 of this Lease.

(b) The trustee may elect to terminate this Lease, or to continue the Lease upon all its terms and conditions, by giving prompt written notice of the election. If the election is to continue the Lease, the trustee shall fully comply with all terms of this Lease including timely payment of rents. If the election is to reject this Lease, Landlord shall be entitled to immediate possession of the Premises and such other remedies for breach of this Lease as allowed under the laws of the State of Florida.

## **18. Landlord's Casualty Insurance.**

The Tenant covenants that should the Landlord's fire and casualty insurance rate on the Premises be increased by reason of any use made of the Premises by the Tenant, the Tenant shall pay as Additional Rent the difference of premiums between the premium based on present rating and the increased premium based on the rating caused by the Tenant's use of the Premises. Such amount shall be in addition to the payment of the premium for the Insurance Expenses as provided in paragraph 2 above.

## **19. Tenant's Insurance.**

a. Liability. The Tenant covenants and agrees that Tenant shall, during the term of this Lease, at Tenant's own cost and expense, maintain and provide general liability insurance for the benefit and protection of the Landlord and the Tenant in an amount not less than \$2,000,000.00 for bodily injury and property damage combined arising out of any one occurrence with a general aggregate limit of not less than \$2,000,000.00. Tenant shall also maintain, during the Term, at Tenant's cost and expense, liquor liability insurance in an amount of \$1,000,000.00 per occurrence and \$1,000,000,000 in the aggregate. Said policies of insurance shall cover the Premises and the Landlord shall be named as co-insured under said policy. A certificate of said insurance shall be delivered to the Landlord at, or prior to the commencement of the term hereof, together with proof of payment of the premium thereon and shall contain thereon an undertaking by the insurer to give the Landlord not less than thirty (30) days written notice of any cancellation, or change in the scope of coverage, of such policy. Proof of payment of renewal premiums of said policy shall be furnished to the Landlord not less than thirty (30) days prior to the expiration date of any such policy. If the Tenant fails to comply with the requirements hereof, as to insurance, the Landlord may obtain such insurance and keep the same in effect, and the Tenant shall pay the Landlord

therefor upon demand; and if not paid as required, the Landlord shall have the right to recover the amount thereof, together with interest at the maximum lawful rate and the non-payment thereof when due shall constitute a default upon this Lease.

b. Plate Glass. The Tenant covenants and agrees that Tenant shall, during the term of this lease, at Tenant's own cost and expense, maintain and provide plate glass insurance for the benefit and protection of the Landlord and the Tenant. Said policy of insurance shall cover the Premises and the Landlord shall be named as co-insured under said policy. A certificate of said insurance shall be delivered to the Landlord at, or prior to the commencement of the term hereof, together with proof of payment of the premium thereon, and shall contain thereon an undertaking by the insurer to give the Landlord not less than thirty (30) days written notice of any cancellation, or change in the scope of coverage of such policy. Proof of payment of renewal premiums of said policy shall be furnished to the Landlord not less than thirty (30) days prior to the expiration date of any such policy. If the Tenant fails to comply with the requirements hereof, as to insurance, the Landlord may obtain such insurance and keep the same in effect, and the Tenant shall pay the Landlord therefor upon demand; and if not paid as required, the Landlord shall have the right to recover the amount thereof, together with interest at the maximum lawful rate and the non-payment thereof when due shall constitute a default upon this lease.

c. Waiver of Subrogation. In addition to all other waivers of liability contained in this Lease, Landlord and Tenant do each hereby release and relieve the other from and waive any claim of recovery for any loss or damage to the real or personal property of either located anywhere in the Premises arising out of or incident to the occurrence of any of the perils covered by their respective casualty insurance policies or arising out of perils required to be covered by insurance pursuant to the terms of this Lease. Under no circumstances whatsoever shall Landlord or any partner in Landlord or any agent or employee of any of the foregoing be liable to Tenant for any losses or damages suffered as a result of business interruption, lost profits or other special, consequential or punitive damages to Tenant, whether or not the same are a result of any negligent act or omission to act on the part of Landlord or any such other party

## **20. Indemnification.**

The Tenant agrees to indemnify and save the Landlord harmless against, and compensate and reimburse Landlord for, any and all claims, or demands of all persons whomsoever for damages, and the cost and expenses, including reasonable attorney's fees for the defense thereof, arising from the conduct or management of the business conducted by the Tenant in the Premises or from any default on the part of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to the terms of this Lease, or from any act of negligence of the Tenant or any agent, contractor, servant, or employee of the Tenant in or about the Premises and from any liability from any person on account of any damage to person or property arising out of any use, misuse, abuse, neglect, or failure to exercise due care in, or about the Premises, including without limitation Tenant's failure to keep said Premises in a safe condition.

**21. Utilities.**

The Tenant will pay all charges for all utilities, including without limitation, electricity, water, sanitary sewer, and gas consumed on the Premises during the Term as the same become due. Tenant shall also be responsible for all pest control charges for the Premises.

