

VISTA BEACH & SLATER CENTRE

THIS LEASE, executed this **April 28th, 2022**, by and between **Phan Property Management** at 17473 Beach Boulevard, Huntington Beach, CA 92647, hereinafter called "Lessor" and **City of Huntington Beach** hereinafter called "Lessee".

Property Address: 17477 Beach Blvd., Huntington Beach, CA 92647

WITNESSETH:

That for and in consideration of the covenants and agreements hereinafter set forth to be kept and performed by Lessee, Lessor hereby leases to Lessee and Lessee does hereby take, accept and hire from Lessor the leased premises hereinafter described for the period, and at the rental, subject to, and upon the terms and conditions herein set forth as follows.

1. **LEASED PREMISES.** The premises ("leased premises") leased hereunder are located in the City of Huntington Beach, County of Orange, State of California, and shall consist of the building space hatch marked on the plan attached hereto as Exhibit "A-1". ~~Said building space to be constructed as set forth in Paragraph 25.~~ The leased premises shall have a frontage of approximately _____ feet (said measurement being from the center of partition or outside dimensions in the case of end space) and a depth of approximately _____ feet (outside dimensions) or a total square footage of approximately square feet **1030 sqft.**

It is expressly understood that the leased premises do not include the roof or exterior face of walls (except store fronts), and the use of the foregoing is expressly reserved to Lessor.

The leased premises, together with and including other property owned, leased or optioned by Lessor referred to hereinafter and throughout this Lease as the "shopping center", is now devoted to, or contemplated for development as a shopping center. The shopping center both present and proposed is depicted on Exhibit "A" and is legally described in Exhibit "B"; both attached hereto and made a part hereof by this reference.

2. **TERM.** The term of this Lease shall be for a period of **MONTH TO MONTH** commencing on **June 1st, 2022**.

3. **PAYMENT OF RENT.** Lessee hereby covenants and agrees to pay rent to Lessor in the form of "fixed minimum rent", ~~"percentage rent"~~ and "additional rent" all as hereinafter provided. The payment of all rents hereinafter set forth shall begin on the commencement date. All rents shall be paid at the office of Lessor. Time is of the essence in the payment of all forms of rent payable hereunder.

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4. RENT. Lessee shall pay to Lessor, as rental hereunder, the aggregate of the following:

A. An annual fixed minimum rent of Thirty-One Thousand Two Hundred Dollars (\$31,200.00) subject to adjustment as provided in Paragraph 5, payable in 12 equal monthly installments of Two Thousand Six Hundred Dollars (\$2,600.00), each payable in advance on the first day of each month throughout the term. Should the term of this Lease commence on a day other than the first day of a month, *the* first monthly installment of fixed minimum rent shall be prorated on the basis of a 30-day month and shall be paid on the date the term commences.

B. ~~Monthly percentage rent in an amount of which _____% of gross sales (as defined in Paragraph 6) made during each month exceeds the amount of the installment of fixed minimum rent for such month.~~

C. Additional rent (monthly or quarterly as Lessor shall designate) Lessee's share of the aggregate of the following: (1) Estimated annual taxes and assessments as defined in Paragraph 11; (2) Estimated annual premiums for insurance carried by Lessor pursuant to Paragraph 13; and (3) Estimated common area charges as defined in Paragraph 12 incurred or to be incurred in connection with the operation of the shopping center. It is understood that the foregoing charges shall be paid in estimated amounts determined periodically by Lessor. When the actual amounts of such charges are determined, an appropriate lump sum adjustment shall be made between Lessor and Lessee.

5. ADJUSTMENT OF FIXED MINIMUM RENT. Commencing at the expiration of the first year and each year thereafter ("adjustment date"), fixed minimum rent shall be increased, but in no event decreased, in accordance with the increase, if any, in the cost of living. The fixed minimum rent, as so adjusted, shall be paid in accordance with Paragraph 4.A. until the next adjustment date.

The adjusted fixed minimum rent shall be determined on each adjustment date by multiplying the fixed minimum rent set forth in Paragraph 4.A. by a fraction, the denominator of which is the index figure for the month immediately preceding the "commencement date" of this Lease as published in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers, Los Angeles/Long Beach, Anaheim, all items (1967-100) ("the CPI") and the numerator of which is the CPI index figure for the month immediately preceding the month during which the particular adjustment occurs.

The index for the adjustment date shall be the one reported in the U.S. Department of Labor's most comprehensive official index then in use and most nearly answering the foregoing description of the index to be used. If it is calculated from a base different from the base period 1967-100. Figures used for calculating the adjustment shall first be converted under a formula supplied by the Bureau. If the described index shall no longer be published, another index generally recognized as authoritative shall be substituted by Lessor.

6. ~~GROSS SALES AND RECORDS. The term "gross sales" as used in this Lease, shall mean the total of the you selling price of all merchandise or services sold by Lessee, its subtenants,~~

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~~concessionaires and any other person in or from the leased premises including without limitation, (1) All sales made in, or upon orders placed at or completed by delivery in, through, or from the leased premises; (2) All charges, including membership fees, made for service, rendered in or from or upon order placed at the leased premise; and (3) All sales and charges made in connection with business transacted in whole or in part in, upon, or from the leased premises. Gross sales shall include sales and charges made for cash, credit card or upon credit or partly for cash and partly for credit, without regard to whether or not collection is made of the amounts for which credit is given, and shall also include; (4) Sales and charges, whether made by Lessee or any other occupant or occupants of the leased premises or some part or part thereof; and (5) Sales made by means of mechanical or other vending machines, in the leased premises. Each sale, charge or business transaction upon installment or contract therefore shall be treated as a gross sale for the full price or charge in the month during which such charge or contract is made.~~

~~———— Gross sales shall exclude refunds for merchandise returned which were previously included in gross sales; allowances or adjustments granted to customers which were previously included in gross sales; transfers of merchandise from the leased premises to any other store or stores, warehouse or warehouses of Lessee; merchandise returned to vendors; and sales, excise and Like taxes which are added to the selling price of merchandise and paid for by the customer.~~

~~———— Lessee shall keep full and complete records and books of account reflecting all sales or business transactions in or from the leased premises, in order to enable Lessor to ascertain the percentage rent due hereunder. Lessee shall install one or more recording cash registers on which all sales including credit card sales in, on, or from the leased premises shall be recorded and such cash register tapes shall be retained as part of the records. Lessor, or its duly authorized representatives, shall have access thereto at all reasonable times for the purpose of examining the same and, if Lessor elects, of auditing the same, in the manner hereinafter provided. Lessee shall keep all records at or near the leased premises for a period of not less than 4 years following the date on which Lessee submits its report of gross sales based on such records.~~

