

IN THE CIRCUIT COURT IN AND FOR THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

**CROCKER DOWNTOWN
DEVELOPMENT ASSOCIATES,**

Plaintiff,
vs.

CASE NO:

KAPOW OF BOCA RATON, INC.,

Defendant /

COMPLAINT FOR DAMAGES

Plaintiff, **CROCKER DOWNTOWN DEVELOPMENT ASSOCIATES**, sues the
Defendant, **KAPOW OF BOCA RATON, INC.**, and states:

1. This is an action for damages above the sum of \$50,000.00.
2. The Plaintiff is a Florida General Partnership, authorized to do business in the State of Florida.
3. Defendant is a Florida corporation doing business in Palm Beach County, Florida as Kapow Asian Noodle Bar.
4. Venue for this action lies in Palm Beach County, Florida.
5. All conditions precedent to the bringing of this action have been met or have occurred.
6. Defendant was the Tenant of the real property pursuant to a written Lease Agreement executed on or about March 1, 2011, a copy of which is attached hereto and incorporated herein as Exhibit "1-A", as amended by that certain Extension and First Amendment of Lease executed on or about June 23, 2021, a copy of which is attached hereto and incorporated herein as Exhibit "1-B" (Exhibit 1-A and Exhibit 1-B are collectively referred to as Exhibit "1").
7. Defendant is in default of its obligations under Exhibit 1, by having failed to pay

the rental monies as they came due and owing.

8. As of October, 2023, there is due, owing and unpaid the sum of \$68,296.05. The Plaintiff is entitled to recover interest on all unpaid Rent at the rate of two (2%) percent above the Prime Rate in accordance with Article 4(a) of Exhibit 1, together with a late payment fee equal to five (5%) percent of the delinquent rental for each and every month or part of every month that the rental payment remains unpaid in accordance with Article 4(e) of Exhibit 1.

9. In addition, the Plaintiff is entitled to all Rent which accrues during the pendency of this Lawsuit and through the end of the current term, which continues until December 31, 2023.

10. As a result of Defendant's actions, the Plaintiff has retained the undersigned law firm and agreed to pay it a reasonable fee for its services rendered, for which Defendant is responsible pursuant to paragraph 28 of Exhibit 1.

WHEREFORE, Plaintiff requests this Court issue judgment against the Defendant, **KAPOW OF BOCA RATON INC.**, for compensatory damages, prejudgment interest, court costs, reasonable attorneys' fees and any other relief deemed appropriate.

FRANK, WEINBERG & BLACK, P.L.
Attorneys for Plaintiff
7805 S.W. 6th Court
Plantation, FL 33324
Telephone: (954) 474-8000
Facsimile: (954) 474-9850

By: /s/ David W. Black
DAVID W. BLACK
Fla. Bar No. 365671
Date: October 18, 2023

Mizner Park

*Kapow Asian Noodle Bar
Space No. 1402*

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Mizner Park

THIS LEASE is between CROCKER DOWNTOWN DEVELOPMENT ASSOCIATES, a Florida general partnership ("Landlord"), and KAPOW OF BOCA RATON INC., a Florida corporation ("Tenant"). The date of this Lease is June 23, 2021 ("Effective Date"). The Leased Premises are located in the MIZNER PARK ("Shopping Center") in the City of Boca Raton, County of Palm Beach, and State of Florida.

REFERENCE PROVISIONS

The following references define terms used in the specified Articles and elsewhere in this Lease and shall be construed in accordance with the provisions and conditions in this Lease:

1.01 Leased Premises: 1402 MIZNER PARK containing approximately 5,175 square feet of floor area, and in addition, the Patio, as described in Reference Provision 1.33 of this Lease.

1.02 Expiration Date: The last day of the 120th full calendar month following the Rent Commencement Date. [ARTICLE 1(a)]

Option to Extend: Tenant will have the right and option, if Tenant is not in default, beyond the applicable notice and cure period provided in this Lease, and is in possession of the Leased Premises, to extend the Term of the Lease for two (2) successive periods of five (5) years each by notifying Landlord in writing at least 365 days prior to the expiration of the immediately preceding Term of the Lease. If the option for the first 5-year extended period is duly exercised, the Term of this Lease will be extended to, and will expire on, the last day of the 180th full calendar month following the Rent Commencement Date, upon all of the same terms, provisions and conditions set forth in this Lease. If Tenant does not exercise the first 5 year option, Tenant will surrender the Leased Premises on the Expiration Date, in accordance with ARTICLE 24. If the option for the second 5-year extended period is duly exercised, the Term of this Lease will be extended to, and will expire on, the last day of the 240th full calendar month following the Rent Commencement Date, upon all of the same terms, provisions and conditions set forth in this Lease. If Tenant does not exercise the second five (5) year option, Tenant will surrender the Leased Premises on the Expiration Date at the end of the first five (5) year extended period, in accordance with ARTICLE 24.

The option periods are personal to Tenant and are not assignable, other than in connection with an assignment to a Permitted Transferee (as defined in Article 21 of this Lease).

[ARTICLE 1(b)]

1.03 Permitted Use: Only for the operation of an Asian Fusion restaurant serving made-to-order Asian Fusion dishes in addition to a full-service bar selling alcoholic and non-alcoholic drinks with a primary focus on "Asian-style" organic and natural alcoholic drinks. Tenant shall obtain and maintain, at all times during the Term, Liquor Legal Liability or "Dram Shop" Insurance with policy limits of \$2,000,000.00 per occurrence, naming Landlord and such additional parties as Landlord may designate as additional insureds, either as an endorsement to its Comprehensive General Liability policy or as a separate policy. Tenant shall provide Landlord with evidence of this insurance coverage prior to selling or serving alcoholic beverages at or from the Leased Premises and shall maintain current certificates of insurance evidencing the noted coverage on-site at all times during the Term. If Tenant fails to obtain this coverage, Tenant shall not sell alcoholic beverages from the Leased Premises. If Tenant obtains said coverage, but fails to continue it, Tenant shall immediately discontinue selling and serving alcoholic beverages from the Leased Premises until said coverage is reinstated. Tenant shall not be permitted to operate the Leased Premises for any other use or purpose whatsoever, without Landlord's prior consent, which consent may be withheld in Landlord's sole discretion. Tenant does not have the exclusive rights to serve Asian food in the center.

[ARTICLE 1(c)]

1.04 Submittal date for preliminary plans: Within thirty (30) days following the date of full execution of this Lease.

[ARTICLE 2(d)]

Submittal date for final plans and specifications: Within thirty (30) days after Landlord's approval of Tenant's preliminary plans.

[ARTICLE 2(d)]

Notwithstanding anything in this Lease to the contrary, in the event Tenant does not provide preliminary plans and/or final plans, in compliance with Exhibit C and the Tenant Criteria Manual, on or before the submittal date for preliminary plans and/or final plans as each is respectively set forth in Reference Provision 1.04, Landlord may charge Tenant, as liquidated damages, \$250.00 per day for each day past that date that Tenant is late in providing such preliminary plans and/or final plans.

- 1.05 **Beginning Work Date:** The latest to occur of: (a) the date Landlord delivers possession of the Leased Premises to Tenant; (b) the date of Landlord's approval of Tenant's final plans on the condition that Tenant submits its plans at the time and in the manner required in this Lease; and (c) the date of issuance of the building permits for the construction of the improvements described in the final plans, on the condition that: (i) Tenant submits its application for the building permits to the applicable governmental agency(ies) no later than five (5) business days after Tenant receives Landlord's approval of Tenant's final plans; (ii) Tenant diligently pursues approval of such permit; (iii) Tenant provides Landlord with proof of its application for such permit within 10 days following the date of Tenant's permit application; and (iv) Tenant provides Landlord with the date of approval of such permit. Tenant must diligently pursue permits and utilize expeditors, as necessary. All of the foregoing dates are subject to extension due to any event of Force Majeure, as defined in Article 44 of this Lease.

[ARTICLE 2(e)]

- 1.06 **Opening Date:** The date that is 120 days immediately following the Beginning Work Date, as extended due to any delays as a result of an event of Force Majeure.

[ARTICLE 3]

- 1.07 **Minimum Annual Rental:**

[ARTICLE 4(a)]

Rental Commencement Date ("RCD") - last day of the 60th full calendar month following the RCD
\$258,750.00 per year (\$21,562.50 per month)

The first day of the 61st full calendar month following the RCD - Expiration Date
\$284,625.00 per year (\$23,718.75 per month)

OPTION 1:

The first day of the 121st full calendar month following the RCD - the last day of the 180th full calendar month following the RCD
\$315,933.75 per year (\$26,327.81 per month)

OPTION 2:

The first day of the 181st full calendar month following the RCD - the last day of the 240th full calendar month following the RCD
\$347,553.00 per year (\$28,962.75 per month)

- 1.08 **Percentage Rate: 5%**

[ARTICLE 4(b)]

- 1.09 **Annual Sales Base:**

RCD - the last day of the 60th full calendar month following the RCD
\$5,175,000.00 per year

The first day of the 61st full calendar month following the RCD - Expiration Date
\$5,692,500.00 per year

OPTION 1:

The first day of the 121st full calendar month following the RCD - the last day of the 180th full calendar month following the RCD
\$6,261,750.00 per year

OPTION 2:

The first day of the 181st full calendar month following the RCD - the last day of the 240th full calendar month following the RCD
\$6,887,925.00 per year

[ARTICLE 4(b)]

1.10 Address of Landlord:

[ARTICLES 4 and 30]

Landlord's Notice Address
CROCKER DOWNTOWN
DEVELOPMENT ASSOCIATES
c/o Mizner Park
350 N. Orleans St.
Suite 300
Chicago, IL 60654-1607
Attn: Law/Lease Administration
Department

Landlord's Payment Address:
CROCKER DOWNTOWN
DEVELOPMENT ASSOCIATES
SDS-12-2563
PO Box 86
Minneapolis, Minnesota 55486-2563

With a copy to:
Mizner Park
327 Plaza Real, Suite 315
Boca Raton, Florida 33432
Attn: General Manager

1.11 Address of Tenant:

[ARTICLE 30]

Notice:
KAPOW OF BOCA RATON INC.
C/O Subculture Group LLC
518 Clematis Street Suite 3
West Palm Beach, Florida 33401

Billing:
KAPOW OF BOCA RATON INC.
C/O Subculture Group LLC
518 Clematis Street Suite 3
West Palm Beach, Florida 33401

With a copy to:
The Law Office of Paul A. Krasker, P.A.
1615 Forum Place, 5th Floor
West Palm Beach, Florida 33401
Attn: Paul A. Krasker, Esq.

1.12 Additional Gross Leasable Area Annual Rental Increase: Not Applicable

[ARTICLE 4(c)]

1.13 Anchor Minimum Annual Rental Increase: Not Applicable

[ARTICLE 4(d)]

1.14 Trade Name: "Kapow Asian Noodle Bar"

[ARTICLE 25]

1.15 Intentionally Omitted

[ARTICLE 37]

1.16 Initial Assessment: Not Applicable

[ARTICLE 37]

1.17 Preliminary Rent: Not Applicable

1.18 Construction Allowance: \$350,000.00

Landlord agrees to pay to Tenant, if Tenant is not then in default under this Lease beyond the applicable notice and cure period provided under the Lease, the cost of Tenant's Work up to the sum of \$350,000.00 (the "Construction Allowance"), but not more than that amount, subsequent to the fulfillment of all of the following requirements:

Subsections A and B below are for this Lease at Mizner Park only:

A. 50% of the Construction Allowance will be paid to Tenant within 45 days after Landlord's receipt of Tenant's written request and notice to Landlord that Tenant has completed at least 50% of its construction of Tenant's Work, in accordance with Tenant's plans and specifications as approved by Landlord, which notice shall contain partial lien waivers from all architects, subcontractors, sub-subcontractors and material suppliers providing goods and services with respect to such 50% completion.

B. 40% of the Construction Allowance will be paid to Tenant within 45 days after Landlord's receipt of Tenant's written request and notice to Landlord that Tenant has completed at least 90% of Tenant's Work, in accordance with Tenant's plans and specifications as approved by Landlord, which notice shall contain partial lien waivers from all architects, subcontractors, sub-subcontractors and material suppliers providing goods and services with respect to such 90% completion.

C. the remaining 10% of the Construction Allowance will be paid to Tenant within 30 days following Tenant satisfying all of the following conditions:

1. Compliance with the scheduled dates outlined in Reference Provisions 1.04, 1.05 and 1.06;

2. Completion of Tenant's Work in accordance with EXHIBIT P, lien free and in a manner satisfactory to Landlord and Landlord's Architect;

3. Presentation to Landlord, in form and detail satisfactory to Landlord, of:

a. Contractor's Sworn Statement showing that the amount requested by Tenant has been spent by Tenant on the Leased Premises and listing all subcontractors, sub-subcontractors and material suppliers and amounts which they were to be paid and were paid for work performed for or on the Leased Premises or for materials supplied for Tenant's Work;

b. Tenant's architect shall provide an original and notarized Affidavit or Final Waiver of Lien indicating that the Architect has been paid in full;

c. General Contractor's original and notarized Final Waiver of Lien;

d. Notarized Final Waivers of Lien from all architects, subcontractors, sub-subcontractors and material suppliers;

4. Presentation to Landlord of unconditional certificates of occupancy from all applicable governmental authorities; and

5. Tenant shall have opened its restaurant in the Leased Premises for business with the public.

Tenant's requests for payment must be sent to Landlord at the Notice address shown in Reference Provision 1.10 directed to Attn: Tenant Allowance Administration. The Construction Allowance will be paid to Tenant as reimbursement for Tenant's payment for construction of improvements, additions, alterations and attached fixtures (excluding trade fixtures) in the Leased Premises, including the cost of raw materials, labor, architects fees, permits, and related costs of construction work (the "Leasehold Improvements"). Leasehold Improvements do not include inventory, supplies, Tenant's moveable property (including trade fixtures) or the cost of training Tenant's employees.

The terms of this Reference Provision shall be a condition precedent to Tenant's right to receive the Construction Allowance, and no portion of the Construction Allowance shall vest in Tenant, nor shall Tenant sell, assign, encumber or create a security interest in the Construction Allowance prior to full compliance with the terms of this Reference Provision.

Landlord shall be entitled to any unpaid portion of the Construction Allowance in the event of a default by Tenant which remains uncured following the expiration of the applicable notice and cure period provided in the Lease, even if Tenant shall have paid all or a portion of the cost of Tenant's Work.

Leasehold Improvements funded by the Construction Allowance will at all times be the sole property of Landlord, and Tenant will have no ownership interest in such Leasehold Improvements. It is the intention of Landlord and Tenant that the Leasehold Improvements which are paid for with the Construction Allowance will be qualified long-term real property in accordance with Section 110 (a) of the Internal Revenue Code and the regulations thereunder. Each party shall prepare its federal, state and local income tax forms and schedules, and calculate taxable income, in a manner consistent with Landlord's ownership of such Leasehold Improvements for all taxable years, and shall furnish the information described in Treasury Regulations Section 1.110-1(c) in the time and manner specified therein.

[ARTICLE 2]

1.19 Security: Not Applicable

[ARTICLE 46]

1.20 Radius: Not Applicable

[ARTICLE 58]

1.21 Intentionally Omitted

1.22 Operating Expenses Payment: \$57,028.50 (\$11.02 per square foot) per year for the calendar year 2022, payable in equal monthly installments, subject to the annual increases provided in ARTICLE 17 of this Lease.

[ARTICLE 17]

1.23 Not Applicable

1.24 Chargeback Waiver: Notwithstanding anything to the contrary contained in the EXHIBITS attached hereto, the construction chargeback items which Tenant shall be obligated to pay Landlord in connection with the construction of the Leased Premises pursuant to the EXHIBITS shall be waived.

Notwithstanding the foregoing, the plan review fee, sprinkler shut down charge, floor tile costs, Temporary Electric, Construction Trash Removal (if applicable), the Construction Deposit and Construction Barricade (if a barricade is required) contained in the EXHIBITS shall not be waived, reduced or capped in any way.

1.25 Not Applicable

1.26 A. Not Applicable

B. Not Applicable

C. Not Applicable

1.27 Not Applicable

1.28 Not Applicable

1.29 Not Applicable

1.30 Not Applicable

1.31 Not Applicable

1.32 Not Applicable

1.33 **Patio/Common Area Seating:** To the extent permitted by local ordinances and regulations, and the Agreement referenced in ARTICLE 8 of this Lease, Tenant may use the area outlined on EXHIBIT A-1 for an outdoor seating area for its customers (the "Patio"). Tenant shall have the exclusive right to use the Patio without having to pay any additional Minimum Annual Rental or additional rental to Landlord, except that all Net Sales generated from the Patio will be included with the Leased Premises in the calculation of Net Sales for the payment of Percentage Rental. Tenant, at its sole cost and expense will prepare all portions of the Patio for use by its customers. Tenant shall comply, at its sole cost and expense, with all relevant state, municipal or local laws, regulations, rules or ordinances relating to the use of the Patio and shall obtain, at its sole cost, all necessary permits or licenses for its use and operations of the Patio. Tenant shall be responsible for maintaining the area in upscale, clean and safe condition. The Patio shall be considered part of the Leased Premises for all of Tenant's obligations under this Lease, except those obligations regarding Minimum Annual Rent and additional rent. Tenant shall in any event be required to pay Percentage Rent from any sales generated on or from the Patio. Notwithstanding the foregoing, in the event that Tenant elects to expand the Leased Premises into any part of the Patio, Tenant shall be required to pay Minimum Annual Rent and additional rent for such square footage. Tenant will be responsible for payment of all utilities consumed in Tenant's use of the Patio and for all trash removal charges. Landlord shall have the right to terminate Tenant's use of the Patio with 20 days prior written notice in the event, in Landlord's commercially reasonable discretion, Tenant fails to remedy (within ten (10) days of Landlord's notice to Tenant) of Tenant's failure to maintain the Patio in a clean, sanitary and safe condition.

1.34 Not Applicable

1.35 **Anchor:** An "anchor" for all purposes under this Lease is any operation, land, building, store or business, whether occupied or vacant and whether owned or leased, which leases or occupies 30,000 square feet or more of space in the Shopping Center. A "variety or specialty store" is (aa) an occupant which leases or occupies between 10,000 and 29,999 square feet of space in the Shopping Center, or (bb) a restaurant occupant having an exterior entrance. An "outparcel" is any operation, land, building, store or business whether occupied or vacant and whether owned or leased, that is not an anchor or variety or specialty store and is separated by vehicular access or parking area from the Main Mall Building(s) or does not have an entrance accessible to the customers of the Shopping Center directly from the Main Mall Building(s).

1.36 **Minimum Hours of Operation:** Tenant agrees that its minimum hours of operation in the Leased Premises shall be Monday through Sunday, 11:30 a.m. – 10:00 p.m. Tenant shall be permitted to remain open until the closing time designated by the City of Boca Raton.

References to articles are for convenience and designate some of the other provisions where references to the particular Reference Provision appear. If there is a conflict between a Reference Provision and the other provisions of this Lease, the former shall control.

ARTICLE 1 - Leased Premises, Term and Use

(a) Landlord leases to Tenant and Tenant takes from Landlord in consideration of the covenants and agreements in this Lease, the premises ("Leased Premises") being that portion of the building measured to the center of common walls and the outside faces of exterior walls, on the drawings attached to this Lease and made a part of this Lease as "EXHIBIT A" and "EXHIBIT A-1". The Leased Premises shall include corridors and passageways for the exclusive use of the Leased Premises, columns, stairs, elevators and any construction or equipment located in the Leased Premises, as well as pipes, conduits, electrical wires and drainage lines that directly serve the Leased Premises. The Shopping Center includes all buildings, land, improvements, additions, extensions and deletions which may be made from time to time, and may include adjacent parcels of land not owned, leased or controlled by Landlord but which are operated as an integral part of the Shopping Center. The Leased Premises are described further in the Reference Provisions. If the square footage of the Leased Premises is different than the amount set forth in Reference Provision 1.01, all rental and additional rental and amounts based upon the square footage of the Leased Premises shall be proportionately adjusted, and the parties shall execute an amendment to this Lease memorializing the adjustments. If Tenant constructs a mezzanine in the Leased Premises, the square footage of the Leased Premises shall be increased in an amount equal to the square footage of the mezzanine, and all rental, additional rental and amounts based upon the square footage of the Leased Premises shall be proportionately adjusted. The Parties shall execute an amendment to this Lease memorializing the adjustment. A mezzanine shall not be permitted if the Leased Premises are located on an upper level.

EXHIBITS A, A-1 and B are for informational purposes only, and are not a warranty, representation or agreement that the Leased Premises, Shopping Center or other areas will be as shown on the Exhibits, or that other occupants if shown on the Exhibits will be in the Shopping Center. Tenant has not been granted any easements of light, air or access. Tenant's rights are limited to the use and occupancy of the Leased Premises and the license to use the Joint Use Areas as they may exist from time to time, all subject to the terms, covenants, conditions and provisions of this Lease.

(b) The term of this Lease ("Term") shall begin on the Effective Date and end on the Expiration Date in the Reference Provisions.

(c) The Leased Premises shall be used and occupied only for the Permitted Use in the Reference Provisions, and for no other use or purpose whatsoever. Unless specifically noted in the Reference Provisions, Tenant does not have exclusive rights to sell any particular merchandise or provide any particular services in the Shopping Center.

