

RESOLUTION NO. R-15-31

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROPOSED LEASE AGREEMENT WITH CAKE WHIMZY TO OPERATE A BAKERY AT 504 NORTHEAST 70TH STREET, SUITE B, GLADSTONE, MISSOURI.

WHEREAS, The City of Gladstone owns a former United States Postal Office building, Gladstone 18, located on real property described as all of lots 4, 5, 6 and 7, Block 23, Linden addition to the City of Gladstone, Clay County, Missouri, more commonly known as 504 Northeast 70th Street, Gladstone, Missouri; and

WHEREAS, the above described land lies within the Downtown Village Center which the City of Gladstone is developing for public purposes to enrich and enhance the quality of life in Gladstone; and

WHEREAS, the City of Gladstone sought Requests for Proposals from businesses desiring to locate within the Downtown Village Center as start-up business; and

WHEREAS, Cake Whimzy, submitted a proposal and has negotiated a proposed lease agreement with City staff for the operation of a bakery consisting of approximately ±1,274 Square Feet for a term no longer than seven (7) years from the commencement date, with reasonable market rent rates, and such other terms as more particularly set forth in the proposed lease document.

NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI AS FOLLOWS:

That the City Manager of the City of Gladstone, Missouri, is hereby authorized to enter into the proposed lease agreement with Cake Whimzy, on the terms and conditions described herein and as more particularly set forth in the lease document and to take any other such measures as may be required to ensure the opening of the new bakery.

INTRODUCED, READ, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLADSTONE, MISSOURI THIS 26TH DAY OF MAY 2015.



Mayor Bill Garnos

ATTEST:



Ruth Bocchino, City Clerk



P.O. Box 10719
GLADSTONE, MISSOURI 64188-0769

7010 North Holmes
GLADSTONE, MISSOURI 64118-2646

816-436-2200
816-436-2228 FAX

MEMORANDUM

TO: Kirk L. Davis, City Manager
FROM: Melinda Mehaffy, Economic Development Administrator
DATE: May 20, 2015
SUBJECT: 504 NE 70th Street (Gladstone 18) Project

The City of Gladstone accepted proposals from interested parties in the leasing of 504 NE 70th Street, Suite B, generally referred to as Gladstone 18. The City received three proposals and asked all three proposals to move forward to the second phase of the proposal process. In the second phase, business prospects met with architect Mark Spurgeon, WSKF Architecture to create concept drawings of their plan and estimate the costs associated with construction.

Cake Whimzy is a custom bakery located in Gladstone currently operating under a Special Use Permit. Owner Alicia Hommon has successfully grown her business and is ready to expand to a storefront and expand her offerings.

Ms. Hommons plans include opening a bakery which offers coffee and pastries, seasonal baked goods and the opportunity to sign up for baking classes.

On the agenda Tuesday evening for the City Council meeting is a resolution authorizing the execution of a commercial lease between the City of Gladstone and Cake Whimzy to operate a bakery at 504 NE 70th Street, Suite B.

The basic terms of the lease are for seven years and four months beginning on or around September 1, 2015. Prior to the City turning the building over to the tenant, the construction work must be completed. This includes items such as installing restrooms, completing interior walls, moving electrical services, completing plumbing services, flooring and work required to comply with health department codes.

LEASE AGREEMENT

FOR

504 NE 70th Street, Suite B
GLADSTONE, MO 64118

BETWEEN

**THE CITY OF GLADSTONE, MISSOURI, a Third-Class City
("LANDLORD")**

AND

Cake Whimzy ("TENANT")

GLADSTONE 18RETAIL LEASE

In consideration of mutual covenants, Landlord and Tenant hereby agree as follows:

A-1. BASIC LEASE PROVISIONS AND ENUMERATION OF EXHIBITS

Section A-1, Basic Lease provisions.

DATE: May, 26, 2015

LANDLORD: **THE CITY OF GLADSTONE, MISSOURI**, a Third-Class City

ADDRESS OF LANDLORD: 7010 N Holmes
Gladstone, MO 64118

TENANT: Alicia Hommon

ADDRESS OF TENANT: 5710 N Michigan
Gladstone, Missouri 64118

TENANT'S TRADE NAME: Cake Whimzy

GUARANTOR(S): None

LEASED PREMISES: The Leased Premises constitutes approximately 1,274 rentable square feet in the Building.

Exhibit A-1: Site Plan showing location of the Leased Premises

Exhibit A-2: Floor Plan of Leased Premises
Gross Rentable Area of the Leased Premises: 1,274 rentable sq. ft.

TENANT'S PROPORTIONATE SHARE: Tenant's Proportionate Share as to the Building is 23%.

Landlord will calculate Tenant's pro rata CAM share for the Building and the Retail Areas separately.

LEASE TERM: Seven (7) YEARS

ANNUAL MINIMUM
RENT:

Year 1 \$9.00/SF
Year 2 \$9.75/SF
Year 3 \$10.50/SF
Year 4 \$11.25/SF
Year 5 \$12.00/SF
Year 6 \$12.75/SF
Year 7 \$13.50/SF

MONTHLY RENT

Year 1 \$159.25
Year 2 \$1,194.38
Year 3 \$1,274.00
Year 4 \$1,353.63
Year 5 \$1,433.25
Year 6 \$1,512.88
Year 7 \$1,592.50

Language for Gross Lease ONLY:

Monthly base rent includes estimated operating expenses of taxes, electricity and all CAM charges.

The operating expenses do not include utilities, cleaning, phone/internet or cable TV and shall be paid by Tenant.

RENEWAL TERM:

None

PERMITTED USES:

Bakery/Restaurant

SECURITY DEPOSIT:

\$955.50 due and payable with the execution of this lease.

COMMENCEMENT
DATE:

Estimated "Commencement Date" shall be September 1, 2015.

FREE RENT:

Tenant may occupy the premises free of rent (under all other terms and conditions of this Lease) until December 31, 2015 at which time Base Rent and CAMS shall commence. CAM Charges and operating expenses shall be paid during the four (4) month rent abatement in Year 1.

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TENANT'S TAX
CHARGE:
CAM, TAXES, &
INSURANCE:

See Article VIII.

Landlord estimates (without any liability for the accuracy thereof) Tenant's initial CAM charges, taxes and insurance to be \$1.50 per square foot. This estimate includes the Tenant's Tax Charge. Tenant's pro rata share of said expenses may be adjusted at the end of each lease year based upon actual costs. Tenant must also have the right to audit all of the foregoing costs, subject to the limitations to be contained in the Lease.

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Section A-2. Effect of Reference to a Basic Lease Provision.

Each reference in this Lease to any of the Basic Lease Provisions contained in Section A-1 shall be deemed to incorporate all of the terms provided under each Basic Lease Provision.

Section A-3. Enumeration of Exhibits.

The Exhibits enumerated in this Section and attached to this Lease are hereby incorporated in this Lease by reference and each party agrees to perform all obligations binding upon it under or by virtue of such Exhibits.

Exhibit A-1: Site Plan showing location of the Leased Premises
Exhibit A-2: Floor Plan of Leased Premises
Exhibit B: Certificate of Commencement Date

ARTICLE I
GRANT AND TERM

Section 1.01. Leased Premises.

Landlord leases to Tenant and Tenant rents from Landlord the Leased Premises, together with the appurtenances specifically herein granted. The Leased Premises are located in the building as shown on **Exhibit A-1** attached hereto (the "Building").

Section 1.02. Use of Common Areas.

The use by Tenant of the Leased Premises shall include the use, in common with others entitled thereto, of the "Common Area" (as defined in Section 10.02) in the retail/office Building commonly known as Gladstone 18 Retail Space (hereinafter referred to as the "Retail Areas").

Section 1.03. Term.

(a) The initial term of this Lease and Tenant's obligation to pay rent shall commence on the Commencement Date as defined in the Base Lease Provisions. The initial term shall expire, unless sooner terminated as herein provided, on the last day of the last "Lease Year" (as defined in Section 25.04) provided under "Lease Term" in section A1.

(b) Failure of Tenant to Open.

Tenant shall use commercially reasonable efforts to open the Leased Premises for business with the public, fully fixtured and staffed, by the Commencement Date. Tenant shall commence payment of Rent on the Commencement Date whether or not it is open for business on such date.

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Section 1.04.
Commencement Date.

Obligations Prior to Commencement of Term and

Tenant shall perform all of its obligations under this Lease (except its obligations to pay rent and other charges) from the date upon which the Leased Premises are first made available to Tenant until the actual Commencement Date as defined above, in the same manner as though the Term began when the Leased Premises were so made available to Tenant.

ARTICLE II
RENT

Section 2.01.

Annual Minimum Rent.

Tenant agrees to pay to Landlord, without any prior demand therefore and without any deduction or setoff whatsoever, except as may be otherwise expressly provided in this Lease, the "Annual Minimum Rent" specified in Section A-1 of the Basic Lease Provisions.

Section 2.02.

Payment of Annual Minimum Rent.

Annual Minimum Rent for the term shall be payable by Tenant in equal monthly installments on or before the first day of each calendar month in advance, and shall be prorated for partial months within the term.

Section 2.03.

Additional Rent.

Tenant shall pay, as "Additional Rent", all charges required to be paid by Tenant under this Lease, whether or not the same are designated "Additional Rent".

Section 2.04.

Interest and Late Charges.

If Tenant shall fail to pay, when the same is due and payable, any Rent or any Additional Rent, Tenant shall, upon demand, pay Landlord interest at the "Interest Rate" (as defined in Section 25.04) on the arrearages from the due date thereof until paid. Any rentals or other payments required by this Lease not received by Landlord within ten (10) days after the due date set forth herein shall be subject to a late charge of ten percent (10%) of the amount thereof for each month or portion of a month during which said rental remains unpaid.

Section 2.05.

Payment of Rent.

Annual Minimum Rent, Additional Rent, Tenant's Common Area Contribution, Tenant Tax Charge and all other charges required to be paid by Tenant under this Lease are sometimes herein referred to collectively as "Rent," and all remedies applicable to the non-payment of Rent shall be applicable thereto. Unless otherwise specifically set forth in this Lease, Rent shall be paid without any prior demand or notice therefor, and shall in all events be paid without any deduction, recoupment, set-off or counterclaim, and

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without relief from any valuation or appraisal laws. Landlord may apply payments received from Tenant to any rental obligations of Tenant then accrued, without regard to such obligations as may be designated by Tenant.

Section 2.06.

Prorations.

If the Lease Term commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Annual Minimum Rent, Tenant's Common Area Contribution, Tenant Tax Charge, and any other amounts payable on a monthly basis shall be prorated on a per diem basis for such partial calendar months. If the Minimum Rent is scheduled to increase under Article 1 other than on the first day of a calendar month, the amount for such month shall be prorated on a per diem basis to reflect the number of days of such month at the then current and increased rates, respectively. If the Lease Term commences other than on January 1, or ends other than on December 31, Tenant's obligations to pay amounts towards actual Operating Costs for such first or final calendar years shall be prorated on a per diem basis to reflect the portion of such year included in the Term.