~~———— Lessee shall prepare and deliver to Lessor within 20 days after the end of each calendar month at the place where rent is then required to be paid hereunder, a true written statement signed by Lessee or Lessee's duly authorized officer or agent showing in such form and detail as Lessor shall specify the elements and amounts of gross sales made by Lessee during such calendar month or fraction thereof. With said statement for each month, Lessee shall pay to Lessor the amount of percentage rent due for such month. In addition, Lessee shall further prepare and deliver to Lessor on or before the thirtieth day following the end of each calendar year during the term of this Lease and on or before the thirtieth day after the end of the term of this Lease, a complete, audited annual statement, prepared and signed by a certified public accountant and signed by Lessee or Lessee's duly authorized officer or representative, showing in such detail as Lessor shall specify the elements and amounts of gross sales made during the preceding calendar year or fraction thereof.~~

~~———— If Lessee shall fail to prepare and deliver, within the time hereinabove specified, any statement of gross sales required hereunder, Lessor may elect to treat Lessee's failure as a breach of this Lease, entitling Lessor to terminate this Lease or to exercise any other remedy provided for in~~

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~~Paragraph 17. In the alternative or in any case in which Lessor questions the accuracy of any statement submitted Lessee, Lessor may, at any time within 4 years following Lessee's failure to submit a statement or following the submittal of any statement elect to conduct an audit of all books and records of Lessee including without limitation, Lessee's bank accounts and tax returns, which in any way pertain to or show gross sales. Such audit may be conducted by Lessor or by any authorized representative. A statement prepared as a result of such audit shall be conclusively binding on Lessee and, in addition to all percentage rent, if any, shown to be due by such statement, Lessee shall pay for the cost of the audit in any case where the amount of gross sales shown by such audit is equal to or in excess of 102% of the amount shown by Lessee's statement for the same period. In the event such sales exceed 110% of the amount shown by Lessee's statement Lessor shall be entitled to declare same to be a breach of this Lease, or in the alternate, to assess such additional amount as percentage rental for the entire period back to the last audit or commencement of the lease, at option of Lessor.~~

7. USE. Lessee shall occupy and use the leased premises only for the operation of **Huntington Beach Police Department** and for no other purpose whatsoever without the prior written consent of Lessor.

Lessee shall not:

- A. Use or permit the leased premises to be used for any purpose other than that set forth in this Paragraph and further covenants and agrees to comply promptly with all statutes, ordinances, rules, orders or regulations of any governmental authority regulating the use or occupation of the leased premises.
- B. Use or permit the use of the leased premises in any manner that will tend to create a nuisance or disturb other tenants or occupants of the shopping center or tend to injure the reputation of the shopping center.
- C. Conduct or permit to be conducted in the leased premises any fire sale, auction, bankruptcy sale, second-hand sale, going-out-of-business sale or other promotions or sales without Lessor's prior written consent, except for periodic sales in the normal course of business.
- D. Allow any activity to be conducted on the leased premises or store any material on the leased premises which will increase premiums for or violate the terms of any insurance policy maintained by or for the benefit of Lessor or the shopping center, in no event shall any explosive, radioactive or dangerous materials be stored at the leased premises.
- E. Use or allow the premises to be used for sleeping quarters, dwelling rooms or for any unlawful purpose or permit any cooking on the leased premises without Lessor's prior written consent.
- F. Solicit business, distribute advertising, obstruct, place any merchandise, vending or amusement machines on, or other use in the conduct of its business, any part of the common area of the shopping center, including the sidewalks in front of the leased premises wise.

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G. Erect or install any exterior signs or window or door signs, advertising media or window or door lettering or placards; install any exterior lighting or plumbing fixtures, shades or awnings; make any exterior decoration or painting; build any fences, walls, barricades or other obstructions; or, install any radio, television, phonograph, antenna, loud speakers, sound amplifiers, flashing or revolving lights, or similar devices on the roof, exterior walls or in the windows of the leased premises, or make any changes to the store front without Lessor's prior written consent. Any signs, lights, advertising material, loud speakers or anything installed by Lessee on the leased premises which may be seen, heard or experienced outside the leased premises must be designed or approved by Lessor. Lessee shall not display, paint or place, or cause to be displayed, painted or placed any handbills, bumper stickers, or other advertising devices on any vehicles parked in the common area of the shopping center, nor shall Lessee distribute or cause to be distributed in the shopping center any handbills or other advertising devices.

H. Interfere with any other tenant's use of the common area or cause or permit any waste on the leased premises or in the shopping center.

I. ~~Directly or indirectly own, operate or have any interest in the ownership or operation of any business similar in character to that conducted by Lessee in the leased premises within a radius of five (5) miles from the leased premises.~~

Lessee shall:

A. Warehouse, store and/or stock in the leased premises only such goods, wares and merchandise as Lessee intends to offer for sale at retail in, from or upon the leased premises. Lessee shall use for office, clerical or other non-selling purposes only such space in the leased premises as it from time to time reasonably required for Lessee's business in the leased premises.

B. ~~Operate all of the leased premises during the entire term of this lease with due diligence and efficiency so as to produce maximum gross sales. Lessee shall provide sufficient sales personnel and carry at all time in said premises, a stock of merchandise of sizes, character, and quality as shall be reasonably designed to produce the maximum gross sales. Lessee shall keep the leased premises open for business during all regular customary days and hours as is reasonably determined by Lessor for such type of business in the city or area in which the shopping center is located.~~

C. ~~Install and maintain at all times, displays of merchandise in the display windows, If any, of the demised premises. Lessee shall keep the display windows and signs, If any, in the demised premises well lighted during the hours from sundown to 11:00 p.m. unless prevented by causes beyond the control of Lessee. In the event of breach by Lessee, of any of the conditions contained in these Subparagraphs B and C, Lessor shall have, in addition to any and all remedies herein provided, the right at its option to collect not only the fixed minimum rent herein provided, but further rent at the rate of 1/30th of the fixed minimum rent herein provided for each and every day that Lessee shall fail to conduct its business as herein provided; said further rent shall be deemed~~

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~~to be in lieu only of percentage rent as set forth in Paragraph 4 B, that might have been earned during such period of the Lessee's failure to conduct its business as herein provided.~~

D. Keep the leased premises, entrances thereto, walkways adjacent thereto, loading platforms, service areas, garbage and refuse storage areas free from obstruction and clean and neat, and arrange for the prompt and frequent pickup of rubbish at such intervals a Lessor may direct.

8. UTILITIES. Lessee agrees to pay before delinquency all charges for gas, heat, sewer, power, electricity, telephone, storm drain, water service and water meter charges and all other utility charges including any hook up or connection fees or charges which may accrue with respect to the Leased premises during the term of this Lease whether the same be charged or assessed at flat rates, measured by separate meters or prorated by the utility company or Lessor. Lessor shall in no event be liable to Lessee for any interruption on the service of any such utilities to the leased premises, howsoever such interruption may be caused; and this Lease shall continue on full force and effect despite any such interruptions.

9 REPAIRS. Lessee agrees that its acceptance of the leased premises evidenced by Lessee's entry into possession thereof shall constitute unqualified proof that the leased premises are, as of the commencement date of the term, in a tenantable and good condition; that Lessee will take good care thereof; and Lessee hereby waives the right to make repairs at Lessor's expense under the provisions of Sections 1941 and 1942 of the Civil Code of California. Any partial destruction which Lessor is obligated to repair or may repair under any of the provisions of Section 1932, Subdivision 2 and Section 1933, Subdivision 4 of the Civil Code of California are hereby waived by Lessee.