ARTICLE 2 - Original Construction

(a) Landlord may make minor changes to the Leased Premises. Landlord may also make changes, reductions and additions without restriction in other areas of the Shopping Center (including all Joint Use Areas and all buildings and other improvements), whether the changes are requested by other tenants or deemed desirable by Landlord, **provided the same does not materially interfere with Tenant's use of the Leased Premises.**

(b) ~~(i) If (1) within 24 months following the Opening Date, construction has not begun on the Shopping Center site, or (2) within 36 months following the Opening Date, the Leased Premises has not been delivered to Tenant by Landlord, this Lease may be terminated by either party by notifying the other in writing, within 30 days thereafter. Tenant releases Landlord and Landlord's contractor from any claim for damages against Landlord or Landlord's contractor for any delay in the date on which the Leased Premises shall be ready for delivery to Tenant.~~

~~(ii) Notwithstanding anything in 2(b) (i) above to the contrary, **unless** a different contingency period is specifically stated in this Lease, if any conditions or contingencies relative to performance of any obligation hereunder by either party, including but not limited to the obtaining of permits for any reason, are not satisfied within one year after the Effective Date, then this Lease may be terminated by either party effective upon 30 days prior written notice to the other.~~

(c) **Notwithstanding anything to the contrary contained in this Lease or Exhibits to Lease, Landlord agrees to perform its the following construction work ("Landlord's Work") in the Leased Premises: (1) Landlord shall repair the existing roof leaks at the Leased Premises; (2) Landlord will repair the condenser/humidifier that serves the Leased Premises to render the condenser/humidifier in good working order and (3) Landlord will also complete the work necessary to replace the four (4) existing RTU's that serve the Leased Premises as of the Effective Date of this Lease (the "HVAC Work"). Landlord will complete Landlord's Work and Tenant accepts the Leased Premises in its "AS IS" condition, with the exception of Landlord's Work, within 120 days of the Effective Date of this Lease, at Landlord's sole cost and expense (with the exception of the HVAC Work, which will be**

completed at Tenant's expense, as noted hereinafter). In the event that Landlord fails to complete Landlord's Work within the 120-day period immediately following the Effective Date (except and to the extent of any delay caused by Tenant in connection with Landlord's Work), and Tenant is prepared to open for business to the public within the noted 120-day period, the Rent Commencement Date will be delayed for the number of days following the expiration of the 120-day period until the date that Landlord completes Landlord's Work. The HVAC Work will be performed by Landlord at Tenant's sole cost and expense. Tenant will reimburse Landlord for the HVAC Work within ninety (90) days of Landlord's presentation to Tenant of the invoices for the HVAC Work. As set forth in Article 16 of this Lease, Tenant acknowledges and agrees that Tenant will be responsible for the HVAC throughout the Term of this Lease. Landlord acknowledges and agrees to assign all warranties in connection with the HVAC Work to Tenant promptly upon completion of the HVAC Work. Landlord and Tenant acknowledge and agree to cooperate with each other at all times while contractors, agents and employees of the parties, respectively, are conducting their respective work at the Leased Premises, substantially in accordance with the Exhibits. Tenant shall have the right to utilize any equipment remaining in the Leased Premises as of the date of Landlord's delivery of possession of the Leased Premises to Tenant, and Tenant hereby acknowledges that Landlord makes no representation or warranty as to the condition of such equipment, or the status of any lien rights to such equipment. All other work on the Leased Premises shall be done by Tenant, at Tenant's expense ("Tenant's Work"). Tenant shall remodel the Leased Premises to its most current prototype in accordance with this Lease, all exhibits attached hereto and Landlord criteria and in accordance with plans and specifications as first approved by Landlord. Tenant's Work shall include, but not be limited to, the installation of storefronts and storefront signs, customer entrance doors, floor covering, plastering, interior decorating, wall and ceiling treatment, completion of the air conditioning system and fire sprinkler system, extension of electrical service to the Leased Premises, connection of plumbing lines to Landlord's system, the installation of electric lights and fixtures and all other electrical work. The design and installation of mechanical and electrical systems shall comply with the requirements attached and made a part of this Lease as the Exhibits. All signs and electrical work for the signs shall be installed by Tenant at Tenant's expense. They signs shall be of such character, design, size and at such locations as Landlord may reasonably approve. They shall be in accordance with the Exhibits, which is are attached and made a part of this Lease. Tenant agrees not to install any signs until they have been approved by Landlord. Food Court Tenants shall conform to the Design and Operation Criteria contained in EXHIBIT FC "Design and Operations for Food Court Tenants" attached and made a part of this Lease. If Tenant is prevented from beginning construction in the Leased Premises by the Beginning Work Date because of the failure of Landlord to substantially complete Landlord's Work within the Leased Premises, the Opening Date shall be extended by 1 working day for each working day that Tenant is prevented. The certification of Landlord's architect that Landlord's Work is substantially complete and in accordance with the plans and specifications shall be conclusive and binding upon the parties.

(d) Approval of the plans and specifications by Landlord shall not create any responsibility by Landlord for their accuracy, sufficiency or compliance with laws or rules and regulations. Tenant shall be solely responsible for the plans and specifications. When Landlord has approved Tenant's plans and specifications, Landlord shall return one set of approved plans to Tenant. Such approved plans shall show the date of Landlord's approval and shall be made a part of this Lease as "Exhibit P", whether or not physically attached hereto. Tenant agrees not to begin Tenant's Work until Landlord has approved the plans and specifications. Landlord will use commercially reasonable efforts to provide comments to Tenant's plans and specifications within ten (10) business days of Landlord's receipt of such plans and specifications.

(e) Tenant shall begin Tenant's Work by the Beginning Work Date specified in the Reference Provisions (subject to any delays in commencement of the work as a result of any event of Force Majeure), proceed with it diligently and complete it in strict accordance with EXHIBIT P. Upon completion of Tenant's Work Tenant shall provide a certificate furnished by or otherwise satisfactory to Landlord, in Landlord's commercially reasonable opinion, from Tenant's contractor stating that no asbestos-containing materials or other Hazardous Materials as defined in ARTICLE 15 were used in the construction of the Leased Premises. Tenant shall complete the installation of fixtures, trade fixtures, improvements, equipment, stock and inventory prior to the Opening Date.

NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, TENANT IS REQUIRED TO OPEN FOR BUSINESS TO THE PUBLIC IN THE LEASED PREMISES ON OR BEFORE THE

OPENING DATE SPECIFIED IN THE REFERENCE PROVISIONS, UNLESS REQUESTED TO DELAY THE OPENING DATE PURSUANT TO ARTICLE 3(b).

If Tenant does not begin Tenant's Work by the Beginning Work Date (subject to any delays in commencement of the work as a result of any event of Force Majeure), Landlord shall have the right to terminate this Lease by notifying Tenant in writing and providing a cure period, not to exceed 5-10 days. Tenant shall pay Landlord as liquidated damages the cost of any work done by Landlord for Tenant (representing the actual cost plus 15% for overhead), including, without limitation, electrical work, plumbing, concrete floor slabs, and heating and air conditioning equipment and facilities, if any. If Tenant has not completed Tenant's Work and opened its store for business to the public by the Opening Date (subject to ARTICLE 3, except if the delay is due to Force Majeure), Landlord shall be entitled to declare the same a default. In addition to (and not in lieu of) Landlord's other rights and remedies, Tenant's rental shall nevertheless begin on the Opening Date at the per day rate of the greater of either: (i) 1/10th of the monthly installment of Tenant's Minimum Annual Rental; or (ii) \$1,000.00. Late performance will cause Landlord to incur losses, damages and costs not contemplated under this Lease, the exact amount of which are extremely impractical to fix. The costs include, without limitation, processing and accounting charges. The parties agree that these late charges are liquidated damages, represent a reasonable estimate of Landlord's costs and expenses and are fair compensation to Landlord for the loss suffered by Landlord.

ARTICLE 3 - Rental Commencement Date

(a) The rental payments shall begin to accrue on the earlier of the following dates ("Rental Commencement Date"): (i) the Opening Date; or (ii) the date on which Tenant shall open the Leased Premises for business to the public. ~~The Rental Commencement Date will be delayed (if applicable) as set forth in Article 2(c) of this Lease, in connection with the completion of Landlord's Work.~~

~~(b) Notwithstanding any provision to the contrary contained in this Lease, if applicable, Tenant agrees if requested by Landlord to delay the opening of the Leased Premises for business in order to coincide with the grand opening of the Shopping Center or a grand re-opening in the case of a major renovation ("Grand Opening"). In that event, Tenant's obligation to pay rental shall begin on the Grand Opening Date.~~

ARTICLE 4 - Rental

Tenant shall pay Landlord as rental for the use and occupancy of the Leased Premises, at the times and in the manner provided, the following sums of money per annum without deduction or set-off and without prior demand:

(a) **MINIMUM ANNUAL RENTAL:** The Minimum Annual Rental shall be payable in 12 equal monthly installments in advance, upon the 1st day of each and every month during the periods of time specified in the Reference Provisions.

If under ARTICLE 3 rental begins on a day other than the 1st day of a month, the monthly installment of Minimum Annual Rental for the period from the Rental Commencement Date until the 1st day of the month next following shall be prorated accordingly. All past due rental, additional rental, and other sums due Landlord under this Lease shall bear interest from the due date until paid by Tenant, at the rate of 2% above the Prime Rate (as defined below), not to exceed the maximum rate of interest allowed by law in the state where the Shopping Center is located (the "Interest Rate"). The interest shall be deemed to be additional rental. All rental provided for in this Lease shall be paid to Landlord at the address in the Reference Provisions or to another payee or address that Landlord designates.

"Prime Rate" wherever it appears in the Lease means the prime rate (or base rate) reported in the Money Rates column or section of The Wall Street Journal as being the base rate on corporate loans at large U.S. money center commercial banks (whether or not that rate has been charged by any bank). If The Wall Street Journal ceases publication of the prime rate, Prime Rate shall mean the highest rate charged by Chase (or its successor) on short term unsecured loans to its most creditworthy large corporate borrowers. If The Wall Street Journal (i) publishes more than one prime rate or base rate, the higher or highest of the rates shall apply, or (ii) publishes a retraction or correction of that rate, the rate reported in that retraction or correction shall apply.

(b) **PERCENTAGE RENTAL:** Tenant shall pay Landlord as "Percentage Rental" at the times and in the manner provided below, an amount equal to the Percentage Rate of all Net Sales (defined in ARTICLE 5) in excess of the Annual Sales Base for the calendar year specified in the Reference Provisions. ~~In addition to and not in lieu of Percentage Rental, Tenant shall pay to Landlord an amount equal to eight percent (8%) of all monies and other revenues received by Tenant, without regard to the Annual Sales Base, for material and/or information digitally downloaded from the internet or any other remote source to any software format now in existence or hereafter created and sold to customers in, at or from the Leased Premises ("Digital Download Rent"). Sale of such software and the material or information contained therein must be within Tenant's Permitted Use. Income received by Tenant resulting from such sales shall be separately stated monthly and otherwise recorded and documented as set forth in Article 6 hereof, but the amount thereof shall not be included in Net Sales applied to the Annual Sales Base in any year. Any Digital Download Rent due from Tenant to Landlord for any month during the Term shall be payable within thirty (30) days after the end of the month in which the monies or other revenues were received.~~

Percentage Rental shall be paid monthly no later than the 15th day of the month, except that if the Rental Commencement Date is other than the first day of a month, the Net Sales during the first partial month shall be added to the Net Sales of the next month. The amount of each payment of Percentage Rental shall be equal to the amount of Net Sales in excess of the Monthly Sales Base for the immediately preceding month multiplied by the Percentage Rate. The Annual Sales Base and/or the Monthly Sales Base shall be prorated for any partial calendar year upon the basis of 1/12th for each full month of the partial calendar year, plus an amount equal to 1/360ths for each day if the Rental Commencement Date is other than the first day of the month. Percentage Rental shall be paid beginning in the month in which the Net Sales for any calendar year shall exceed the Annual Sales Base for the applicable calendar year. Thereafter, Percentage Rental shall be paid on all additional Net Sales made during the remainder of that calendar year (or partial calendar year, as the case may be). Payments shall be made no later than the 15th day of the next following month. At the end of each calendar year Percentage Rental shall be adjusted to a calendar year basis and the balance of the Percentage Rental due shall be paid within 60 days after the end of that calendar year (including the last calendar year). If at the end of the calendar year, the amount of the Percentage Rental paid by Tenant exceeds the amount of Percentage Rental required to be paid by Tenant for that calendar year, Tenant shall receive a credit for the excess, and the excess shall be deducted by Tenant from the next payments of Percentage Rental due (or after the last calendar year, Landlord shall refund the excess to Tenant after Landlord's receipt of Tenant's certified statement of Net Sales covering the last calendar year). Each calendar year shall be considered as an independent accounting period for the purpose of computing the amount of Percentage Rental due. The amount of Net Sales of any calendar year shall not be carried over into any other calendar year.

Net Sales during any calendar month in which Tenant does not continuously and without interruption conduct its business shall be deemed to be the greater of: (i) Net Sales during that calendar month or (ii) Net Sales during the calendar month in which Net Sales were the highest. This paragraph shall not apply to any calendar month in which the Leased Premises are closed for business with the prior written consent of Landlord, or if the closing of the Leased Premises is expressly permitted by this Lease.

"Lease Year" for all purposes under this Lease shall mean the 12 calendar months between February 1 through and including the next succeeding January 31. If the Rental Commencement Date is not February 1, then the period from the Rental Commencement Date through and including the next succeeding January 31 shall be a partial Lease Year; "calendar year" for all purposes under this Lease shall mean the 12 calendar months between January 1 through and including December 31. If the Rental Commencement Date is not January 1, then the period from the Rental Commencement Date through and including the next succeeding December 31 shall be a partial calendar year.

~~(e) — ADDITIONAL GROSS LEASABLE AREA MINIMUM ANNUAL RENTAL INCREASE: After the Opening Date, should either (i) the Shopping Center be renovated at a cost in excess of \$ _____; (ii) the Shopping Center be expanded by an addition of at least 50,000 feet of leasable area; or (iii) a lifestyle village or wing be added to the Shopping Center regardless of whether such addition occurs as a replacement for an anchor or not, the Minimum Annual Rental shall automatically be increased in accordance with the Reference Provisions, and the Annual Sales Base shall be increased accordingly. Any such increase shall commence on the first day after the completion of any of the events set forth in (i) — (iii) above and continue during the remainder of the Term.~~

~~(d) — ANCHOR MINIMUM ANNUAL RENTAL INCREASE: For each anchor (as defined in this Lease) that is added to the Shopping Center after the Opening Date, the Minimum Annual Rental shall automatically be increased in accordance with the Reference Provisions, and the Annual Sales Base shall be increased accordingly. The increase shall continue during the remainder of the Term.~~

(e) If Minimum Annual Rental or additional rental is not paid within 10 days after it is due, Tenant shall also pay Landlord, as liquidated damages, a late payment fee equal to the greater of \$100.00 or 5% of the delinquent rental for each and every month, or part of every month that the rental remains unpaid. The fee shall not excuse Tenant from the timely payment of rental. If Landlord receives 2 or more checks from Tenant which are returned by Tenant's bank for insufficient funds, Tenant agrees that all future checks shall be either bank certified, cashiers' or treasurers' checks. All bank service charges resulting from bad checks shall be borne by Tenant.

(f) In addition to Minimum Annual Rental, Tenant shall pay, as additional rental, all sums of money required to be paid pursuant to ARTICLE 4(b) (Percentage Rental), 7 (Taxes), 16 (Environmental Services), 17 (Joint Use Areas and Operating Expenses), and all other sums of money or charges required to be paid by Tenant under this Lease (collectively referred to in this Lease as "additional rental"). All amounts shall be paid to Landlord's Payment Address as shown in Reference Provision 1.10. If the amounts or charges are not paid at the time provided in this Lease, they shall nevertheless be collectible as additional rental with the next installment of Minimum Annual Rental falling due, but nothing in this Lease shall be deemed to suspend or delay the payment of any amount of money or charge at the time it becomes due and payable or to limit any other remedy of Landlord. All amounts of Minimum Annual Rental and additional rental payable in a given month (also collectively referred to in this Lease as "rent" or "rental") shall be deemed to be a single rental obligation, and shall survive the expiration of the Term or the earlier termination of this Lease. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord at the time of such payment shall be treated as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or any letter accompanying such check stating that such lesser amount is payment in full shall be given no effect, and Landlord

may accept such check on account without prejudice to any other rights or remedies which Landlord may have against Tenant.

ARTICLE 5 - Definition of Total Sales, Gross Sales, and Net Sales

Total Sales is defined as the dollar aggregate of the full amount of the price charged or value received for all goods and merchandise sold, leased, rented, licensed, or delivered, and all charges for all services sold or performed, and all other receipts from all business conducted in, upon, or from, any part of the Leased Premises (including business conducted by Tenant or its parent, subsidiary or affiliate, licensee, concessionaire, or subtenant (each a "Tenant's Affiliate")) whether for cash, by check, on credit, by charge account, exchange, or otherwise, and in any combination thereof, and shall include, but not be limited to, the following transactions: (i) sales or orders received, placed, taken, billed, fulfilled, shipped, picked up by the customer, or delivered to the customer, from or at the Leased Premises by any means, including but not limited to, mail order, electronic, computer, internet, telephone, or other technology based system whether now existing or hereinafter developed; (ii) equipment leased; (iii) reimbursements; (iv) uncollected and uncollectible credit accounts and bank checks and charges for bank credit cards; (v) all deposits not refunded to purchasers; (vi) all money or other value that Tenant or Tenant's Affiliate is entitled to receive; (vii) the value of any gift certificates, gift cards, electronic vouchers, or like instrument, as well as any associated purchase, service, activation or like fee for same; (viii) sales from vending machines; and (ix) any other transactions that Tenant in the normal and customary course of its operations would credit or attribute to Tenant's business conducted in the Leased Premises. Gross Sales is defined as Total Sales less the following exclusions, but only if and to the extent that, each such exclusion is included in Total Sales and is individually itemized and valued by Tenant in its Gross and Net Sales reports submitted to Landlord as required pursuant to the provisions of Article 6: (a) returns of merchandise to shippers and manufacturers; (b) receipts for the sale of fixtures, equipment or property that are not stock-in-trade, or from any sales not in the ordinary course of Tenant's business; and (c) the value of any exchange or transfer of merchandise between the Leased Premises and another Tenant store location if made solely for the convenient operation of Tenant's business and not for the purpose of consummating a sale made in, at, or from the Leased Premises; and (d) any discounts, comped meals and/or food allowances provided to Tenant's employees and customers, provided such amounts do not exceed three percent (3%) of Gross Sales. Net Sales is defined as Gross Sales less the following deductions, but only if and to the extent that, each such deduction is included in Total Sales and is individually itemized and valued by Tenant in its Gross and Net Sales reports submitted to Landlord as required pursuant to the provisions of Article 6: (1) refunds to customers to the extent and in the amount that the underlying transaction for which the refund is sought was included in Gross Sales; (2) sales tax, use tax, excise tax, retailer's tax, occupation tax, or similar taxes imposed in a either a specific amount or as determined by Tenant's sales; and (3) interest, service, finance, or sales carrying charges paid by customers for the extension of credit on purchases if not included in the price.

ARTICLE 6 - Records and Audits

Tenant agrees to accurately record all sales in accordance with generally accepted accounting practices (showing all of its sales separately from its other stores), and to maintain sufficient original records which accurately summarize all transactions relating to the Leased Premises (including the sales of any subtenant, licensee or concessionaire). Original records shall include but not be limited to: sales documents, sequentially numbered tapes and readout totals of cash registers or point of sale devices, sales returns and allowance detail, cash receipts, payroll journals, accounts receivable, disbursement journals, bank statements, deposit slips, inventory records, purchase orders, receiving records, sales journals or daily sales reports, orders accepted by means of electronic, telephonic, video, computer or another electronic or other technology based system, state sales and use tax returns (and all documentation used to prepare the returns), and a complete general ledger. Documentation and itemization of specific sales exclusions shall also be maintained. Records shall be preserved (properly totaled) by Tenant either (a) at the Leased Premises or (b) at the home or regional offices of Tenant (provided Landlord shall be notified in writing of the address at which the records are maintained) and made available to Landlord at the Leased Premises or the offices, upon demand **no less than forty-eight (48) hours advance notice from Landlord**, for a period of at least 3 years after the year in which the sales occurred (however, if any audit is begun by Landlord or if there is a dispute regarding Tenant's Total, Gross, and/or Net Sales, Tenant's records shall be retained by Tenant until a final resolution of the audit or dispute). The receipt by Landlord of a statement of Total, Gross, and/or Net Sales or Percentage Rental shall not constitute an admission of its correctness. Tenant agrees to deliver to Landlord a statement of each month's sales on or before the 5th day of the following month, and by January 31 of each year of the Term an annual statement certified by a Certified Public Accountant or by a financial officer, owner or partner of Tenant, of the Total, Gross, and/or Net Sales made during the preceding year. If the Term expires or is terminated on a date other than December 31, then a like statement for the partial calendar year in which expiration or termination occurs shall be delivered within 30 days after expiration or termination. Landlord shall be entitled, at Landlord's expense, to have at any time and from time to time an audit of the Total, Gross, and/or Net Sales made during any period covered by the annual statement and account and to recalculate the rental payable for that period. If there is a deficiency in the payment of percentage or additional rental, the deficiency shall be immediately due and payable with interest at the Interest Rate, and the interest shall be additional rental, from the date when the payments should have been made. If there is an overpayment by Tenant, it shall be credited by Landlord against payments due. If Total, Gross, and/or Net Sales have been understated by more than 2% or Tenant fails to record, maintain or make available the required sales supporting documentation, Tenant shall be in default, and shall pay the cost of the audit and all other related costs and expenses. If Tenant is late furnishing

Landlord any monthly sales statement, **then Landlord upon twenty (20) days' notice to Tenant**, shall have the right, ~~without notice~~, to conduct an audit and **Tenant shall pay all reasonable expenses of such audit at Tenant's sole cost**. If Tenant does not furnish the sales documentation referred to above or otherwise impedes Landlord's audit of Tenant's Total, Gross, and/or Net Sales, Landlord shall be entitled, in addition to Landlord's other rights and remedies, to estimate Tenant's annual Total, Gross, and/or Net Sales as 125% of the Net Sales for the preceding year, and bill Tenant for any Percentage Rental which may be due based upon the estimated Net Sales.

ARTICLE 7 – Taxes

(a) (i) Effective upon the Rental Commencement Date, Tenant shall pay, without deduction or set-off of any kind, its proportionate share of all real property taxes and assessments which may be levied or assessed against the retail portion of the Shopping Center during the Term by any lawful authority for each calendar year including, without limitation, all Impositions as defined below in this subpart (a)(i) and the cost of any contest, review or negotiation of an assessment by Landlord, as described in (c) below (collectively "Property Taxes"). Property Taxes shall exclude taxes and assessments actually paid by anchors or outparcel occupants for land and buildings owned or leased by anchors and outparcels whether the anchors and outparcels are occupied or vacant and whether or not the real property taxes thereon are separately billed or assessed. Notwithstanding anything to the contrary contained in this Lease, Property Taxes shall include any form of tax or assessment, license fee, license tax, tax or excise on rent, or any other levy, charge, or similar imposition ("Impositions") imposed by any governmental authority or political subdivision having jurisdiction, or any school, agricultural, lighting, drainage, management, roadway, water, levee, utility or other improvement or special assessment district, on any interest of Landlord or Tenant in the Leased Premises, the Shopping Center or the underlying realty. The Impositions shall include but not be limited to: (aa) any partial or total substitute impositions for real property taxes; (bb) any impositions imposed upon owners of real estate (including any water and sewer tax assessment) rather than upon persons generally, as well as any tax which may become a lien on the land, buildings or other improvements in the Shopping Center, or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Leased Premises; (cc) any Impositions upon this Lease or any document to which Tenant is a party creating or transferring an interest or an estate in the Leased Premises, and (dd) any impositions for offsite property or facilities that provide an easement required to be maintained for the benefit of or that serves the Shopping Center.