**22. Mechanics' Liens.**

No mechanics' liens shall be placed against the Landlord's title in the Premises for or on account of the construction of any improvement upon the Premises or any repair, alterations, demolition, or removal of such improvement, or for any other purpose, by any laborer, contractor, materialman, or other person contracting with Tenant. All laborers, mechanics, materialmen, contractors, subcontractors, and others are called upon to take due notice of this clause, it being the intent of the parties hereby to expressly prohibit any such lien against the Landlord's title or interest by the use of this language as and in the manner contemplated by Section 713.10 of the Florida Statutes. Tenant agrees to promptly pay or bond any liens, and further agrees to indemnify and save harmless the Landlord from and against any loss, cost or expense occasioned by any lien prohibited hereby, including the cost and expense of defending or removing the same, whether the claim therefor be with or without merit or valid or invalid. Further, the Tenant agrees to promptly notify any contractor making any improvements to the Premises of the provisions of this Lease contained in this paragraph.

**23. Condemnation.**

In the event the entire Premises should be taken, appropriated or condemned under the power of eminent domain by any public or quasi-public authority, this Lease shall terminate when possession thereof shall be required by the appropriating or condemning authority or when legal title vests in the appropriating or condemning authority, whichever first occurs, and the Rent and other payments due hereunder shall be apportioned and paid to such date. If there shall be taken during the Term of this Lease any part of the Premises other than a part not interfering with maintenance, operation, or use of any part of the Premises, Landlord may elect to terminate this Lease or to continue same in effect. If Landlord elects to continue this Lease, the Rent shall be reduced in proportion to the area of the Premises so taken and Landlord shall repair any damage to the Premises resulting from such taking. All sums awarded or agreed upon between Landlord and the condemnation authority for the taking of the interest of Landlord and/or Tenant, whether as damages or as compensation, and whether for partial or total condemnation, will be the property of Landlord. If this Lease should be terminated under any provisions of this Paragraph, Rent shall be payable up to the date that possession is taken by the taking authority, and Landlord will refund to Tenant any prepaid unaccrued Rent less any sum then owed by Tenant to Landlord. Tenant shall be entitled to claim independently against condemning authority any damages expressly referable to Tenant's business as the same may be permitted by law provided that such claim shall not reduce any award payable to Landlord.

**24. Right of Entry.**

Landlord reserves, and shall at any and all times have, the right to enter the Premises to inspect the same, to submit said Premises to prospective purchasers or tenants, to post notices of non-

responsibility, to repair the Premises and any portion of the Premises that Landlord may deem necessary or desirable, without abatement of rent, and may for that purpose erect scaffolding and other necessary structures where reasonably required by the character of the work to be performed, always providing that the entrance to the Premises shall not be unreasonably blocked thereby, and further providing that the business of the Tenant shall not be interfered with unreasonably. Tenant hereby waives any claim for damages or for any injury or inconvenience with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency, in order to obtain entry to the Premises without liability to Tenant and same shall not under any circumstances be construed or deemed to be forcible or unlawful entry into, or a detainer of, the Premises, or an eviction of Tenant from the Premises or any portion thereof.

**25. Default; Remedies.**

a. Default. If (i) Tenant fails to promptly accept, move into, take possession of, and operate its business from the Premises when the Premises are substantially complete, or Tenant vacates or abandons the Premises; or if Tenant notifies Landlord that it anticipates that any of the foregoing will occur, or Landlord, in good faith, determines that any of the foregoing will occur; or (ii) Tenant fails to pay Rent when due; (iii) Tenant fails to fulfill any of the other terms, provisions, covenants, and conditions of this Lease within ten (10) days of written notice or, if the nature of the default cannot be reasonably cured within such ten (10) day period, Tenant shall not have commenced to cure such default within such ten (10) day period and diligently pursued same to completion; or (iv) any execution or attachment is issued against Tenant or the Premises are taken or occupied by someone other than Tenant; or (v) Tenant, any of its successors or assigns, or any guarantor of this Lease should file any voluntary petition in bankruptcy, reorganization, or arrangement, or an assignment for the benefit of creditors, or for similar relief under any present or future statute, law, or regulation relating to relief of debtors; or (vi) Tenant or any of its successors or assigns or any guarantor of this Lease should be adjudicated bankrupt or have an involuntary petition in bankruptcy filed against it; or (vii) Tenant becomes insolvent or unable to pay its debts as they become due, or if Tenant notifies Landlord that it anticipates such condition, or Landlord, in good faith determines that such conditions will occur; or (viii) a receiver or trustee appointed for Tenant's leasehold interest in the Premises or for all or a substantial part of the assets of Tenant; or (ix) Tenant shall permit, allow, or suffer to exist any lien, judgment, writ, assessment, charge, attachment, or execution upon Landlord's or Tenant's interest in this Lease or to the Premises and/or fixtures, improvements, and furnishings located thereon; then, Tenant shall be in default hereunder. Notwithstanding the foregoing, regardless of the number of times of Landlord's prior acceptance of late payments and/or Late Charges, if Landlord notifies Tenant twice in any six-month period that Base Rent or any Additional Rent has not been paid when due, any further late payment within such six-month period will constitute a non-curable default hereunder, unless Landlord, in its sole and absolute discretion, grants Tenant an additional right to cure.

b. Landlord's Remedies.