ARTICLE III
RELOCATION OF TENANT

Section 3.01

Relocation of Tenant

Landlord, with sixty (60) days prior written notice, has the right to relocate Tenant on the following terms. Landlord expressly reserves the right after the execution and during the term of this Lease, or any extension or renewal thereof, at its sole cost and expense, to remove the Tenant from the Premises and relocate the Tenant to some other space of Landlord's choosing of approximately the same size within Downtown Gladstone, which other space shall be decorated by Landlord at Landlord's expense and Landlord may in its discretion use such decorations and materials from the existing Premises or other materials, so that the space in which Tenant is removed. Tenant, by the execution of this Lease, acknowledges the foregoing right of Landlord, and no rights granted in this Lease to Tenant, including, but not limited to, the right of peaceful and quiet enjoyment, shall be deemed to have been breached or interfered with by reason of Landlord's exercise of the right of relocation reserved in this Paragraph. Landlord's sole obligation for costs and expenses of removal and relocation shall be the actual cost of relocating and decorating the space in which Tenant is relocated, and Tenant agrees that Landlord's exercise of its election to remove and relocate Tenant shall not terminate this Lease or release the Tenant, in whole or in part, from the Tenant's obligation to pay the rents and perform the covenants and agreements hereunder for the full term of this Lease.

ARTICLE IV
AUDIT

Tenant, at its expense, shall have the right no more frequently than once per calendar year, following prior written notice to Landlord, to audit, at Tenant's sole expense, Landlord's books and records relating to Basic Costs for the calendar year preceding such

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audit. In the event such an audit demonstrates that Additional Rent collected for such preceding year to be higher or lower than the amount of Additional Rent actually due pursuant then Landlord shall refund any over-payment or Tenant shall make good any under-payment within forty-five (45) days of such determination. In the event an audit demonstrates that Additional Rent collected for such preceding year is more than five percent (5%) higher than the amount of Additional Rent actually due under **Articles VIII and X**, Landlord shall pay the expense of such audit up to \$500.00.

ARTICLE V
CONDITION OF IMPROVEMENTS:

Section 5.01.

Condition of Improvements.

Landlord is delivering and Tenant is accepting the Leased Premises in its "as-is, where-is" condition; and Tenant shall construct its tenant improvements at the Leased Premises at its sole cost and expense. Landlord shall have the right to construct, maintain, repair, replace and relocate utility lines where reasonably necessary or desirable, and to repair, alter, replace or remove the same, all in a manner that does not interfere with Tenant's use thereof or of the Leased Premises. If Landlord wishes to perform any work in the Leased Premises after the Commencement Date, Landlord shall notify Tenant of the scope and nature of such work at least 48 hours prior to Landlord's employees or contractors entering the Leased Premises. All Tenant Improvements or Landlord Improvements shall be paid at Prevailing Wage.

(A) Nothing contained in this Lease shall authorize or empower Tenant to do any act which shall in any way encumber Landlord's title to the Building or the Leased Premises, nor in any way subject Landlord's title to any claims by way of lien or encumbrance whether claimed by operation of law or by virtue of any expressed or implied contract of Tenant, and any claim to a lien upon the Building or the Leased Premises arising from any act or omission of Tenant shall attach only against Tenant's interest and shall in all respects be subordinate to Landlord's title to the Building and the Leased Premises. Tenant shall upon request deliver to Landlord copies of all lien waivers obtained by Tenant for work paid for by Tenant. If Tenant has not removed any such lien or encumbrance or (provided that Tenant is contesting such lien or encumbrances) delivered to Landlord a title company indemnity, bond or other security reasonably satisfactory to Landlord, within fifteen (15) days after written notice to Tenant by Landlord, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for making any investigation as to the validity thereof, and the amount so paid shall be deemed Additional Rent reserved under this Lease, due and payable by Tenant on demand by Landlord.

(B) At the termination of the Term for any reason or upon default by Tenant in the performance of any of the terms or conditions of this Lease to be performed by Tenant, then the Tenant Improvements made in the Leased Premises shall and will become the absolute property of Landlord and Tenant shall have no further interest in the same. Tenant shall pay ad valorem taxes and increased insurance thereon or attributable thereto, which cost shall be payable by Tenant to Landlord in advance as Additional Rent.

Neither the Base Rental nor Additional Rent hereunder shall be reduced nor shall any refunds be made by Landlord for the cost of the Tenant Improvements, if any. Trade fixtures and equipment shall remain the property of the Tenant and will be removed by Tenant at the end of the Lease Term.

(C) Landlord will deliver the Premises to Tenant on September 1, 2015 in condition for immediate occupancy. Landlord will have completed all Landlord improvements by that date. In exchange Tenant will contribute Ten Thousand Dollars (\$10,000.00) toward the costs of the Landlord improvements and will make payments of no less than Two Thousand Dollars (\$2,000.00). Payments are due no later than the first day of the month and shall be paid in full no later than January 1, 2016.

Failure to make all of these payments or any one payment shall constitute an event of "Default" pursuant to Section 21.01(A) hereof.

ARTICLE VI CONDUCT OF BUSINESS BY TENANT

Section 6.01.

Use of Leased Premises.

Tenant shall operate the Leased Premises under the "Trade Name", if any, specified in Section A-1 of the Basic Lease Provisions and shall use the Leased Premises solely for "Permitted Uses" specified therein. Tenant shall not use or permit or suffer use of the Leased Premises for any other business purpose.

Tenant shall, subject to the provisions of Section 26.02, keep the Leased Premises open for business during those hours established from time to time by Landlord for the retail space in the Building in general, in Landlord's sole discretion, provided, however, that Landlord shall require that Tenant is open for business no less than fifty (50) hours per week. Tenant shall have no obligation to open on holidays (including, but not limited to Thanksgiving, Christmas and New Year's Day). If Tenant, after having once opened the Leased Premises for business, shall thereafter fail to carry on its business in the manner required under the provisions of this Section (including, without limitation, its failure to remain open for business during the minimum business periods hereinabove provided for) then, without limiting Landlord's other remedies, Tenant shall, in recognition of the difficulty or impossibility of determining Landlord's damages, pay to Landlord, upon demand, as liquidated damages and not as a penalty and in addition to the Annual Minimum Rent and other charges payable under this Lease, a separate charge equal to 1/30th of the then applicable monthly Annual Minimum Rent for each day, or part thereof, Tenant fails to so operate the Leased Premises in accordance with the provisions of this Section.

Tenant's Permitted Use is subject to any exclusive use rights granted to other tenants in the Retail Areas. Landlord shall provide Tenant with information on exclusive use rights granted to other tenants in the Retail Areas on Tenant request.

Section 6.02.

Parking.

Tenant shall cause its employees to park in such areas as are designated for employee parking or as notified from time to time by Landlord. In the event that Tenant shall fail to cause an employee to park where required, Tenant may be charged Twenty Dollars (\$20.00) for each violation of this covenant, which amount may be adjusted from time to time to reflect inflation.

ARTICLE VII
OPERATION OF CONCESSIONS

Section 7.01.

Consent of Landlord.

Tenant shall not permit any business to be operated in or from the Leased Premises by any concessionaire or licensee without the prior consent of Landlord which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE VIII
TAXES

Section 8.01.

Taxes.

(A) The term "**Taxes**" shall mean the aggregate of the real estate taxes, assessments and other governmental charges and levies, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind or nature whatsoever (including, without limitation, assessments for public improvements or benefits and special or installment tax bills and interest on unpaid installments thereof and also including any payments in lieu of taxes (PILOTS)) which may be levied, assessed or imposed or become liens upon the Building, or which arise out of the use, occupancy or possession of the Building (including the land on which the Building is located, leasehold improvements, betterments and other permanent improvements), from time to time. The term "**Taxes**" shall not, however, include inheritance, estate, succession, transfer, gift, franchise, corporation income or profit tax imposed upon Landlord, nor penalties including, but not limited to, those imposed upon Landlord for Landlord's delinquent payment of the Taxes; PROVIDED, HOWEVER, that if any time hereafter the methods of taxation prevailing at the commencement of the term of this Lease shall be altered so that in addition to or in lieu of or as a substitute for the whole or any part of the Taxes now levied, assessed or imposed on real estate as such there shall be levied, assessed or imposed (i) a tax on the rents received from the Building; or (ii) a license fee measured by the rents receivable by Landlord from the Building; or (iii) a tax or license fee imposed upon Landlord which is otherwise measured by or based in whole or in part upon the Retail Areas or any portion thereof, then such tax or fee shall be included in the computation of Taxes, computed as if the amount of such tax or fee so payable were that part due if the Building were the only property of Landlord subject thereto.

(B) The term "**Tax Year**" shall mean the 12 month period established as the real estate tax year by the taxing authorities having jurisdiction over the Retail Areas.

(C) The term "**Tenant Tax Charge**" shall mean an amount equal to the product obtained by multiplying the sum of Taxes for each Tax Year applicable to the Building by Tenant's Proportionate Share with respect to the Building.

(D) Tenant shall pay Tenant's Tax Charge to Landlord in monthly installments in advance on the first day of each calendar month during such Tax Year; provided, however, and without limiting the foregoing obligations of Tenant, in no event shall Tenant pay Tenant's Tax Charge (or any portion thereof) to Landlord less than 30 days prior to the date the Taxes (or any portion thereof) are due to the appropriate taxing authority without interest or penalty. If, on the first day of any calendar month the amount of Taxes payable during the then current Tax Year shall not have been determined by the taxing authority, then the Tax Charge then payable by Tenant shall be estimated by Landlord subject to immediate (i) adjustment when the amount of such Taxes are determined, and (ii) payment by Tenant upon submission of a statement thereof by Landlord.

(E) Within 60 days after the end of each Tax Year, Landlord shall make available a copy to Tenant of all tax bills for such Tax Year and certify to Tenant the amount of Tenant's Tax Charge. If the amount of such monthly payments paid by Tenant exceeds the actual amount due, the overpayment shall be credited on Tenant's next succeeding payment, except during the last Lease Year of the term, Landlord will refund such excess to Tenant within 30 days following the expiration of the term, provided Tenant is not then in default under this Lease. If the amount of such monthly payments paid by Tenant is less than the actual amount due, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due, within 30 days after demand from Landlord.

(F) For the Tax Year in which this Lease commences or terminates, Tenant's Tax Charge shall be prorated on a per diem basis.