(ii) Tenant's proportionate share shall be the product which results by multiplying the Property Taxes (less any payment actually made by variety and specialty stores, and by anchors and outparcels as excluded in subpart (a)(i) above) by a fraction, the numerator of which shall be the number of square feet of floor area in the Leased Premises and the denominator of which shall be the total number of square feet of gross leasable floor area in the main mall building(s) (as determined by Landlord in its sole discretion; hereafter "Main Mall Building(s)") of the Shopping Center which are occupied or producing rent, including the Leased Premises, determined as of August 1 of each year (exclusive of the building areas utilized for non-retail exhibits or uses; recreational purposes, including, without limitation, ice rinks; space operated for a not-for-profit purpose, including, without limitation, museums; the building areas occupied by anchor buildings and outparcels whether the anchors and outparcels are occupied or vacant and whether or not the portion of Property Taxes thereon are separately billed or assessed; and variety and specialty stores [collectively, the "Excluded Areas"]). Tenant's share of Property Taxes shall not, however, be calculated on the basis of less than 80% of the gross leasable area of the Main Mall Building(s) of the Shopping Center determined as of August 1 of each year (minus the Excluded Areas). **Tenant shall not be responsible for any late fees, interest or penalties due to Landlord's failure to timely pay Property Taxes.**

(iii) Notwithstanding anything to the contrary contained in the Lease, an outparcel may at Landlord's sole discretion be considered part of the Shopping Center for purposes of the definition of Property Taxes and the calculation of Tenant's share of Property Taxes under ARTICLE 7, provided that if the Landlord considers an outparcel to be part of the Shopping Center for such purposes Landlord shall include any payments toward Property Taxes actually made by the outparcel occupant before the calculation of Tenant's share of Property Taxes.

(b) From time to time, Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due with respect to Property Taxes. Such monthly installments shall be paid on or before the 1st day of each calendar month, in advance. If Landlord is required however under a mortgage to escrow Property Taxes, Landlord may, but shall not be obligated to, use the amount required to be escrowed as a basis for the estimate of the monthly installments. Upon confirmation of all Property Tax bills attributed to any calendar year during the Term, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's proportionate share of the Property Taxes for that year. If the total amount paid by Tenant for any calendar year during the Term is less than the actual amount due from Tenant for that year, as shown on the statement, Tenant shall pay Landlord the deficiency within 10 days after demand by Landlord. If the total amount paid by Tenant for any calendar year exceeds the amount due from Tenant for that calendar year, Landlord shall credit the excess against payments due. Tenant's liability for its proportionate share of Property Taxes for the calendar years in which this Lease begins and ends shall be subject to a prorata adjustment based on the number of days in those years. Landlord's and Tenant's obligations under this ARTICLE 7 shall survive the expiration of the Term. An official tax bill (or copy), if available, shall be submitted by Landlord to Tenant, upon request by Tenant, and shall be conclusive evidence of the amount of the tax assessed or levied, the items taxed and the installments.

(c) If Landlord contests, reviews or negotiates any tax or assessment upon the Shopping Center, Tenant agrees to pay its proportionate share of Landlord's **commercially reasonable** expenses, whether third party or internal, including but not limited to legal, tax consultant and appraisal fees. Tenant's proportionate share of such

expenses shall be calculated and paid in the manner set forth in ARTICLE 7(a). Tenant shall not have the right to withhold any payments to Landlord notwithstanding anything to the contrary contained in this Lease, nor shall Landlord be obligated to withhold the payment of Property Taxes levied or assessed against the Shopping Center. If Tenant pays an amount in excess of its proportionate share of Property Taxes for any year as the result of a subsequent reduction in total Property Taxes for that year, the excess shall be refunded to Tenant (the "Net Refund") when all refunds to which Landlord is entitled from the taxing authority for that year are received by Landlord. The term "Net Refund" means the refund plus interest, if any thereon less appraisal, engineering, expert testimony, attorneys', printing and filing fees and all other costs and expenses of the contest, review or negotiation to the extent that such fees, costs and expenses have not been previously included in taxes under this ARTICLE 7, and less an administrative fee equal to 1.0% of the original refund.

(d) Notwithstanding anything to the contrary in this Article 7 or elsewhere in this Lease, any excise, transaction, sales or privilege tax (except income, transfer, estate or inheritance tax) imposed upon Landlord on account of, attributed to, or measured by rental or other charges payable by Tenant shall be paid by Tenant to Landlord.

For this Lease at Mizner Park only, the parties acknowledge that the initial rate for Tenant's proportionate share of Property Taxes (for calendar year 2021) is estimated to be \$7.57 per square foot. The foregoing estimate is provided for informational purposes only and Landlord makes no representation that Tenant's proportionate share of Property Taxes will be equal to such amount.

ARTICLE 8 - Subordination and Attornment

(a) Tenant's rights shall be subordinate to the interest of any ground lessor and to the lien of any mortgage or deed of trust in force or later placed against the Shopping Center, upon any building placed later upon the Shopping Center and to all advances made upon the security thereof. No ground lessor nor the mortgagee or beneficiary named in the mortgage or trust deed shall disturb Tenant's peaceable possession of the Leased Premises if Tenant is not in default under this Lease **beyond the applicable notice and cure period provided in this Lease.** Any mortgagee or beneficiary of Landlord may, at its option, subordinate its mortgage or trust deed to this Lease. This ARTICLE 8(a) is self-operative, and no further documentation of Tenant's subordination and attornment is required; however, Tenant shall execute any subordination agreement requested by Landlord, any mortgagor or beneficiary of Landlord upon written request. Tenant shall accept performance of any of Landlord's obligations hereunder by any mortgagee or beneficiary of Landlord.

(b) If any proceedings are brought for foreclosure, or if the power of sale under any mortgage, deed of trust or deed to secure debt made by Landlord covering the Leased Premises is exercised, Tenant shall attorn to the purchaser upon the foreclosure or sale and recognize the purchaser as the Landlord under this Lease.

(c) Landlord covenants that it is or will be a party to a certain agreement or agreements with the anchors in the Shopping Center (the "Agreement"), which may be amended from time to time. The Agreement shall not prevent Tenant from using the Leased Premises for the purpose set forth in Reference Provision 1.03. This Lease is subject and subordinate to the Agreement and any amendments to or modifications of the Agreement.

(d) Tenant agrees to make such reasonable modifications to this Lease as may be reasonably required in connection with the obtaining of financing or refinancing of the Shopping Center or any portion thereof or interest therein, so long as such modifications do not change the economic terms hereof or materially affect Tenant's rights, increase Tenant's obligations, or reduce Landlord's obligations hereunder.

ARTICLE 9 - Additional Construction

Landlord reserves the right at any time to make alterations or additions to, subdivide, change the building dimensions and storefront lines, build additional stories on the building in which the Leased Premises are contained or on any other building or buildings in the Shopping Center, and to build adjoining the Shopping Center, **provided such alterations do not materially interfere with Tenant's use of the Leased Premises.** Landlord also reserves the right at any time to construct other buildings, structures or improvements including, but not limited to, surface, elevated or double-deck parking facilities and to erect temporary scaffolds and other aids to construction.

~~Landlord shall have the right at any time upon 90 days' notice, to relocate the Leased Premises to another location within the Shopping Center ("Substitute Space"), containing approximately the same amount of floor area as the Leased Premises. Landlord shall pay the cost of improving the Substitute Space to a comparable condition that existed in the Leased Premises, and for all reasonable moving expenses incurred by Tenant. Tenant shall, upon delivery of the Substitute Space to Tenant, install its fixtures, furniture and equipment in the Substitute Space prior to opening for business in the Substitute Space and Tenant shall open for business in the Substitute Space within 30 days after~~

~~delivery of the Substitute Space to Tenant. Minimum Annual Rental shall abate during any period Tenant is unable to be open for business due to the relocation.~~

Landlord shall have the right, at Landlord's sole cost and expense and upon no less than ninety (90) days advance notice to Tenant, to relocate Tenant from the Leased Premises to another space in the Shopping Center (the "Substitute Premises") which is comparable in size and frontage to the Leased Premises. Landlord shall move Tenant's trade fixtures and property from the Leased Premises to the Substitute Premises and remodel the Substitute Premises so that it is put in the same condition and style (in Landlord's reasonable opinion) that the Leased Premises were in at the time of the relocation. If the square footage of the Substitute Premises is different than the square footage of the Leased Premises, Minimum Annual Rental, Percentage Rental and all additional rental (if based upon the square footage of the Substitute Premises) shall be adjusted to reflect the new square footage. Tenant shall move to the Substitute Premises and re-open for business to the public promptly after receipt of Landlord's notice that the Substitute Premises is in the condition required in this Article 9. Landlord will reimburse Tenant for Tenant's commercially reasonable moving expenses, as well as for mailers to customers, new business cards and letterhead that reflect the address of the Leased Premises. Landlord will deliver written notice of the date of completion of Landlord's Work no less than ten (10) days in advance of such completion. Tenant will deliver the original Leased Premises to Landlord at the end of the 10-day notice period in the condition provided in Article 24 of this Lease.

ARTICLE 10 - Condition of Leased Premises

Tenant's taking possession of the Leased Premises shall be conclusive evidence of Tenant's acceptance of the Leased Premises in good order and satisfactory condition and "as-is", including patent and latent defects. Tenant agrees that no representations about the condition of the Leased Premises, nor promises to decorate, alter, repair or improve the Leased Premises have been made by Landlord or its agents to Tenant. Tenant also agrees that no representations have been made to Tenant that any other tenants will lease space in the Shopping Center nor have any promises been made that Tenant has the exclusive right to sell any merchandise, goods or services. Tenant hereby waives any implied warranties, including but not limited to fitness, suitability and habitability.

ARTICLE 11 - Repairs and Maintenance

Landlord shall be responsible for all structural repairs to the Leased Premises. Landlord shall not be responsible for damage or personal injury caused by any defects or other conditions, or the consequences thereof, except in the case of Landlord's willful misconduct. Landlord shall not be liable to Tenant for any damage to merchandise, trade fixtures or personal property of Tenant in the Leased Premises, including without limitation damage by water leakage, seepage, water discharge from a sprinkler system or water damage caused by leakage from other occupants. Beginning on the date Tenant takes possession of the Leased Premises, Tenant shall be liable for the repairs, replacements and maintenance of the Leased Premises, except those for which Landlord is responsible under this ARTICLE 11. Tenant shall keep the Leased Premises in good order and repair, clean, sanitary and safe and shall notify Landlord, in writing, prior to beginning any repair. The notice shall specify the repair work to be performed. Tenant's repairs, replacements and maintenance obligations shall include, but not be limited to, its heating and cooling equipment; other equipment; fixtures; improvements; floor covering; the exterior and interior portions of all doors, door locks, security gates, and windows; plumbing and sewage facilities which are not Landlord's obligation; walls; ceilings; and plate glass. Tenant shall be solely responsible for maintenance and repair costs related to the Leased Premises, **except for any damage caused by the gross negligence or intentional misconduct of Landlord or its agents, employees and contractors, to the extent not covered by Tenant's insurance policy required to be maintained pursuant to the terms of this Lease.** Tenant agrees to keep the interior of the Leased Premises in a clean and sightly appearance. If Tenant ~~refuses or neglects fails~~ to make repairs or maintain the Leased Premises, in a manner reasonably satisfactory to Landlord **within fifteen (15) days after Tenant's receipt of Landlord's notice to Tenant of such failure, unless said repairs or maintenance cannot be completed within said fifteen (15) day**

period and Tenant has begun to make said repairs or perform said maintenance and continues to diligently proceed with same to completion, Landlord shall have the right, upon giving Tenant reasonable written notice, to make the repairs or perform the maintenance on behalf of Tenant. Tenant shall reimburse Landlord promptly upon receipt of a bill. The interior and storefront of the Leased Premises shall be painted, redecorated and refurbished by Tenant at least once every 5 years. Landlord has no obligation to do work which Landlord is not expressly required to perform under this Lease or which, under this Lease, Tenant is required to perform. The performance of that work by Landlord shall not constitute a waiver of Tenant's default.

ARTICLE 12 - Alterations

Tenant shall not make any structural, electrical, storefront, exterior, major interior or mechanical alterations to the Leased Premises without obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall not interfere with any work in the Shopping Center, and shall not cause the closing, interruption or impairment of Tenant's normal conduct of business. All alterations, additions, improvements and Tenant's Work shall become, upon expiration of the Term, or the earlier termination of this Lease, the property of Landlord without any payment by Landlord. All such work by Tenant shall be made under the supervision of a competent architect or competent licensed structural engineer and shall be in accordance with plans and specifications approved in writing by Landlord before the start of the work. Landlord's approval of Tenant's plans and specifications shall not create a responsibility or liability of Landlord for their accuracy, sufficiency or compliance with laws or rules and regulations. The work shall be in accordance with necessary governmental approvals and permits. Tenant shall obtain approvals and permits at its sole expense. The work shall be done in a good and workmanlike manner and diligently prosecuted to completion. The Leased Premises shall at all times be a complete unit except during the performance of work. Work done by Tenant without Landlord's consent shall be returned to its original condition, at Tenant's expense, upon request by Landlord. Tenant will not be required to obtain Landlord's prior consent to non-structural work that does not impact any utility systems serving the Leased Premises, the cost of which work does not (in the aggregate) cost in excess of \$5,000 to complete.

ARTICLE 13 - Fixtures and Personal Property

Trade fixtures, signs and other personal property of Tenant not permanently affixed to the Leased Premises shall remain the property of Tenant. Tenant shall have the right, provided Tenant is not in default beyond the expiration of the applicable notice and cure period provided in this Lease, to remove its trade fixtures, signs and other personal property. Tenant shall not however, during the Term, render the Leased Premises unsuitable for conducting the type of business specified in Reference Provision 1.03 by removing personal property unless Tenant immediately replaces it with personal property of comparable or better quality. Tenant, at its expense, shall immediately repair damage to the Leased Premises caused by the removal of such trade fixtures, signs and other personal property. Upon the expiration or earlier termination of this Lease, Tenant shall leave the Leased Premises in a neat and clean condition, free of debris, subject to ordinary wear and tear not covered by Tenant's maintenance obligations required under this Lease. All trade fixtures, signs, and other personal property installed in or to the Leased Premises by Tenant must be new or like new when installed or attached. Tenant shall pay before delinquency all taxes, assessments, license fees and public charges levied, assessed or imposed upon its business operation in the Leased Premises as well as upon its trade fixtures, leasehold improvements (including but not limited to merchandise and other personal property in, on or upon the Leased Premises). If Tenant's property is assessed with Landlord's property, the assessment shall be equitably divided between Landlord and Tenant. Landlord shall determine the basis of prorating the assessments and that determination shall be binding. No taxes, assessments, fees or charges referred to in this ARTICLE 13 shall be considered Property Taxes under ARTICLE 7. Tenant's obligation to perform the provisions of this ARTICLE 13 shall survive the Expiration Date or the earlier termination of this Lease. Landlord agrees to subordinate its interest in Tenant's property to any lien holder, so long as such agreement to subordinate its lien rights is prepared on Landlord's form document.

ARTICLE 14 - Liens

Tenant shall not permit a mechanics' or materialmen's lien or claim to attach to the Leased Premises by reason of work, labor, services or materials performed or furnished to Tenant. If any such lien shall be filed as aforesaid, Tenant may contest the same in good faith, but, notwithstanding such contest, Tenant shall, within fifteen (15)

business days after receipt of notice of filing of the lien, and shall promptly cause the such lien or claim to be released of record by payment, bond, order of a court of competent jurisdiction, or otherwise. If Tenant contests the lien or claim, Tenant shall indemnify Landlord and, if requested, deposit with Landlord a cash or surety bond in a form and with a company satisfactory to Landlord in an amount equal to twice the amount of the contested lien or claim. If Tenant shall fail to cause a lien to be discharged or bonded, within 10 15 days after being notified of the filing of the lien, in addition to any other right or remedy, Landlord may discharge the lien by paying the amount claimed to be due or by bonding or in any other manner Landlord deems appropriate, after prior written notice to Tenant. The amount paid by Landlord, together with interest at the Interest Rate and all costs and expenses, including reasonable attorneys' fees incurred by Landlord, shall be due and payable by Tenant to Landlord as additional rental on the 1st day of the next following month. Tenant shall immediately give Landlord written notice of the recording of a lien against the Leased Premises or the Shopping Center arising out of work done by or at the direction of Tenant.

ARTICLE 15 - Laws and Ordinances

(a) Tenant shall comply with all laws, ordinances, codes, orders and regulations affecting the construction, use, occupancy, alteration, cleanliness, safety and operation of the Leased Premises, which are in force now or hereafter in effect later. Tenant shall comply with the regulations, requirements and recommendations of any insurance underwriter, inspection bureau or similar agency. Tenant shall notify Landlord if Tenant has received notice of, or has knowledge of any condition or occurrence that might result in liability to Landlord. Tenant shall give Landlord, upon Landlord's request, information regarding the environmental condition of the Leased Premises so Landlord can determine if Landlord must comply with any rule, regulation, order, act, law or statute pertaining to the environmental condition of the Leased Premises or the Shopping Center, and for Landlord to accurately complete a form or otherwise provide information required under any rule, regulation, order, act, law or statute. Tenant shall permit Landlord to comply with those recommendations and requirements. In addition, Tenant agrees to comply, to the extent that the same may be applicable to the Leased Premises and as same may be amended from time to time, with the standards and requirements of the Williams-Steiger Act (PL91-596), known as the "Occupational Safety and Health Act of 1970," notwithstanding the fact that Tenant may otherwise be exempted from the provisions of said Act, and the Americans with Disabilities Act of 1990.

(b) Tenant shall not: (i) permit an immoral practice in the Leased Premises; (ii) use or allow the Leased Premises to be used or occupied in a manner that might invalidate or increase the rate of or make inoperative an insurance policy carried on the Leased Premises or on property, buildings or improvements in the Shopping Center; (iii) keep, use or permit in the Leased Premises inflammable fluids or explosives without the prior written permission of Landlord, or engage in hazardous activities; (iv) use the Leased Premises for a purpose which might create a nuisance or injure the reputation of the Leased Premises or the Shopping Center; (v) deface or injure the Leased Premises or any portion of the Shopping Center; (vi) overload the floors; (vii) commit or suffer waste; (viii) install electrical equipment that overloads lines; or (ix) conduct any sampling, testing, or drilling to locate any Hazardous Material without Landlord's prior written approval. Tenant shall, upon demand, reimburse Landlord for extra premiums caused by Tenant's use or occupancy of the Leased Premises, whether or not Landlord has consented to the use and occupancy. A schedule issued by the organization making the insurance rates on the Leased Premises, showing the components of the rates, shall be conclusive evidence of the items and charges which make up the hazard and other insurance rates on the Leased Premises. Tenant shall, at Tenant's expense, make from time to time whatever changes are necessary to comply with the requirements of the insurance inspectors, underwriters and governmental authorities in connection with electrical and fire prevention systems and equipment.

(c) Tenant shall not have a claim against Landlord, and Landlord shall not be liable for damages, demands, expenses, fees, fines, penalties, suits, proceedings, claims, actions and causes of action arising out of or in any way connected with Tenant's use or occupancy of the Leased Premises, if the use or occupancy is prohibited or substantially impaired by any law, ordinance, regulation or by legal, governmental or other public authority.

(d) Tenant shall not cause or permit any Hazardous Material (defined below) to be brought upon, transported through, stored, kept, used, discharged or disposed in or about the Leased Premises or the Shopping Center (collectively "Property") by Tenant, its agents, employees or contractors. Tenant shall notify Landlord immediately of the presence of or disposal of Hazardous Material on or near the Leased Premises, and of any notice by a party alleging the presence of Hazardous Material on or near the Leased Premises. However, Hazardous Materials brought upon, transported, used, kept or stored in or about the Property which is necessary for Tenant to operate its business for the use permitted under Reference Provision 1.03 of this Lease shall be brought upon, transported, used, kept and stored only in the quantities necessary for the usual and customary operation of Tenant's business and in a manner that complies with: (i) all laws, rules, regulations, ordinances, codes or any other governmental restriction or requirement of all federal, state and local governmental authorities having jurisdiction and regulating the Hazardous Material; (ii) permits (which Tenant shall obtain prior to bringing the Hazardous Material in, on or about the Property) issued for the Hazardous Material; and (iii) all producers' and manufacturers' instructions and recommendations, to the extent they are stricter than laws, rules, regulations, ordinances, codes or permits. If Tenant, its agents, employees or contractors, in any way breaches the obligations in the preceding sentence; or if the presence of Hazardous Material on the Property caused or permitted by Tenant results in the release or threatened release of Hazardous Material on, from or under the Property; or if the presence on, from or under the Property of Hazardous Material otherwise arises out of the operation of Tenant's business then, without limitation of any other rights or remedies available to Landlord under this Lease or at law or in equity, Tenant shall indemnify, defend, protect and hold harmless Landlord (and Landlord's parents, subsidiaries, affiliates, employees, partners, agents,

mortgagees or successors to Landlord's interest in the Leased Premises) (collectively "Indemnity") from any and all claims, sums paid in settlement of claims, judgments, damages, clean-up costs, penalties, fines, costs, liabilities, losses or expenses (including, without limitation, attorneys', consultants' and experts' fees and any fees by Landlord to enforce the Indemnity) which arise during or after the Term as a result of Tenant's breach of the obligations or the release or contamination of the Property, including, without limitation: diminution in value of the Property; damages for the loss of, or the restriction on the use of, rentable or usable space or any amenity of the Property; damages arising from any adverse impact on the sale or lease of the Property; and damage and diminution in value to the Property or other properties, whether owned by Landlord or by 3rd parties. This Indemnity includes, without limitation, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on, under or originating from the Property. Without limiting the foregoing, if the presence of Hazardous Material on the Property caused or permitted by Tenant results in the contamination, release or threatened release of Hazardous Material on, from or under the Property or other properties, Tenant shall promptly take all actions at its sole cost and expense which are necessary to return the Property and other properties to the condition existing prior to the introduction of the Hazardous Material; provided that Landlord's written approval of the actions shall be obtained first (which approval shall not be unreasonably withheld) and so long as such actions do not have or would not potentially have any material, adverse long-term or short-term effect on Landlord or on the Property or other properties. This Indemnity shall survive the Expiration Date or earlier termination of this Lease and shall survive any transfer of Landlord's interest in the Property. "Hazardous Material" means any hazardous, radioactive or toxic substance, material or waste, including, but not limited to, those substances, materials and wastes (whether or not mixed, commingled or otherwise combined with other substances, materials or wastes) listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or substances, materials and wastes which are or become regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) a petroleum product, crude oil or any fraction thereof, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Section 1251, *et seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. Section 1317), (v) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. Section 6903) or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. Section 9601), as all of the foregoing may be amended from time to time.

Notwithstanding anything to the contrary contained in this ARTICLE 15 (d), Tenant shall have the right to maintain, store and use in the Leased Premises such chemicals and materials that are customarily used in restaurants for either cleaning or cooking purposes ("Restaurant Supplies") so long as said Restaurant Supplies are: (i) stored in leak-proof containers on the Leased Premises in small quantities; (ii) disposed of in accordance with governmental regulations; (iii) not used in any open basin, tub or other vessel; and (iv) otherwise used and handled in accordance with all federal, state, county, regional or local authorities.