Lessee covenant and agrees at Lessee's own cost and expense to keep the leased premises, and each and every part thereof including without limitation, all plumbing and electrical conduits, wiring, fixtures and pipes and all sewers, floors, flooring, walls, lighting, store fronts, plate glass and glazing, air conditioning and heating systems, ceiling and all other parts thereof in good condition and repair at all times during the term hereof and to make promptly any and all repairs, renewals and replacements which may at any time be necessary or proper to put and keep the leased premises in good condition and repair, and to keep the leased premises and all appurtenances thereto in a good, clean, safe and wholesome condition at all times during said term. In the event that the leased premises contain air conditioning and/or elevators, Lessee's said obligation shall also include the retaining by Lessee of an air conditioning service company and/or an elevator service company approved by Lessor, which approval Lessor will not unreasonably or arbitrarily withhold, to service and to maintain the air conditioning equipment and/or the elevator equipment on a regular periodic inspection and service basis calling for inspection and servicing not less frequently than once quarterly and provide Lessor with copy of this contract. Lessee expressly agrees to pay promptly for any and all labor done or material furnished for any work or repair, maintenance, improvements, alteration or addition done by the Lessee in connection with these items.

Notwithstanding the fact that some of the following items are not part of the leased premises hereunder and shall be maintained by Lessor, Lessee shall nevertheless reimburse Lessor for

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Lessee's pro rate share of the cost of maintenance and repair thereof within 10 days following receipt of Lessor's statement therefore: roof, exterior walls, foundations and structural portions of the building exterior trim, all underground and overhead utilities and service lines and drops located outside the perimeter of the leased premises, and painting or staining of exterior walls, trim or accessories at such intervals as Lessor shall determine and which work shall be performed by Lessor.

Lessee's pro rata share of such costs shall be determined in accordance with Paragraph 12, except that the denominator for computing pro rata share shall be the ground floor area of the portion of the building to which such service pertains as is then leased, open for business and as to which rent is being paid.

Lessee shall promptly notify Lessor in writing of the need for any of the foregoing repairs to be performed by Lessor at Lessee's expense and Lessor shall have the right to enter the leased premises at any time with men and equipment as may be deemed necessary by Lessor to make such repairs. In no event shall Lessor be liable to any person, including Lessee, its agent or employees for any loss, damage (including water damage), theft, or destruction of or to any merchandise, fixtures, money or other property belonging to any person as a result of Lessor's failure promptly or correctly to perform any of the foregoing repairs or occasioned by acts of Lessor or its agents or employees while making such repairs. In no event shall Lessee be entitled to any offset, abatement or reduction in rent during periods of such repair.

In the event Lessee fails or refuses to perform any repairs required of it hereunder, in addition to all other remedies available hereunder or at law for Lessee's default, Lessor may, but shall not be obligated to, enter the leased premises, with men and equipment and perform such repairs on behalf and at the expense of Lessee.

10. ALTERATIONS. Lessee shall not make any alterations, additions, modifications, or changes ("alterations") to the leased premises without first procuring Lessor's written consent.

Any alterations to the leased premises or the building of which they are a part which are required by reason of any present or future law, ordinance, rule, regulation or order of any governmental authority having jurisdiction over the leased premises or the shopping center or of any insurance company insuring the leased premises, and regardless of whether or not such alteration pertains to the nature, construction or structure of the building or to the use made thereof by Lessee, shall be at the sole cost of Lessee regardless of whether the work is performed by Lessor or Lessee. All alterations, to or upon the leased premises, except removable trade fixtures, shall at once when made or installed be deemed to have attached to the freehold and to have become the property of Lessor at the option of Lessor.

11. TAXES AND ASSESSMENTS. Lessee shall be responsible for and shall pay to Lessor all real property taxes, assessments (whether special or general), fees, rental business tax, (the term "rental business tax" as used herein, shall include any business tax imposed upon Lessor by the State of California, or any political subdivision thereof, which is based upon or measured in whole or in part by amounts charged or received by Lessor under this Lease, provided that Lessee shall only pay

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the amount of such rental business tax that would be payable by Lessor if the leased premises were the only property of Lessor) or surcharges including without limitation any tax, excise on rent, or levy for parking privileges or in any way relating to environmental protection, or any other tax, levy, assessment or other charge of any nature whatsoever imposed by any governmental authority having jurisdiction over the shopping center and levied upon or payable in connection with the shopping center, leased premises, the operation thereof, or business conducted therein including any such tax, fee or assessment levied or assessed in lieu of such real property taxes (all of which are herein referred to as "taxes and assessments"). If the leased premises are not separately assessed, Lessee shall be responsible for a pro rata share (as defined in Paragraph 12) of all taxes and assessments except that for purposes of this Paragraph, the denominator for computing pro rate share shall be the ground floor area of such buildings as are then leased, open for business, and as to which rent is being paid, as are included in such tax bill. In the event said taxes and/or assessments are not paid in accordance with Paragraph 4.C. Lessor may, in addition to all other remedies permitted in this Lease, add an additional charge to the penalty and interest that would have been due if Lessee had failed to make timely payments directly to the tax collector.

Lessee shall pay, before delinquency, all property taxes and assessments on the furniture, fixtures, equipment, merchandise and other property of Lessee at any time situated or installed in the leased premises, and, in addition, on improvements in the leased premises made or installed by Lessee subsequent to the commencement date. If at any time during the term of this Lease any of the foregoing are assessed as a part of the real property of which the leased premises are a part, Lessee shall pay to Lessor upon demand the amount of such additional taxes as may be levied against said real property by reason thereof. For the purpose of determining said amount, figures supplied by the County Assessor as to the amount so assessed shall be conclusive.

12. COMMON AREA. Lessor hereby grants to Lessee the non-exclusive right in common with others during the term of this Lease to use the common area (as hereinafter defined) of the shopping center for itself, its employees, agents, customers, invitees and licensees.

The common area shall be subject to the exclusive control and management of Lessor or such other persons or nominees as Lessor may designate to exercise such management or control, in whole or in part over the common area, in Lessor's place and stead. And Lessor, and Lessor's nominees and assignees shall have the right to establish, modify, amend and enforce reasonable rules and regulations with respect to the common area. Lessee agrees to abide by and conform with such rules and regulations: to cause its concessionaires, and its and their employees and agents, so to abide and conform; and to use its best efforts to cause its customers, invitees and licensees so to abide and conform.

Lessor shall have the right to close, if necessary, all or any portion of the common area to such extent as may in the opinion of Lessor's counsel be necessary or desirable in order to prevent a dedication thereof or the accrual of any rights of any person or of the public therein; to close temporarily all or any portion of the common area to discourage non-customer use; to use portions of the common area while engaged in making additional improvements or repairs or alterations to the

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shopping center; and to do and perform such other acts in, to, and with respect to the common area as Lessor, in its sole judgment, shall determine to be appropriate for the shopping center.