(G) Tenant shall pay (or reimburse Landlord upon demand if the same are levied against Landlord or the Retail Areas), before delinquency, any and all taxes, assessments, license fees and public charges, of whatever kind or nature, levied or assessed during the term by any governmental authority against Tenant's business in the Leased Premises and the fixtures, furniture, appliances and any other personal property.

(H) Landlord shall have the right (but not the obligation), if permitted by law, to make installment payments of any assessments levied against the Retail Areas, and in such event, Tenant's share of the Taxes shall be computed upon the installments and interest thereon paid by Landlord in each Tax Year; PROVIDED, HOWEVER, if any special assessment exceeds \$5,000.00 in cost and is payable in installments, Tenant's share of the Taxes shall be computed as if Landlord had elected to pay such assessment in installments over the longest period permitted by law (irrespective of whether Landlord elects to pay in said manner), and Tenant's share of the Taxes shall include only those installments (and interest thereon) which would come due during the Term. Landlord shall have the right (but not the obligation) in its commercially reasonable discretion to contest the validity or amount of any Tax by appropriate proceeds, and if Landlord shall

voluntarily institute any such contest, it shall have the sole, absolute and unrestricted right to settle any negotiation, contest, proceeding or action upon whatever terms owner may, in its commercially reasonable discretion, determine. In the event Landlord receives any refund of such Taxes (and provided Tenant is not then in default under this Lease) Landlord shall credit such proportion of the refund (after deducting all of Landlord's cost and expenses in connection with obtaining such refund) as shall be allocable to Tenant's Tax Charge due from Tenant, except during the last Lease Year of the term, Landlord will refund such excess to Tenant within 30 days following expiration of the term provided Tenant is not then in default under this Lease.

(I) In the event of any dispute under this Section, Tenant shall pay Tenant's Tax Charge in accordance with the applicable bill or statement, and such payment shall be without prejudice to Tenant's position. If the dispute shall be determined in Tenant's favor by agreement or otherwise, Landlord shall pay to Tenant the amount of Tenant's overpayment resulting from compliance with such bill or statement.

ARTICLE IX CHANGES TO THE RETAIL AREAS

Section 9.01.

Control by Landlord; Changes to the Retail Areas.

Notwithstanding anything set out in this Lease to the contrary, it is agreed that (i) all Common Area shall be subject to the exclusive control and management of Landlord. Provided that such action does not adversely affect the operation of the Permitted Uses then, without Tenant's prior written consent, Landlord shall have the right at any time (either before, during or after the initial construction thereof), once or more often, to change the size, area, level, location and arrangement of the entrances, access roads, parking areas and other Common Area, to construct buildings and other improvements thereon and therein and to permit the owners or occupants of land located outside the Retail Areas and their invitees to use the Common Area; (ii) Landlord shall have the right to make alterations and additions to the buildings in the Retail Areas (including the construction of additional buildings therein), and to add and exclude areas from the Retail Areas, and to relocate improvements, and the premises leased to any other tenant, and (iii) Landlord shall have the right to do and perform such other acts in and to the Common Area as they shall reasonably determine to be advisable with a view to the improvement of the convenience and use thereof by tenants of the Retail Areas and their customers.

ARTICLE X COMMON AREA EXPENSE

Section 10.01.

Common Area.

In each "Lease Year" (as defined in Section 25.04) Tenant shall pay to Landlord the "**Tenant's Common Area Contribution**" (hereinafter defined). "Tenant's Common Area Contribution" for each Lease Year shall be that portion of the "Common Area Operating Cost" (hereinafter defined) equal to the product obtained by multiplying such

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Common Area Operating Cost for such Lease Year by the percentage that is Tenant's Proportionate Share. In each fiscal year (as defined in Section 25.04) Tenant shall pay to Landlord Tenant's **"Building Operating Cost Contribution"** (hereinafter defined). "Tenant's Building Operating Cost Contribution" for each lease year shall be that portion of the Building Operating Cost (hereinafter defined) equal to the product obtained by multiplying such Building Operating Cost of the Building for such fiscal year by the percentage that is Tenant's Proportionate Share of the Operating Cost. Tenant's Proportionate Share of Building Operating Cost is 23%. The **"Tenant's Common Area Contribution"** and the Tenant's **"Building Operating Cost Contribution"** may be referred to hereinafter collectively as the **"Tenant's Contribution"**. Common Area Operating Costs and Building Operating Cost may be collectively referred to as the **"Operating Costs"**.

Section 10.02.

Common Area Definitions.

(A) The term **"Common Area Operating Cost"** shall mean the following:

(1) The total amount of all of Landlord's actual and reasonable expenses incurred in maintaining, repairing, replacing, managing and operating the Common Areas in the Retail Areas and all services and obligations incidental to the operation of the Retail Areas, all costs of security, insurance and all real estate taxes and assessments for the Common Area of the Retail Areas, all other additional reasonable costs and expenses actually incurred by Landlord in operating, maintaining, equipping, inspecting, insuring, protecting and repairing the Common Areas, including, without limitation, all costs or expense of or incurred in connection with or reasonably attributable to: exterior lighting of the Common Area and electricity (including holiday lighting), exterior holiday decorations; gardening and landscaping (including planting, replanting and replacing flowers and shrubs); cleaning, public liability insurance (including, without limitation, "umbrella coverage"), worker's compensation and hazard insurance (including, without limitation, fire and extended coverage [with standard and malicious mischief endorsement], machinery coverage and all-risk policies; fire protection; fees for required licenses; personal property taxes; sanitary control; and all utility charges related to the Common Areas. The foregoing provision of this subsection is for definitional purposes only and shall not be construed to impose any obligation upon Landlord to incur such expenses.

(B) The Term **"Building Operating Cost"** shall mean the following:

(1) Any and all other reasonable costs and expenses actually incurred by Landlord in operating, maintaining, equipping, inspecting, insuring, protecting, and repairing the Building (excluding interior tenant premises), including without limitation all cost or expense of or incurred in connection with or reasonably attributable to: exterior lighting and electricity (including holiday lighting); exterior holiday decorations; gardening and landscaping (including planting, replanting and replacing flowers and shrubs); cleaning; public liability (including, without limitation, "umbrella coverage"), worker's compensation, and hazard insurance (including, without limitation, fire and extended coverage [with vandalism and malicious mischief endorsement], boiler and machinery,

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and all-risk policies); fire protection (including maintenance of an ADT or similar type alarm security system); fees for required licenses; personal property taxes; sanitary control; and utility charges related to the Building. The foregoing provision in this subsection is for definitional purposes only and shall not be construed to impose any obligation upon Landlord to incur such expenses.

(C) By way of illustration and not of limitation, the term "Common Area Operating Cost" and the "Building Operating Cost" shall not include the following:

(1) any financing costs, including without limitation, interest and amortization on mortgages and deeds of trust and other debt costs or ground lease payments, if any, except as provided herein; depreciation of the Building and other improvements (except permitted amortization of certain capital expenditures as provide below); interior improvements, repairs or alterations to spaces leased to other tenants of the Building; the cost of providing service directly to and paid directly by, any tenant of the Building; or costs of any items to the extent Landlord receives reimbursement from warranty, condemnation or insurance proceeds or from a third party (such proceeds to be deducted from Operating Costs in the year in which received);

(2) capital expenditures to the Building, except those (i) made primarily to and which in fact reduce Building Operating Costs or to comply with any Laws or other governmental requirements that go into effect on or after the Commencement Date, or (ii) for repairs or replacements (as opposed to additions or new improvements); provided, all such permitted capital expenditures (together with reasonable finance charges) shall be amortized for purposes of this lease over the useful life of such improvement;

(3) leasing commissions and legal fees and expenses incurred by Landlord in dealing with other tenants and prospective tenants of the Building or in connection with the development and leasing of the Retail Areas, and costs to improve or make space in the Building for other tenants "tenant-ready";

(4) costs of any special services, operations or accommodations for the benefit of specific tenants of the Building (as opposed to all tenants of the Building and their customers or the public generally);

(5) any costs or charges for utility service and usage for which Landlord is reimbursed; and

(6) any administrative, management or supervisory fees or expenses.

(D) The term "Common Area" shall mean means all portions of the Retail Areas, exclusive of buildings constructed within the Retail Areas and those portions of the Retail Areas leased to third parties, including, without limitation, parking areas, streets, driveways, curb cuts, access roads, aisles, sidewalks, malls, landscaped areas, storm water detention areas, drainage facilities, lighting, retaining walls, water, sanitary and storm sewer, gas, electric, telephone and other utility lines and systems, conduits and

facilities, which serve the access ways, the parking areas and other common areas, and other common and service areas within the Retail Areas, whether or not shown on the Site Plan, in its sole discretion, from time to time to designate in writing what is and is not Common Area.

Section 10.03.

Payment.

Tenant's Contribution shall be paid in monthly installments on the first day of each calendar month in advance, in an amount reasonably estimated by Landlord. Within 90 days after the end of each Lease Year, Landlord shall furnish Tenant with a statement summarizing the actual Operating Costs for the preceding Lease Year and setting forth in detail the method by which Tenant's Contribution was determined as herein provided. To the extent the aggregate of the monthly Tenant's Contributions paid by Tenant during such Lease Year exceeds the amount which is payable by Tenant during such Lease Year, as provided in Section 10.01, the difference shall be credited against the next succeeding monthly Tenant's Contribution to be made by Tenant under this Article, except during the last Lease Year of the term, Landlord will refund such excess to Tenant within 30 days following the expiration of the term, provided Tenant has discharged all of its obligations under this Lease. If the aggregate of the monthly Tenant's Contributions paid by Tenant during any Lease Year is less than the actual amount due, Tenant shall pay Landlord the difference between the amount paid by Tenant and the actual amount due, within 30 days of demand therefor submitted by Landlord hereunder for any such Lease Year. For the Lease Year in which this Lease commences or terminates, Tenant's Contribution shall be prorated, if applicable, on a per diem basis.

ARTICLE XI
ALTERATIONS; SIGNS;
SURRENDER AND TENANT LIENS

Section 11.01.

Alterations.

Other than improvements described in the Plans, Tenant shall not make or cause to be made any alterations, additions or improvements in or to the Leased Premises without submitting to Landlord plans and specifications therefor and obtaining Landlord's consent thereto; PROVIDED, HOWEVER, Tenant may make interior, non-structural alterations aggregating less than \$10,000.00 in cost during the term without Landlord's consent. Landlord's consent to all alterations, additions and improvement requested by Tenant shall not to be unreasonably withheld. Prior to making any alterations in the Leased Premises, Tenant shall give Landlord notice.

Section 11.02.
Restoration by Tenant.