ARTICLE 16 – Environmental Services

(a) Tenant shall pay for all utilities used in the Leased Premises during the Term. Tenant shall, if required by Landlord or applicable code, provide and pay for its own meters for heat, air conditioning, water, gas, electricity and all other utilities, and shall pay all water and sewage charges (and all other charges for utilities used in the Leased Premises), rentals and taxes imposed by governmental authority or otherwise. Landlord may at its election provide Tenant with or designate a third party provider to provide Tenant with any or all of the utilities used in the Leased Premises. If Landlord or its designee provides Tenant with the utilities used in the Leased Premises, Tenant shall purchase such utilities from Landlord or its designee and may not purchase such utilities from any other source. Landlord agrees, however, that the charge to Tenant for utilities furnished by Landlord shall not exceed that which Tenant would be required to pay for if Tenant purchased such utilities, with a comparable level and quality of service and equipment, directly from the local public utility company, but not less than Landlord's cost to provide such utilities.

(b) Heating, ventilation and air conditioning for the Leased Premises will be in accordance with the EXHIBITS.

(c) Tenant shall be responsible for completing the installation of the heating, ventilation and air conditioning system within the Leased Premises, as provided for in the EXHIBITS. Tenant, at Tenant's expense, shall maintain the heating, ventilation and air conditioning equipment which exclusively serve or are within the Leased Premises. Tenant shall use best efforts to conserve energy in the operation of its heating, ventilation and air conditioning. Tenant shall upon request by Landlord supply Landlord with evidence satisfactory to Landlord that Tenant is fulfilling Tenant's obligations under ARTICLE 16 of the Lease to maintain the heating, ventilation and air conditioning equipment within the Leased Premises.

(d) Landlord has, at its cost and expense, preinstalled a potable water distribution system and a sewer system which will provide water and sewer service to the Leased Premises in accordance with the EXHIBITS. Tenant, at

Tenant's expense, shall be responsible for completing the installation of the water and sewer systems within the Leased Premises in accordance with the EXHIBITS.

(e) If Tenant shall require natural gas for the normal operation of Tenant's business, such utility service shall be available in accordance with the EXHIBITS. All natural gas service shall be arranged by the Tenant and all such work shall be done in accordance with the EXHIBITS.

(f) In addition to the Minimum Annual Rental, Tenant shall pay, as additional rental, in advance on the first day of the month during the Term (prorated for any fractional month), without deduction set-off of any kind, a charge to Landlord for any services furnished by Landlord to the Leased Premises under this Article 16 (the "Environmental Charge"). In the event of any dispute, Tenant shall pay the bill for all such utility furnished to the Leased Premises in accordance with Landlord's billing, and such payment shall not prejudice Tenant's position. The Environmental Charge shall be adjusted from time to time by Landlord's engineer, shall be initially based on a typical store layout that is comparable to Tenant's utility usage and shall be subject to adjustment by Landlord from time to time. If Tenant fails to make any applicable payment of the Environmental Charge to Landlord within ten (10) days from the date such payment is due, or upon failure of Tenant to pay any other sums of rental or other charges due under the provisions of this Lease in full, Landlord may, ~~without limitation~~ **ten (10) days after Landlord's written notice to Tenant**, cut off and discontinue any such utilities furnished by Landlord to the Leased Premises, without any liability to Landlord.

(g) If Landlord or Landlord's third party designee is furnishing utilities to Tenant during the Term, Landlord or such designee may cease furnishing any of such utilities without responsibility to Tenant except to connect or cause to be connected to the service facilities another available source of supply. Notwithstanding anything contained in this Lease to the contrary, Landlord or such designee shall not be responsible or liable for damages or injuries sustained by Tenant or those claiming by, through or under Tenant, because of the interruption, discontinuance, quality or quantity of any utility used in or for the Leased Premises, (whether or not supplied by Landlord or such designee, and regardless of the reason or cause of the interruption or discontinuance). Tenant shall not be relieved from the performance of its obligations if an interruption or discontinuance occurs. Landlord may take any energy management measures it deems necessary for energy conservation including, but not limited to, control of all Tenant's energy consumption.

(h) Landlord shall keep in good order and repair and shall maintain the telephone raceway and interface wiring system and shall make any necessary repairs to or replacements of such telephone raceway and/or interface wiring system except that Landlord's obligation shall not include repair or replacement of service extensions, wiring or other telephone systems exclusively servicing the Leased Premises and that Tenant shall reimburse Landlord for any and all repairs thereto necessitated by any acts, omissions to act or negligence of Tenant or Tenant's agents, employees and contractors.

(i) Tenant agrees that garbage and refuse shall be kept in an adequate container so as not to be visible to the public, within the Leased Premises, for collection at reasonable times specified by Landlord and at Tenant's cost. In lieu and instead of the foregoing provisions of this subsection (i), Landlord, or a contractor selected by the Landlord, at its option, may purchase or lease a garbage compactor for the use of tenants and occupants of the Shopping Center. If Landlord, or a contractor selected by the Landlord, purchases or leases said garbage compactor for the use of tenants in the Shopping Center, then Tenant agrees to use the same for the disposal of its garbage and refuse to the exclusion of all other garbage collection companies. Tenants shall pay monthly, in advance, the charges therefor, based upon Landlord's, or a contractor selected by Landlord, reasonable estimate of the amount of the refuse and garbage generated and the frequency of use by Tenant. Tenant shall cause its garbage and refuse to be taken to such garbage compactor within the Shopping Center; and it is understood and agreed that Tenant's monthly charge as aforementioned will not include pick-up service. The aforementioned monthly charge as estimated by Landlord, or a contractor selected by Landlord, shall be adjusted from time to time based upon the garbage generated by Tenant and/or changes in rates for refuse collection. Tenant shall store soiled or dirty linen in approved fire rating organization metal containers with self-closing fusible link covers. In addition to the foregoing, Landlord may cause the removal of all debris, rubbish, material and equipment during the construction of Tenant's store and/or during the time preceding the initial opening date of the Shopping Center, and charge the cost thereof to Tenant as provided in the EXHIBITS. Tenant shall pay Landlord such charge within 10 days of billing.

(j) During the Term, Landlord shall keep in good order and repair and shall maintain the sprinkler system in the Leased Premises, including checking, testing and servicing thereof, and shall make any necessary repairs to or replacements of such sprinkler system except that Tenant shall pay any and all charges billed by Landlord in connection with all repairs and replacements thereto necessitated by any acts, omissions to act or negligence of Tenant or Tenant's agents, employees and contractors. All modifications to such sprinkler system that Tenant may desire shall be performed as provided in the Exhibits. Should the utility company furnishing water to the Shopping Center levy, assess or impose upon Landlord a sprinkler system backup charge, then Tenant shall pay to Landlord its proportionate share thereof, which shall be in an amount equal to the product obtained by multiplying said charge by a fraction, the numerator of which shall be the gross leasable area of the Leased Premises and the denominator of which shall be the gross leasable area in the Shopping Center served by such sprinkler system determined as of the date such charge is billed to Tenant; and shall be paid by Tenant within 10 days after billing by Landlord.

ARTICLE 17 - Joint Use Areas and Operating Expenses

(a) The "Joint Use Areas" shall consist of all parking areas, parking facilities, approaches, streets, sidewalks, malls, driveways, loading platforms, canopies, elevators, escalators, ramps, storm drainage facilities, exits, entrances, sprinkler mains, landscaped areas, comfort stations, light facilities, computer facilities, cable facilities, telecommunications facilities, washrooms, lounges and shelters, utility lines, roofs, roadways and other facilities available for joint use or benefit designated by Landlord, as they may from time to time exist and be available to the tenants in the Shopping Center, their employees, officers, agents, customers, licensees and invitees.

(b) Landlord shall, subject to events beyond its reasonable control, maintain or cause to be maintained the Joint Use Areas in good order and repair. The Joint Use Areas and other facilities in and about the Shopping Center shall at all times be subject to the control and management of Landlord and other parties that Landlord may designate. Landlord shall have the right at any time to redesignate, modify, alter, close, restrict, expand, reduce and change the Joint Use Areas, **so long as such changes do not materially decrease Tenant's use of the Leased Premises.** Landlord shall also have the right to permit entertainment events, the placement of kiosks, carts, advertising and other displays in the Joint Use Areas, and to convert the Joint Use Areas into retail areas. The activities and uses may be temporary or permanent.

(c) (i) Operating Expenses shall consist of all expenditures relating to operating, managing, equipping, policing, protecting, lighting, repairing, cleaning, replacing and maintaining the Joint Use Areas in the same or improved condition as when originally installed, including any rental and lease payments paid for machinery and equipment used in the maintenance of the Joint Use Areas and the personnel costs to implement those services, compliance with statutes, laws, codes, rules and regulations, even if applicable after the Effective Date; maintaining parking spaces for employees, customers and other parties; music; maintenance of the roof; removal of snow, ice, rubbish, dirt and debris; garbage collection service; planting, replanting and replacing flowers and landscaping; costs and expenses of utilities including, but not limited to, maintaining lighting facilities and storm drainage and detention systems (whether on or off the Shopping Center); sewage treatment plant; domestic water wells, pumps, and similar facilities and equipment; heating and cooling the enclosed portion of the Shopping Center; pest extermination; the alarm service charge if a supervised fire sprinkler alarm system is installed; premiums for liability, property, damage, fire and rental interruption insurance (if carried by Landlord); the cost of the personnel reasonably required to implement all of the foregoing, including the policing of the Joint Use Areas and the directing of traffic and parking of automobiles on the parking area; insurance aggregate allocations and losses borne by Landlord as a result of deductibles or self-insured retention limits carried by Landlord under an insurance policy or self-insurance by Landlord; costs of adjusting an insured casualty; wages; unemployment, social security and personal property taxes; all other expenditures made for the use or benefit of the Joint Use Areas; direct or indirect costs of advertising, marketing and promotion of the Shopping Center as set forth in Article 37, including the cost of marketing and customer service personnel; and maintenance of the sprinkler grid in tenant spaces of the Shopping Center.

(ii) Effective upon the Rental Commencement Date, Tenant shall pay, without deduction or set-off of any kind, the Operating Expenses Payment, which for the calendar year stated in Reference Provision 1.22 shall be the amount specified in Reference Provision 1.22. Tenant's Operating Expenses Payment shall increase on the 1st day of each subsequent calendar year by 5%. As Tenant's obligation to pay the Operating Expenses Payment is predetermined and not subject to adjustment except as expressly provided herein, Tenant shall have no express or implied right to examine, inspect or audit Landlord's records pertaining to the Operating Expenses Payment. Landlord shall have the right, in its sole and absolute discretion, to allocate all or a portion of any of Tenant's payments under this Lease including, but without limitation, Minimum Annual Rental and Operating Expenses Payment, toward Operating Expenses.

ARTICLE 18 - Damage to Leased Premises

If the Leased Premises are damaged, destroyed or rendered partially untenantable by fire or other insured casualty, Landlord shall promptly repair and restore the Leased Premises in accordance with Landlord's Work. From the date of the fire or casualty until the Leased Premises are repaired and restored, Minimum Annual Rental and additional rental, except for any additional rental due under ARTICLE 7, shall abate in the proportion that the part of the Leased Premises destroyed or rendered untenantable bears to the total Leased Premises. Landlord shall not be required to repair or restore the Leased Premises or any part of the Shopping Center as the result of an uninsured casualty. If 50% or more of either the Leased Premises or the Shopping Center is destroyed or rendered untenantable by fire or other casualty during the last 3 years of the Term (based upon the replacement cost compared with the market value of the improvements immediately prior to the fire or other casualty as shown by the certificate of Landlord's architect), either party shall have the right to terminate this Lease. The termination shall be effective on the date of casualty by Landlord or Tenant giving the other, within 90 days after the casualty, written notice of termination. If the notice is given within the 90 day period, this Lease shall terminate and Minimum Annual Rental and additional rental shall abate from the date of the casualty. Landlord shall promptly repay Tenant any rental paid in advance which had not been earned at the date of the casualty. If the notice is not given and Landlord is required or elects to repair or rebuild the Leased Premises, Tenant shall repair and replace its merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture and other personal property to a condition at least equal to its condition prior to its damage or destruction and, if Tenant has closed, Tenant shall promptly reopen for business. Landlord shall not be required to expend more for repair or restoration of the Leased Premises or the Shopping Center than the amount of insurance proceeds paid Landlord (or, if Landlord is self-insured, the amount of insurance proceeds which would have been paid Landlord if Landlord was not self-insured). Except as expressly provided to

the contrary, this Lease shall not terminate nor shall there be an abatement of Minimum Annual Rental or additional rental as the result of a fire or other casualty.

ARTICLE 19 - Insurance

- (a) Landlord agrees to carry, or cause to be carried, the following insurance coverages and types:
- (i) Workers' Compensation Insurance in statutory amounts;
 - (ii) Employer's Liability Insurance in the amount of \$1,000,000 per person for each accident, or disease;
 - (iii) Commercial General Liability Insurance on the Joint Use Areas providing coverage of not less than \$1,000,000 per occurrence, with a \$2,000,000 aggregate.
 - (iv) Commercial Property Insurance including special form perils endorsement insuring Landlord's property in the Shopping Center for the full replacement value. This insurance will exclude Tenant's Work and Tenant's merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture and other personal property).
 - (v) Landlord will have the right to carry or cause to be carried additional types of insurance in whatever limits Landlord chooses, including coverage under blanket insurance policies which may be allocated by Landlord among the properties owned or managed by Landlord which in Landlord's opinion Landlord deems appropriate.
- (b) Tenant agrees to carry the following insurance coverages and types:
- (i) Workers' Compensation Insurance in statutory amounts;
 - (ii) Employer's Liability Insurance in the amount of \$1,000,000 per person for each accident, or disease;
 - (iii) Commercial General Liability Insurance including products and completed operations coverages of not less than \$1,000,000 per occurrence, with a \$2,000,000 per location aggregate (for Shopping Centers in the states of New York, Texas and California these limits shall be \$3,000,000 per occurrence with a \$5,000,000 per location aggregate). The fire legal liability limit shall be not less than \$1,000,000. This policy shall include Contractual Liability coverage. This policy shall also include an Additional Insured Endorsement containing the names of the Additional Insureds identified below. The policy must have a Waiver of Subrogation endorsement in favor of all Additional Insureds. Any deductible/self-insured retention in excess of \$5,000 per occurrence requires Landlord's written consent.
 - (iv) Commercial Property Insurance including special form perils endorsement insuring Tenant's property, including plate glass, in the Shopping Center for the full replacement value, without deduction for depreciation. This policy shall have an Agreed Value Endorsement. This insurance must include all of Tenant's work, improvements and betterments, Tenant's inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property). Tenant shall insure for loss from flood, including coverage for water damage from all causes including but not limited to sprinkler damage, sewer discharge or backup, water line breakage, and overflow from other tenant's spaces or from the Joint Use Areas. Where available, Tenant shall insure for earthquake. Landlord shall be named as a loss payee with respect to the coverage for Tenant's betterments and improvements. The policy must have a Waiver of Subrogation endorsement in favor of all Additional Insureds. The deductible/self-insured retention shall not exceed \$5,000 per occurrence without Landlord's written consent.
 - (v) Loss of Business Income Insurance, including Extra Expense and Contingent Business income coverage. The insurance limits for this insurance shall be based upon a minimum of 12 months business income with a 60-day extended period of indemnity endorsement.
 - (vi) Boiler and Machinery insurance, including mechanical breakdown, covering rooftop HVAC units and any separate heating units or boilers which serve only the Leased Premises. Such coverage shall be for the full replacement value of the units without deduction for depreciation.
 - (vii) If in Landlord's reasonable judgment there is a need for additional or different types of insurance, Tenant shall obtain upon Landlord's request the insurance at Tenant's sole expense.
 - (viii) Automobile liability coverage, including owned, non-owned and hired automobiles, with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage.
 - (ix) If Tenant sells or serves alcoholic beverages, Tenant shall obtain and maintain, at all times during the Term, Liquor Liability Insurance with policy limits of not less than \$2,000,000.00 per occurrence, naming Landlord and such additional parties as listed in (e) below as Additional

Insureds. If Tenant fails to obtain or to continue this coverage, Tenant shall immediately discontinue selling and serving alcoholic beverages from the Leased Premises.

- (x) If Tenant performs professional services on the Leased Premises Tenant shall obtain and maintain, at all times during the Term, Professional Liability insurance appropriate to the service provider's profession, with policy limits of not less than \$1,000,000 per occurrence or loss. This insurance shall not exclude coverage for bodily injury.

(c) All policies of insurance (including policies of Tenant's contractors and subcontractors) shall contain a Waiver of Subrogation Endorsement in favor of all Additional Insureds. If Tenant is permitted to self-insure for any of the insurance coverages required to be provided, Tenant hereby waives against Landlord, its parents, partners, joint venturers, subsidiaries and affiliates, against the property manager, and against the Additional Insureds if not listed below, all claims, including any and all rights of subrogation which may exist, for all losses and damages no matter how caused, which were or could have been insured for under any policy of insurance required to be obtained by Tenant. This waiver of liability and waiver of subrogation expressly includes any cause of loss due to the sole or concurrent negligence of any Additional Insured. If Tenant shall, for any reason, fail to obtain from its insurance carrier(s) the required Waiver of Subrogation Endorsement, the Tenant shall fully and completely defend and indemnify the Landlord and all Additional Insureds from any claims and demands, including lawsuits, brought against Landlord and/or the Additional Insureds by any insurance company which insured Tenant for a paid loss and which seeks to recover amounts paid under Tenant's policy.

(d) Tenant shall, upon request of Landlord, provide a Certificate of Insurance to Landlord evidencing all of the required coverages and Endorsements. The Certificate of Insurance must remain current (or be replaced with a current Certificate) at all times during the period of Tenant's tenancy. All policies of insurance must be written by insurance carriers licensed to do business in the state in which the Shopping Center is located and have an A.M. Best's rating of not less than A:VII. All Tenant's liability policies shall be endorsed to be primary and non-contributory to policies of the Landlord and the Additional Insureds, and shall contain either a cross-liability endorsement or separation of insureds provision which permits the limits of liability under Tenant's policies to apply separately to each Additional Insured. Tenant shall promptly give the certificate holder written notice in advance of any cancellation, lapse, reduction in amount of coverage or any other adverse change to the policy or insurer.

(e) The Additional Insureds who shall be named on Tenant's policies shall include the Landlord, Brookfield Property REIT Inc., Brookfield Properties Retail Inc., BPR REIT Services LLC, and such other entities provided by Shopping Center Management, any owner or occupant in or adjoining the Shopping Center (including anchors), any joint venturer or partner of Landlord, and any mortgagee or beneficiary of any part of the Shopping Center.

ARTICLE 20 - Indemnification

Excluding the **gross negligence or willful misconduct** of the indemnitee, Tenant shall indemnify, defend and save harmless Landlord, its parents, partners, subsidiaries, affiliates and any anchor, owner or operator which is or may be in the Shopping Center, their agents, officers and employees from and against liability, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and causes of action arising out of or connected with Tenant's use, occupancy, management or control of the Leased Premises or Tenant's operations or activities in the Shopping Center (whether or not occurring or resulting in damage or injury within the Leased Premises or the Joint Use Areas). This obligation to indemnify shall include reasonable legal and investigation costs and all other reasonable costs, expense and liabilities from the 1st notice that any claim or demand is or may be made. Tenant's obligation shall become effective beginning on the date Tenant is delivered the Leased Premises. Tenant's indemnification obligation shall survive the expiration of the Term or the earlier termination of this Lease.

ARTICLE 21 - Assignment, Subletting and Ownership

(a) Tenant acknowledges that its agreement to operate in the Leased Premises for the use permitted in the Reference Provisions for the Term was a primary inducement and precondition to Landlord's agreement to lease the Leased Premises to Tenant. Additionally, the parties agree that the successful commercial profitability of the Shopping Center is based on the appropriate mix of retail and nonretail activity and that Landlord has leased the Leased Premises to Tenant because, in Landlord's opinion, Tenant's presence and commercial activity during the Term will significantly contribute to the profitability, viability and success of the Shopping Center. Accordingly, Tenant shall not transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or Tenant's interest in and to the Leased Premises in whole or in part, or otherwise permit occupancy of all or any part of the Leased Premises by anyone with, through or under it. Any of these acts shall be considered a "transfer" for the purposes of ARTICLE 21. Any attempt at a transfer shall be null and void and confer no rights upon a 3rd person. These prohibitions shall be construed to refer to events occurring by operation of law, legal process, receivership, bankruptcy or otherwise. Notwithstanding any permitted transfer, the Leased Premises shall be used and operated as a single store.

Notwithstanding the foregoing, and without conferring any rights upon Tenant, Tenant shall submit the request for a transfer, in writing **and delivered at least thirty (30) days prior to the proposed transaction and such request shall contain, with sufficient time and such information concerning the proposed transferee as for Landlord may desire in order for Landlord** to make an informed decision regarding the qualifications of the

~~proposed transferee. In any event, Landlord may upon receipt of a request to transfer, instead of consenting to or denying the proposed transfer, terminate Tenant's obligations under the Lease and regain possession of the Leased Premises. Tenant may, within 15 days of receipt of the notice of termination, withdraw its request for the transfer by written notice to Landlord, and continue in possession under the terms of the Lease. Landlord's right to terminate the Lease because of that request shall in that event be inoperable. If Landlord exercises its termination right, Tenant shall surrender possession of the Leased Premises on the termination date specified in Landlord's notice, which shall not be less than 90 nor more than 180 days of receipt of the notice of termination in accordance with the provisions of this Lease.~~

Tenant shall have the right, provided Tenant is not in default under this Lease beyond any applicable notice and cure period provided in this Lease for the default in question, to assign this Lease to a wholly-owned subsidiary or affiliate of Tenant, without Landlord's consent (each, a "Permitted Transferee"), provided that the following conditions are met:

(i) Such proposed assignee shall have a net worth not less than the greater of the following: Tenant's net worth as of the date of this Lease and Tenant's net worth immediately prior to the date of the assignment;

(ii) the Leased Premises shall be operated under the Trade Name specified in Reference Provision 1.14 or the trade name of substantially all other similar stores owned by Tenant or Tenant's affiliates in the United States, or a trade name which would continue to operate the store under the Permitted Use specified in Reference Provision 1.03;

(iii) Tenant shall submit to Landlord 30 days prior written notice of its intent to assign this Lease:

(iv) such proposed assignee shall assume in writing, in a form reasonably satisfactory to Landlord, all of the obligations and liabilities of Tenant under this Lease:

(v) the proposed assignee has prior experience in the operation of a restaurant for the Permitted Use and the transfer shall not result in a material decrease in the quality of Tenant's business operations; and

(vi) Tenant shall not be released from its obligations and liabilities provided for under this Lease by virtue of such assignment.