Lessor shall have the unqualified right to increase or reduce the common area, and to rearrange the parking spaces, driveways and improvements on the common area.

Lessor shall have the sole right to place vending or amusement devices and public telephones on the common area.

Lessee agrees that its officers, agents, employees, vendors, suppliers and other independent contractors will use such access roads and will operate trucks and trailers in delivering merchandise to and from the leased premises at such days and hours upon and over such access roads as are designated therefore by Lessor as a means of ingress to and egress from the leased premises. The use of such access roads by Lessee and Lessee's officers, agents, employees, vendors, suppliers and other independent contractors shall be subject to the rules and regulations established by Lessor with respect to the use thereof.

All automobiles, trucks and other vehicles of Lessee shall be parked only where and as permitted by Lessor from time to time, and officers, agents and employees of Lessee shall park their vehicles only in such places or in such particular area, if any, as may be designated by Lessor as employee parking area. Lessee agrees that when and if requested by Lessor so to do, Lessee will furnish Lessor with the license numbers of the vehicles of Lessee and other respective officers, agents and employees.

If any vehicle of Lessee or any concessionaire or any of their respective officers, agents or employees, is parked in any part of the shopping center other than the employee parking areas, Lessee hereby authorizes Lessor to engage a towing service to remove such vehicle at Lessee's expense.

As used herein, "common area" means all areas of the shopping center (as the same may be expanded or decreased at Lessor's option) except those areas, which from time to time are designated by Lessor as being outside the common area or are leased to or within the exclusive control of a tenant of the shopping center. The common area includes, without limitation, the land and facilities utilized for or as parking areas, access and perimeter roads, truck passageways (which may be elevated or subsurface in whole or in part,) and platforms therein (including, notwithstanding anything herein contained, any such platform as is for the use of Lessee or concessionaire); service corridors and stairways providing access from store premises to such platforms and truck passageways; loading docks, landscape areas, exterior walks, arcades and / or balconies; sign and directory equipment; wash rooms comfort room, drinking fountain, toilets and other public facilities, bus station, taxi stands and the like; areas devoted to or for maintenance purpose or equipment including management offices; and any areas dedicated or belonging to the public or any government authority, which are contiguous or near to the shopping center and which are required to be maintained by or the cost of maintenance required to be borne by Lessor.

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Lessee shall pay to Lessor in the manner set forth in Paragraph 4.C. Lessee's pro rata share of all charges of any kind or nature incurred or paid by Lessor in connection with the maintenance, repair, operation or ownership of the common area, which charges shall include but not necessarily be limited to the expense of the following:

Repair, replacement, and maintenance, surfacing, resurfacing, painting, restriping, cleaning, sweeping, window washing, janitorial services, planting, and landscaping, signs and markers, lighting and other utilities, parking control and security guards and fire protection or detection service, all real property and personal property taxes and assessments (as defined in Paragraph 11), levied or assessed against the common area, premiums for all forms of insurance described in Paragraph 13, covering the common area as well as Workmen's Compensation Insurance and any other insurance carried by and deemed advisable by Lessor, wages and salaries for personnel employed to operate the common area, cost of machinery and equipment used for common area maintenance or rental thereof, plus 15% of all the foregoing charges to cover Lessor's overhead.

Lessee's pro rata share of common area expenses shall be determined by multiplying such expenses by a fraction, the numerator of which is the total number of square feet of floor area in the leased premises and the denominator of which is the total number of square feet of floor area of buildings located in the shopping center and which is then leased, open for business and as to which rent is being paid, at the time the proration is made. Lessor shall periodically determine ground floor area for purposes of the above calculation and Lessor's determination shall be conclusive.

13. **INSURANCE.** At all times during the term of this Lease, Lessor shall maintain in full force and effect with insurance companies licensed to do business in the State of California and otherwise satisfactory to Lessor in its sole discretion one or more policies including the following coverage's:

A. A. General public liability insurance against claims for bodily injury, death or property damage occurring in or upon the common area with limits of coverage of not less than \$500,000 for death or injury to one person, \$1,000,000 for death or injury to more than one person in a common accident or occurrence, and \$50,000 for damage or injury to property. Lessor may increase the foregoing limits if it deems such increase desirable to protect Lessor and Lessee.

B Fire, extended coverage, vandalism, malicious mischief, earthquake, flood, fire rental and sprinkler leakage (if building contains sprinklers) insurance in such form and with such covered perils as Lessor deems appropriate in its sole discretion insuring the building and other improvements on the leased premises in an amount equal to the full replacement value thereof. All proceeds shall belong to and be the sole property of Lessor and Lessee hereby assigns to Lessor or its nominee all of Lessee's right, title and interest thereto.

Lessee shall pay its pro rata share of such premiums (said pro rata share being the same as defined in Paragraph 12 above) in the manner provided in Paragraph 4. Lessor shall have the right to maintain blanket policies with the foregoing limits provided that the amount of insurance premium payable by Lessee hereunder shall be determined as the premium Lessee would have been required

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to pay if Lessor had caused to be issued a separate policy of the particular insurance on the leased premises in accordance with applicable tariff rules and rates duly promulgated by same by the Insurance Service Bureau or any successor insurance industry rating authority.

At all times during the term of this Lease, Lessee shall maintain in full force and effect with insurance companies licensed to do business in the State of California and otherwise satisfactory to Lessor in its sole discretion one or more policies evidencing the following coverage:

1 General public liability and workmen's compensation insurance against claims for bodily injury, death or property damage occurring within the leased premises with limits of coverage of not less than \$500,000 for death or injury to one person, \$1,000,000 for death or injury to more than one person in a common accident or occurrence and \$50,000 for damage or injury to property. Lessee shall increase the foregoing limits if Lessor deems such increase desirable to protect Lessor and Lessee.

2. Plate glass insurance on the leased premises and policies of fire insurance, including extended coverage and such other insurance as Lessor may require, on all fixtures and equipment installed by Lessee and contents in the leased premises, such insurance to be in an amount equal to 100% of the insurable value thereof.

All proceeds of such property insurance shall be paid to Lessor and held in trust to be used for the repair or replacement of the plate glass fixtures, equipment or contents so insured. A duplicate original of all such policies shall be delivered to Master Lessor at least 15 days prior to the time such insurance is first required to be carried by Lessee, and thereafter at least 15 days prior to the expiration or cancellation of any such policy. In the event Lessee fails at any time during the term of this Lease to obtain such insurance or to provide such evidence thereof, Lessor shall have the right but not the duty to procure such insurance and Lessee shall pay to Lessor the costs and expenses thereof as additional rent when the next payment of fixed minimum rent is required to be made.

Lessor and Lessee agree that all insurance policies shall contain a clause permitting the insured to waive the insurance carrier right of subrogation against the other arising out of the occurrence of any casualty insured against Lessee and Lessor hereby waive any such right of subrogation against the other party hereto.