Surrender, Title to Improvements; Removal and

On the last day of the term or on the sooner termination thereof, Tenant shall (i) subject to the provisions of Articles XIX and XX, peaceably surrender the Leased Premises broom clean and in good order, condition and repair except for reasonable wear and tear; and (ii) at the request of Landlord at Tenant's expense remove from the Leased Premises

the signs, moveable furniture, trade fixtures, and carpeting ("Tenant's Property"), and any of Tenant's Property not so removed may, at Landlord's election and without limiting Landlord's right to compel removal thereof, be deemed abandoned. Tenant shall have the right to remove Tenant's Property, regardless of Landlord's request to do the same. Any damage to the Leased Premises caused by Tenant in the removal of Tenant's Property shall be repaired by Tenant at Tenant's expense.

Except for Tenant's Property, the title to all permanent alterations, additions, improvements, repairs, decorations (including any hard surface, bonded or adhesively affixed flooring), and heating and air conditioning equipment, built-in cabinetry, plumbing, electrical and mechanical systems which shall have been made, furnished or installed by or at the expense of either Landlord or Tenant in or upon the Leased Premises, shall vest in Landlord upon the installation thereof, and the same shall remain upon and be surrendered with the Leased Premises as a part thereof, without disturbance and without charge.

Section 11.03.

Tenant's Liens.

Tenant shall not suffer any mechanics' or materialmen's lien to be filed against the Leased Premises or the Retail Areas by reason of work, labor, services or materials performed or furnished to Tenant or anyone holding any part of the Leased Premises under Tenant. If any such lien shall at any time be filed as aforesaid, Tenant may contest the same in good faith but notwithstanding such contest, Tenant shall, within thirty (30) days after the filing thereof, cause such lien to be released of record by payment, bond, order of a court of competent jurisdiction, or otherwise.

Section 11.04.

Tenant's Signs.

(A) Tenant shall, at its cost, install signage in a location designated by Landlord. The size, design and type of construction of such sign shall be subject to approval by Landlord.

(B) Except for the signage referred to in paragraph (A) of this Section, Tenant shall not place or suffer to be placed or maintained on the exterior of the Leased Premises any sign, canopy, awning, pennant, decals, temporary signs of any nature, aerial, antenna, advertising matter or other equipment of any kind without prior written approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. All signage must comply with Landlords specifications and be approved by applicable governmental authorities.

ARTICLE XII
MAINTENANCE OF LEASED PREMISES:
RULES AND REGULATIONS

Section 12.01.

Maintenance by Tenant.

Subject to the provisions of Articles XIX and XX, Tenant shall, at its sole cost, keep and maintain the Leased Premises together with exterior (i) heating, ventilation and air

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conditioning equipment, (ii) windows, including sashes, (iii) sewage lines and sewers servicing the Leased Premises exclusively, (iv) doors, including frames, automatic door openers and lifts, locks, hardware and track, (v) store front (and plate glass) of the Leased Premises, and (vi) signs and other equipment referred to in Section 11.04, including without limitation, the partitions, ceiling, walls, floor covering therein, and the fixtures, equipment, machinery, appliances and utility lines therein and appurtenances thereof, such as, but not limited to, such fixtures, equipment, machinery controls, appliances and utility lines and appurtenances thereof, as are used for, in connection with or which are a part of the electrical, plumbing, heating, air conditioning, ventilation, sprinkler, or any other mechanical systems in (and serving only) the Leased Premises, in conformity with all rules and regulations of the hazard insurer, neat and clean and in good order, condition, maintenance and repair. Tenant shall also at its cost procure and maintain in the Leased Premises all safety appliances required by the hazard insurer to be maintained therein. Tenant shall replace any and all plate, window and other glass (structure or otherwise) in, on or about the Leased Premises, which may be broken or destroyed, with glass of the same or similar quality.

Section 12.02.

Maintenance by Landlord.

Subject to the provisions of Articles XIX and XX and to the obligations of Tenant under the provisions of Section 12.01, the foundations, roof (excluding interior ceilings), exterior portions of the exterior walls (excluding store front and plate glass), structural elements, and drainpipes of the Building in which the Leased Premises are located shall be maintained by Landlord at its expense in good order, condition, maintenance and repair. Landlord shall not be deemed to have breached its obligation to make the repairs required of Landlord as set forth in this Section, or be liable for any damages resulting therefrom, unless Landlord fails to make the same within a reasonable period (taking into consideration the type of repair involved) after receiving notice from Tenant of the need therefor.

Section 12.03.

Rules and Regulations.

Landlord reserves the right, at any time, once or more often, by notice to Tenant, to amend or supplement said rules and regulations in a reasonable and non-discriminatory manner, so long as such amendments do not adversely affect the operation of Tenant's business, the Permitted Uses, or Tenant's rights under this Lease. In addition, Tenant agrees to comply with and observe the following rules and regulations:

- (A) Tenant shall keep the Leased Premises free and clear of rodents, bugs and vermin.
- (B) Tenant shall keep the windows of the Leased Premises and the interior of the Leased Premises suitably illuminated during the business hours of the Retail Areas as established by Landlord from time to time, but Tenant shall not have or permit any building front lighting not approved by Landlord.
- (C) Tenant shall not place any obstruction on the sidewalks, entrances, passages, corridors or stairways or other Common Area and specifically, without limitation, shall

not, without the prior consent of Landlord, use Common Area for the display of merchandise, vending machines or any other activity except ingress and egress.

(D) No loudspeakers, televisions, phonographs, radios or other devices shall be placed outside the Leased premises or operated in a manner in the Leased Premises so as to be heard or seen outside the Leased Premises.

(E) Tenant shall use, at its cost and at such intervals as Landlord shall reasonably require, a reputable heating and air conditioning service contractor to inspect the heating, air conditioning and ventilating system servicing the Leased Premises and shall promptly perform the repair or maintenance work recommended by such contractor.

ARTICLE XIII INSURANCE AND INDEMNITY

Section 13.01.

Liability Insurance.

Tenant shall obtain with an insurance company authorized to do business in the State of Missouri, and which has a *minimum* Best's Insurance Guide Rating of A-:VI (an "**Authorized Carrier**") and pay for a broad-form policy of commercial general liability insurance, including property damage, with respect to the Leased Premises and the business operated by Tenant and any other occupant of the Leased Premises, in which the limits of coverage shall not be less than \$1,000,000.00 per occurrence and \$2,000,00.00 General Aggregate (combined single limit bodily injury and property damage) specific to this location which amount may be reasonably adjusted for inflation purposes from time to time in the reasonable judgment of Landlord. Such policy shall also insure the performance by Tenant of the indemnity agreement set forth in Section 13.05. In addition to Tenant, the policy shall also name Landlord as an additional insured on a primary and non-contributory basis for claims arising due to the operations or negligence of Tenant. The commercial general liability insurance carried by Tenant shall also include (a) hired and non-owned automobile liability insurance with a combined single limit of not less than \$1,000,000 per accident; (b) Worker's Compensation insurance to provide statutory benefits and Employers' Liability limits of not less than \$500,000 per accident/\$500,000 per employee by disease/\$500,000 per policy by disease; (c) an umbrella liability policy with limits of coverage not less than \$1,000,000; and (d) a policy with \$300,000-\$500,000 in fire damage coverage with legal liability/damage to rented premises coverage.

Section 13.02.

Casualty Insurance.

(A) Tenant shall obtain an Authorized Carrier and pay for so-called "all risk" fire and casualty insurance as written on the special forms, together with water damage and sprinkler leakage insurance, insuring the Leased Premises and all of Tenant's Property in the Leased Premises and all betterments, additions, repairs, improvements and alterations made to the Leased Premises by Tenant, in an amount equal to 100% of the replacement cost thereof. The Landlord shall be named as a loss payee and additional insured under the policy. The proceeds of such insurance for the repair, replacement and restoration of

all betterments, improvements and alteration to the Leased Premises shall be held in trust by Landlord for use in repairing and restoring the items covered thereby; provided, however, that in the event that pursuant to Article XIX, the Leased Premises are not restored upon a casualty, Landlord shall be entitled to, and shall receive, all insurance proceeds except Tenant being entitled to such proceeds for Tenant's furniture, equipment, inventory, and trade fixtures. If Tenant does not obtain such policy on the Leased Premises, then Landlord may do so with respect to the Leased Premises (but not as concerns Tenant's Property) and the premium for such policy shall be included in the Building Operating Costs and paid by Tenant.

(B) Tenant shall obtain and pay for fire and casualty insurance as written on special forms, together with water damage coverage, sprinkler leakage coverage, and equipment breakdown / machinery coverage, insuring the Leased Premises in an amount reasonably designated by Landlord, for and in the name of Tenant and Landlord as their respective interests may appear.

(C) Landlord shall maintain a policy of all risk insurance insuring the Building to its full insurable value against loss from fire and other casualty normally and customarily included within an all risk policy of insurance maintained for commercial structures similar to the Building. The deductible applicable to any property insurance policy maintained by Landlord shall be determined by Landlord in Landlord's reasonable discretion, and shall be a Building Operating Cost. Landlord shall also maintain a policy of insurance insuring Landlord against liability for personal injury or property damage in connection with the ownership, maintenance and operation of the Building in an amount not less than \$2,000,000 per occurrence. Landlord shall provide Tenant evidence of this insurance upon request.

(D) A 30-day Notice of Termination or Material Change in coverage should be provided to the Landlord for every policy carried by Tenant and Contractors.

Section 13.03.

Failure to Meet Requirements.

Tenant agrees to pay upon demand, as Additional Rent, any increases in premiums for insurance that may be charged during the Term on the insurance carried by Tenant on the Leased Premises or Landlord on the Retail Areas resulting from the failure of Tenant to comply with the recommendations of the insurance carrier applicable to the Leased Premises.

Section 13.04.

Certificates.

Tenant, prior to delivery of possession of the Leased Premises to Tenant and prior to Tenant commencing any work in the Leased Premises, shall deliver to Landlord an "ACORD 27" certificate of insurance (or equivalent), evidencing that Tenant is maintaining in good standing the insurance required to be maintained by Tenant under Sections 13.01 and 13.02 above, and providing to Landlord that (a) insurance policies have been issued to Tenant in compliance with Sections 13.01 and 13.02 of this Lease, (b) specifically identifying Landlord as an additional insured and loss payee as required

under this Article XIII, and (c) affirmatively stating that notice of policy termination or change in coverage will be given to Landlord at least thirty (30) days prior to any such termination or change.

Section 13.05.

Indemnification.