Landlord will not unreasonably withhold, condition or delay its consent to a proposed assignment to an entity that is unrelated to Tenant, so long as all of the above conditions are satisfied in connection with such proposed assignee.

It is further understood that the assignment permitted under this subparagraph shall not be used to circumvent the remainder of the provisions of this ARTICLE 21 and this Lease. In no event shall such proposed assignee be permitted to transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or its interest in and to the Leased Premises in whole or in part, or otherwise permit occupancy of all or any part thereof by anyone with, through or under it, without first procuring the written consent of Landlord, except and to the extent set forth otherwise in this Article 21.

(b) Landlord's consent to a transfer shall not constitute a waiver of Landlord's right not to consent to a subsequent transfer. The receipt of rental or additional rental from any party other than Tenant shall not be deemed to be a consent to a transfer, nor shall that receipt relieve Tenant of its obligation to pay rental or additional rental for the Term. Tenant shall not have a claim and waives the right to any claim against Landlord for damages because of

the refusal, withholding or delaying by Landlord of consent. Tenant's only remedies shall be an action for specific performance or an injunction to enforce a consent requirement.

(c) Each transfer to which Landlord has consented shall be in writing, in a form satisfactory to Landlord and executed by the transferor and transferee. The transferee shall agree, in writing, to assume, be bound by and perform the covenants and conditions of this Lease. Tenant shall deliver to Landlord a statement within 30 days after the end of each calendar year, and within 30 days after the expiration or earlier termination of the Term, specifying each transfer in effect during the period covered by the statement, as well as: (a) the date of the transfer document's execution and delivery; (b) the square footage of the rentable area demised and the term; and (c) a computation in reasonable detail showing the amounts, if any, paid and payable by Tenant to Landlord for the transfer pursuant to this subsection. Tenant shall not be released from liability or relieved of its obligations, unless Landlord expressly agrees otherwise in writing. If the Minimum Annual Rental, Percentage Rental, additional rental or other payment to be paid to Tenant from a transfer exceeds the rental and additional rental Tenant is required to pay Landlord under this Lease, then Tenant shall pay to Landlord the entire amount of the excess, without prior demand, which shall be deemed additional rental.

(d) If Tenant (or a guarantor of the Lease) is a nonpublic corporation and the control of the corporation changes, Tenant shall notify Landlord. If the control changes (whether or not Tenant has notified Landlord), Landlord may declare the change to be a default, effective 60 days from the date of the notice from Tenant, or the date on which Landlord first has knowledge of the change, whichever occurs first. The provisions of the preceding sentence shall not be applicable if control of the corporation changes as the result of a public offering which occurs on a major security exchange. If Tenant (or a guarantor of the Lease) is a partnership or entity other than a corporation (including, but not limited to, a sole proprietorship) and if the control changes (if Tenant is a partnership, a change shall include, but not be limited to, the withdrawal of a partner or partners from the partnership or the dissolution of the partnership), Tenant shall notify Landlord. If the control changes (whether or not Tenant has notified Landlord), Landlord may declare the change a default, effective 60 days from the date of the notice from Tenant, or the date on which Landlord first has knowledge of the change, whichever occurs first. The receipt by Landlord of rental from a party other than Tenant shall not be deemed notice of change in control or ownership of Tenant.

(e) Tenant agrees to pay Landlord **\$500 plus any reasonable costs incurred by Landlord** ~~\$400 plus one month's installment of Minimum Annual Rental~~ to reimburse Landlord for attorneys' fees and administrative expense for the review, processing or preparation of any document in connection with a transfer, whether or not Landlord's consent to the transfer is required or obtained.

(f) If Landlord is not permitted to terminate this Lease because of the provisions of Title 11 of the United States Code relating to Bankruptcy, as amended ("Bankruptcy Code"), Tenant agrees, as a debtor in possession or any trustee for Tenant, within 15 days after Landlord's request to the Bankruptcy Court, to assume or reject this Lease. Tenant, on behalf of itself and any trustee, agrees not to seek or request an extension or adjournment of the application to assume or reject this Lease. In no event after the assumption of this Lease shall an existing default remain uncured for a period more than the earlier of 10 days or the time period specified in this Lease. If a filing of a petition under the Bankruptcy Code occurs, Landlord shall not have an obligation to provide Tenant with services or utilities unless Tenant has paid and is current in all payments of rental and additional rental.

(g) All of the other obligations, covenants and conditions shall remain unamended.

ARTICLE 22 - Access to Leased Premises

Tenant agrees that Landlord, its agents, employees, servants or any person authorized by Landlord, may enter the Leased Premises, **with forty-eight (48) hours advance verbal notice (except in the event of an emergency, in which event no advance notice shall be required)** to: (a) inspect its condition; (b) make repairs, additions or improvements to any part of the Shopping Center, including the Leased Premises; (c) exhibit the Leased Premises to prospective purchasers of the Shopping Center; (d) place notices during the last 60 days of the Term in the Leased Premises at such places as may be determined by Landlord; (e) perform construction on or near the Leased Premises; and (f) post notices of non-responsibility.

ARTICLE 23 - Default by Tenant

(a) The following shall be a default by Tenant:

(i) The failure to pay when due an installment of rental, or any other payment required to be made in whole or in part, if the failure shall continue for more than 10 days after written notice that same is past due, provided that any such notice given by Landlord shall be in lieu of, and not in addition to, any notice required by state law; and/or

(ii) The abandonment or vacation of the Leased Premises or any part of it; and/or

(iii) The failure to observe or perform any other provision of this Lease, if the failure continues for 10 days after written notice to Tenant **(excepting therefrom delays caused by events of Force Majeure)**; if the default cannot reasonably be cured within 10 days, Tenant shall not be in default if Tenant begins to cure the default within 10 days and diligently cures the default; and/or

(iv) The making by Tenant of a general assignment for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless a petition filed against Tenant is dismissed within 60 days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease if possession is not restored to Tenant within 30 days; or the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Leased Premises, or of Tenant's interest in this Lease, if the seizure is not discharged within 30 days; and/or

(v) The failure more than twice within a 12 month period to make any payment of rental, provided Landlord has given Tenant the required written notices in each case. The 3rd failure shall be a non-curable default.

(b) In addition to any other remedies available to Landlord at law or in equity for default, Landlord shall have the immediate option to terminate this Lease and the rights of Tenant by written notice to Tenant. If Landlord elects to terminate, Landlord shall have the right to recover from Tenant as damages:

(i) The worth at the time of the award of any unpaid rental which has been earned at the time of termination; and

(ii) The worth at the time of the award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of rental loss Tenant proves could have been reasonably avoided; and

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the Term after the time of award exceeds the amount of rental loss Tenant proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate Landlord for the detriment proximately caused by Tenant's failure to perform its obligations (including the costs and expenses of recovering the Leased Premises and reasonable attorneys' fees) or which would be likely to result from Tenant's failure; and

(v) At Landlord's election, other amounts permitted by applicable law; and

(vi) Any default by Tenant's affiliates under the lease agreements between Tenant's affiliates and Landlord for Space Nos. 1431 and/or 1435 at the Shopping Center shall constitute a default under this Lease.

(c) The word "rental" shall mean the Minimum Annual Rental and all other sums required to be paid by Tenant under this Lease. The word "award" means a judgment issued or rendered in favor of Landlord in a proceeding or action to recover damages from Tenant. The phrase "at the time of the award" means the date of entry of such a judgment. All sums, other than Minimum Annual Rental, shall be computed based on the average monthly amount accruing during the 24 month period preceding the default. However, if it becomes necessary to compute the rental before the 24 month period has occurred, the rental shall be computed on the basis of the average monthly amount accruing during that shorter period. As used in paragraphs (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest at the Interest Rate. As used in paragraph (iii) above, the "worth at the time of the award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of Chicago, at the time of award, plus 1%. In order to determine the amounts payable under ARTICLE 23, Percentage Rental shall be included as additional rental and determined based on the average annual Net Sales for the 36 months (or, if Tenant has been operating in the Leased Premises less than 36 months, on the average Net Sales for the 12 month period) preceding the termination of Tenant's right to possession of the Leased Premises.

(d) Landlord shall also have the right if Tenant defaults under this Lease to terminate Tenant's right to possession of the Leased Premises (without terminating this Lease) and reenter the Leased Premises and remove all persons and property from the Leased Premises. The property may be stored at Tenant's cost. Landlord shall not be liable to Tenant for loss or damage resulting from an entry by Landlord. Tenant shall pay as additional rental, upon demand, expenses incurred or paid by Landlord because of Landlord's entry. If 2 or more or any combination of individuals, corporations, partnerships or other business associations ("Individuals") sign this Lease as Tenant or guarantee this Lease as Guarantors, the liability of each individual group to pay rental and perform the obligations under this Lease shall be joint and several. The failure or refusal by Landlord to proceed against all the (or any combination of the) Individuals comprising Tenant or against Tenant or against 1 or more of the Guarantors shall not be a release or waiver of rights which Landlord may possess against the others, nor shall the granting by Landlord of a release of or execution of a covenant not to sue any 1 or more of the (or any combination of the) Individuals comprising the Tenant or the Guarantors be a release or waiver in whole or in part of rights which Landlord may possess against the others. If either party institutes legal suit or action for enforcement of an

obligation, Landlord may determine the venue. Landlord shall not be in default unless and until Landlord shall have failed to perform its obligations under this Lease for 30 days (or within such additional time as is reasonably required) after written notice to Landlord properly specifying Landlord's failure to perform the obligations. Landlord shall not be in default until and unless a court of competent jurisdiction has determined that Landlord is in default. To the extent permitted by applicable law, Tenant waives notice of reentry (or institution of legal proceedings), including the right to receive notice pursuant to any statute or judicial decision of law. Notwithstanding anything to the contrary contained in ARTICLE 23, any written notice, other than as specifically set forth in this ARTICLE 23, required by a statute or law enacted now or later is waived by Tenant, to the extent permitted under that statute or law.

(e) If all or any part of the Leased Premises are vacated or abandoned by Tenant, or if Landlord elects to reenter or take possession of the Leased Premises pursuant to legal proceedings or notice, and if Landlord does not elect to terminate this Lease, then Landlord may from time to time, without terminating this Lease, either recover rental as it becomes due or relet the Leased Premises or any part of it for any length of time, rental and conditions that Landlord in its sole discretion deems advisable. Landlord shall have the right to make alterations and repairs to the Leased Premises. If Tenant has left all or any of its trade fixtures, furniture, furnishings, signs, stock or other personal property in the Leased Premises, that shall not preclude a determination that a vacation or abandonment has occurred.

(f) If Landlord elects to relet, rental received by Landlord from reletting shall be applied: 1st, to the payment of indebtedness other than rental due Landlord from Tenant; 2nd, to the payment of the cost of reletting; 3rd, to the payment of the cost of alterations and repairs to the Leased Premises; 4th, to the payment of rental due and unpaid; and the remainder, if any, shall be applied to the payment of future rental that may become due. If the rental received from reletting during any month which is applied to the payment of rental is less than the rental payment during that month by Tenant, Tenant shall pay the deficiency to Landlord. The deficiency shall be calculated and paid monthly. Tenant shall also pay Landlord, as soon as ascertained, the costs and expenses incurred by Landlord to relet or make alterations and repairs not covered by the rental received from the reletting of the Leased Premises.

(g) A reentry or taking possession of the Leased Premises by Landlord shall not be construed to be an election to terminate this Lease, nor shall it cause a forfeiture of rental remaining to be paid during the balance of the Term, unless a written notice of that intention is given to Tenant or the termination is decreed by a court of competent jurisdiction. Notwithstanding a reletting without termination by Landlord because of default by Tenant, Landlord may at any time after reletting elect to terminate this Lease for any default.

(h) Tenant expressly waives any right or defense it may have to claim a merger, and neither the commencement of an action or proceeding nor the settlement of, or entering of judgment for any action or proceeding shall bar Landlord from bringing subsequent actions or proceedings, based upon other or subsequently accruing claims, or based upon claims or events which have previously accrued and not been resolved in any prior action, proceeding or settlement. The parties waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other, regardless of whether such action, proceeding or counterclaim is related to a default under this Lease.

In the event of a default by Landlord under this Lease that is not cured by Landlord within a commercially reasonable period of time following Landlord's receipt of a written notice of same from Tenant, Tenant shall have all available remedies available to it under applicable law.

ARTICLE 24 - Surrender of Leased Premises

Tenant shall, upon expiration of the Term, or the earlier termination of this Lease, surrender to Landlord, without damage, injury, disturbance or payment, the Leased Premises including, without limitation, all apparatus, equipment, alterations, improvements and additions by either party to, in, upon or about the Leased Premises. If Tenant shall be in default, Tenant shall not have the right to remove trade fixtures, signs and other personal property. They shall remain or become, as the case may be, the property of Landlord. Tenant, at its sole expense, shall immediately repair damage to the Leased Premises caused by Tenant vacating the Leased Premises or by Tenant's removal of trade fixtures, signs and other personal property. Tenant shall comply with all laws and governmental regulations applicable to the removal and repair of the property. Tenant shall not create a disturbance or health problem for customers, agents, invitees or other parties in the Shopping Center as result of the removal or repair. Any property not removed may be deemed by Landlord to be abandoned by Tenant and may be retained by Landlord or may be removed and stored for Tenant, at Tenant's sole cost. Tenant shall surrender the Leased Premises to Landlord free of Hazardous Material and free of any violation of any environmental rule or regulation. ~~Upon surrender of the Leased Premises, Tenant shall provide Landlord with a report by experts acceptable to Landlord showing the Leased Premises free of Hazardous Material.~~ Tenant's obligation to observe and perform the provisions of this ARTICLE 24 shall survive the expiration of the Term or earlier termination of this Lease.

ARTICLE 25 - Tenant's Conduct of Business

(a) Tenant covenants to continuously and uninterruptedly operate within the entire Leased Premises the business it is permitted to operate under Reference Provision 1.03, except any portion of the Leased Premises while

that portion is untenantable because of fire or other casualty, or any closure of the Leased Premises due to an event of Force Majeure. Tenant agrees to conduct its business at all times in a first-class manner consistent with reputable business standards and practices, and to maintain within the Leased Premises a stock of merchandise and trade fixtures adequate to service and supply the usual demands of its customers. Tenant shall keep the Leased Premises in a neat, safe, clean and orderly condition. Tenant also agrees to conduct Tenant's business under the Trade Name set forth in the Reference Provisions, which Tenant represents that it has a right to use. Tenant further agrees to keep open the Leased Premises and operate its business ~~at the hours and on the days and evenings of the week determined from time to time by Landlord in Landlord's sole and absolute discretion~~ at minimum from 11:30 a.m. until 10:00 p.m. seven (7) days per week, but will be permitted to remain open until 2:00 a.m. so long as Tenant has appropriate permits from the municipality for the extended hours of operation. A vacation or abandonment of other premises by any other tenant, occupant or anchor in the Shopping Center shall not release Tenant from its obligations under this Lease, notwithstanding anything to the contrary contained in this Lease.

If Tenant shall request Landlord's approval to open the Leased Premises for business for periods other than as set forth above and Landlord shall approve such request (which approval shall be in Landlord's sole and absolute discretion), Tenant shall pay for any additional costs incurred by Landlord in connection with such extended hours, including but not limited to the cost of security, heating, ventilating and air-conditioning the Leased Premises and the Joint Use Areas required in order to access the Leased Premises, and any extra maintenance and/or repair to the Joint Use Areas required as a result of such extended operating period. Additionally, Tenant shall be responsible for any such extraordinary additional maintenance, security or other costs which are incurred by Landlord as a result of Tenant's use of the Leased Premises during normal operating hours.

(b) The parties agree that because of the difficulty or impossibility of determining Landlord's damages, if Tenant fails to keep open the Leased Premises and operate its business during the hours and on the days and evenings of the week determined by Landlord, in addition to and not in lieu of Landlord's other rights and remedies, Tenant shall pay Landlord liquidated damages of \$150 per hour or fraction of the hour, as the case may be, that Tenant fails to keep open and operate the Leased Premises and operate its business. Landlord and Tenant agree that this amount represents a reasonable estimate of the damages that Landlord would suffer.

ARTICLE 26 - Rules and Regulations

Tenant shall require its employees, agents and contractors to comply with the rules and regulations made by Landlord from time to time regarding the operation of the Shopping Center or the Leased Premises including, but not limited to, the following:

(a) Tenant shall not put on the glass and supports of the windows (nor within 24 inches of any window), doors or exterior walls of the Leased Premises any signs, advertising placards, names, insignias, trademarks or descriptive material. No signs or other items shall be placed within the Leased Premises if they materially obstruct a view of the Leased Premises. Tenant shall not place vents, structures, improvements or obstructions on the exterior of the Leased Premises without Landlord's written consent. Landlord shall have the right, without giving notice to Tenant and without liability, to restore the Leased Premises and remove property from the Leased Premises unless the size, type, color, location, copy, nature and display qualities of the property were approved by Landlord in writing. The cost of the restoration and removal of property shall be paid for by Tenant promptly upon receipt of a bill. Tenant shall not place a sign on the roof of the Leased Premises notwithstanding anything in this Lease to the contrary.

(b) Except for any awning or other projection in existence at the Leased Premises as of the date of this Lease, no awning or other projections shall be attached to the outside walls of the Leased Premises or the Shopping Center without the written consent of Landlord.

(c) Loading and unloading of goods shall be done only at the times, in the areas and through the entrances designated by Landlord.

(d) Garbage shall be kept in the kind of container approved by Landlord's fire and casualty consultants and shall be removed and deposited daily in mass disposal containers in the manner prescribed from time to time by Landlord. Landlord shall provide or designate a service for collection of garbage from designated mass disposal containers.

(e) Except solely for Tenant's own internal operations use within the Leased Premises, no radio or television aeriels or other receivers and/or equipment, infrared transmitters/receivers, cabling, telecommunications systems (including but not limited to switching, relay, hub or booster systems) shall be erected or placed within the Leased Premises or on the roof or walls (interior or exterior) of the Leased Premises or the Shopping Center without the written consent of Landlord, which may be withheld in Landlord's sole discretion. If Landlord's consent is not received, anything erected or placed on the roof or elsewhere within the Shopping Center may be removed, without notice, and any damage to the walls or roof or elsewhere within the Shopping Center shall be the responsibility of Tenant. Tenant's access to the roof is limited to the maintenance of equipment installed with Landlord's approval and inspections for damage. Tenant shall not go on the roof without the written approval of Landlord.

(f) No loudspeakers, televisions, radios, flashing lights, machinery, **video monitors** or other devices shall be heard or seen outside of the Leased Premises without the prior written consent of Landlord, **and any such equipment requested by Tenant shall be reviewed by Landlord as a part of Landlord's review of Tenant's plans and specifications, which consent to such equipment shall not be unreasonably withheld.** ~~Subject to Landlord's approval of Tenant's plans and specifications, Tenant may install one or more video monitors in the Leased Premises that are visible from the Joint Use Area provided the sole purpose of such video monitors is the promotion of merchandise offered for sale in the Leased Premises and not for general advertising purposes. Sound from the video monitors may not emanate into the Joint Use Area and content displayed may not be unreasonably offensive to patrons of the Shopping Center. Landlord will have the right to revoke its approval and require Tenant to remove such video monitors on 2 days' prior notice if sound or content emanating from Tenant's video monitors is offensive in Landlord's **sele**commercially reasonable discretion.~~

(g) No auction, fire, bankruptcy or selling-out sales shall be conducted without the written consent of Landlord.

(h) Tenant shall keep its display windows and signs illuminated every day of the Term during the hours designated by Landlord.

(i) Areas immediately adjoining the Leased Premises shall be kept clear by Tenant, and Tenant shall not place nor permit obstructions, garbage, refuse, improvements, merchandise or displays in those areas.

(j) Tenant and its employees shall not park motor vehicles in parts of the parking area which may be designated for customer parking. Tenant shall furnish Landlord the state automobile license numbers assigned to the vehicles of Tenant's employees within 5 days after request by Landlord. Tenant shall notify Landlord of changes to the numbers within 5 days after the changes occur. If Tenant or Tenant's employees continue to park in the customer parking areas, after notice is given to Tenant by Landlord, Landlord may, in addition to any other remedies Landlord may have, charge Tenant \$25 per day, for each day or partial day, per vehicle parked in the customer parking areas, attach violation stickers or notices to the vehicles and have the vehicles removed at Tenant's expense.

(k) Tenant shall use the pest extermination contractor that Landlord may choose, and when Landlord requires Tenant to do so. Tenant shall not keep or permit any animals in the Leased Premises, unless expressly allowed by in this Lease, or unless used by disabled persons.

(l) ~~If Landlord installs a central music system in the Shopping Center, and Tenant desires to purchase another music system, Tenant may, at Landlord's option, purchase the system from Landlord (provided Landlord's charge is competitive with any similar service available to Tenant).~~

(m) Tenant shall not carry on any trade or occupation or operate any instrument, apparatus or equipment which emits an odor or causes a noise outside the Leased Premises or which is offensive.

(n) Tenant shall not put temporary signs or fixtures (including portable trade fixtures, displays and folding tables) for the display of merchandise within 3 feet of either side of any entrance to the Leased Premises. Merchandise displays shall not extend beyond the frontage line of the Leased Premises.

(o) Tenant shall store and stock in the Leased Premises only goods, wares, merchandise and other property necessary for the conduct of Tenant's business.

(p) Tenant shall not use or permit the Leased Premises to be used for living, sleeping, residential or lodging purposes.

(q) Tenant shall not use the plumbing for a purpose other than that for which it is constructed. No grease or foreign substance shall be put in the plumbing, and the expense of any resulting breakage, stoppage or damage (whether on or off the Leased Premises) shall be borne by Tenant.

(r) Tenant shall not in the Joint Use Areas:

(i) vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter;

(ii) exhibit any sign, placard, banner, notice or other written material;

(iii) distribute any circular, booklet, handbill, placard or other material;

(iv) solicit membership in any organization, group or association or contribution;

(v) parade, patrol, picket, demonstrate or engage in conduct that might interfere with or impede the use of the Joint Use Areas by any customer, invitee or employee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the other tenants;

(vi) use the Joint Use Areas for any purpose when none of the retail establishments within the Shopping Center are open for business;

- (vii) panhandle, beg or solicit funds; nor
- (viii) solicit business.
- (s) Tenant shall have the responsibility for protecting the Leased Premises from theft, robbery and pilferage, and shall keep non-customer doors locked.
- (t) No symbol, design, name, mark or insignia adopted for or used by Landlord in the Shopping Center shall be used by Tenant without the prior written consent of Landlord.
- (u) In the event Tenant requires the use of telecommunication, high-speed network or data transmission services from the Leased Premises, Landlord may require Tenant to contract for such services through Landlord or one of Landlord's designated service providers, provided that the cost thereof is comparable to that available to Tenant from another provider, given a comparable level and quality of service and equipment. Landlord's liability relative to such services shall be the same as that for provision of utilities as set forth in Article 16(g).