If Tenant is in default of this Lease, Landlord may, at its option, in addition to such other

remedies as may be available under Florida law; (i) terminate this Lease and Tenant's right of possession; or (ii) terminate Tenant's right to possession but not this Lease and/or proceed in accordance with any and all provisions of this Paragraph set forth below, or any other right otherwise provided by law or equity.

(i) Landlord may without further notice re-enter the Premises either by force or otherwise and dispossess Tenant by summary proceedings or otherwise, as well as the legal representative(s) of Tenant and/or other occupant(s) of the Premises, and remove their effects and hold the Premises as if this Lease had not been made, and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end including service of any so-called "three-day notice"; and/or,

(ii) All Base Rent and all Additional Rent for the balance of the Term will, at the election of Landlord, be accelerated, net of amounts actually collected by Landlord, and shall become immediately due thereupon and be paid, together with all unamortized costs to Landlord of this Lease, including but not limited to improvements by Landlord, real estate commissions, and attorneys' and paraprofessional fees and costs incurred or paid by Landlord in preparation of this Lease, and all expenses of every nature which Landlord may incur as a result of Tenant's default, such as (by way of illustration and not limitation) those for reasonable attorneys' and paraprofessional fees and costs incurred or paid by Landlord without and with litigation and at trial and on appeal, brokerage, advertising, and refurbishing the Premises in good order or preparing them for re-lease; and/or,

(iii) Landlord may re-lease the Premises or any part thereof, either in the name of Landlord or otherwise, for a term or terms which may at Landlord's option be less than or exceed the period which would otherwise have constituted the balance of the Term, and may grant concessions or free rent or charge a higher rent than that reserved in this Lease; and/or,

(iv) Tenant or its legal representative(s) will also pay to Landlord as liquidation damages any deficiency between the Base Rent and all Additional Rent hereby reserved and/or agreed to be paid and the net amount, if any, of the rents collected respecting the Premises for each month of the period which would otherwise have constituted the balance of the Term. In the event that the Base Rent and/or Additional Rent that Landlord collects upon re-leasing of the Premises for the balance of the Term exceeds that which is provided in this Lease, such excess shall be retained by Landlord and Tenant shall receive no credit thereof.

## **26. Holding Over.**

In the event Tenant continues to occupy the Premises or any part thereof after the last day of the term hereby created, or after the last day of an extension of this Lease, if any, and Landlord elects to accept Rent thereafter, only a month-to-month tenancy shall be created and not for any longer period, and Tenant shall pay as rent an amount equal to two hundred percent (200%) of the Rent, plus all other applicable charges payable hereunder, and upon all the terms hereof applicable to a month to month tenancy.

**27. Time of the Essence.**

It is understood and agreed between the parties hereto that time is of the essence of this Lease.

**28. Inurement.**

This Lease shall bind the Landlord and Landlord's heirs, assigns, administrators, legal representatives, executors or successors, and the heirs, assigns, administrators, legal representatives, executors or successors as the case may be, of the Tenant.

**29. Notice.**

Any notice required or permitted to be given under this Lease must be given only by one of the following: (a) United States registered or certified mail, postage prepaid, return receipt requested, (b) reputable overnight courier service which provides written evidence of delivery, or (c) personal delivery; and addressed as follows:

If to Landlord:

941 W. Morse Blvd., Suite 315  
Winter Park, Florida 32789

If to Tenant:

or such other address as may be designated by either party by written notice to the other, except as otherwise provided in this Lease, every notice, demand, request or other communication shall be deemed to have been given or served upon actual receipt thereof. Notwithstanding the foregoing, any notice mailed to the last designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the person or party to which the notice is directed or the failure or refusal of such person or party to accept delivery of the notice.

**30. No Waiver.**

The rights of the Landlord hereunder shall be cumulative, and failure on the part of the Landlord to exercise promptly any rights given hereunder shall not operate to forfeit any of the said rights nor constitute a waiver thereof as to any future occasion.

**31. Condition of Premises.**

Tenant covenants and agrees that at the end of the Term hereof, or any prior termination other than for casualty destruction, Tenant will surrender the Premises (including all Improvements) in substantially the same condition as the same are now, subject to normal wear and tear. If the Tenant should damage the Premises in the course of removing its property, Tenant shall cause the repair of said damages to be made, at Tenant's sole expense within five (5) business days after the Premises are vacated.

**32. Expenses.**

In the event of any default on the part of either party to this Lease and the necessity to initiate court action for the enforcement of any right here under, then in such event, the prevailing party in such action shall be entitled to recover all reasonable costs and expenses of such action, including reasonable attorney's fees and such fees and costs incurred in establishing the right to recover such fees and costs and the amount to be recovered.