Tenant will, subject to the provisions of Section 13.06, indemnify and save harmless Landlord and its officers, agents and servants from and against any and all claims, actions, liability and expense in connection with loss of life, bodily injury and/or damage to property arising from or out of any failure by Tenant to perform its obligations under this Lease and arises from or out of any occurrence (i) in, upon or at the Leased Premises, or the occupancy or use by Tenant, its agents, employees, servants, subtenants, licensees or concessionaires, of the Leased Premises or any part thereof, unless the same be caused by the willful or negligent act or omission of Landlord, its agents, employees or servants and/or (ii) outside the Leased Premises which is occasioned wholly or in part by any willful or negligent act or omission of Tenant, its agents, employees, servants, subtenants, licensees or concessionaires. Landlord covenants and agrees to indemnify and hold Tenant harmless from and against any and all losses, claims, demands, damages, liabilities or expenses resulting from third party claims for personal injury or property damage arising out of the negligence or willful acts or omissions of Landlord or its agents, contractors, subcontractors or employees in the use, occupancy, operation or maintenance of the Common Area. The foregoing shall not apply to any loss, claim, damage, liability or expense arising out of or resulting from any negligent, willful or otherwise wrongful act or omission of Tenant or its agents, contractors, subcontractors or employees.

Section 13.06.

Waiver of Subrogation; Limitation of Liability.

(A) Anything in this Lease to the contrary notwithstanding, it is agreed that each party (the "**Releasing Party**") hereby releases the other (the "**Released Party**") from any liability which the Released Party would, but for this Section 13.06, have had to the Releasing Party during the term of this Lease, resulting from the occurrence of any accident or occurrence or casualty (i) which is or would be covered by any policy of insurance required to be maintained pursuant to this Lease (irrespective of whether such coverage is actually being carried by the Releasing Party), or (ii) covered by any other property damage insurance actually being carried by the Releasing Party at the time of such occurrence, which accident, occurrence or casualty may have resulted in whole or in part from any act or neglect of the Released Party, its officers, agents or employees; PROVIDED, HOWEVER, the release hereinabove set forth shall become inoperative and null and void if the Releasing Party wishes to place the appropriate insurance with an insurance company which (y) takes the position that the existence of such release vitiates or would adversely affect any policy so insuring the Releasing Party in a substantial manner and notice thereof is given to the Released Party upon purchasing such insurance, or (z) requires the payment of a substantially higher premium by reason of the existence

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of such release, unless in the latter case the Released Party within 15 days after notice thereof from the Releasing Party pays such increase in premium.

(B) Anything in this Lease to the contrary notwithstanding, it is agreed that neither Tenant nor Landlord shall be liable to the other for any damage arising from the willful or negligent act or omission of any other tenant or occupant of the Building or the Retail Areas.

ARTICLE XIV UTILITIES

Section 14.01.

Utilities.

(A) Tenant shall contract in its own name for and promptly pay all charges for electrical energy, gas, sewerage, telephone and any other utility used or consumed in the Leased Premises to the concern furnishing the same. If Landlord furnishes any utilities to the Leased Premises, Tenant shall reimburse Landlord monthly upon demand, for the cost incurred by Landlord in furnishing such utilities to the Leased Premises (which cost shall not exceed that which would be charged to Tenant by such utility company if such service were provided directly).

(B) Except to the extent due to Landlord's negligence or willful misconduct, Landlord shall not be liable in any way to Tenant or to any other party occupying any part of the Leased Premises for any failure or defect in the supply or character of water, electric energy or any other utility service furnished to the Leased Premises or to the Common Area (whether furnished by Landlord or by others), by reason of any requirement, act or omission of the public utility company serving the Retail Areas with electricity, water, or other utility service, or because of necessary repairs or improvements, or by reason of any cause referred to in Section 25.02. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Leased Premises or any part thereof, or render Landlord liable to Tenant for abatement of Rent, or relieve Tenant from performance of Tenant's obligations under this Lease.

ARTICLE XV ESTOPPEL CERTIFICATE; ATTORNMENT PRIORITY OF LEASE; RIGHTS OF MORTGAGEE

Section 15.01.

Estoppel Certificate.

Upon the reasonable request of the other party at any time or from time to time, each of Landlord and Tenant agree to execute, acknowledge and deliver to the other within twenty (20) days after request a written instrument in a form reasonably satisfactory to both parties duly executed and acknowledged (a) certifying that this Lease has not been modified except as set forth in such certificate and is in full force and effect as modified, (b) specifying the dates to which the Rent and other charges hereunder have been paid, (c) stating whether or not, to the knowledge of the party executing such instrument, the other party thereto is in default and, if so, stating the nature of such default, (d) stating the Commencement Date, (e) stating which options to renew the Lease

term have been exercised, if any, and (f) affirming such other factually accurate matters pertaining to the provisions or subject matter of this Lease as may be requested by the other party. Each party shall pay the reasonable expenses incurred by the other party in providing the second and any subsequent such certificate requested during any twelve (12) month period. Such instrument shall not have the effect of waiving or estopping any party from asserting or otherwise depriving any party of the benefit of any provision of this Lease which provides a right to contest any payment, to receive a refund of any overpayment, to adjust the amount of any past or future payment or to receive copies of or to audit or review any books or records of the other party.

Section 15.02.

Mortgage of the Leased Premises.

Tenant's rights under this Lease are all expressly subordinate, junior and inferior to the lien of any mortgage or deed of trust currently or in the future in effect against real estate and/or buildings of which the Premises are a part. The foregoing subordination shall be self-operative and no additional documentation shall be needed to effectuate the same. In the event of a foreclosure of the property of which the Premises are a part or other acquisition of such property in lieu of such foreclosure, Tenant shall, upon request of such foreclosing or acquiring party (the "New Owner"), nonetheless attorn to and respect such New Owner as the then owner of the property and thereby entitled to all rights of Landlord pursuant to this Lease, including, without limitation, the right to all rental payments. Notwithstanding the foregoing, it is further expressly agreed and understood that any such New Owner shall not assume or be deemed to assume any liabilities of Landlord pursuant to this Lease or otherwise solely by virtue of such New Owner's acceptance of title to all or a portion of the property, acceptance of rental or otherwise. Furthermore, New Owner shall not be bound by any payment of rent for more than one (1) month in advance, or any amendment or modification of said Lease made without the express written consent of the holder of the mortgage or deed of trust.

Section 15.03.

Rights of Landlord's Mortgagee.

Within 10 business days after demand by the holder of any mortgage covering all of any part of the Retail Areas, Tenant shall execute, acknowledge and deliver an agreement in favor of and in the form customarily used by such encumbrance holder, by the terms of which Tenant will agree to give prompt notice to such encumbrance holder in the event of any casualty damage to the Leased Premises or in the event of any default on the part of Landlord under this Lease, and will agree to allow such encumbrance holder a reasonable length of time (taking into consideration for the purpose of determining such permitted length of time and delays encountered by reason of any of the causes referred to in Section 25.02), after notice to cure or cause the curing of such default before exercising Tenant's rights of self-help under this Lease, if any, or terminating or declaring a default under this Lease. In addition, within 10 business days after demand by the holder of any such mortgage, Tenant shall deliver to such encumbrance holder the most current prepared financial statement of Tenant, and Guarantor, if any, duly certified by an officer thereof.

ARTICLE XVI
ASSIGNMENT, SUBLETTING AND
CORPORATE OWNERSHIP

Section 16.01.

Consent Required; Landlord's Rights to Assign.

(A) Tenant shall not voluntarily, involuntarily or by operation of law assign this Lease, in whole or in part, nor sublet all or any part of the Leased Premises without the prior consent of Landlord in each instance, which consent may not be unreasonably withheld, conditioned, or delayed. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment, encumbrance or subletting. Notwithstanding any assignment or subletting, Tenant shall remain fully liable under this Lease and shall not be relieved from performing any of its obligations hereunder. As a condition to any assignment of this Lease by Tenant which is permitted under this Lease, the assignee thereof shall be required to execute and deliver to Landlord an agreement, in recordable form, whereby such assignee assumes and agrees with Landlord to discharge all obligations of Tenant under this Lease.

(B) If Tenant shall request Landlord's consent to subletting of the Leased Premises or any part thereof and Landlord shall consent thereto, Tenant shall pay Landlord, as additional rent, in addition to the Annual Minimum Rent and other charges payable hereunder, an amount equal to fifty percent (50%) of any consideration paid by the subtenant to Tenant in excess of (i) the Annual Minimum Rent and other charges payable hereunder if all of the Leased Premises are so sublet or (ii) if less than all of the Leased Premises are so sublet, the Annual Minimum Rent and other charges payable hereunder allocable to the portion of the Leased Premises so sublet based on the number of square feet of Gross Rentable Area in the Leased Premises so sublet to the total number of square feet of Gross Rentable Area in the Leased Premises prior to such subletting. The foregoing amount shall be determined monthly and paid by Tenant to Landlord on the first day of each calendar month in advance during the term of such sublease. If Tenant shall fail to pay Landlord any such consideration, such failure shall be a default under this Lease.

(C) If Tenant shall request Landlord's consent to a subletting of the Leased Premises or any part thereof and Landlord shall consent thereto, Tenant shall pay Landlord, as additional rent, in addition to the Annual Minimum Rent and other charges payable hereunder, an amount equal to any consideration paid by the subtenant to Tenant in excess of (i) the Annual Minimum Rent and other charges payable hereunder if all of the Leased Premises are so sublet or (ii) if less than all of the Leased Premises are so sublet, the Annual Minimum Rent and other charges payable hereunder allocable to the portion of the Leased Premises so sublet based on the number of square feet of Gross Rentable Area in the Leased Premises so sublet to the total number of square feet of Gross Rentable Area in the Leased Premises prior to such subletting. The foregoing amount shall be determined monthly and paid by Tenant to Landlord on the first day of each calendar month in advance during the term of such sublease. If Tenant shall fail to pay Landlord any such consideration, such failure shall be a default under this Lease.

(D) Tenant agrees to reimburse Landlord for reasonable attorney's fees incurred by Landlord (not to exceed \$1,000.00) in connection with the processing and documentation of any assignment, subletting, license, concession, creation of a security interest, granting of a collateral assignment, change of ownership or other transfer under this Article or Article VII for which Landlord's consent is required or sought, it being agreed that Landlord shall not be required to take any action thereon until Landlord is paid such amount.

(E) If Landlord conveys or transfers its interest in the Retail Areas or in this Lease (which sale or transfer may be effected without Tenant's consent), upon such conveyance or transfer, Landlord (and in the case of any subsequent conveyances or transfers, the then grantor or transferor) shall be entirely released and relieved from all liability with respect to the performance of any covenants and obligations on the part of Landlord to be performed under this Lease from and after the date of such conveyance or transfer.

Section 16.02.

Ownership.

If at any time during the term of this Lease, Tenant, whether directly or indirectly, voluntarily, by operation of law, or otherwise, allows or permits any sale or transfer (including by consolidation, merger or reorganization) of a majority of the voting stock or management control or membership interest of Tenant, or a change of present controlling executive management by management contract, license, franchise agreement or other arrangement, any such transfer shall be deemed an assignment of this Lease requiring Landlord's consent pursuant to Section 16.01.

ARTICLE XVII

GOVERNMENTAL AND INSURANCE REGULATIONS

Section 17.01.