Landlord shall have all remedies provided in this Lease for the breach of any of the provisions of ARTICLE 26. ~~Tenant agrees to pay Landlord, upon demand, in addition to and not in lieu of Landlord's other remedies, \$70 per violation of any of the rules and regulations. Landlord shall have the right to grant variances of the rules and regulations, and shall enforce the rules and regulations at its sole discretion.~~

ARTICLE 27 - Eminent Domain

- (a) If the entire Leased Premises is appropriated or taken under eminent domain by any public or quasi-public authority, this Lease shall terminate on the date of the taking. Landlord and Tenant shall be released from liability accruing after that date. If more than 25% of the square footage of floor area (including a mezzanine, if any) of the Leased Premises is taken under eminent domain by any public or quasi-public authority, or if because of the appropriation or taking, regardless of the amount taken, the remainder of the Leased Premises is not usable for the purposes specified in Reference Provision 1.03, either Landlord or Tenant shall have the right to terminate this Lease as of the date Tenant is required to vacate a portion of the Leased Premises which has been taken, by giving notice to the other in writing within 60 days after the date of the taking. Landlord and Tenant shall be released from liability accruing after that date.
- (b) Whether or not this Lease is terminated, Landlord shall be entitled to the entire award or compensation and any portion of any compensation awarded for the diminution in value of the leasehold interest or fee of the Leased Premises, but Tenant's right to receive compensation or damages for Tenant's fixtures and tangible personal property shall not be affected. If this Lease is terminated, rental, additional rental and other charges for the last month of Tenant's occupancy shall be prorated, and Landlord shall refund to Tenant rental, additional rental or other charges paid in advance.
- (c) If Landlord and Tenant elect not to terminate this Lease, Tenant shall remain in the portion of the Leased Premises which has not been appropriated or taken. Landlord agrees, at Landlord's cost and expense, to restore the remaining portion of the Leased Premises to the quality and character that existed prior to the appropriation or taking as soon as reasonably possible. The Minimum Annual Rental shall be adjusted, on an equitable basis, taking into account the relative value of the portion taken compared to the portion remaining. A voluntary sale or conveyance in lieu of condemnation, but under threat of condemnation, shall be an appropriation or taking under eminent domain. Tenant shall not have a claim against Landlord because of a taking.

ARTICLE 28 - Attorneys' Fees

If, during the Term or afterwards, either party institutes an action, proceeding or counterclaim against the other relating to this Lease, or a default, the unsuccessful party shall reimburse the successful party for the total amount of court costs, expenses and reasonable attorneys' fees actually incurred, the parties waiving any statute, rule of law or public policy to the contrary. The parties agree to confirm this agreement in writing at the start of the action, proceeding or counterclaim. The giving of a notice of default by Landlord shall constitute part of an action or proceeding under this Lease, entitling Landlord to reimbursement of its reasonable expenses of attorneys' fees and disbursements, even if an action or proceeding is not commenced in a court of law and whether or not the default is cured. This ARTICLE 28 shall survive the expiration or termination of this Lease.

ARTICLE 29 - Sale of Leased Premises by Landlord

In the event of the sale or exchange of the Leased Premises or the Shopping Center and the assignment of this Lease, Landlord shall be relieved of all liability for the covenants and obligations in or derived from this Lease, or arising out of any act, occurrence or omission relating to the Leased Premises or this Lease. The covenants, representations and obligations of Landlord shall be binding on Landlord only during the period that Landlord has an ownership interest in the Shopping Center.

ARTICLE 30 - Notices

Notices and demands shall be given in writing and sent by certified mail or by nationally recognized overnight courier service, addressed to Landlord and to Tenant at the addresses specified in the Reference Provisions or at the addresses which were last specified by notice by Landlord or Tenant. Notices or demands shall be deemed to have been given, made or communicated on the date they were deposited in the United States mail as certified matter, with postage fully prepaid or deposited with the nationally recognized overnight courier service.

ARTICLE 31 - Remedies

All rights and remedies of Landlord and Tenant under this Lease or at law are cumulative, and the exercise of one or more rights or remedies shall not exclude or waive the right to the exercise of any others. All rights and remedies may be exercised and enforced concurrently, whenever and as often as desirable.

ARTICLE 32 - Successors and Assigns

All covenants, promises, conditions, representations and agreements shall be binding upon, apply and inure to Landlord and Tenant and their heirs, executors, administrators, successors and assigns. The provisions of ARTICLE 21 hereof shall not be affected by this ARTICLE 32.

ARTICLE 33 - Representations

Tenant agrees that Landlord, its employees and agents have made no representations, inducements or promises about the Leased Premises, the Shopping Center or this Lease, or about the characteristics or conditions regarding or pertaining to the Leased Premises or the Shopping Center, unless the representations, inducements and promises are in this Lease. Tenant has independently investigated the potential for the success of its operations in the Shopping Center. Therefore, no claim or liability, or cause for termination, shall be asserted by Tenant against Landlord, its employees and agents, for, and they shall not be liable because of, the breach of any representations, inducements or promises not expressly in this Lease.

Any claim, demand, right or defense by Tenant which is based upon or arises in connection with this Lease or the negotiation of this Lease prior to its execution shall be barred unless Tenant commences an action or interposes a legal proceeding or defense within 1 year after the date of the inaction, omission or occurrence of the event, or the action to which the claim, demand, right or defense relates.

ARTICLE 34 - Waiver

The failure by Landlord or Tenant to insist upon strict performance by the other of any of the covenants, conditions, provisions, rules and regulations and agreements in this Lease, or to exercise a right, shall not be a waiver of any rights or remedies and shall not be a waiver of a subsequent breach or default. A surrender of the Leased Premises shall not occur by Landlord's acceptance of rental or by other means unless Landlord accepts the surrender in writing. A payment by Tenant or receipt by Landlord of an amount less than the monthly rental shall not, nor shall the endorsement, statement, check, letter accompanying a check or payment of rental, be an accord and satisfaction. Landlord may accept a check or payment without prejudice to its right to recover the balance of rental due and pursue any other remedy. A waiver by Landlord for one tenant shall not constitute a waiver for another tenant.

ARTICLE 35 - Holding Over

If Tenant remains in possession of the Leased Premises after the expiration of the Term without a new lease (even if Tenant has paid and Landlord has accepted rental), Tenant shall be deemed to be occupying the Leased Premises as a tenant from month to month, subject to the covenants, conditions and agreements of this Lease. The monthly rental shall be computed based on 1/6th of the full Minimum Annual Rental and additional rental due during the last 12 month period of the Term (without benefit of any right to pay less rental otherwise set forth in this Lease). If Tenant fails to surrender the Leased Premises on the termination of this Lease, Tenant shall, in addition to other liabilities to Landlord, indemnify, defend and hold Landlord harmless from loss and liability resulting from that failure including, but not limited to, claims made by a succeeding tenant. The exercise of Landlord's rights shall not be interpreted to allow Tenant to continue in possession, nor shall it be deemed an election to extend the Term beyond a month-to-month basis. If Landlord, in its sole discretion, determines to permit Tenant to remain in the Leased Premises on a month-to-month basis, the month-to-month tenancy shall be terminable on 30 days prior written notice given by either party to the other party.

ARTICLE 36 - Interpretation

Only the relationship of Landlord and Tenant is created by this Lease. No provision of this Lease or act of either party shall be construed to create the relationship of principal and agent, partnership, or joint venture or enterprise.

ARTICLE 37 - Advertising and Promotional Service

As part of Operating Expenses, Landlord may furnish and maintain professional advertising, marketing and sales promotions which are intended to promote the Shopping Center and/or benefit sales therein. Such advertising and promotion services may be provided in whole or in part by a 3rd party provider or by Landlord or by an affiliate, subsidiary or other related company of Landlord. The nature and extent of such advertising and sales promotion services shall be within Landlord's sole and absolute discretion, and the portion of Minimum Annual Rental and/or Operating Expenses Payment used by Landlord for such advertising and sales promotion services as set forth in Article 17 shall constitute the entire obligation of Tenant to contribute to the cost of such services. ~~Tenant shall pay Landlord the initial assessment specified in the Reference Provisions, for advertising and promotional activities, in a lump sum within 10 days after demand.~~

ARTICLE 38 - Quiet Enjoyment

Landlord has the right, power and authority to enter into this Lease. Tenant, or any permitted assignee or sublessee of Tenant, upon the payment of the rental and performance of Tenant's other covenants, shall and may peaceably and quietly have, hold and enjoy the Leased Premises during the Term. This covenant shall be construed as a covenant running with the land. It shall not be construed as a personal covenant of Landlord.

ARTICLE 39 - Waiver of Redemption

Tenant waives any right of redemption if Tenant is evicted or dispossessed for any cause, or if Landlord obtains possession of the Leased Premises because of the default of Tenant or otherwise. The rights given to Landlord are in addition to rights that may be given to Landlord by statute or otherwise.

ARTICLE 40 - Fees

Tenant warrants and represents that it has not had negotiations with or dealt with a realtor, broker or agent in connection with this Lease. Tenant agrees to pay and hold Landlord harmless from the cost, expense or liability (including the costs of suit and reasonable attorneys' fees) for compensation, commissions or charges claimed by a realtor, broker or agent regarding this Lease.

ARTICLE 41 - Tenant's Property

Except for the willful misconduct of Landlord, its agents or employees, Landlord, its agents and employees shall not be liable, and Tenant waives all claims, for damage to persons, property and Tenant's business sustained by Tenant (or anyone claiming through Tenant) located on the Leased Premises. Property kept or stored on the Leased Premises shall be kept or stored at the sole risk of Tenant, and Tenant shall indemnify, defend and hold Landlord harmless from any claims arising out of damage to the same or damage to Tenant's business, including subrogation claims by Tenant's insurance carrier.

ARTICLE 42 - Lease Status

Within 10 days of Landlord's written request, Tenant shall without charge execute, acknowledge and deliver to Landlord an instrument required under this Lease or an instrument prepared by Landlord containing the Rental Commencement Date and Expiration Date of this Lease, and if true, that (a) this Lease is a true copy of the Lease between the parties, (b) there are no amendments (or stating the amendments), (c) the Lease is in full force and effect and that, to the best of Tenant's knowledge, there are no offsets, defenses or counterclaims of rental or in the performance of the other covenants and conditions to be performed by Tenant, (d) no default has been declared by either party and that Tenant has no knowledge of any facts or circumstances which it believes would constitute a default by either party and (e) any other matters reasonably requested by Landlord. Tenant shall remain liable to Landlord for damages sustained by Landlord because of the failure by Tenant to execute, acknowledge and deliver the instrument. The failure of Tenant to execute, acknowledge and deliver the instrument shall be an acknowledgment by Tenant that the statements contained in the instrument are correct. Anyone transacting with Landlord shall have the right to rely on the accuracy of the statements contained in the instrument, whether it is signed by Tenant or deemed acknowledged by Tenant pursuant to this ARTICLE 42.

ARTICLE 43 - Recording

Tenant shall not record this Lease, a memorandum, "short form" or other reference to this Lease, without the written consent of Landlord.

ARTICLE 44 - Force Majeure

If either party is delayed, hindered or prevented from the performance of an obligation because of strikes, lockouts, labor troubles, the inability to procure materials, power failure, restrictive governmental orders, mandates, laws, regulations, or impositions of quarantine relating to events such as epidemics or pandemics that affect the area the Shopping Center is in, riots, insurrection, war or another reason not the fault of the party delayed, but not including financial inability, the performance shall be excused for the period of delay. The period for the performance shall also be extended for a period equal to the period of delay. Tenant shall not be excused from the prompt payment of rental, additional rental or other payments. In the event that Tenant is unable to use all or a portion of the indoor seating in the Leased Premises pursuant to local governmental requirements restricting customer occupancy in the Leased Premises in connection with a Pandemic (the "Seating Restrictions") during the first twenty-four (24) months following the Rent Commencement Date and Tenant notifies Landlord thereof in writing, then commencing on the date Landlord receives Tenant's written notice thereof and continuing thereafter for as long as there are Seating Restrictions in effect (the "Deferral Period"), Tenant's payment of Minimum Annual Rental shall accrue without interest in proportion to the amount of indoor seating in the Leased Premises lost as a result of the Seating Restrictions (the "Deferred Rental"). In no event will the Deferral Period exceed one hundred eighty (180) total days. Tenant shall continue to be obligated to pay Percentage Rental, the Operating Expenses Payment and Tenant's Property Taxes payment during the Deferral Period. The Deferred Rental shall be paid by Tenant beginning on the first day of the calendar month immediately following the earlier to occur of: (a) the expiration of the Deferral Period and (b) one hundred eighty (180) days after the first day of the Deferral Period. The Deferred Rental will be payable to Landlord in equal monthly installments over a period equal to the shorter of the following: (i) twelve (12) full calendar months; and (ii) the number of months between the end of the Deferral Period and the Expiration Date. In the event the Deferral Period exceeds a period of one hundred eighty (180) days, then commencing on the 181st day following the first day of the Deferral Period, Tenant shall immediately revert to paying full Minimum Annual Rental as defined in Reference Provision 1.07 of this Lease as required hereunder. It shall be a condition of Tenant's right to claim an extension that Tenant notify Landlord, in writing, within 10 days after the occurrence of the cause, specifying the nature of the cause and the period of time necessary for performance.

ARTICLE 45 - Construction of Lease

Tenant has read and understands this Lease. The rule of construction that a document should be construed most strictly against the party which prepared the document shall not be applied, because both parties have participated in the preparation of this Lease.

ARTICLE 46 - Security Deposit

~~(e) Tenant has deposited with Landlord the sum specified in the Reference Provisions, which shall be held by Landlord, without liability for interest, as security for the performance by Tenant of Tenant's obligations. The deposit shall not be mortgaged, assigned, transferred or encumbered by Tenant without Landlord's written consent,~~

and any such act by Tenant shall be without force and effect and not binding on Landlord. If Tenant performs the covenants and agreements in this Lease, the deposit, or the portion of the deposit not previously applied, shall be returned to Tenant after the expiration of the Term, if Tenant has surrendered possession at the expiration of the Term, and has left the Leased Premises in the condition required under this Lease.

(b) Landlord may commingle the deposit with its other funds. If the rental or any other sum is overdue, if Landlord makes payments for Tenant, or if Tenant fails to perform any of its obligations, Landlord may (without affecting any remedy Landlord may have), apply this deposit, or so much of it to be necessary, to compensate Landlord for rental, additional rental and any loss or damage sustained by Landlord. Tenant shall, upon demand, restore the deposit to the original amount. If a bankruptcy or other creditor-debtor proceedings against Tenant occurs, the deposit and all other securities shall be applied first to the payment of rental and other charges due Landlord for periods prior to the filing of the proceedings. Landlord may deliver the deposit to the transferee of Landlord's interest in the Leased Premises. If that interest is transferred, upon notice to Tenant, Landlord shall be discharged from further liability, and this provision shall also apply to subsequent transferees. Tenant hereby grants Landlord a security interest in the deposit, and to execute the necessary Uniform Commercial Code filing to perfect the security interest granted Landlord; this provision shall survive the expiration or termination of the Lease.

(c) Neither Landlord's right to possession of the Leased Premises for non-payment of rental or for any other reason, nor any other right of Landlord, shall be affected because Landlord holds the deposit.

ARTICLE 47 - Captions

Captions are for convenience and reference only. The words contained in the captions shall not be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of this Lease. The use of masculine or neuter genders shall include the masculine, feminine and neuter genders. The singular form shall include the plural if the context requires. "Landlord" and "Tenant" means "Landlord" and "Tenant" and "their agents and employees", unless the context requires otherwise.

ARTICLE 48 - Severability

If any provision of this Lease or any paragraph, sentence, clause, phrase or word is judicially or administratively held invalid or unenforceable, that shall not affect, modify or impair any other paragraph, sentence, clause, phrase or word. The parties acknowledge that certain charges, fees and other payments are deemed "additional rental" in order to enforce Landlord's remedies, and shall not be construed to be "rent" if rent controls are imposed.

ARTICLE 49 - Objection to Statements

Tenant's failure to object to a statement, invoice or billing within one year after receipt shall constitute Tenant's acquiescence. Tenant shall be required to provide Landlord with a specific and detailed list of Tenant's objections at the time Tenant makes its objection to Landlord. The statement, invoice or billing shall be an account stated between Landlord and Tenant.

ARTICLE 50 - Liability of Landlord

Landlord's liability under this Lease or arising out of the relationship of the parties shall be limited to Landlord's interest in the Shopping Center. Judgments rendered against Landlord shall be satisfied solely out of the proceeds of the sale of Landlord's interest in the Shopping Center which have been received by Landlord. No personal judgment shall apply against Landlord upon extinguishment of its rights in the Shopping Center. A personal judgment shall not create a right of execution or levy against Landlord's assets. The provisions of this ARTICLE 50 shall inure to Landlord's successors and assigns. These provisions are not designed to relieve Landlord from the performance of its obligations under this Lease, but to limit the personal liability of Landlord in case of a judgment against Landlord. Tenant's right to obtain injunctive relief or specific performance or to have any other right or remedy which may be awarded Tenant by law or under this Lease shall not be limited however. No personal liability is assumed by nor shall at any time be enforceable against Landlord.

ARTICLE 51 - No Option

The submission of this Lease is not a reservation of or option for the Leased Premises or any other space in the Shopping Center, and vests no right in Tenant. This Lease shall become effective only upon proper execution and delivery by the parties.

ARTICLE 52 - Execution of Documents

Tenant shall pay Landlord \$400 plus any reasonable costs incurred by Landlord one month's installment of Minimum Annual Rental (plus charges, if any, from Landlord's mortgagee) to reimburse Landlord for the administrative and legal expense for the review, preparation and processing of any document sent to Landlord at Tenant's request, whether or not the document is executed by Landlord.

ARTICLE 53 - Corporate Tenant

If Tenant is or will be a corporation or partnership or limited liability company of any kind, the persons executing this Lease on behalf of Tenant covenant and represent that Tenant is a duly incorporated or duly qualified (if foreign) corporation or partnership, as the case may be (including without limitation a limited liability corporation and a limited liability partnership) and is authorized to do business in the State where the Shopping Center is located (evidence shall be supplied Landlord upon request). Tenant also covenants and represents that the person or persons, partner or member executing this Lease on behalf of Tenant is (if a corporation) an officer of Tenant, and is (if a corporation or partnership of any kind) authorized to sign and execute this Lease.

ARTICLE 54 - Printed Provisions

The printed provisions of this Lease and written or typed additions shall be given equal weight for the interpretation of this Lease. The deletion of any portion of this Lease shall not create an implication regarding the intent of the parties, and this Lease shall be read and interpreted as if the deleted portion had never been in this Lease.

ARTICLE 55 - Entire Agreement

This Lease is the only agreement between the parties for the Leased Premises. An amendment, modification or supplement to this Lease shall not be effective unless it is in writing and executed by the parties.

ARTICLE 56 - No Third-Party Rights

This Lease shall not confer rights or benefits, including third-party beneficiary rights or benefits to anyone that is not a named party to this Lease, including any individual, corporation, partnership, trust, unincorporated organization, governmental organization or agency or political subdivision.

ARTICLE 57 - Financial Statements

(a) Tenant acknowledges that it has provided Landlord with its financial statement or annual report ("Statement") and represents that the Statement is a primary inducement to Landlord's agreement to lease the Leased Premises to Tenant. Landlord has relied on the accuracy of the Statement in order to enter into this Lease. Tenant represents that the information contained in the Statement is true, complete and correct in all material aspects. This representation is a precondition to the Lease.

(b) At the request of Landlord, unless Tenant is a publicly traded company, Tenant shall, not later than 30 days following such request, furnish to Landlord its most recent balance sheet for at least the most recent fiscal year, a statement of income and expense for that year and an opinion of an independent certified public accountant satisfactory to Landlord (or a certificate of the chief financial officer, owner or partner of Tenant) indicating the financial statement has been prepared in conformity with generally accepted accounting principles consistently applied and fairly present the financial condition and results of the operations of Tenant for that year.

ARTICLE 58 - Other Locations

~~If during the Term: (a) Tenant, its parent, subsidiary, franchisor, or franchisee, the Guarantor of this Lease; (b) any person, firm, corporation or other entity having an interest in any of the above parties; or (c) any other person, firm or corporation controlling or controlled by Tenant or any of the above parties, shall directly or indirectly, either individually or as a partner, shareholder, agent, employee or otherwise, own, operate, maintain or have an affiliation, investment or interest in business similar to or in competition with the one operated at the Leased Premises within the radius specified in Reference Provision 1.20 as measured from the perimeter of the Shopping Center (except those carried on as of the Effective Date) then that shall constitute a default. At Landlord's option, in addition to Landlord's other remedies, the Net Sales from any other business within the specified radius shall be included in the Net Sales of the Leased Premises during each year. The Percentage Rental shall be computed on the aggregate of the annual Net Sales made on, in or from the Leased Premises and on, in or from any other business located within~~

~~the radius. Tenant shall submit monthly sales statements and maintain records of the sales and transactions of the other business. Landlord shall have the right to examine and audit those statements and records as though they were made on, in or from the Leased Premises. A substantial increase in size or other substantial change in the business at locations in existence on the Effective Date, or change in location to a location within the radius, shall remove the exemption created for that location. "Radius" shall mean a geometric measurement and not the actual distance over roads.~~

ARTICLE 59 - Tenant's Failure

This Lease shall be governed by the laws of the State in which the Shopping Center is located and shall be deemed made and entered into in the county in which the Shopping Center is located. If Tenant fails to comply with and perform any of its covenants, conditions or agreements, Landlord shall have the right, but not be obligated, to perform the covenants, conditions or agreements. Tenant shall pay to Landlord on demand as additional rental, a sum equal to the amount spent by Landlord for the performance, plus 15% of such amount to defray supervision and overhead. If Landlord performs any covenants, conditions or agreements, Landlord, its agents or employees may enter the Leased Premises. That entry and performance shall not constitute an eviction of Tenant in whole or in part, nor relieve Tenant from the performance of the covenants, conditions and agreements. Landlord, its agents and employees shall not be liable for claims for loss or damage to Tenant or anyone claiming through or under Tenant.

ARTICLE 60 - Ownership

(a) If the ownership of the Shopping Center is in a Real Estate Investment Trust, then Landlord and Tenant agree that Minimum Annual Rental, Percentage Rental and all additional rental paid to Landlord under this Lease (collectively referred to in this Article as "Rent") shall qualify as "rents from real property" within the meaning of Section 856(d) of the Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Department of Treasury Regulations (the "Regulations"). Should the Code or the Regulations, or interpretations of them by the Internal Revenue Service contained in Revenue Rulings, be changed so that any Rent no longer qualifies as "rent from real property" for the purposes of Section 856(d) of the Code and the Regulations, other than by reason of the application of Section 856(d)(2)(B) or 856(d)(5) of the Code or the Regulations, then Rent shall be adjusted so that it will qualify (provided however that any adjustments required pursuant to this Article shall be made so as to produce the equivalent (in economic terms) Rent as payable prior to the adjustment).