**33. Landlord's Lien and Security Interest.**

The Tenant covenants and agrees that it will not at any time, except in the ordinary course of business, cause any property including stock, inventory, machinery or assets to be removed from the Premises for the purpose of attempting to defeat the landlord's lien in favor of Landlord against said property. The Tenant further agrees that all property of the Tenant on the Premises or customarily used thereat shall be deemed subject to a landlord's lien for Rent and the faithful performance of this Lease, and that in addition to any other right or remedy the Landlord shall have the right to enforce said lien by foreclosure, seek appointment of a receiver, or seek injunction in aid of foreclosure, or distress, as the case may be. In addition, Tenant hereby grants to Landlord a security interest in all property of the Tenant on the Premises and authorizes Landlord to file a financing statement to perfect such security interest.

In addition to the security deposit above, Tenant hereby agrees to pledge as security, the Tenant's property consisting of machinery, trade equipment, business and trade fixtures, refrigeration equipment, cabinetry, countertops, tables and chairs, and other trade equipment whether presently placed or installed or hereafter placed or installed at said Premises and including substitutions, accessions, additions and replacements thereof or thereto by Tenant, subtenants of Tenant or assignees of Tenant. All rent, reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of Tenant's property, together with reasonable attorney's fees and court costs are secured by this agreement. Tenant represents and warrants that it is the owner of Tenant's property except for the security interest granted by this agreement and the items set forth in Exhibit "D" attached hereto. The term "Tenant's property" shall not include or be deemed to include any item now or hereinafter installed in the Premises that is an integral part of the building, including, without limiting the generality of the foregoing, heating plants and systems and air conditioning, electrical and plumbing fixtures, and other like equipment and fixtures. All such items now or hereafter installed in the Premises by Tenant, Landlord or Tenant's sub-Tenant or Tenant's assigned belong to the Landlord upon installation. At no time will the Landlord agree to sign a Waiver from any lending institution and/or finance company regarding its rights to the "Tenant's property".

Tenant agrees that all personal property consisting of machinery, trade equipment, business and trade fixtures, refrigeration equipment, cabinetry, countertops, tables and chairs, and other trade equipment whether presently placed or installed or hereafter placed or installed at said Premises and including substitutions, accessions, additions and replacements thereof or thereto by Tenant will be subject to a filing of Form UCC-1 State

of Florida Uniform Commercial Code/Financing Statement listing all of Tenant's property installed in the Premises and subject to a Landlord's lien. Tenant will keep Tenant's property in good condition and repair, reasonable wear and tear excepted. Tenant will permit Landlord and its agents to inspect Tenant's property at any time without prior notice. Tenant shall be in default under this Lease if Tenant removes, replaces or sells Tenant's property without the written consent of Landlord.

In addition, to all of the remedies set forth in the Lease, Landlord shall have the option to purchase Tenant's property upon abandonment of the Lease by Tenant, termination of the Lease or eviction of Tenant. Landlord may have the Tenant's property appraised by an individual or corporation experienced in the buying and selling of used equipment and furnishings. Landlord may at its option in addition to all of the remedies set forth in this Lease, purchase Tenant's property for the appraised value, assuming it was being sold on a basis of having been removed from the Premises. Any monies owing to Landlord by Tenant may be used as a credit in paying for the Tenant's property under this option to purchase. If Tenant objects within ten (10) days of Landlord exercising the option and delivering by U.S. Mail to Tenant's last known address the consideration for the purchase (check and/or application of monies owed), Tenant may have the issue of the value of Tenant's property resolved by American Arbitration Association. If Tenant fails to invoke the jurisdiction of the American Arbitration Association with ten (10) days of Landlord's mailing to Tenant's last known address of the exercise of the option and consideration, Tenant waives all rights to contest the purchase price for Tenant's property.

#### **34. Signs.**

Tenant may, at its sole cost and expense, subject to approval of Landlord, install and maintain its sign on the façade of the Building and on any pylon or monument sign on the Property all in accordance with applicable law and shall obtain all permits for such signage at Tenant's sole cost and expense, provided that such signage and all permit applications shall be first approved by Landlord in writing. Tenant shall not install signage upon the exterior of the Building, on the pylon or elsewhere that is visible from the exterior of the Building on the Premises without the prior written consent of Landlord, which Landlord may withhold in Landlord's sole discretion.

#### **35. Brokers.**

Tenant warrants that it has dealt only with who represents Tenant, and who represents the Landlord and who will be compensated by the Landlord. The commissions shall be paid pursuant to a listing agreement between Landlord and Broker. Landlord and Tenant hereby mutually agree that in the event Tenant engages any broker to negotiate renewals, extensions, or expansions, in any of Landlord's existing properties at the time of such negotiation, Tenant will be responsible for paying any and all brokers fees associated with such renewal, extension, or expansion and shall hold Landlord harmless for any claims brought by said Broker. Tenant further warrants that it knows of no other real estate broker or agent, other than those who are named above, who is entitled to a real estate commission in connection with this Lease. Tenant agrees to indemnify and hold Landlord harmless against any claims for commission and expenses created by any such claim by any other real estate broker or agent with whom the Tenant may have dealt or communicated, including

reasonable attorneys' and paraprofessional fees and costs and expenses, including expenses not otherwise taxable as costs, paid or incurred (regardless of whether they have been paid) by the Landlord in the defense of any such claim, whether well or unfounded, and including any claim by any broker who represented Tenant respecting any previous lease or previous term of this Lease.