14. DAMAGE AND DESTRUCTION. In the event the leased premises, or any part thereof, shall be damaged by any casualty, this Lease shall remain in full force and effect, and Lessor shall repair such damage and put the leased premises in good condition as rapidly as reasonably possible. Provided such damage was not caused or contributed to by the act of negligence of Lessee, its agents or employees, Lessee shall be entitled to an equitable abatement of the fixed minimum rent during periods of such restoration, but Lessee shall remain liable for all other charges hereunder including, without limitation, percentage rent.

Notwithstanding any other provisions of this Paragraph 14 to the contrary, if the leased premises shall be damaged and such damage shall be to the extent of more than 15% of the

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replacement value of the leased premises at the time of such damage, then Lessor may at its election upon notice to Lessee, within 90 days after such damage, terminate this Lease as of the date of such damage.

In the event that 25% or more of the building area or common area of the shopping center shall be damaged or destroyed by casualty, notwithstanding that the leased premises may be unaffected by such casualty, Lessor may terminate this Lease and the tenancy hereby created by giving to Lessee written notice of Lessor's election so to do, within 90 days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

15. EMINENT DOMAIN. If there is any taking of or damage to all or any part of the leased premises or any interest therein because of the exercise of the power of eminent domain, whether by condemnation proceedings or otherwise, or any transfer of any part of the leased premises or any interest therein made in avoidance of the exercise of *the* power of eminent domain (all of the foregoing being hereinafter referred to as "taking") prior to or during the term hereof, the rights and obligations of the Lessor and Lessee with respect to such taking shall be as follows:

A. If there is a taking of all of the leased premises, this Lease shall terminate as of the date of such taking.

B. If 25% or more of the ground floor area of the leased premises shall be taken, or 25% of the land area described in Exhibit "B" (as the same may be amended) shall be taken (regardless of whether or not any part of the leased premises is taken) then, in that event, Lessor shall be entitled to elect either to terminate this Lease or to rebuild the remainder of the leased premises or the shopping center. Lessor shall give written notice to Lessee of its election no later than 90 days after the date Lessor receives notice that possession or title to the portion of the leased premises or shopping center taken has vested in the condemner.

If this Lease is terminated in accordance with the provisions of this Paragraph 15 such termination shall become effective as of the date physical possession of the particular portion is taken or immediate possession is ordered. The parties shall be released from all further liability hereunder. If this Lease is not terminated as provided in this Paragraph 15, Lessor shall restore the remainder of the improvements occupied by Lessee so far as practicable to a complete unit of like quality, character, and condition as that which existed immediately prior to the taking.

If this Lease is not terminated as provided in this Paragraph 15, the annual fixed minimum rent only set forth in Article 4A for the remainder of the term shall be reduced by the proportion which the number of square feet of ground floor area of the leased premises taken bears to the total ground floor area of the leased premises immediately before the taking.

The entire award or compensation in such proceedings, whether for a total or partial taking or for diminution in the value of the leasehold or for the fee shall belong to and be the property of Lessor, and Lessee hereby assigns to Lessor all of Lessee's interest in any award.

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16. ASSIGNMENT AND SUBLEASE. Lessee shall not assign this Lease or any interest therein whether voluntarily, by operation of law, or otherwise, and shall not sublet the leased premises or any part thereof, except by written permission and consent of Lessor being first had and obtained. Consent of Lessor to any such assignment shall not be unreasonably withheld if: (1) At the time of such assignment or transfer Lessee is not in default in the performance and observance of any of the covenants and conditions of this Lease; (2) The assignee or subtenant of Lessee shall expressly assume in writing all of Lessee's obligations hereunder; (3) Lessee shall provide proof to Lessor that the assignee or subtenant has a financial condition which is satisfactory to Lessor and Lessor's lender and (4) The leased premises continue to be used solely for the purposes set forth in Paragraph 7 and the assignee or subtenant is, in Lessor's opinion, capable of operating such business. In connection with any such assignment or sublease, Lessee or the assignee of Lessee shall pay to Lessor a fee of \$250. However, prior to Lessor's consent for such assignment or subletting, Lessor shall have the right to terminate this Lease upon written notice to Lessee and upon such termination Lessee shall have no further obligation to Lessor by reason of this Lease.

Any such subleasing or assignment, even with the approval of Lessor shall not relieve Lessee from liability for payment of all forms of rental and other charges herein provided or from the obligations to keep and be bound by the terms, conditions and covenants of this Lease. The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease, or consent to the assignment or subletting of the leased premises. Consent to any assignment or subletting shall not be deemed consent to any future assignment or subletting. Any merger, consolidation or transfer of corporate shares of Lessee, if Lessee is a corporation, so as to result in a change in the present voting control of the Lessee by the person or person owning a majority of said corporate shares on the date of this Lease, shall constitute an assignment and be subject to the conditions of this paragraph.

17. LESSEE'S DEFAULT. The following shall be deemed to be acts of default under this Lease:

A. Lessee shall fail, neglect or refuse to pay any installment of fixed minimum rent, additional rent, percentage rent or any other charge including, without limitation, penalty charges, required to be paid by Lessee hereunder at the time and in the amount as herein provided, or pay any moneys agreed by it to be paid promptly when and as the same shall become due and payable under the terms hereof and such default shall continue for a period of more than 5 days after notice thereof in writing given to Lessee by Lessor.

B. Lessee shall fail, neglect or refuse to keep and perform any of the other covenants, conditions, stipulations or agreements herein contained and covenanted and agreed to be kept and performed by Lessee and such default shall continue for a period of more than 15 days after notice thereof in writing given to Lessee by Lessor; provided, however that if the cause for giving such notice involves the making of repairs or other matters reasonably requiring a longer period of time than the period of such notice, Lessee shall be deemed to have complied with such notice if Lessee has commenced and is diligently prosecuting compliance therewith.

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C. Any attachment or levy of execution or similar seizure of the leased premises or Lessee's merchandise, fixtures or other property at the leased premises or any foreclosure, repossession, or sale under any chattel mortgage, security agreement or conditional sales contract covering Lessee's merchandise, fixtures or other property at the leased premises; or the filing of any petition by or against Lessee under any chapter of the Bankruptcy Act, or the adjudication of Lessee as a bankrupt or insolvent; or the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Lessee or a general assignment by Lessee for the benefit of creditors; or any other action taken or suffered by Lessee under any State or Federal insolvency or bankruptcy act and the continuation thereof for more than 20 days.

In the event of an act of default by Lessee, Lessor may, at its option: (1) Terminate Lessee's right to possession of the leased premises because of such breach and recover from Lessee all damages allowed under Section 1951.2 of the California Civil Code, including, without limitation, the worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided, or; (2) Not terminate Lessee's right to possession because of such breach, but continue this Lease in full force and effect and in that event (a) Lessor may enforce all rights and remedies under this Lease, including the right to recover the rent and all other charges due hereunder as such rent and other charges become due, and (b) Lessee may assign its interest in this Lease with Lessor's prior written consent, which consent shall not be unreasonably withheld in accordance with Paragraph 16.