(b) Any services which Landlord is required to furnish pursuant to the provisions of this Lease may, at Landlord's option, be furnished from time to time, in whole or in part, by employees of Landlord or Landlord's affiliates or by one or more third parties hired by Landlord or Landlord's affiliates. Tenant agrees that upon Landlord's written request it will enter into direct agreements with the parties designated by Landlord to provide such services, provided that no such contract shall result in Tenant having to pay, in the aggregate, more money for the occupancy of the Leased Premises under the terms of this Lease, or Tenant's receiving fewer services or services of a lesser quality than it is otherwise entitled to receive under the Lease.

ARTICLE 61 - Special Provisions

(a) Tenant, and not Landlord, shall pay, when due and payable, the Florida State Sales Tax and any other sales or excise tax or assessment now or later levied or assessed upon or against Tenant's or Landlord's interest in the rental and additional rental to be paid under this Lease, or any portion of it, or Landlord's interest in this Lease or its income from this Lease. Should the appropriate taxing authority require that any sales or excise tax and/or assessment be collected by Landlord for or on behalf of the taxing authority, then the sales or excise tax and/or assessment shall be paid by Tenant to Landlord as additional rental in accordance with the terms of any written notice from Landlord to Tenant.

(b) Tenant shall notify any contractor making improvements upon the Leased Premises before the contractor makes the improvements, that Landlord's interest shall not be subject to liens for improvements made by Tenant, and Tenant shall comply in all respects with Chapter 713 of the Florida Statutes (1989), as amended from time to time.

(c) Radon Gas – the following disclosure is required by Florida Statutes, Section 404.056(6): "Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit." Landlord has not conducted radon testing for the Shopping Center or the Leased Premises, and Landlord disclaims any and all representations and warranties regarding the absence of radon gas or radon gas-producing conditions in connection with the Leased Premises.

(d) In any distress for rent action filed by Landlord against Tenant, Tenant waives the requirement under section 83.12, Florida Statutes, that Landlord file a bond payable to Tenant in at least double the sum demanded by Landlord, and Tenant agrees that no bond shall be required in any such action. Tenant also waives the right under Section 83.14, Florida Statutes, to replevy distrained property.

(e) Anything to the contrary contained herein notwithstanding, Tenant may not withhold rent for any reason hereunder, including without limitation, Landlord's failure to complete structural repairs to the Leased Premises in accordance with the terms of this Lease.

(f) Anything to the contrary contained herein notwithstanding, Tenant expressly waives notice to Tenant for failure to pay rent or any other amount due under this Lease prior to Landlord's initiation of any legal action, including, without limitation, eviction proceedings.

ARTICLE 62 - Special Provisions

(a) Tenant's proportionate share of Taxes shall be computed by multiplying the amount of such Taxes (less any contributions by Anchors and tenants whose floor area is not included in the denominator) by fraction, the numerator of which shall be Tenant's Floor Area and the denominator of which shall be the total Landlord's Floor Area in the Tax Parcel; provided, however, Landlord may, at its option, exclude from Landlord's Floor Area any theatre where such party is not required to pay a full prorata share of Taxes.

(b) Landlord's Property and other portions of the Project are leased by Landlord and affiliates of Landlord from the Boca Raton Community Redevelopment Agency, a community redevelopment agency (the "CRA"). Pursuant to the Florida Statutes, the leasehold interest of Landlord and its affiliates may be subject to intangible personal property taxes. In addition, the ground leases provide that if the real property leased by Landlord and its affiliates are exempted from the payment of real estate taxes as a result of being owned by the CRA, Landlord and its affiliates are required to pay to the CRA in each year in lieu of real estate taxes an amount equal to the amount of real estate taxes that would be payable if the real property were not exempt. Therefore, "Taxes" shall also include any intangible personal property taxes imposed under the Florida Statutes and any amount payable by Landlord to the CRA in lieu of real property taxes.

NOT A CERTIFIED COPY

Landlord and Tenant intend to have the option for either party or both parties, to enter into this Lease with electronic signatures or with signatures signed, scanned to Portable Document Format ("PDF") and delivered via email and, if so, each party hereby consents to the other party entering into this Lease with electronic signatures or with signatures signed, scanned to PDF and delivered via email. Landlord and Tenant hereby agree that the electronic signature of Landlord and/or Tenant to this Lease or with signatures signed, scanned to PDF and delivered via email shall be as valid as an original handwritten signature of such party to this Lease and shall be effective to bind such party to this Lease. Landlord and Tenant agree that this Lease, as signed by Landlord and Tenant, with electronic signatures or with signatures signed, scanned to PDF and delivered via email (being optional for either or both parties), shall be deemed (i) to be "written" or "in writing," (ii) to the extent either party signs electronically or with signatures signed, scanned to PDF and delivered via email, shall have been signed by Landlord and Tenant to the same extent as if signed by Landlord and Tenant with original handwritten signatures, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files, even though containing one or more electronic signatures or with signatures signed, scanned to PDF and delivered via email. Such paper copies or "printouts" of this Lease as signed with electronic signatures or with signatures signed, scanned to PDF and delivered via email, if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between Landlord and Tenant to the same extent and under the same conditions as other original business records containing original handwritten signatures and created and maintained in documentary form. Neither Landlord nor Tenant shall contest the admissibility of true and accurate copies of this Lease as signed by the Landlord and Tenant with electronic signatures or with signatures signed, scanned to PDF and delivered via email on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means an electronic symbol or process attached to or logically associated with a contract or other record intended to serve as a manual signature.

The exhibits are incorporated by reference into this Lease.

If Tenant is a CORPORATION, the authorized signatory shall sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice president and attested by the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors provides otherwise. In that case, the bylaws or a certified copy of the resolution shall be attached to this Lease. The appropriate corporate seal must be affixed to the Lease.

TENANT:

KAPOW OF BOCA RATON INC., a Florida corporation

dba "Kapow Asian Noodle Bar"

By: Vaughan Dugan
Authorized Signatory

LANDLORD:

CROCKER DOWNTOWN DEVELOPMENT ASSOCIATES, a Florida general partnership

By: MIZNER PARK HOLDINGS I, LLC, & MIZNER PARK HOLDINGS II, LLC, Delaware limited liability companies, being all of the partners

By: MIZNER PARK VENTURE, LLC, a Delaware limited liability company, sole member of both partners

By: GGP-MIZNER PARK, LLC, a Delaware limited liability company, its managing member

By: Kristen Pate
Authorized Signatory

CONSENT OF THE NON-MANAGING MEMBER (Non-GGP Entity):

MIZNER MALL HOLDINGS, INC., the non-managing member of Mizner Park Venture, LLC

By: Scott Trafford
Authorized Signatory



AFFIDAVIT

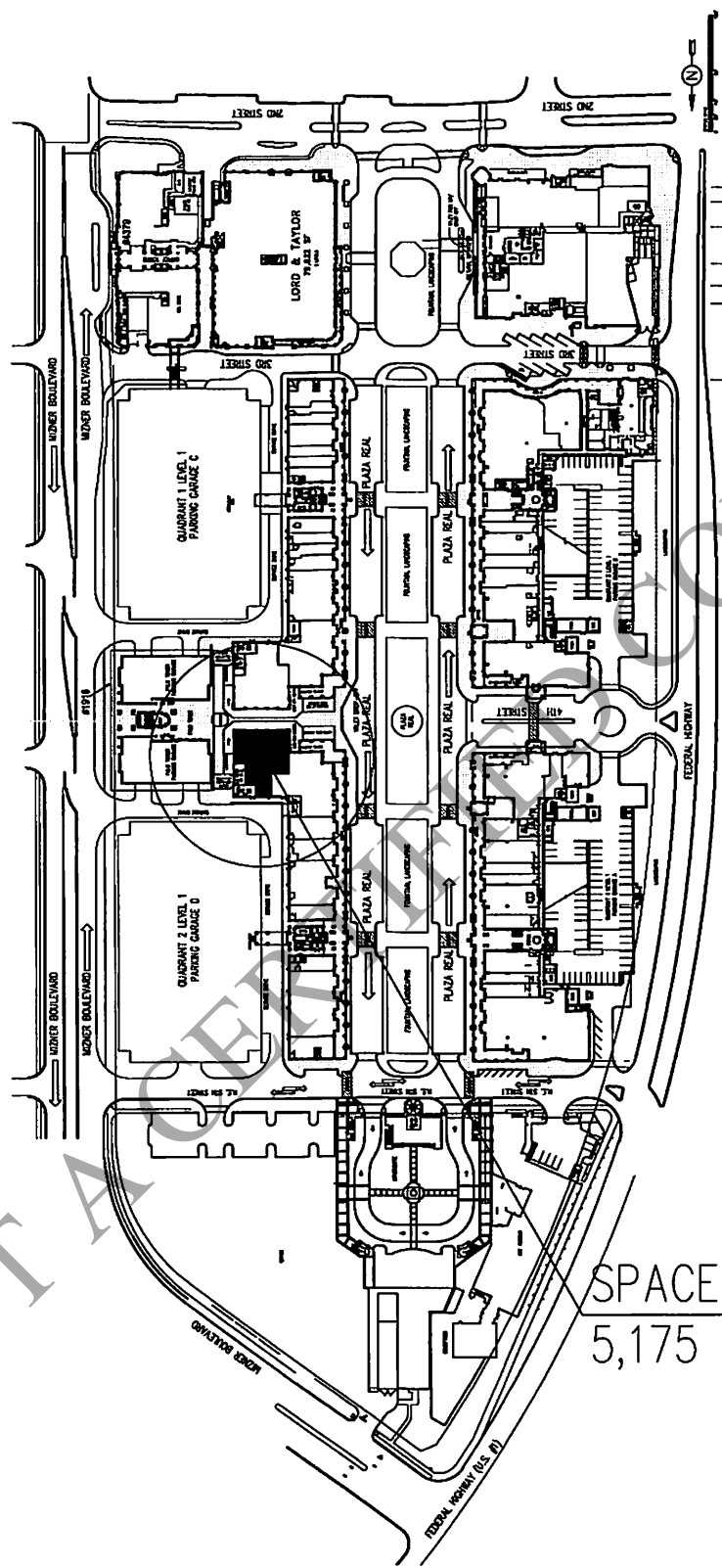
The undersigned has signed a Lease dated June 23, 2021, with **CROCKER DOWNTOWN DEVELOPMENT ASSOCIATES**, a Florida general partnership for the occupancy of Space No. 1402 MIZNER PARK. The Lease business terms were negotiated with **Tim Gearhart**, as representative of the Landlord. No representative, agent or employee of the Landlord represented, suggested, promised or implied that the undersigned would be given an exclusive use in the Shopping Center for the operation of the business to be conducted in the Leased Premises, or that the Landlord would not lease space in the Shopping Center to a competing or other tenant. Nor has any representative, agent or employee of Landlord made any representations, inducements or promises about the Leased Premises or the entry into the Lease, unless expressly in the Lease. Nor has any representative, agent or employee made any representations, inducements or promises about the characteristics or conditions regarding or pertaining to the Leased Premises or the Shopping Center, unless expressly in the Lease. The undersigned has independently investigated the potential for the success of its operations in the Shopping Center and has not relied upon any representations, inducements or promises by Landlord's representatives, agents or employees, other than those contained in the Lease.

TENANT: **KAPOW OF BOCA RATON INC.** a
Florida corporation

d/b/a: **Kapow Asian Noodle Bar**

By: Vaughan Dugan
Its: Treasurer

NOT A CERTIFIED COPY



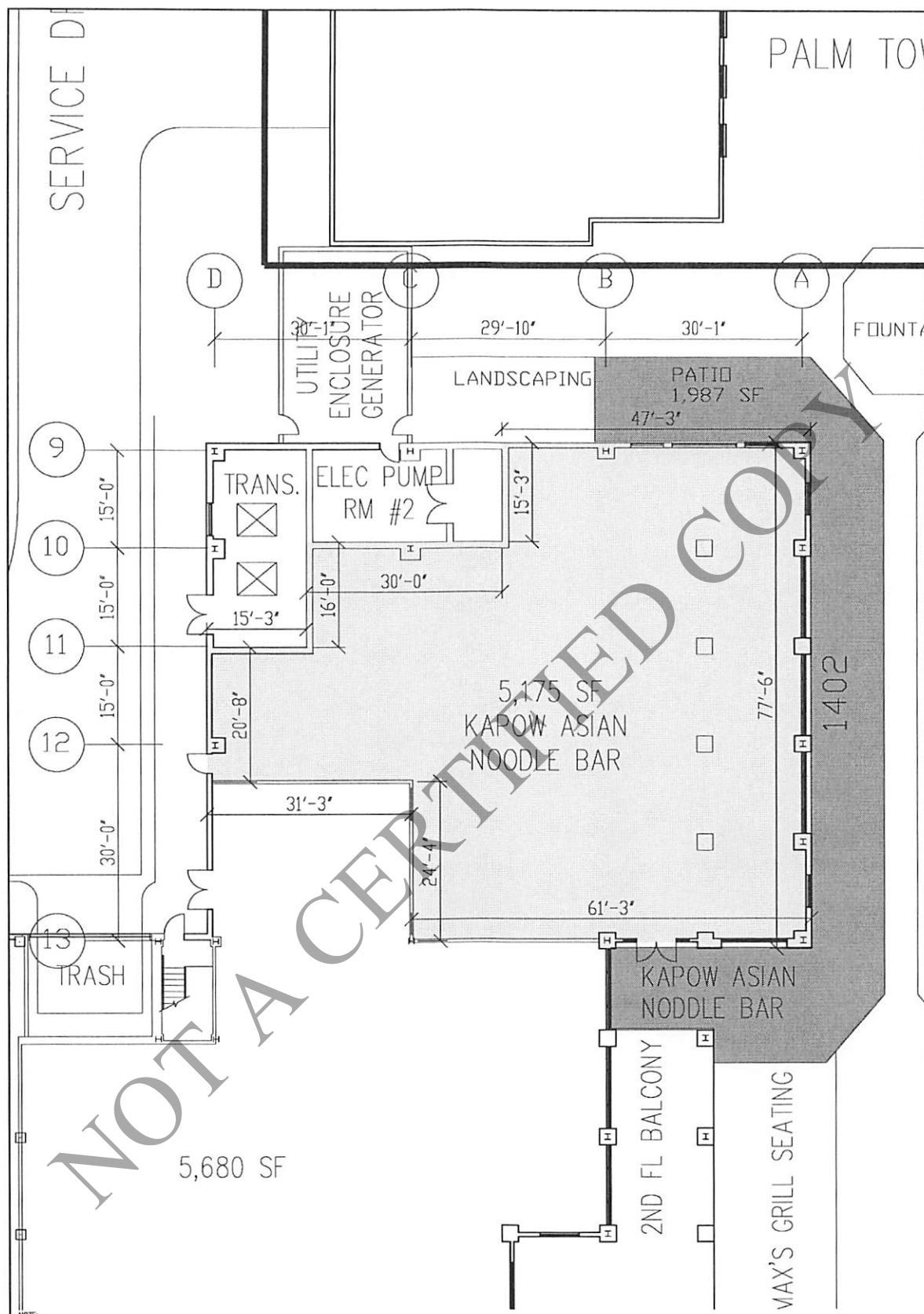
SPACE #1402
5,175 SQ. FT.

NOT A COPY

NOTE:
EXHIBIT A IS FOR INFORMATIONAL PURPOSES ONLY AND IS INTENDED ONLY AS A GENERAL DESCRIPTION OF EXISTING OR CONTEMPLATED IMPROVEMENTS TO BE MADE AS A PART OF THE SHOPPING CENTER, PROVIDED THAT LANDLORD MAKES NO REPRESENTATION THAT ANY FUTURE DEVELOPMENT WILL OCCUR AS SHOWN.
SPECIFIC NAMES, LOCATIONS, DIMENSIONS OF ANY STORES, ENTRANCES, OR IMPROVEMENTS ARE NOT INTENDED TO BE, NOR SHOULD BE RELIED UPON AND ARE SUBJECT TO CHANGE, MODIFICATION AND DELETION BY LANDLORD OR OTHER PARTIES, AND ARE NOT A REPRESENTATION OF, OR WARRANTY AS TO THE OPENING OR CONTINUED OPERATION OF ANY STORE NAMED OR DEPICTED IN THIS EXHIBIT A.

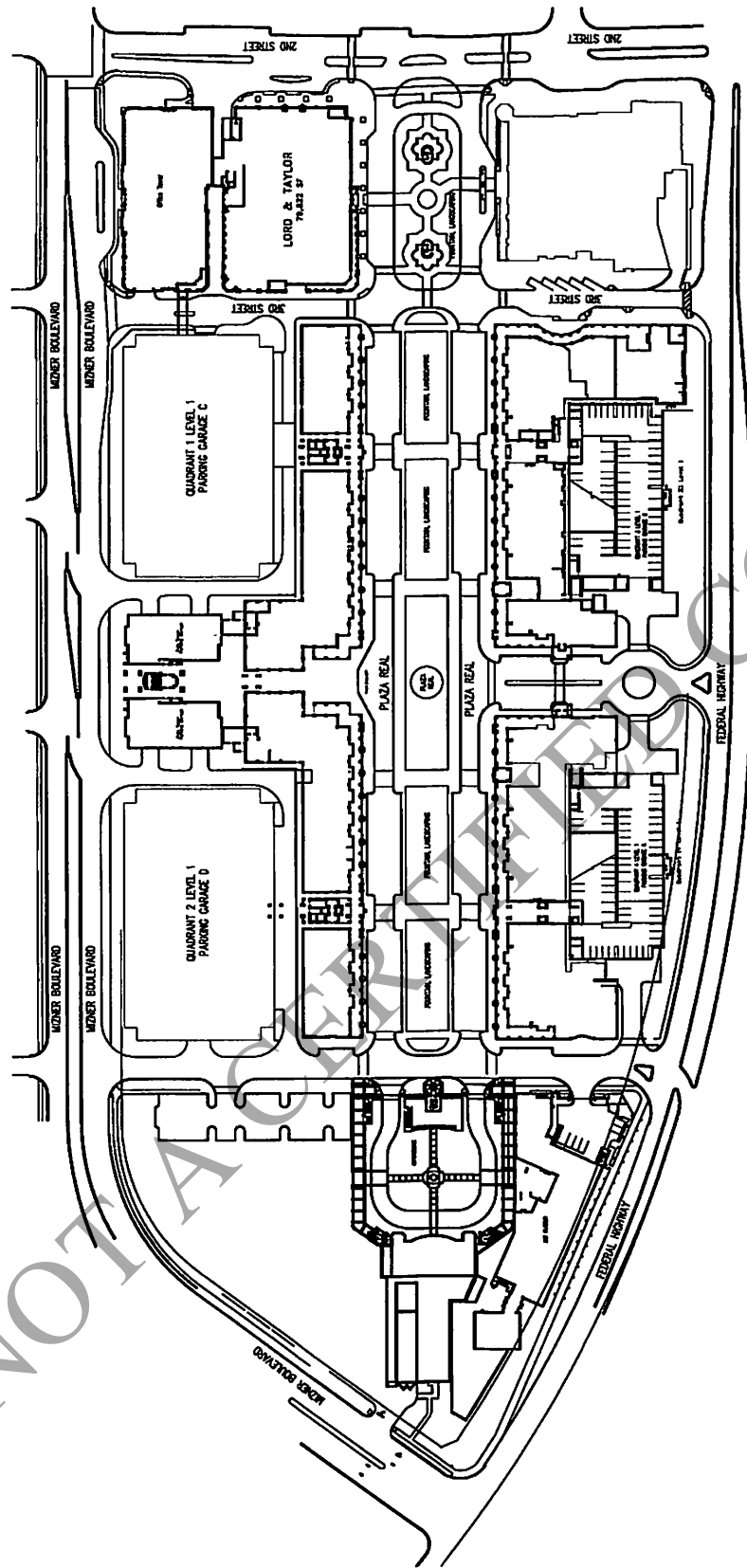
MALL LEVEL

<p>EXHIBIT A</p>	<p>MIZNER PARK BOCA RATON, FLORIDA EXHIBIT 1 A</p>	<p>Brookfield Properties</p>
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NOTE:
 LANDLORD DOES NOT GUARANTEE THAT INTERNAL CHANGES HAVE NOT OCCURRED SINCE THESE PLANS HAVE BEEN PREPARED, AND RECOMMENDS THAT THIS SPACE BE FIELD VERIFIED BY THE TENANT TO ENSURE THE ACCURACY OF THESE DRAWINGS.
 ALL TENANT LEASE AREAS ARE MEASURED FROM THE CENTERLINE OF INTERIOR PARTITION, FROM THE OUTSIDE FACE OF EXTERIOR WALL, FROM THE FULL THICKNESS OF CORRIDOR AND SHAFT WALLS AND FROM THE EDGE OF SLAB AT ANCHOR STORE WALL.

TENANT: KAPOW ASIAN NOODLE BAR		DATE: 04/14/21	NOT TO SCALE
SPACE #: 1402	AREA: 5,175 SF	DRAWN BY: JR	
EXHIBIT A-1	MIZNER PARK BOCA RATON, FLORIDA	Brookfield Properties	



NOTE

EXHIBIT B IS FOR INFORMATIONAL PURPOSES ONLY AND IS INTENDED ONLY AS A GENERAL DESCRIPTION OF EXISTING OR CONTEMPLATED IMPROVEMENTS TO BE MADE AS A PART OF THE SHOPPING CENTER, PROVIDED THAT LANDLORD MAKES NO REPRESENTATION THAT ANY FUTURE DEVELOPMENT WILL OCCUR AS SHOWN.

SPECIFIC NAMES, LOCATIONS, DIMENSIONS OF ANY STORES, ENTRANCES, OR IMPROVEMENTS ARE NOT INTENDED TO BE, NOR SHOULD BE RELIED UPON AND ARE SUBJECT TO CHANGE, MODIFICATION AND DELETION BY LANDLORD OR OTHER PARTIES, AND ARE NOT A REPRESENTATION OF, OR WARRANTY AS TO THE OPENING OR CONTINUED OPERATION OF ANY STORE NAMED OR DEPICTED IN THIS EXHIBIT B.