**36. Entire Agreement.**

This Lease contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements, oral or otherwise, between the parties, not embodied herein or in the guaranty, shall be of any force and effect. Tenant acknowledges that Tenant has read the entire Lease, and notwithstanding the fact that Tenant has not initialed each page of the Lease or the fact that a portion of the Lease may be separated from the rest of the Lease, Tenant is bound by all of the provisions of the Lease.

**37. Applicable Law/Venue.**

The laws of the State of Florida shall govern any and all claims arising under this Lease. Venue of any action arising hereunder shall lie in the County where the Premises is located.

**38. Counterpart Execution.**

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same Lease.

**39. Captions.**

The captions contained herein are for convenience and reference only and shall not be deemed a part of this lease or construed in any manner limiting or amplifying the terms and provisions of this lease to which they relate.

**40. Radon Gas.**

Pursuant to Section 404.056 of the Florida Statutes, the following notice is given:

**Radon Gas.** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of Radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding Radon and Radon testing may be obtained from your county public health unit.

**41. Estoppel Certificates.**

Tenant shall at any time and from time to time, upon not less than five (5) days written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease as so modified is in full force and effect), and the date to which the rental and other charges are paid in advance, if any, and (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of the Landlord hereunder, or specifying such defaults if any are claimed, and (c) setting forth the date of commencement of rents and expiration of the term hereof, and (d) stating such other information concerning the Lease as

Landlord may request. Any such statement may be relied upon by the prospective purchaser or encumbrancer of all or any portion of the Premises. In the event Tenant fails to deliver such written statement within such five (5) day period, then Tenant shall be in default hereunder, Tenant's tenancy shall thereafter be a month-to-month tenancy as set forth in and upon the terms of Paragraph 26 above, and Tenant shall be liable to Landlord for any damages Landlord may incur by reason of Tenant's failure to provide such statement within such time period.

**42. Exculpation.**

Neither Landlord nor any partner or shareholder in Landlord, nor any director, officer or other party with interests in Landlord or any such partner or shareholder shall be subject to personal liability for any matter whatsoever arising out of or in connection with this Lease or the Premises. Except to the extent recourse shall be further limited by the other terms of this Lease, Tenant shall look solely to the interest of Landlord in the Premises (subject to prior rights of any ground Landlord and the holder of any mortgage or deed of trust) for the satisfaction of the remedies of Tenant for any such matters. Nothing in this Section shall be construed to impose liability on Landlord which is waived or otherwise limited by the other terms of this Lease.

**43. Guaranty.**

To induce Landlord to enter into this Lease, \_\_\_\_\_, (the "Guarantor"), has agreed to serve as guarantor of Tenant's liabilities and obligations hereunder for the Term, which guarantor obligations shall be as set forth pursuant to that certain Guaranty dated on or about even date herewith and incorporated herein as **Exhibit "C"** (the "Guaranty"). Guarantor's execution of the Guaranty is hereby made an express condition precedent to Landlord's obligations under this Lease.

**44. Confidentiality.**

Tenant will maintain the confidentiality of this Lease and will not divulge, directly or indirectly, the economic or other provisions of this Lease, to any persons, other than Tenant's officers, directors, partners, or shareholders, Tenant's attorneys, accountants, real estate brokers and other professional consultants, any governmental agencies and pursuant to subpoena or other legal process. Tenant agrees that any violation or threatened violation of the provisions of this Paragraph may be enjoyed by a court of applicable jurisdiction without notice to Tenant, and further agrees that Tenant shall be liable to Landlord for all damages, including consequential damages, and all of Landlord's reasonable attorneys' and paraprofessional fees, as well as costs and expenses (including expenses not otherwise taxable as costs) respecting any litigation to construe or enforce the provisions of this Paragraph.

**45. Radius Restriction.**

Tenant covenants and agrees that, during the Term, neither Tenant nor Tenant's management; nor any person or entity controlled by Tenant or controlled by any of the same persons or entities controlling Tenant, or otherwise affiliated with Tenant; nor any guarantor of this Lease, shall directly or indirectly own, operate, be employed in, direct or serve any other place of business which is (a) the same, similar to, or in competition with the business Tenant is obligated to operate in the Premises by virtue of the provisions of this Lease; and (b) located within a radius of three (3) miles from the outside boundary of the Premises (which distance shall be measured in a straight line

without reference to road mileage). In the event that this covenant is violated, then, in addition to any other remedy Landlord may have, during any such violation, the Base Rent provided for in this Lease shall be increased by fifty percent (50%); and, in addition, for the purpose of computing Percentage Rent hereunder, the Gross Sales of any such other place of business shall be considered to be a part of the Gross Sales derived in, on, or from the Premises, and Tenant agrees to pay Percentage Rent to Landlord computed on the basis of such combined Gross Sales.