In the event of any reentry, Lessor may remove all persons from the leased premises and all property and any signs located in or about the leased premises and place such property in storage in a public warehouse at the cost and risk of Lessee.

No reentry or reletting of the leased premises of any nature served under unlawful detainer action or the filing of any unlawful detainer or similar action shall be construed as an election by Lessor to terminate this Lease unless a written notice of such intention is given by Lessor to Lessee; and notwithstanding any such reletting without such termination, Lessor may at any time thereafter elect to terminate this Lease.

Except in the case of Lessor's willful misconduct, Lessee hereby waives all claims or demands for damages that may be caused by Lessor in reentering and taking possession of the leased premises as hereinabove provided and all claims or demands for damages which may result from the destruction of or injury to the leased premises and all claims or demands for damages or loss of property belonging to Lessee or to any other person or firm that may be in or about the leased premises at the time of such reentry.

Nothing contained in this Lease shall limit Lessor to the remedies set forth in this Paragraph 17; and upon Lessee's default Lessor shall be entitled to exercise any right or remedy then provided by law, including, but without limitation, the right to obtain injunctive relief and the right to recover all damages caused by Lessee's default in the performance of any of its obligations under this Lease.

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Neither this Lease nor any interest herein nor any estate created hereby shall pass by operation of law under any State or Federal insolvency or bankruptcy act to any trustee, receiver, assignee for the benefit of creditors or any other person whatsoever without the prior written consent of Lessor.

In computing damages or rental due under this Lease, the value of percentage rent for any period subsequent to the termination of this Lease or the termination of Lessee's right of possession shall be an amount per year equal to 1/3 of the total percentage rent paid by Lessee for the last 3 full years, provided that if 3 full years have not elapsed at the time of such default, such value shall be an amount per year equal to the average yearly percentage rent theretofore paid by Lessee.

If any payment of rent or other payment is not paid when due, the Lessee shall, as a penalty for such delinquency, pay to Lessor a **\$75 late charge** if payment is not received within 5 days of due date. It is further agreed that in the event Lessor shall receive two (2) consecutive rental payments after the above referenced due date, Lessor shall have the option, at its sole discretion, to require that the rent as set forth in Paragraph 4 herein shall no longer be paid monthly in advance but shall be paid quarterly in advance. This provision shall not be construed to relieve Lessee from any default hereunder arising through the failure on the part of Lessee to make any payment at the time and in the manner specified, in addition any sum accruing to Lessor under the terms and provisions of this Lease which shall not be paid when due shall bear interest at the highest lawful rate from the date the same becomes due and payable by the terms and provisions of this Lease until paid.

18. **DEFAULT BY LESSOR.** Lessor shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Lessor shall have failed to perform such obligations within 30 days (or such additional time as is reasonably required to correct any such defaults) after written notice by Lessee to Lessor properly specifying wherein Lessor has failed to perform any such obligation. Notwithstanding any default by Lessor, Lessee shall not have the right to exercise any remedy provided for herein or at law unless and until Lessee shall have delivered a written notice to any lender holding a trust deed against the leased premises or the shopping center or portion thereof specifying wherein Lessor has failed to correct or remedy such default, which such notice may not be delivered until after the expiration of the period set forth herein for Lessor to remedy such default and shall grant to the lender an additional equal period within which to cure such default.

19. **SURRENDER OF PREMISES.** At the expiration of the tenancy hereby created, Lessee shall surrender the leased premises in the same condition as the leased premises were in upon delivery of possession thereto under this Lease, in addition to any alterations or additions which Lessor elect to keep pursuant to Paragraph 10, reasonable wear *and* tear excepted, and shall surrender all keys for the leased premises to Lessor at the place then fixed for the payment of rent and shall inform Lessor of all combinations on locks, safes and vaults, if any, in the leased premises. No act or conduct of Lessor, except a written acknowledgement of acceptance of surrender signed by Lessor, shall be deemed to be or constitute an acceptance of the surrender of the leased premises by Lessee prior to the expiration of the term of this Lease.

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If prior to the termination of this Lease or within 15 days thereafter, Lessor elects, by written notice to Lessee, Lessee shall promptly remove the additions, improvement, fixtures, trade fixtures and installations which were placed in the leased premises by Lessee and which are designated in said notice, and shall repair any damage occasioned by such removal; and in default thereof Lessor may effect said removals and repairs at Lessee's expense. The covenant of Lessee contained herein shall survive the expiration or termination of the Lease term.

20. INDEMNIFICATION, RELEASE AND LIENS. Lessee agrees and this Lease is made upon the express condition that Lessor shall not be liable, responsible, or in any way accountable, to Lessee, Lessee's agents, employees, servants, customers or invitees, or to any person whomever, for any loss, theft or destruction of or damage (including but not limited to any damage caused by rain storm or other water damage) to any goods, wares, merchandise, fixtures or other property stored, kept, maintained, or displayed in, on or about the leased premises, or in, on or about the facilities, the use of which Lessee may have in conjunction with this Lease, nor for injury to or death of any person or persons who may at any time be using, occupying or visiting the leased premises or thereabout regardless of the nature or cause of such injury, damage or destruction including without limitation, the negligence of Lessor.

Lessee agrees to indemnify, defend and hold harmless Lessor, its agents and employees from and against any and all expense, liability and claims for damage to or loss of property (including Lessee's property) or injury to or death of persons (including Lessee, its agents, employees, visitors, or invitees) directly or indirectly resulting from anything occurring from any cause on or about the leased premises, in connection with the maintenance or operation of Lessee's business, or Lessee's occupation or use of the leased premises. Lessee shall discharge any judgment or compromise rendered against or suffered by Lessor, as a result of anything indemnified against hereunder and shall reimburse Lessor, for any and all costs, fees, or expenses incurred or paid by Lessor, (including, without limitation, reasonable attorneys' fees) in connection with the defense of any action or claim.

Lessee shall keep the leased premises and any buildings located thereon and all of the right, title and interest of Lessee and Lessor, therein free and clear of all liens or claims, which may ripen into such a lien or encumbrance, and in the event Lessee fails to do. Lessor may pay such lien or encumbrance or claim, and on or before the 10th day of the month following the month during which such payment is made, Lessee shall pay to Lessor such sums so paid, plus such reasonable costs and attorneys' fees as may have been incurred by Lessor; provided, however, that in the event Lessee in good faith disputes such lien or encumbrance and with reasonable promptness furnishes an indemnity bond or such undertaking in an amount sufficient either to procure the release of such lien or encumbrance or to indemnify against the principal amounts thereof, together with such costs or attorneys' fees may be covered by said lien or encumbrance, then the furnishing of such bond or undertaking shall be deemed due compliance with the foregoing provision.