Governmental and Insurance Regulations.

Tenant shall, at Tenant's sole cost, comply with all of the requirements of all governmental authorities (including without limitation those requiring replacements, additions, repairs and alterations, structural or otherwise, and with all directions, rules, regulations and recommendations of the hazard insurer), now in force, or which may hereafter be in force, pertaining to (i) those portions of the Leased Premises Tenant is required to maintain pursuant to Section 12.01, (ii) those portions of the Leased Premises constructed or improved by Tenant, (iii) all of Tenant's Property in the Leased Premises, and (iv) Tenant's use and occupancy of the Leased Premises.

Section 17.02.

Environmental.

Tenant shall not (i) use, store, generate, treat, sell or dispose of any "Hazardous Substances" (hereinafter defined) in, on or about the Leased Premises or (ii) permit the use, storage, generation, treatment, selling or disposal of any Hazardous Substances in, on or about the Leased Premises except Hazardous Substances in such amounts and of such type as are commonly and customarily used in compliance with "Governmental Regulations" (hereinafter defined) in the cleaning and maintenance of retail stores or fitness facilities and the operation of the Permitted Uses. The term "**Hazardous**

Substances" means any substances or substance now or hereafter designated as, or containing components designated as, hazardous, dangerous, toxic or harmful and/or subject to regulation by any federal, state or local law, regulation, rule, statute or ordinance ("**Governmental Regulations**"), including lead, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid or other fluids containing levels of polychlorinated biphenyls in excess of 50 parts per million and petroleum products in any form. Tenant shall promptly comply with all Governmental Regulations now or hereafter pertaining to the use, discharge, handling, transportation, disposal, treatment, generation, storage, sale or presence on the Leased Premises of Hazardous Substances, except to the extent the same resulted solely from the act, omission, or negligence of Landlord. Tenant shall defend, indemnify and save Landlord, its partners, managers, agents and employees harmless from and against any and all damages, costs, expenses, claims, penalties and other liabilities (including reasonable attorneys' fees and the cost of any remedial or abatement activities) arising during the term or any time thereafter, directly or indirectly, from the use, discharge, handling, transportation, disposal, treatment, generation, storage, existence or sale of Hazardous Substances during the term in the Leased Premises, except to the extent such use, discharge, handling, transportation, disposal, treatment, generation, storage, existence or sale of Hazardous Substances resulted solely from the act, omission, or negligence of Landlord. This Section shall survive the termination of this Lease.

ARTICLE XVIII PROMOTIONS

Section 18.01.

Advertising.

Tenant, at its sole expense, agrees to (i) refer to the Retail Areas by name in designating the location of the Leased Premises in all newspaper, telephone book and other advertising, on all stationery and other printed materials, with respect to any other references to the Leased Premises location; and (ii) include the address and identity of its business activity in the Leased Premises in all advertisements made by Tenant in which the address and identity of any other business activity of like character conducted by Tenant within the city or trade area in which the Retail Areas is located shall be mentioned.

ARTICLE XIX DESTRUCTION

Section 19.01.

Destruction of Leased Premises.

(A) If the Leased Premises are damaged or destroyed by fire or other casualty insurable under standard fire and extended coverage insurance so as to become partially or totally untenable, the same, unless this Lease is terminated as provided in paragraph (B) shall be repaired and restored by Landlord to substantially the condition they were in immediately before such damage or destruction. Landlord is not, however, obligated to repair or restore Tenant's leasehold improvements, fixtures, Tenant's Property and

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equipment installed or any other work done by Tenant in or about the Leased Premises. Landlord shall not be required to repair or restore if Landlord reasonably determines there will not be sufficient insurance proceeds to complete Landlord's required restoration or repair. If the insurance proceeds are not made available to Landlord by its mortgage lender(s), if any, then Landlord at its option, may either: (i) repair and restore the Leased Premises as required above or (ii) within sixty (60) days after the occurrence of such damage, terminate this Lease by giving Tenant notice in writing of such termination. If Landlord repairs and restores the Leased Premises or the Retail Areas, as the case may be, Tenant, at Tenant's expense, promptly repair or restore or replace all of Tenant's Leasehold Improvements, fixtures, Tenant's Property and equipment damaged by such casualty. If any uninsured damage referred to under this Article XIX is caused by the act or omission of Tenant or any of Tenant's contractors, employees, agents, customers or invitees, then, notwithstanding any other provision of this Article XIX, Tenant, at its expense, will repair such damage.

(B) If the Leased Premises are damaged or destroyed and (i) the Building is materially damaged or destroyed, or (ii) Landlord reasonably determines that there will not be sufficient insurance proceeds to complete the required repair or restoration or (ii) this Lease is in the last twelve (12) months of the Term, then Landlord shall have the option to cancel this Lease as of the date of the occurrence by giving notice to Tenant of its election to do so within 30 days after such occurrence and receive all insurance proceeds payable with respect to the Building. Tenant shall be entitled to any insurance proceeds for Tenant's personal property and trade fixtures. If Landlord exercises its right to terminate this Lease, then this Lease shall cease, effective as of the date of such damage or destruction, and all rent and other charges payable by Tenant shall be adjusted as of that date.

(C) If the Leased Premises are damaged or destroyed by fire or other casualty and if this Lease is not terminated as set forth in paragraph (B), then (and as Tenant's sole right against Landlord by reason of such damage or destruction), the Rent and other charges hereunder shall be abated or equitably reduced during any period in which the Leased Premises are rendered wholly or partially untenable to the extent such damage or destruction interferes with the operation of Tenant's business in the Leased Premises. Such abatement or reduction shall continue for the period commencing with such destruction or damage and ending after Landlord substantially completes its repair or restoration as set forth in paragraph (A).

(D) Except as set forth in paragraph (C) of this Section, there shall be no abatement or reduction in the Annual Minimum Rent or other charges payable under this Lease in the event of any damage or destruction of the Leased Premises or the Retail Areas on account of any casualty, notwithstanding any law or statute to the contrary.

Section 19.02.

Destruction of the Retail Areas.

Notwithstanding anything to the contrary set forth in Section 19.01, in the event all or at least twenty percent (20%) of the Retail Areas shall be damaged or destroyed by fire or other cause (notwithstanding that the Leased Premises may be unaffected thereby), then

Landlord may terminate this Lease by giving to Tenant 60 days prior notice of Landlord's election so to do, which notice shall be given, if at all, within 90 days following the date of such occurrence. In the event of the termination of this Lease as aforesaid, this Lease shall cease 60 days after such notice is given, and the rent and other charges hereunder shall be adjusted as of the date of the casualty, unless Tenant's use and operation of the Leased Premises was unaffected by the casualty, in which case the rent and other charges shall be adjusted as of the date Landlord gives the aforesaid notice.

ARTICLE XX
EMINENT DOMAIN

Section 20.01.

Condemnation.

(A) If the whole of the Leased Premises shall be condemned by eminent domain for any public or quasi-public use or purpose or be conveyed in lieu thereof, or if a part of the Leased Premises shall be so acquired or condemned, and if such partial taking or acquisition renders the Leased Premises unsuitable for the business of Tenant, then and in either such event the term of this Lease shall terminate as of the date possession shall be taken by the acquiring authority, and rent and other charges shall be adjusted as of the date of such termination. In the event of a partial taking or acquisition which is not extensive enough to render the Leased Premises unsuitable for the business of Tenant, the Landlord shall restore the Leased Premises to a condition comparable to its condition at the time of such condemnation, less the portion lost in the taking, and this Lease shall continue in full force and effect and the Rent and other charges under this Lease shall be reduced in the same proportion that the Gross Rentable Area contained in the area so taken (increased by any area restored by reconstruction) bears to the original Gross Rentable Area in the Leased Premises. Notwithstanding anything hereinabove set out to the contrary, Landlord's obligation to restore the Leased Premises shall be limited to restoring those portions of the Leased Premises which Landlord is required to maintain under Article XII (and in no event shall Landlord be obligated for any restoration to the extent the cost thereof exceeds the condemnation proceeds received by Landlord offset against any costs and expenses incurred by Landlord in connection with such condemnation, including any reasonable attorney's fees); except as provided for in this Section 20.01(A) Tenant shall be required to complete with due diligence all other restoration of the Leased Premises.

(B) All compensation and damages awarded or other sums or awards paid on account of any condemnation, whether temporary or permanent, of all or any portion of the Leased Premises or the Retail Areas will belong to and be the sole property of Landlord, whether such damages or other sums are awarded as compensation for the loss, taking, or diminution in value of any fee, leasehold, easement, or other interest in the Leased Premises or the Retail Areas or other rights therein. Tenant will make no claim whatsoever against Landlord or the condemning authority for the loss or diminution in value of its leasehold interest in the Leased Premises or any leasehold improvements therein or for the value of any unexpired portion of the Term. Tenant expressly assigns any such right or claim to Landlord; provided, however, that Tenant will be entitled to any separate award made by the condemning authority solely for or on account of any

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loss or expense which Tenant may sustain or incur in removing Tenants personal property from the Leased Premises or for any loss of or damage to items of Tenant's personal property. Nothing in this paragraph will be construed to release Tenant of any liability to Landlord arising before the effective date of any termination of this Lease pursuant to this paragraph.

ARTICLE XXI
TENANT'S DEFAULT AND BANKRUPTCY;
OWNER'S LIEN; SECURITY DEPOSIT

Section 21.01.

Default by Tenant.

The following shall constitute a "Default" by Tenant and shall give rise to Landlord's remedies set forth in Section 21.02 below:

(A) If the Annual Minimum Rent, Additional Rent, or any other charge payable by Tenant under this Lease shall be unpaid on the date payment is required by the terms hereof and shall remain so for a period of ten (10) days after Landlord gives Tenant notice of such default;

(B) If Tenant fails to perform any of the other terms, conditions, covenants and obligations of this Lease to be observed and performed by Tenant for more than thirty (30) days after Landlord gives Tenant notice of such default (it being agreed that a default, other than the failure to pay money, which is of such a character that rectification thereof reasonably requires longer than said thirty (30) day period, shall be deemed cured within such period if Tenant commences the rectification thereof within such thirty (30)-day period and completes the same with due diligence);

(C) If Tenant shall vacate or abandon the Leased Premises for a period of ninety (90) days;

(D) If Tenant suffers this Lease to be taken under any writ of execution, attachment or other process of law;

(E) If this Lease shall by operation of law devolve upon or pass to any other party other than a party, if any, to whom Tenant is authorized to assign this Lease by the provisions of Section 16.01;

(F) If Tenant has failed to open for business within one hundred eighty (180) days after the Commencement Date;

(G) If there shall be a default by a Guarantor under the Guaranty of this Lease.