**[46. Existing Tenant.**

Tenant recognizes that the Premises is currently occupied by a tenant and Landlord's obligations with respect to this Lease are expressly contingent upon such existing tenant vacating the Premises and surrendering it to Landlord in the condition and at such time as required under the terms of the lease between that tenant and Landlord.]

**(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK)**

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument for the purpose herein expressed, the day and year first above written.

**Signed, sealed and delivered  
in the presence of:**

**(LANDLORD)**

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**As to Landlord**

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

**Mary L. Demetree**

**Its: Manager**

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

**TENANT NAME**

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

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

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

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

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**As to Tenant**

**EXHIBIT “A”**

**LEGAL DESCRIPTION**

**EXHIBIT “B”**  
**LANDLORD’S WORK AND TENANT’S**  
**WORK**

**LANDLORD’S WORK**

Landlord, at its sole cost and expense, shall complete the work identified as Landlord’s Work on the attached **Exhibit B-1**.

**TENANT’S WORK**

Tenant shall, at its sole cost and expense, complete all work necessary to prepare the Premises for occupation and operation for the Permitted Use, such occupation to be evidenced by unconditional certificates of occupancy obtained by Tenant at its sole cost and expense from all applicable governing authorities, including without limitation all of the work identified as Tenant’s Work on the attached **Exhibit B-1** (the “**Tenant’s Work**”).

Tenant shall, within thirty (30) days of the date that this Lease is executed submit for Landlord’s approval, digital copies of all documents relating to all alterations and additions which Tenant plans to make to the Premises, including, without limitation, (i) design drawings (specifically including a colored rendering of the proposed storefront and signage, if any, a materials sample board, and the interior layout of the Premises) (collectively, “**Design Drawings**”) and (ii) working drawings and specifications for architectural, signage, electrical, mechanical, sprinkler, plumbing work and all other Tenant’s Work within the Premises (collectively, “**Plans and Specs**”); and (iii) a list of all tenant’s contractors and subcontractors (the “**Tenant’s Contractors**”) (the Design Drawings, Plans and Specs and Tenant’s Contractors list are hereinafter collectively, the “**Construction Documents**”). Tenant’s Design Drawings and Plans and Specs shall be prepared and sealed by an architect or engineer duly licensed in the state in which the Premises is located; and, if they are not, Landlord shall have the right to have its architect redraft, sign and seal the same at Tenant’s cost and expense. Failure by Tenant to timely submit the Construction Documents shall constitute a default under this Lease.

The Construction Documents shall be reviewed by Landlord within fifteen (15) days after having received all of the Construction Documents. Landlord may either (1) evidence its approval by endorsement to that effect by signature or initials on one (1) set of said Construction Documents and the return of such signed or initialed set to Tenant (whereupon such approved Construction Documents shall then constitute the “**Final Construction Documents**”), or (2) refuse such approval if Landlord shall determine that the same (a) do not conform to the architectural theme of the Premises and surrounding area, including, without limitation, standards of design, motif and décor, established or adopted by Landlord; (b) would subject Landlord to any additional cost, expense or liability or would subject the Premises to any violation, fine or penalty; (c) would in any way, adversely affect the reputation, character and/or nature of the Premises; and/or (d) provide for or require any installation or work which is, or might be, unlawful or create an unsound or dangerous condition or adversely affect the structural soundness of the Premises. If the Landlord refuses approval, any modifications or changes requested by Landlord shall be made by Tenant and, within ten (10) days of such refusal, Tenant shall resubmit revised Construction Documents to Landlord for its approval in

accordance with this Section. In the event Tenant does not timely resubmit the Construction Documents, Landlord

may place Tenant in default. The foregoing process shall be repeated until the Construction Documents are approved by Landlord.

All of Tenant's Work shall be completed in accordance with the Final Construction Documents. Tenant shall make no changes to the Final Construction Documents without, in each instance, the prior written approval of Landlord; and Tenant shall not commence any work until all Construction Documents have been approved by Landlord. Any revisions to the Final Construction Documents shall be subject to Landlord's prior written approval. Tenant shall pay for any and all requested changes, substitutions or eliminations of the Final Construction Documents and the cost of Landlord's review of any such changes, substitutions or eliminations.

Tenant is solely responsible for timely preparation and submission of all Construction Documents to Landlord for approval and to the jurisdictional authorities for timely procurement of all necessary permits, for timely bidding and award of contracts and ordering of material and equipment, and for timely performance of all other acts necessary for Tenant to commence construction of Tenant's Work and to open the Premises for business when required by this Lease. Tenant acknowledges that failure to open the Premises for business as required hereunder renders Tenant liable to Landlord for late opening damages and for all other remedies available to Landlord under this Lease and at law or in equity.