21 SUBORDINATION AND FINANCING. This Lease shall in all respect be junior and subordinate to any ground lease or other matters of record and all of the provisions contained therein. In the event of any conflict between the terms hereof and any of the foregoing, the provisions of the foregoing shall prevail. Subject to the foregoing, and upon payment by Lessee of all of the rents

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herein provided, and upon the observation and performance of all of the covenants, terms and conditions on Lessee's part to be observed and performed, Lessee shall quietly hold and enjoy the leased premises for the term hereby leased without hindrance or interruption by Lessor or any other person or persons lawfully or equitably claiming by, through or under Lessor, subject nevertheless to the terms and conditions of this Lease.

Lessee covenants and agrees that upon written request of Lessor, Lessee will make, execute, acknowledge and deliver any and all instruments requested by Lessor Which are necessary or proper to effect the subordination of this Lease to any mortgage, deed of trust, indenture or other encumbrance, and hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make, execute, acknowledge and deliver any such instruments in the name and on behalf of Lessee, or to subordinate any such mortgage, deed of trust, indenture or other encumbrance, such person may elect to continue this Lease in full force and effect in the same manner and with like effect as if such person had been named as Lessor herein, and in the event of such election, this Lease shall continue in full force and effect, as aforesaid and Lessee hereby attorns and agrees to attorn to such person.

At any time and from time to time, upon request in writing from Lessor, Lessee agrees to execute, acknowledge and deliver to Lessor a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications) and the dates to which fixed minimum rent, additional rent, percentage rent and other charges have been paid. It is understood and agreed that any such statement may be relied upon by any prospective purchaser of the leasehold or the mortgagee, beneficiary or grantee of any security or interest, or any assignee of any thereof, under any mortgage or deed of trust now or hereafter made covering any leasehold interest in the leased premises or the real property covered by this Lease.

It is understood and agreed that Lessor may be required to obtain financing in connection with the purchase, construction and / or operation of the shopping center and the lender or lenders providing such financing may require modifications or amendments to this Lease. In the event Lessee does not agree to such amendments or modifications of this Lease, may be required by such lender or lenders a condition to providing such financing, then in either of these event Lessor may cancel this Lease on 30 days written notice to Lessee without liability to either party.

Lessee agrees to furnish such financial statements, balance sheets or operating statements as may be required and which Lessor is authorized to use or furnish to any lender or lenders. Any financial statements submitted to Lessor by Lessee prior to or after execution of this Lease are warranted by Lessee to be true and correct.

If during the term of this Lease, Lessor sells, assigns, subleases or otherwise transfers or conveys its interest in the leased premises, or this Lease, or all or any portion of the shopping center, then all rights and obligations of Lessee hereunder, shall remain in full force and effect as though there had been no such sale, transfer, assignment or sublease. Upon such transfer and conveyance Lessor shall be unconditionally absolved and released of all obligations of Lessor accruing hereunder from the date of such sale or transfer.

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This Lease, or a short form thereof shall not be recorded without the prior written consent of Lessor and if Lessor so requests, Lessee agrees to execute and deliver a short form of this Lease for recordation.

~~22. ATTORNEY'S FEES. In case suit shall be brought for any breach of this Lease including without limitation unlawful detainer of the leased premises or for the recovery of any rent due under the provisions of this Lease, or because of the breach of any covenant herein contained on the part of Lessee to be kept or performed, the prevailing party shall be entitled to a reasonable attorney's fee which shall be fixed by the Court, or in any compromise or settlement such attorney's fee shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.~~

23. NOTICES. Whenever under this Lease a provision is made for any demand, notice or declaration of any kind or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other it shall be in writing delivered personally or by certified mail with postage prepaid addressed to Lessee or to Lessor at the address appearing opposite their signatures at the end of this Lease. Either party may, by like notice, at any time and from time to time designate a different address or a different person to whom or in care of who notices shall be sent. Notices delivered by mail shall be deemed delivered 48 hours after deposit thereof in a U.S. Mail Post Box located in California, postage prepaid and addressed as required herein. Lessee shall post in a conspicuous place on the front of leased premises an emergency telephone number where Lessee may be reached after business hours.

24. SECURITY DEPOSIT. Lessee, contemporaneously with the execution of this Lease, has deposited with Lessor the sum of **Two Thousand Six Hundred Dollars (\$2,600.00)**, plus the first months rent in the amount of **Two Thousand Six Hundred Dollars (\$2,600.00)**, receipt of which is hereby acknowledged by Lessor. Said deposit shall be held by Lessor, without interest, and deposited with other funds of Lessor, security for the faithful performance by Lessee of all of the terms, covenants, and conditions of this Lease by Lessee to be kept and performed during the term hereof. The first months rent shall be kept as security under this article until store opens for business then be applied against rent due.

In the event of the failure of Lessee to keep and perform any of the terms, covenants and conditions of this Lease to be kept and performed by Lessee then Lessor, at its option may, with or without terminating this Lease appropriate and apply said entire deposit, or so much thereof as may be necessary, to compensate Lessor for all loss or damage sustained or suffered by Lessor due to such breach on the part of Lessee. Should the entire deposit, or any portion thereof be appropriated and applied by Lessor for the payment of overdue rent or other sums due and payable to Lessor by Lessee hereunder, then Lessee shall, upon the written demand of Lessor, forthwith remit to Lessor in cash an amount sufficient to restore said security to the original sum deposited, and Lessee's failure to do so within 10 days after receipt of such demand shall constitute a breach of this Lease. Should Lessee comply with all of said terms, covenants and conditions and promptly pay all the rental herein provided for as it falls due, and all other sums payable by Lessee to Lessor hereunder, the

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deposit or so much thereof as may remain, shall be returned in full to Lessee at the end of the term of this Lease, or upon the earlier termination of this Lease.

25. CONSTRUCTION OF LEASED PREMISES. Lessor shall complete, at its own expense, the work designated as "Lessor's Construction" on Exhibit "C" attached hereto and made a part hereof. All other work of any character, whether performed by Lessor or Lessee shall be at Lessee's sole expense including, without limitation, work designated as "Lessee's Construction" and "Lessor's Optional Construction" on Exhibit "C". All work to be performed by either party shall be done in accordance with plans and specifications to be approved by Lessor and in accordance with all applicable building codes and regulations governing said construction and in accordance with Exhibit "C" and same shall become the property of Lessor upon termination of this Lease.

Upon execution of this Lease, Lessee will have prepared at its expense plans and specifications for the work designated as "Lessee's Work" and "Lessor's Optional Work" and shall deliver a full set of plans to Lessor within 30 days following notice from Lessor that said plans are required. Lessor shall have the right to approve, disapprove or require modification of said plans and specifications which changes shall be made by Lessee and revised plans submitted promptly to Lessor for approval. The foregoing procedure shall be followed until a satisfactory set of plans and specifications have been prepared. The interior design of the leased premises shall be consistent with the overall theme and design of the shopping center.

Lessor shall perform for Lessee such of "Lessor's Optional Work" as Lessor elect to perform and Lessee shall perform the remainder thereof. In any event, such work shall be at Lessee's sole expense.