(H) making by Tenant of any general assignment for the benefit of creditors, (ii) filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy or insolvency (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days), (iii) appointment of trustee or receiver to take possession of substantially all

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of Tenant's assets located in the Leased Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days, (iv) Tenant's insolvency or admission of an inability to pay its debts as they mature; or

Upon an Event of Default, Landlord shall have, besides its other rights or remedies at law or in equity or under this Lease, the following immediate rights:

(I) If Tenant shall have abandoned the Leased Premises, at its option, without terminating this Lease, to change the locks on the doors to the Leased Premises and exclude Tenant therefrom.

(J) At its option, by notice to Tenant, to terminate this Lease. Upon the service of such notice of termination, the term shall automatically terminate.

(K) At its option, by notice to Tenant, to terminate Tenant's right to possession of the Leased Premises without termination of this Lease.

(L) Upon (i) any termination of this Lease, whether by lapse of time or by the exercise of any option by Landlord to terminate the same or in any other manner whatsoever, or (ii) any termination of Tenant's right to possession without termination of this Lease, Tenant shall immediately surrender possession of the Leased Premises to Landlord and immediately vacate the same, and remove all effects therefrom, except such as may not be removed under other provisions of this Lease. If Tenant shall not remove all effects from the Leased Premises as hereinabove provided, Landlord may, at its option, remove any or all of such effects in any manner it shall choose and store the same without liability for loss thereof, and Tenant shall pay Landlord, on demand, any and all expenses incurred in such removal and also storage of such effects for any length of time during which the same shall be in Landlord's possession or in storage. No re-entry or taking possession of the Leased Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a notice of such intention is given to Tenant. Notwithstanding any reletting without termination, Landlord may at any time thereafter elect to terminate this Lease for such previous breach in the manner provided in this Section.

(M) At its option, to make such alterations and repairs as Landlord shall determine may be reasonably necessary to relet the Leased Premises, and to relet the same or any part thereof for such term or terms (which may be for a term extending beyond the term) and upon such terms and conditions as Landlord in its reasonable discretion may deem advisable. Upon each reletting, all rentals received by Landlord from such reletting shall be applied as follows: first, to the payment of any indebtedness other than Rent or other amounts due under this Lease from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys' fees and costs of such alterations and repairs, each of which fees and costs shall be reasonable in amount; and third, to the payment of Rent and other amounts due and unpaid hereunder. In no event shall Tenant be entitled to receive any surplus of any sums received by Landlord on a reletting in excess of the rental and other amounts payable hereunder. If such rentals and other amounts received from such reletting during any month are less

than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord (notwithstanding the fact that Landlord may have received rental in excess of the rental and other amounts payable hereunder in previous or subsequent months), such deficiency to be calculated and payable monthly.

(N) At its option, to collect from Tenant any other loss or damage which Landlord may sustain by reason of any breach and any diminished value of the Leased Premises resulting from such breach.

(O) If Landlord terminates this Lease or Tenant's right to possession, Landlord shall use commercially reasonable efforts to mitigate Landlord's damages, which shall not exceed such efforts as Landlord generally uses to lease other space at the Retail Areas. Landlord will not be deemed to have failed to mitigate if Landlord leases any other portions of the Retail Areas before re-letting all or any portion of the Leased Premises, and any failure to mitigate as described herein with respect to any period of time shall only reduce the Rent and other amounts to which Landlord is entitled hereunder by the reasonable rental value of the Leased Premises during such period. In recognition that the value of the Retail Areas depends on the rental rates and terms of leases therein, Landlord's rejection of a prospective replacement tenant based on an offer of rentals below Landlord's published rates for new leases of comparable space at the Retail Areas at the time in question, or at Landlord's option, below the rates provided in this Lease, or containing terms less favorable than those contained herein, shall not, in and of itself, give rise to a claim by Tenant that Landlord failed to mitigate Landlord's damages.

Section 21.02.

Additional Remedies.

Landlord shall at all times have the right without prior demand or notice except as required by applicable law to: (i) seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease or restrain or enjoin a violation of any provision hereof, and Tenant hereby waives any right to require that Landlord post a bond in connection therewith, and (ii) sue for and collect any unpaid Rent which has accrued. Notwithstanding anything to the contrary contained in this Lease, to the extent not expressly prohibited by applicable law, in the event of any default by Tenant, Landlord may terminate this Lease or Tenant's right to possession and accelerate and declare that all Rent reserved for the remainder of the Term shall be immediately due and payable, provided the Rent so accelerated shall be discounted in accordance with accepted financial practice at the rate of 6% per annum to the then present value, and Landlord shall, after receiving payment of the same from Tenant, be obligated to turn over to Tenant any actual net reletting proceeds (net of all Costs of Reletting) thereafter received during the remainder of the Term, up to the amount so received from Tenant pursuant to this provision.

Section 21.03.

Legal Expenses; Remedies Cumulative.

(A) In case suit shall be brought because of the breach of any agreement or obligation contained in this Lease on the part of Tenant or Landlord to be kept or performed, and a

breach shall be established, the prevailing party shall be entitled to recover all expenses incurred therefore, including reasonable attorney's fees.

(B) The rights and remedies of the parties shall be cumulative and may be exercised and enforced concurrently. Any right or remedy conferred upon the parties under this Lease shall not be deemed to be exclusive of any other right or remedy they may have.

Section 21.04.

Landlord's Right to Cure Defaults.

If Tenant fails to perform any agreement or obligation on its part to be performed under this Lease, Landlord shall have the right (i) if no emergency exists, to perform the same after giving 15 days' notice to Tenant; and (ii) in any emergency situation, to perform the same immediately without notice or delay. For the purpose of rectifying Tenant's defaults as aforesaid, Landlord shall have the right to enter the Leased Premises at reasonable times. Tenant shall on demand reimburse Landlord for the costs and expenses incurred by Landlord in rectifying Tenant's defaults as aforesaid, including reasonable attorneys' fees. Except for negligence or any willful misconduct by Landlord or its employees, agents or contractors, Landlord shall not be liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Tenant or anyone holding under Tenant for any action taken by Landlord pursuant to this Section. Any act or thing done by Landlord pursuant to this Section shall not constitute a waiver of any such default by Tenant or a waiver of any covenant, term or condition herein contained or the performance thereof.

Section 21.05

Security Deposit

The amount provided in Section A-1 Basic Lease Provisions is deposited by Tenant for the faithful performance of the terms and conditions of this Lease to be performed by Tenant, which security deposit is subject to the following:

(A) The deposit shall be held as security for the faithful performance of the terms and conditions of this Lease by Tenant and shall not be considered as liquidated damages in the event of default by Tenant. In no event shall Landlord be obligated to pay to Tenant any interest on or increment to said deposit.

(B) The deposit may, in the sole discretion of Landlord, be used by Landlord to cure any default on the part of Tenant or to pay all or any portion of expenses arising from a default on the part of Tenant; provided, however, the application by Landlord of all or any part of such deposit as aforesaid, shall not constitute a waiver of such default, or deprive Landlord any right of action or other remedy which it may have on account of any default by Tenant.

(C) If any part or all of such deposit shall be applied to cure a default by Tenant, and Landlord shall not elect to declare this Lease terminated, Tenant shall immediately restore the deposit to its full original amount.

Upon the expiration of the term of this Lease or on the termination of this Lease not resulting from default by Tenant, Tenant shall be entitled to a return of such deposit, or

any balance of such deposit remaining in the event any portion has been applied by Landlord to cure a default on the part of Tenant.

ARTICLE XXII
ACCESS BY LANDLORD

Section 22.01.

Right of Entry.

(A) Landlord and its designees shall have the right to enter the Leased Premises for all lawful purposes upon 24 hours notice to Tenant (including, without limitation, the right to show the Leased Premises to prospective purchasers of the Retail Areas, and, during the last twelve (12) months of the term, the right to show the Leased Premises to prospective tenants) at reasonable times, and to the extent reasonably necessary to enable Landlord to exercise all of its rights under this Lease (including without limitation the right to perform certain provisions of this Lease on Tenant's behalf as set forth in Section 21.04) and to carry out all of Landlord's obligations hereunder. Landlord and Landlord's representatives shall also have the right to enter the Leased Premises and to erect scaffolding and barricades around the same (but not so as to preclude entry thereto) in order to make such repairs, alterations, improvements and additions to the foundation and roof of the Leased Premises as Landlord may, in its reasonable discretion, deem necessary or desirable (and Landlord shall be allowed to take all equipment and material upon the Leased Premises which may be required therefor), but Landlord shall use reasonable efforts consistent with accepted construction practice to minimize interference to Tenant's business caused by reason thereof. The exercise by Landlord of its rights of entry and other rights granted under this paragraph shall not constitute an eviction of Tenant and the Rent payable under this Lease shall not abate by reason thereof.

(B) Nothing in this Section shall be construed to impose upon Landlord any obligation whatsoever for the care, maintenance or repair of the Leased Premises.

ARTICLE XXIII
LANDLORD'S LIABILITY

Section 23.01.

Limitations on Liability.

Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to the estate of Landlord in the Retail Areas for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed or performed by Landlord, subject, however, to the prior rights of the holder of any mortgage covering the Retail Areas, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim, and Landlord shall not be liable for any such default or breach except to the extent of Landlord's estate in the Retail Areas.

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ARTICLE XXIV
HOLDING OVER; SUCCESSORS

Section 24.01.

Holding Over.

In the event Tenant remains in possession of the Leased Premises after the expiration of the Lease term without the execution of a new Lease or amendment, Tenant, at the option of Landlord, shall be deemed to be occupying the Leased Premises as a tenant from month to month, at one hundred fifty percent (150%) of the Annual Minimum Rent for the last Lease Year of the term, subject to all the other conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy.

Section 24.02.

Successors; Joint Liability.

All rights and liabilities herein given to or imposed upon the respective parties hereto shall, except as may be otherwise herein provided, extend to and bind the respective heirs, executors, administrators, successors and assigns of the said parties; and if there shall be more than one Tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein contained. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been made in accordance with the provisions set forth in Section 16.01.

ARTICLE XXV
WAIVER; NOTICES; DEFINITIONS

Section 25.01.

Waiver and Confidentiality.

The waiver by Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Lease shall be deemed to have been waived unless such waiver be in writing signed by the party charged therewith. Tenant and Guarantor agree that neither shall disclose the terms of this Lease to any third party, including, without limitation, any other tenant or occupant of the Retail Areas. Tenant and Guarantors represent to Landlord that they have and will continue to keep the terms of this Lease confidential between Landlord, Tenant and Guarantor. It shall be a material event of default under the Lease in the event any third person is made aware of the terms of this Lease through Tenant or Guarantor or any officer, agent or representative of either.

Section 25.02.

Force Majeure.

In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Lease by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental law or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease,

then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not (a) operate to excuse Tenant from prompt payment of Rent or any other payment required by the terms of this Lease, except as the same may excuse a delay in opening the Leased Premises as required under Section 1.04, and (b) be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Lease because of a lack of funds.