Tenant shall (i) take physical possession of the Premises on the Delivery Date, (ii) commence Tenant's Work within fifteen (15) days thereafter, and (iii) diligently prosecute Tenant's Work to completion within One Hundred Eighty (180) days after the Delivery Date. Notwithstanding anything to the contrary contained in any provision of this Lease, Tenant shall not be entitled to possession, nor shall any act of Tenant, be deemed to constitute possession of, nor to give to Tenant a possessory interest in, the Premises prior to the Delivery Date.

Tenant shall work in harmony with Landlord and (whether union or non-union) the labor hired by Landlord or Landlord's contractors and Tenant shall not employ or permit to be employed by Tenant's contractors anyone whose presence is likely to cause labor disputes or work stoppages at the Premises.

At all times during the course of the performance of Tenant's Work, Landlord and the authorized representatives of Landlord (including Landlord's lender) shall be afforded access to the Leased Premises for the purpose of inspecting the performance of Tenant's Work, in such manner and at such times as shall not interfere therewith.

Upon completion of Tenant's Work (and in any event no later than One Hundred Eighty (180) days after the Delivery Date), Tenant shall promptly deliver to Landlord: (a) a certificate from the Tenant's architect or engineer certifying the completion of Tenant's Work, (b) a copy of the unconditional permanent certificates (state and local) of occupancy for Tenant's Work, (c) a complete set of "as built" plans and specifications for Tenant's Work, (d) a final lien waiver from each of Tenant's contractors, and (e) such other items as Landlord or its mortgage lender may reasonably request.

**EXHIBIT "B-1"**  
**LANDLORD'S WORK AND TENANT'S WORK**

**PART I — LANDLORD WORK DONE AT LANDLORD'S EXPENSE**

- \_\_\_\_
- \_\_\_\_
- \_\_\_\_
- 

**PART II — TENANT'S WORK DONE AT TENANT'S EXPENSE.**

Tenant's Work shall conform to all applicable governing codes and shall be approved by Landlord pursuant to the provisions of the Lease.

## **EXHIBIT "C"**

### **FORM OF GUARANTY**

#### **ABSOLUTE AND UNCONDITIONAL GUARANTY TO THE SINGLE TENANT LEASE BETWEEN (LESSOR) AND (LESSEE)**

THIS GUARANTY ("Guaranty") is executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by (hereinafter, collectively, "Guarantor") in favor of , LLC, a Florida limited liability company ("Landlord").

#### **R E C I T A L S:**

A. Landlord and ("Tenant") entered into that certain Lease Agreement dated of even date herewith (the "Lease"), for that certain premises located at , Florida (the "Premises").

D. In consideration of and as a material inducement to the Landlord to enter into the Lease, Guarantor has agreed to execute and deliver to Landlord this Guaranty.

E. Guarantor acknowledges that Landlord would not enter into the Lease with Tenant without the execution and delivery by Guarantor of this Guaranty.

NOW THEREFORE, In consideration of these presents, and in further consideration of the sum of Ten and 00/100 Dollars (\$10.00) in hand paid to the Guarantor by Landlord, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. Subject to Paragraph 9 below, Guarantor irrevocably and unconditionally guarantees payment when due, whether by acceleration or otherwise, of all amounts due under the Lease, together with all interest thereon and all attorneys' fees, cost and expenses of collection incurred by the Landlord in collecting such amounts, and does also irrevocably and unconditionally guarantee the performance by Tenant of all the duties and obligations to be performed by Tenant under the terms of the Lease. This is a guarantee of payment and not of collection.

2. Guarantor shall have no right of subrogation whatsoever with respect to the amounts owed by the Tenant to the Landlord unless and until Landlord shall have received full payment of all the amounts due under the Lease through the end of the term thereof.

3. The obligations of Guarantor hereunder shall not be released, discharged, impaired, modified or in any way affected by reason of:

(a) The unenforceability, non-existence, or invalidity of any of the terms of the Lease.

- (b) The modification or other change of any terms of all or any part of the Lease, any renewal thereof and any other indulgence with respect thereto, and any release, compromise or settlement with respect to the Tenant or any Guarantor.
- (c) The financial condition of the Tenant or any guarantor with may have changed or may hereafter change.
- (d) Any understanding or agreement that any other individual or entity was or is to execute this Guaranty.
- (e) The death, insolvency or bankruptcy of the Tenant or any other Guarantor, or the failure of the Landlord to file a claim against the estate of any such deceased or bankrupt party for such party's liability or obligation to the Landlord.
- (f) Any default by the Tenant under the Lease, whether or not notice of any such default is given to Guarantor.
- (g) Any failure, omission, delay or lack of diligence on the part of Landlord to enforce, assert or exercise any right, remedy, power or privilege of the Landlord under the Lease.
- (h) Any claim (including, but not limited to a counterclaim) that Guarantor or any other individual or entity may have against the Landlord.
- (i) Any other event, circumstance or condition, whether or not the Guarantor shall have notice or knowledge thereof.