Any changes in the work described in Exhibit "C" or the plans and specifications requested by Lessee or required by any Governmental authority shall be at Lessee's sole expense. Lessee shall pay Lessor any cost, which Lessee is required to pay pursuant to this article within 5 days following Lessor's periodic billings therefore. No changes in the work described in Exhibit "C" shall be valid unless they are approved by Lessor in writing.

In order to expedite the commencement of Lessee's business in the leased premises, Lessee, upon receipt of notice from Lessor that Lessee may enter to perform its work, may enter upon the leased premises for the purpose of performing "Lessee's Work" and installing trade fixtures and furnishings during the construction period; provided, however, that such activity on the part of Lessee shall be done only in such manner as not to interfere with Lessor's construction and Lessor shall not be liable to Lessee for damages to or loss of such fixtures, equipment or furnishings. Lessee agrees to comply with any union labor provisions of any Contractor's Agreement made with Lessor. Lessee agrees to promptly after notice commence and diligently prosecute its work to completion so that Lessee's business will be ready to open as soon as possible.

In the event Lessee shall not have completed its construction at the time any other shops in the shopping center are ready to open, Lessee shall temporarily enclose and paint its store front to a

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minimum height of 10 feet and any material or construction deliveries shall be made through the rear entrance.

26. ~~MERCHANTS ASSOCIATION. Should a nonprofit corporation or association comprised of at least 50% of the tenants at any time operating business establishment in the shopping center be now or hereafter organized for the purpose, among other things, of carrying out such common or general advertising or promotional activities or programs for the shopping center and the various business establishments operated therein as a majority of the members thereof may deem proper and expedient, then at Lessor's request Lessee shall at its own expense do all things necessary promptly to become, and throughout the term hereof remain, an active member in good standing of such corporation or association. Lessor shall have no financial obligation to Merchants Association except on a volunteer basis.~~

27. DEVELOPMENT OF SHOPPING CENTER. It is expressly understood and agreed that Lessor may at its sole option and without Lessee's consent (1) (but shall not be obligated to), develop that portion of the shopping center situated outside of the area outlined in red on Exhibit "A"; (2) Increase the size of the shopping center by addition of contiguous property, or decrease the size of the shopping center or modify Exhibit "A" by adding, deleting or changing the building areas, common area, parking layout. Ingress or egress of the shopping center; in any of which event. Lessor shall deliver to Lessee revised Exhibit "A" and "B" which shall be substituted in and automatically become part of this Lease; (3) Vary the plan, location or dimensions of the leased premises at any time prior to the time Lessee commences its construction pursuant to Paragraph 25, provided that the approximate size and general location of the leased premises will not be changed without Lessee's consent, and provided further that if a material change of location or dimensions of the leased premises is requested by Lessor and Lessee does not consent to such change then Lessor may, at its option, terminate this Lease; (4) Build additional stories on any building or buildings in the shopping center and construct double-deck, subterranean, or elevated parking facilities. Lessor makes no warranty or representation whatever regarding the names or character of businesses to be conducted or the size or location of any spec. to be occupied by any tenant of the shopping center. The building use designation, if any, set forth on Exhibit "A" is for convenience only, and is not to be construed as a representation that the proposed building will be put to such use; and Lessee does not rely on any such representation in entering into this Lease.

28. MISCELLANEOUS. Lessor and its agent shall have free access to the leased premises during all reasonable hours for the purpose of examining the same and to ascertain if Lessee is in compliance with the terms of this Lease, to exhibit the same to prospective purchasers or tenants pursuant to this Lease and to post such notices as may be desirable or necessary in Lessor's sole judgment.

Lessor shall have the right to designate any five named individuals who may purchase from Lessee any product or services sold by Lessee at Lessee's cost plus ten per cent.

As used in this Lease and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include all genders. Lessor and

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Lessee as used in this Lease or in any other instrument referred to in or made a part of this Lease shall likewise include both the singular and the plural, a corporation, co-partnership, individual or person acting in any fiduciary capacity as executor, administrator, trustee, or in any other representative capacity. All covenants herein contained on the part of Lessee shall be joint and several.

All of the terms hereof shall apply to, run in favor of and shall be binding upon and inure to the benefit of, as the case may require, the parties hereto, and also their respective heirs, executors, administrators, personal representatives and assigns and successors in interest, subject at all times nevertheless to the provisions of Paragraph 16 of this Lease relating to restrictions upon assignment or subletting this Lease or the Leased premises.

One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a subsequent breach of the same or any other covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent act.

Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Lessor and Lessee, it being expressly understood and agreed that neither the method of computation of rent nor any other provisions contained in this Lease nor any act or act of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

The laws of the State of California shall govern the validity, construction, performance and enforcement of this Lease.

Each of the parties represents and warrants that it has engaged no broker or finder and that no claims for brokerage commissions or finder's fees will arise in connection with the execution of this Lease and each of the parties agrees to indemnify the other against, hold it harmless from, all liabilities arising from any such claim (including, without limitation, the cost of attorney's fees in connection therewith).

The submission of this Lease for examination does not constitute a reservation of or option for the leased premises and this Lease becomes effective as a Lease only upon execution thereof by Lessor and Lessee.

It is understood that there are no oral agreements between the parties affecting this Lease and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements, representations, and understanding, if any, between the parties hereto or displayed by Lessor to Lessee with respect to the subject matter thereof and none thereof shall be used to interpret or construe this Lease.

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If a corporation executes this Lease as a Lessee, Lessee shall promptly furnish Lessor certified corporate resolutions attesting to the authority of the officers to execute the Lease on behalf of such corporation.

The Paragraph titles herein are for convenience only and do not define, limit or construe the contents of such Paragraphs.

Lessee hereby grants to Lessor such licenses or easements in, under or over the leased premises or any portion or portions thereof as shall be reasonably required for the installation or maintenance of mains, conduits, pipes or other facilities to serve the shopping center or any part thereof, including but not by way of limitation the premises of any occupant.

It is specifically understood and agreed that this lease is subject to conditions, covenants, restrictions, grants of easement and/or restrictions and easement agreements and any master leases if Lessors are master Lessees and not fee owners.

~~In the event the Lessee shall hold over the leased premises after the expiration of the term hereof with the consent of the Lessor either express or implied, such holding over shall be construed to be only a tenancy from month to month subject to all the covenants, conditions and obligations hereof and the Lessee hereby agrees to pay the Lessor the same rentals provided for by this Lease for such additional times as Lessee shall hold such property, or Lessor may at its sole discretion increase said rentals to an amount equal to 150% of that set forth in Article 4.~~

(Signature Page Follows)

VISTA BEACH/SLATER CENTRE LEASE

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LESSOR'S BUSINESS ADDRESS:

17473 Beach Blvd
Huntington Beach, CA 92647

LESSOR



LESSEE'S BUSINESS ADDRESS:

LESSEE

LESSEE'S HOME ADDRESS:

HOME PHONE

OFFICE PHONE

APPROVED AS TO FORM

By: 

 MICHAEL E. GATES
CITY ATTORNEY
CITY OF HUNTINGTON BEACH