Section 25.03.

Notices and Payments.

(A) Whenever any notice, consent, approval or authorization (for the purposes of this Section, a "**Notice**") is required or permitted under this Lease, the same shall be in writing, and all oral notices, consents, approvals and authorizations shall be of no effect. All Notices by Tenant to Landlord shall be sent to Landlord by registered or certified mail (return receipt requested), postage prepaid, or by recognized overnight courier (such as Federal Express) to Landlord at the "Address of Landlord" designated in A-1 of the Basic Lease Provisions. Until Landlord is notified otherwise by Tenant, all Notices by Landlord to Tenant shall be deemed to have been duly given if sent by registered or certified mail (returning receipt requested), postage prepaid, or by recognized overnight courier (such as Federal Express) to Tenant at the "Address of Tenant" designated in A-1 of the Basic Lease Provisions.

(B) All Notices shall be effective upon being deposited in the United States mail or sent by overnight courier in the manner prescribed in paragraph (A) of this Section. However, the time period in which a response to any such Notice must be given shall commence to run from the date of receipt by the addressee thereof as shown on the return receipt of the Notice. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given, shall be deemed to be receipt of the Notice as of the date of such rejection, refusal or inability to deliver.

Section 25.04.

Definitions.

(A) The term "**Rentable Area**" shall mean the aggregate square footage of floor area within the exterior faces of the exterior walls, shaft walls or corridors or the center of any common walls, without deduction for columns, stairs or other interior construction or equipment, and shall include any basements and mezzanines in the Leased Premises. Landlord reserves the right to remeasure the Leased Premises or the Building at any time prior to the end of the second Lease Year. If any remeasurement determines that the Leased Premises or the Building contain a different number of square feet than set forth in Section A-1, the Annual Minimum Rent and Tenant's Common Area Contribution and other Additional Rent, shall be adjusted retroactively and prospectively on a prorata basis to reflect the number of square feet determined by such remeasurement. Upon either party's request, the revised square footage shall be confirmed in an amendment to this Lease signed by both parties.

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(B) The term "**Interest Rate**" shall mean a rate of interest, per annum, equal to the lesser of (i) the highest lawful rate of interest that may be charged Tenant under the laws of the State of Missouri or (ii) two percent (2%) in excess of the "Base Rate" of First Bank of Missouri, (or its successor), determined as of the date any rent, additional rent or other payment under this Lease is due and for which interest at the Interest Rate is charged. The term "Base Rate" shall mean the composite "Prime Rate" as reported in the Wall Street Journal from time to time as representing the prime rate on corporate loans at large U.S. money center commercial banks; provided, that if any time the Wall Street Journal shall cease to report said Prime Rate, then thereafter "Base Rate" shall mean the interest rate per annum announced from time to time by First Bank of Missouri as its corporate base rate or prime rate, whether or not such Base Rate is announced to the general public. The Base Rate is not necessarily the lowest, or a favored, rate of interest charged by First Bank of Missouri.

(C) The term "**Lease Year**" shall mean a period of twelve (12) consecutive full calendar months, beginning on the Commencement Date and ending on the day preceding the first anniversary of such date.

(D) The term "**Tenant's Proportionate Share**" is as set out in Article A-1 (as the same may be adjusted). Landlord may determine separately and allocate Operating Costs between tenants of the Retail Areas between the retail and non-retail space in the Building, in accordance with sound accounting and management principles, in which event Tenant's Proportionate Share shall be subject to adjustment.

(E) The word "**State**" shall mean the State of Missouri.

(F) The word "**Tenant**" shall mean each and every person or party mentioned as Tenant herein.

(G) The word "**Guarantor**" shall mean any person, trust, partnership, corporation or other entity which has undertaken, by separate instrument, endorsement on this Lease or in any other manner, to warrant, agree or guarantee that the obligations of Tenant, or any portion thereof, shall be performed by Tenant.

Section 25.05.

Brokers.

Tenant represents and warrants to the other that it has had no dealings with any broker or agent in connection with this Lease except for the "Broker" described in Section A-1 of the Basic Lease Provisions, and each party agrees to indemnify and hold the other harmless from and against any and all claims, liabilities or expenses (including reasonable attorney's fees) imposed upon, asserted or incurred by the other party as a consequence of any breach of this representation.

Section 25.06.

Survival of Tenant's Obligations.

All obligations of Tenant and Landlord, which by their nature involve performance, in any particular, after the end of the term, or which cannot be ascertained to have been fully

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performed until after the end of the term, shall survive the expiration or sooner termination of the term.

Section 25.07.

Applicable Law.

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

Section 25.08.

Trial by Jury Waiver.

The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, or Tenant's use and occupancy of the Leased Premises.

Section 25.09.

Consent to Liquor Licenses.

Tenant will not directly or indirectly oppose and will, if required by any governmental authority, sign any necessary consents to, or any application that Landlord or any other tenant or owner of any portion of the Retail Areas may make, for a license to serve and/or sell alcoholic beverages on any portion of the Retail Areas.

Section 25.10.

Consent to Service.

Tenant agrees that any action brought in connection with this Lease shall be maintained in any court of competent jurisdiction in Clay County, Missouri.

Section 25.11.

Management of Property.

In the event Landlord retains a separate company to handle management of the property that Tenant agrees to pay a management fee not to exceed three percent (3%) of tenant monthly lease amount.

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THIS LEASE CONSTITUTES THE
ENTIRE AGREEMENT

THIS LEASE AND THE EXHIBITS AND RIDER, IF ANY, ATTACHED HERETO, IS THE COMPLETE AGREEMENT BETWEEN OWNER AND TENANT CONCERNING THE LEASED PREMISES AND THE RETAIL AREAS. THERE ARE NO ORAL AGREEMENTS, UNDERSTANDINGS, PROMISES OR REPRESENTATIONS BETWEEN LANDLORD AND TENANT AFFECTING THIS LEASE. ALL PRIOR NEGOTIATIONS AND UNDERSTANDINGS, IF ANY, BETWEEN THE PARTIES HERETO WITH RESPECT TO THE LEASED PREMISES AND THE RETAIL AREAS SHALL BE OF NO FORCE OR EFFECT AND SHALL NOT BE USED TO INTERPRET THIS LEASE

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

"LANDLORD"

THE CITY OF GLADSTONE, MISSOURI,
a Third-Class City

By: 

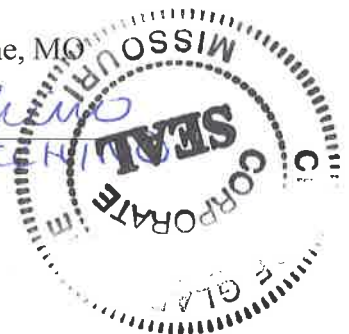
Printed Name: Kirk L. Davis

Title: City Manager, City of Gladstone, MO

Attest: 

Printed Name: RUTH E. BOCHINI

Title: CITY CLERK



"TENANT"

Cake Whimzy

By: 

Printed Name: Alicia M. Hommon

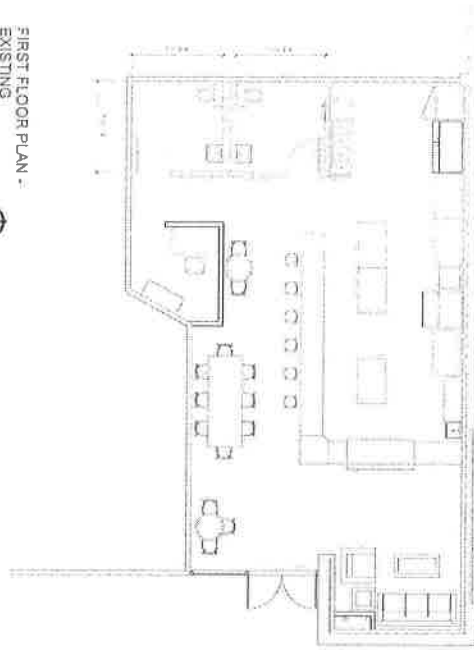
Title: Owner

EXHIBIT A-1 SITE PLAN

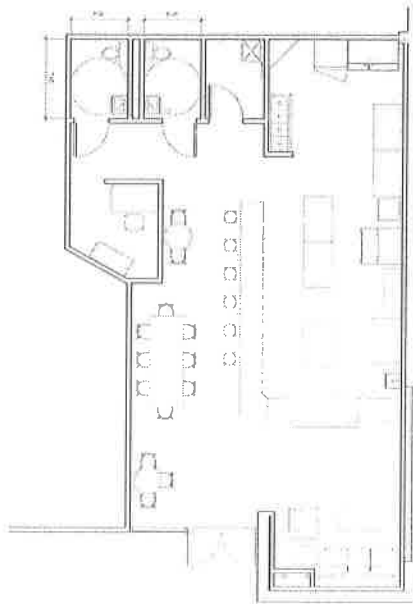
WILSON
SOUTHERN
KITCHEN
FLOORPLAN

GLADSTONE 18
CAKE WHIMZY

FIRST FLOOR PLAN -
EXISTING
1 RESTROOMS



FIRST FLOOR PLAN -
REVISED
2 RESTROOMS



DATE
03/26/2015

WILSON
SOUTHERN
KITCHEN
FLOORPLAN

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EXHIBIT A-2
FLOOR PLAN

EXHIBIT B

Certificate of Lease Term Commencement and Tenant's Proportionate Share

TENANT: Cake Whimzy
LANDLORD: THE CITY OF GLADSTONE, MISSOURI
PREMISES: GLADSTONE 18 RETAIL
DATE OF ORIGINAL LEASE EXECUTION: May, 26 2015

This Certificate of Lease Term Commencement is executed by Tenant and Landlord pursuant to the provisions of the Lease referenced above, and shall be attached thereto and become a part thereof for all purposes.

1. Tenant and Landlord hereby agree, pursuant to Section 1.03 of the Lease, that the actual Commencement Date of the term of the Lease shall be November 1, 2015 and that the rent, as provided for in the Lease, shall commence as of such date, and further, that the Lease will terminate at Midnight (local time) on October 31, 2022, 7 (seven) years from the Commencement Date), if not otherwise terminated pursuant to the provisions of the Lease.

2. Executed this 29th day of December, 2015.

TENANT:

Cake Whimzy

LANDLORD

THE CITY OF GLADSTONE, MISSOURI

By: Alicia M. Hommon

Printed Name: Alicia Hommon

By: Kirk L. Davis

Printed Name: Kirk L. Davis

Title: owner

Date: 12-29-15

Title: City Manager, City of Gladstone, MO

Date: January 7, 2016

Attest: Ruth Bocchino

Printed Name: RUTH BOCCINO

Title: CITY CLERK

January 7, 2016