4. Guarantor hereby waives all notice of acceptance of this Guaranty, notice of maturity, payment or default, and any other requirement or notice necessary to bind Guarantor hereunder, including, but not limited to, presentment, notice of dishonor and protest.

5. Guarantor hereby consents that from time to time Landlord may, without notice to Guarantor and without affecting any liability of Guarantor, waive or fail to enforce any of Landlord's rights under the terms of the Lease.

6. If more than one party shall execute this Guaranty, the term "Guarantor" shall mean all parties executing this Guaranty, and all such parties shall be jointly and severally liable.

7. Notwithstanding anything in this Guaranty to the contrary, if a bankruptcy petition is filed by or against Tenant or Guarantor, and the Tenant or Guarantor have made payments to the Landlord during any preference period as established by any bankruptcy or other similar laws, this Guaranty shall not be terminated, unless and until a final non-appealable decision of a court of competent jurisdiction has been entered determining that the Landlord shall be entitled to retain all such monies paid it by the Tenant or the Guarantor during such preference period. The obligations of the Guarantor under this Guaranty shall include the obligations to reimburse Landlord for any preferential payments received by Landlord during such period which Landlord has been required to return or repay. The Guarantor also hereby waive(s) any claim, right or remedy which the Guarantor may now have or hereafter acquire against the Tenant that arises hereunder and/or from the performance by any Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, indemnification, or participation in any claim

right or remedy of Landlord against the Tenant, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

8. Anything to the contrary set forth herein notwithstanding, the liability of the Guarantor shall be limited as follows: (i) during the first five (5) Lease Years of the Term, Rent (as defined in the Lease) for five (5) full Lease Years of the Term at the applicable rate during those Lease Years and (ii) after the fifth Lease Year of the Term, all Rent payable for the twelve (12) month period following the occurrence of a Default under the Lease, together with (i) all costs incurred by Landlord in collecting the amounts due under the Lease and hereunder, enforcing the performance of the Tenant under the Lease and/or the Guarantor hereunder, and/or protecting its rights under the Lease or hereunder, and (ii) the amount payable by Tenant under any indemnification provision in the Lease.

9. The undersigned expressly agree(s) that this Guaranty is governed by the laws of the State of Florida, and the United States of America, whichever the context may require or permit and that proper venue for any action which may be brought under this Guaranty in addition to any other venue permitted by law shall be Orange County, Florida. Should Landlord institute any action under this Guaranty, the undersigned hereby submits itself to the jurisdiction of any court sitting in Florida.

10. Guarantor agrees to pay to Landlord all costs incurred by Landlord in collecting the amounts due hereunder, enforcing the performance of the Guarantor hereunder and/or protecting its rights hereunder, including, but not limited to, reasonable fees for attorneys, paralegals and legal assistants, and expenses incurred in any and all judicial, bankruptcy, reorganization, administrative, receivership, or other proceedings. Such costs shall be paid regardless of whether suit is brought and shall include all trial and appellate levels including bankruptcy court.

11. This Guaranty may be executed in any number of identical counterparts, each of which shall be deemed an original and all of which, collectively, shall constitute one agreement; it being understood and agreed that signature pages may be detached from one or more such counterparts and combined with the signature pages from any other identical counterpart in order that one or more fully executed originals may be assembled.

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date and year first above written.

Signed, sealed and delivered in presence of:

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(Print Name) \_\_\_\_\_

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(Guarantor)

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(Print Name) \_\_\_\_\_

Guarantor Address:

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**EXHIBIT "D"**

**SECURITY INTERESTS IN TENANT'S PROPERTY**



**DEMETREE**  
REAL ESTATE SERVICES

**EXHIBIT "E"**  
**ACH AUTHORIZATION FORM**

I (we) hereby authorize DEMETREE REAL ESTATE SERVICES, as agent for \_\_\_\_\_ (PROPERTY) to initiate debit entries from my (our) checking/savings account at the financial institution listed below. I acknowledge that this authority will remain in full force and effect until Demetree Real Estate Services has received written notification from me (us) of its termination as to afford Demetree Real Estate Services and the financial institution a reasonable opportunity to act on it.

Name of Business: \_\_\_\_\_

Business Address: \_\_\_\_\_

Name of Financial Institution: \_\_\_\_\_

Address of Financial Institution- Branch, City, State, Zip: \_\_\_\_\_

Financial Institution Routing Number: \_\_\_\_\_

Checking/Savings Account Number: \_\_\_\_\_



Amount Authorized to be Debited Monthly (Must be in Compliance with Lease and will adjust with rent): \_\_\_\_\_

Requested Draft Date (Must be in Compliance with Lease): \_\_\_\_\_

Name (Please Print): \_\_\_\_\_

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

\*\*A VOIDED check must be submitted, along with this completed form, for debits to be initiated. Please note that a Convenience Fee of \$1.95/transaction applies\*\*