SITE PLAN

EXHIBIT B

MZNER PARK
BOCA RATON, FLORIDA
EXHIBIT 1-A

Brookfield
Properties

DESCRIPTION OF LANDLORD/TENANT WORK

ALL TENANTS

MIZNER PARK
BOCA RATON, FLORIDA

Tenant accepts the Leased Premises in its "as-is" condition. Tenant, at Tenant's expense, shall complete any improvements that may be required for Tenant's use of the Leased Premises. If Tenant's design is not feasible with the existing utility locations, such as mechanical, electrical, plumbing or fire protection, any alterations to the existing utility locations shall be completed by Tenant at Tenant's expense, subject to Landlord's prior approval. All such work shall be in accordance with this Exhibit "C", the Tenant Criteria Manual and other information contained within the Tenant Package reference below. All work to be performed by Landlord in delivering the Leased Premises to Tenant shall be limited to those items expressly set forth in Exhibit "C" and Article 2 of the Lease, some of which may be performed by Landlord on behalf of, and for Tenant as is more fully described herein.

A. TENANT PACKAGE

Tenant Package Landlord shall provide a "Tenant Package" to better identify the Leased Premises and provide details in describing conditions of the shell structure. This package may contain such items as:

- a. Lease exhibit drawing indicating approximate Leased Premises.
- b. Dimensional floor plan drawings, if available. Tenant shall not rely on such plans or drawings and must field-verify physical dimensions and existing conditions in the Leased Premises prior to and during Tenant Work (defined in ARTICLE 2 of the Lease).
- c. Criteria Manual containing Tenant-required drawing submissions information, sign criteria, architectural, electrical and mechanical information necessary for the preparation of Tenant's plans, typical detail sheets, and other information.
- d. By the execution of Tenant's Lease, Tenant acknowledges receipt of the Tenant Package and by this reference, it is incorporated in the Lease.

B. TENANT PLAN SUBMITTAL REQUIREMENTS

1. Tenant Working Drawings
Tenant shall provide working drawings consisting of architectural, mechanical, electrical, plumbing, structural, life safety, specifications and supporting calculation data, prepared by a registered architect and licensed engineer of the state in which the Shopping Center is located as deemed necessary by Landlord. Refer to Tenant Package for details. Tenant agrees to comply with the schedule set forth in 2 below.
2. Tenant Plan Submittal & Additional Requirements
 - a. By the submittal date for preliminary plans and specifications specified in the Reference Provisions, Tenant agrees to notify Landlord of the identity and mailing address of the licensed architect engaged by Tenant for the preparation of plans for Tenant's Work. At the same time Tenant, at Tenant's expense, shall cause Tenant's architect to prepare and deliver to Landlord for Landlord's approval one (1) preliminary drawing submittal for Tenant's Work, adhering to the requirements as described in the Tenant Package.
 - b. If Tenant does not furnish Landlord with the identity of Tenant's architect or furnish Landlord with drawings and specifications by the required date, Landlord shall have the right, in addition to any other right or remedy it may have at law or in equity, to cancel and terminate this Lease by written notice to Tenant. Landlord shall in addition to all other remedies, be entitled to retain and have recourse to any bond, deposit or advance rental previously deposited by Tenant under this Lease as liquidated damages.
 - c. By the submittal date for final plans and specifications specified in the Reference Provisions, Tenant, at Tenant's expense, shall cause Tenant's architect to prepare and deliver to Landlord for Landlord's approval three (3) sets of final working drawings and specifications for Tenant's Work, adhering to the requirements as described in the Tenant Package.
 - d. Landlord shall review Tenant's drawings and specifications and notify Tenant within 15 days of their receipt if they do not meet with Landlord's approval. Tenant shall, within 10 days of the receipt of notification, revise and resubmit the

drawings and specifications. When Landlord has approved Tenant's drawings and specifications, Landlord shall initial and return one (1) set of approved drawings to Tenant. That set shall show the date of Landlord's approval, and shall be made a part of this Lease as "EXHIBIT P."

- e. If any changes and/or revisions are made in Tenant's working drawings and specifications after Landlord's initial approval, Tenant shall deliver to Landlord one set of revised working drawings and specifications for additional approval.
- f. No approval by Landlord shall be valid unless signed in writing by Landlord or Landlord's representative.
- g. Tenant shall prepare its plans and perform Tenant's Work in compliance with Landlord's requirements, governing statutes, ordinances, regulations, codes and insurance rating boards. Tenant shall pay Landlord for review of final plans at the rate of \$0.50 per square foot of space in the Leased Premises, plus \$0.25 per square foot for each required additional review of final plans. Landlord's approval does not relieve Tenant of its obligation to complete Tenant's Work in accordance with the terms of the Lease, nor of the necessity of Tenant's compliance with the laws, rules, regulations and ordinances of local governing authorities.
- h. Any approval by Landlord or Landlord's architect shall neither obligate Landlord in any manner whatsoever with respect to the finished product, design and/or construction by Tenant nor be deemed to be a modification or amendment to the provisions of the Lease. Any deficiency in design or construction, with or without prior approval of Landlord, shall be solely the responsibility of Tenant. Tenant shall be solely responsible for corrections in Tenant's Work and its working drawings and specifications required by governmental authority.
- i. Notwithstanding anything to the contrary contained in this Lease, Tenant shall comply with the Americans with Disabilities Act of 1990 ("ADA"), and any amendment to the ADA, as well as applicable state, local laws, regulations, ordinances and independent inspections. Compliance will include, but not be limited to, the design, construction, and alteration of the Leased Premises as well as access to, employment of and service to individuals covered by the ADA. Upon completion of work, Tenant's or Tenant's architect must supply to Landlord a letter, satisfactory to Landlord, stating that the Leased Premises have been designed and constructed in accordance with and are in compliance with the ADA.
- j. Within 10 days after opening for business in the Leased Premises, Tenant shall provide Landlord with one set of "as-built" drawings and specifications indicating the changes from EXHIBIT P made during the performance of Tenant's Work. As-built drawings shall accurately locate all underground utilities and equipment installed. As-built drawings shall be delivered to Landlord prior to final inspection of the Leased Premises.

C. STRUCTURE

1. Building Shell

- a. Landlord may provide, at its option, a concrete floor slab within the interior of the Leased Premises at Tenant's expense. In the event Landlord provides a concrete floor slab based on the area of the Leased Premises, Tenant shall pay Landlord \$3.00 per square foot for concrete slab. Such concrete slab shall be installed in accordance with the requirements as described in the Tenant Criteria Manual. Any tenant whose requirements exceed the designed live load shall furnish Landlord with load information prepared by a licensed structural engineer. At Landlord's option, Landlord may, at Tenant's expense, submit structural information to its engineer for verification.
- b. Tenant is responsible for maintaining the integrity of the concrete slab. Any alterations to Landlord's slab shall be executed in accordance with the requirements described in the Tenant Criteria Manual.
- c. Upper and lower level suspended slab floor penetrations shall be core-drilled; no saw cutting or trenching is permitted. All floor penetrations shall be sleeved and sealed as required in the Tenant Criteria Manual.
- d. Structural modifications and or additions by Tenant to Landlord's structure is subject to Landlord's prior approval. Tenant shall submit structural calculations, which have been prepared by a licensed structural engineer, to Landlord for review by Landlord's engineer, at Tenant's expense.

2. Roof Penetrations

Roof penetrations by Tenant shall be held to a minimum. Penetrations, flashing and patching of the roofing system shall be made by Landlord's roofing contractor, subject to Landlord's prior approval, at Tenant's expense. Any structural framing or structural calculations required by Landlord as a result of Tenant's roof penetrations shall be performed at Landlord's option by Landlord's contractor, at Tenant's expense. Any associated curbs, rails, skids, etc. which can impact the roof system shall be designed in accordance with the manufacturer's recommendations and installed by Landlord's approved roofing contractor, at Tenant's expense.

3. **Waterproof Membrane**
All food tenants, high water use tenants such as, beauty salons, pet stores, etc., lower and upper level tenants whose design includes water being present, such as in kitchens or restrooms, shall install and maintain a waterproof membrane approved by Landlord throughout the Leased Premises. A water test shall be performed by Tenant. Tenant is responsible for maintaining liquid-tight capacities of the floor and other boundaries of the Leased Premises.
4. **Fireproofing**
Landlord may provide, at its option, fire retardant material on its structure within the Leased Premises. Tenant shall be required to protect fireproofing and damage to fireproofing shall be repaired by Tenant as necessary to meet the requirements and recommendations of applicable code and local inspectors, at Tenant's expense.

D. STOREFRONTS

1. **Neutral Piers and Bulkhead**
Landlord may provide, at its option, vertical neutral surfaces or structural columns at the lease line separating Tenant storefront construction from another adjacent space. Tenant shall pay Landlord \$200.00 for neutral piers and \$6.50 per lineal foot of bulkhead soffit. The storefront area will be left open for Tenant construction between the edges of the neutral surfaces and between the mall finished floor and the underside of the horizontal soffit.
2. **Additional Storefront Requirements**
 - a. Landlord has established design criteria regulating materials and construction of the storefronts and signage so that tenant storefronts contribute to the overall design concept of the Shopping Center. In order to contribute to this theme, the overall storefront design must conform to the design criteria as described in the Tenant Criteria Manual. Landlord has the right to reject storefronts which do not meet the design criteria and to accept and approve unusual designs that deviate from the required criteria, all at Landlord's sole discretion.
 - b. Tenant is responsible for constructing a complete storefront to the full height and for making a suitable attachment or termination of construction to the bulkhead soffit and proper closure against each neutral pier. Refer to Tenant Criteria Manual for details. Tenant shall be solely responsible for the repair of damage it causes to Landlord's finish material.
 - c. Tenant's storefront shall be self-supporting. Limited lateral bracing is permitted from Landlord's structure. The storefront or any part of the interior cannot be suspended from Landlord's bulkhead framing or structure.

E. DEMISING WALLS AND EXITS

1. **Demising Walls**
 - a. Landlord shall provide light gauge metal studs or unfinished masonry separating the Leased Premises from adjacent space. Tenant shall pay Landlord \$10.00 per lineal foot for demising partitions.
 - b. Tenant is responsible for furnishing gypboard on all demising partitions and surfaces in accordance with code and as described in the Tenant Criteria Manual.
 - c. Tenants are prohibited from allowing music or other sounds to emanate from their space into an adjacent Tenant space or into the mall common area. Tenants who generate sound levels greater than 40 decibels, or as otherwise deemed necessary by Landlord, shall insulate their space against sound transmission. Methods to prevent sound transmission must be thoroughly detailed on Tenant's plans and is subject to Landlord's approval, as described in the Tenant Criteria Manual.
 - d. Tenant is responsible for providing Landlord with anticipated load and weight calculations for any wall hung fixtures. If Landlord deems necessary, Tenant shall provide backing and bracing support to demising walls to compensate for loading

imposed by Tenant's wall-hung fixtures at Tenant's expense.

- e. Tenant is responsible for the construction of any wall in which an expansion joint occurs, the construction of such wall shall be in accordance with acceptable construction design practices and applicable codes.

2. **Service Doors**

Tenant is responsible for furnishing and installing a service door connecting to service corridors or mall exterior service areas. The door shall comply with applicable code requirements and Landlord requirements as described in the Tenant Criteria Manual. In the event Landlord has installed any such doors, frames and hardware, then Tenant shall reimburse Landlord for the cost thereof at \$1000.00 per door.

3. **Exit Requirements**

Tenant is responsible for providing all exit requirements and exit identifications within the Leased Premises in accordance with requirements of applicable code and subject to approval by the local building authority.

F. INTERIOR FINISHES, FURNISHINGS AND EQUIPMENT

1. **Floor Finish**

Tenant is responsible for all floor finish covering materials for the Leased Premises and shall make a smooth, level transition with the mall floor at the lease line. In the event that Tenant is required to match Landlord's floor tile at Tenant's lease line and closure line, Tenant shall pay Landlord \$22.00 per square foot for Landlord selected floor tile. Tenant shall protect and repair any damage to Landlord's floor finish material, at Tenant's expense.

2. **Wall Finish**

Tenant is responsible for the installation of finished walls on the demising partitions, including any necessary additional supports, wall blocking, fire tapping and wall finishes, at Tenant's expense.

3. **Ceilings**

Ceiling height limitations are created by existing conditions and floor-to-floor heights vary throughout the Shopping Center. Where building conditions permit, higher ceilings may be allowed with the written approval of Landlord. Any relocation of or modification to existing piping, conduit and/or ductwork necessitated by Tenant's installation of a ceiling shall be at Tenant's expense. If the area above the ceiling is a return air plenum, ceilings are required throughout the Leased Premises including, without limitation, stock and toilet rooms.

4. **Access Panels**

Tenant is responsible for providing access panels throughout the Leased Premises. Tenant shall at minimum provide 24" x 24" flush mount access panels in the ceiling within the Leased Premises at dampers, HVAC equipment and elsewhere as required by Landlord or as required by code in order to provide access to the equipment.

5. **Furnishings and Equipment**

Tenant is responsible for furnishing and installing all fixtures, furnishings, equipment, shelving, trade fixtures, leasehold improvements, interior decorations, graphics, signs, mirrors, coves and decorative light fixtures and other special effects, as first approved and permitted by Landlord and in accordance with all applicable federal, state, local laws, regulations and ordinances.

G. SIGNAGE

1. **Tenant Signage Submittal**

a. Tenant shall submit sign manufacturer's shop drawings to Landlord depicting sign, lettering dimensions, overall dimensions, color, materials, mounting details, quantities and location of the sign in relation to each elevation, as described in the Tenant Criteria Manual. Signs, permits and related or resulting construction shall be Tenant's responsibility. All signs shall be installed under the supervision of Landlord. The sign contractor shall repair any damage caused by its work.

b. Landlord's final written approval is required prior to sign fabrication. Tenant shall not be permitted to open for business in the Leased Premises without a sign that has been approved in writing by Landlord and which conforms to applicable building and electrical codes.

2. **Interior Signage Requirements**

a. No signage shall be applied to storefront or hung within 4'-0" from the lease line without Landlord's written approval. Refer to Tenant Criteria Manual for

- additional information.
- b. No signs shall be allowed beyond the lease line without Landlord's written approval.
 - c. No flashing, action, moving or audible signs are permitted.
 - d. No television or projection screens are permitted within 15 feet of the lease line without Landlord's written approval. Subject to Landlord's approval of Tenant's plans and specifications, Tenant may install one or more video monitors in the Leased Premises that are visible from the Joint Use Area provided the sole purpose of such video monitors is the promotion of merchandise offered for sale in the Leased Premises and not for general advertising purposes. Sound from the video monitors may not emanate into the Joint Use Area and content displayed may not be unreasonably offensive to patrons of the Shopping Center. Landlord will have the right to revoke its approval and require Tenant to remove such video monitors on 2 days' prior notice if sound or content emanating from Tenant's video monitors is offensive in Landlord's sole discretion.
 - e. Signs may be vertical, horizontal, and be illuminated. Multiple signing may be permitted on multi-directional storefronts but only with Landlord's prior written approval.
 - f. The length of horizontal lettering shall not exceed 50% of the horizontal storefront length. The proportional ratio of the proposed signage length to the overall horizontal storefront length shall be left to the sole discretion of Landlord.
 - g. Landlord reserves the right to regulate signage location throughout the mall and near Anchor stores.
 - h. Wording is limited to the trade name of the store. Landlord shall review logos on a case-by-case basis.
 - i. Sign shall be on a timer set to illuminate during mall hours.
 - j. No sign manufacturer's identification, decals or registered trademark shall be permitted.
 - k. Tenant shall keep the sign in good repair at all times.

H. HEATING VENTILATION AND AIR CONDITIONING

1. Landlord provided Heating, Ventilation and Air Conditioning System, "HVAC System"
Landlord may provide, at its option, the HVAC system to the Leased Premises, as defined in the Tenant Criteria Manual. Tenant is responsible for design and installation, at its sole expense, of the mechanical system within the Leased Premises from Landlord's distribution point.
2. Tenant provided Roof Top Unit, "RTU System"
 - a. Tenant may, at its sole expense, upon prior written approval of Landlord, install and operate a supplemental RTU System on the roof of the Shopping Center. The RTU System shall supplement, and not replace, any existing air conditioning unit, and shall be compatible with the Landlord-provided air conditioning system in all respects including, but not limited to, roof integrity, structure, air flow, electric load, life safety alarm system and utility capacity.
 - b. In the event Landlord does not provide the HVAC system, Tenant is required to design and install the RTU System to the Leased Premises as defined in the Tenant Criteria Manual.
 - c. Landlord may provide, at its option, universal roof supports for roof-mounted equipment. Tenant shall reimburse Landlord for all associated costs.
 - d. Tenant shall locate the RTU System and provide structural modifications in order to comply with the Shopping Center's structural load limits. Tenant shall submit structural calculations, which have been prepared by a licensed structural engineer, to Landlord for review by Landlord's engineer, at Tenant's expense. Landlord may require modifications to Tenant's design and construction.
 - e. Tenant shall not install or operate the RTU System without the prior written approval of Landlord. Tenant shall not enter the roof without prior permission

from a representative of Landlord.

- f. Tenant shall supply Landlord with maintenance agreements, plans and specifications for the installation and operation of the RTU System.
- g. Notwithstanding anything to the contrary contained in the Lease, Tenant shall have no right to an abatement, deduction or set-off in rental if Tenant's RTU System is or becomes inoperable.

3. Additional Tenant Requirements

- a. Tenant is responsible for providing the mechanical system within the Leased Premises, including but not limited to maintenance, supply metal ductwork, grilles, registers, electrical wiring, controls, heating, heat detection and circuitry necessary for the satisfactory operation of an air conditioning system. Refer to Tenant Criteria Manual for details.
- b. Tenant is responsible for the design of all ductwork and accessories for air distribution in accordance with the procedures described in the American Society of Heating, Refrigerating, and Air Conditioning Engineering Guide ("ASHRAE"), and in accordance with the latest methods recommended in the Sheet Metal and Air Conditioning Contractors National Association ("SMACNA") low velocity duct manual, and as otherwise set forth by code.
- c. In the event Landlord provides a pre-approved mechanical contractor, Tenant will be required to use Landlord's contractor for the purchase and installation of Tenant's HVAC unit, heating & cooling equipment and HVAC curb, all at Tenant's sole expense. Refer to Tenant Criteria Manual for details.
- d. Tenant is responsible for providing the Leased Premises with its own thermostat(s) in accordance with the requirements of the Tenant Criteria Manual.
- e. Tenant shall provide plans, specifications and calculations required in connection with the installation and operation of Tenant's HVAC System. Any review of the plans, specifications and calculations performed by Landlord or Landlord's engineer, as Landlord deems necessary, shall be at Tenant's expense.
- f. Tenant is required to route HVAC condensation lines as directed by code and the mall on-site representative.
- g. Tenant is responsible for providing Landlord copies of air test and balance reports upon completion of work.
- h. Tenant shall reimburse Landlord, at Landlord's option, for any measurement system(s) required by Landlord for measuring Tenant's consumption of conditioned air.
- i. Landlord may provide, at its option, a smoke evacuation and control system within the Leased Premises. In the event Landlord provides a smoke evacuation and control system, Tenant shall pay Landlord \$3.00 per square foot.
- j. Tenants HVAC System and related rooftop equipment must be compatible with Landlord's life safety/ smoke exhaust system. Alterations to and interface with Landlord's life safety/smoke exhaust system shall be by Landlord's contractor at Tenant's sole expense.
- k. Tenant may be required to provide and install, at Tenant's expense, heat or smoke detectors within the Leased Premises to shut down the heating, air conditioning and ventilation whenever an abnormal condition is detected. In addition, these devices may be required by local code authorities as part of the fire prevention smoke removal system. Refer to Tenant Criteria Manual for details.
- l. Landlord shall have the right to require Tenant to cease operation of the Tenant's HVAC System if it is causing damage to any of the structural or mechanical elements of the Shopping Center, interfering with or diminishing any service provided by Landlord or others, or interfering with any other tenant's business.

I. TOILET EXHAUST SYSTEM

- a. Landlord may provide, at its option, a common toilet exhaust system to the Leased Premises, as defined in the Tenant Criteria Manual. Tenant shall design and install a toilet exhaust system and connect to Landlord's exhaust duct system within the Leased Premises.

- b. In the event Landlord does not provide the common toilet exhaust system, Tenant is required to design and install the exhaust system for the Leased Premises, per code and as defined in the Tenant Criteria Manual.

J. SPECIAL EXHAUST AND MAKE-UP AIR SYSTEMS

1. Special Exhaust Systems
Odors produced by tenants such as food service, beauty salons, pet shops, etc. must be exhausted to the atmosphere through a tenant-furnished exhaust system. Tenant shall design and install an engineered exhaust and make-up air system to maintain a negative pressure in the Leased Premises to keep odors from disturbing Landlord, customers and other tenants. The location and minimum distance of exhaust fans from any air intakes shall be as directed by Landlord and in accordance with applicable code. Refer to Tenant Criteria Manual for details.
2. Make-Up Air Systems
Make-up air systems as referenced in 1 above shall be furnished and installed by Tenant, upon Landlord's approval, utilizing secondary mall air. If Tenant uses more than 10% of Landlord's air supply for Tenant's special exhaust system, Tenant shall be responsible for an adjusted operating charge.
3. Exhaust Discharge
 - a. Tenant is responsible for providing mushroom-type exhaust discharge outlets. All roof-mounted equipment shall be approved by Landlord and installed on curbs per the specifications in the Tenant Criteria Manual. All roof flashing shall be performed by Landlord's roofing contractor at Tenant's expense. Projections above 3'-0" will require approval by Landlord and may require additional screening by Tenant.
 - b. Tenant shall provide a residue trough grease containment system, approved by Landlord, on all roof-mounted grease exhaust discharge equipment. The containment system shall be cleaned and replaced on a regular basis.
4. Damper Control and Interlock
Tenant shall provide damper controls with automatic fan shutdown and interlock to maintain the original design air balance approved by Landlord and in accordance with applicable code. The control system must be able to shut down its fans in case of fire.

K. UTILITIES

1. Electric Service
 - a. Landlord shall provide the main electric distribution system as more fully described in the Tenant Criteria Manual.
 - b. Landlord may provide, at its option, an empty electrical conduit to the Leased Premises and associated electrical equipment serving the Leased Premises. In the event Landlord provides electrical conduit and equipment, Tenant shall pay Landlord \$800.00 for the empty electrical conduit and \$2,500.00 for electrical equipment.
 - c. In the event Landlord provides a Cable Tap Box assembly ("CTBA") switch terminal to the Leased Premises, Tenant shall pay Landlord \$2,500.00.
 - d. Landlord will furnish electric service within the Leased Premises of not more than 15 watts per square foot. Tenant's electrical requirements for the space shall be determined from Tenant's electrical engineering plans in accordance with the National Electrical Code ("NEC"). If the electrical service described above exceeds the minimum electric service required by the NEC and as Tenant's plans indicate, Tenant shall relinquish to Landlord such excess service. Electrical system within the Leased Premises shall be "as-is" with all electrical upgrades and modifications by Tenant at Tenant's expense, upon Landlord's approval.
2. Tenant Electrical Requirements
 - a. Tenant is responsible for providing a complete electrical system from Landlord's distribution point within the Leased Premises. This shall include, but not be limited to, all necessary labor, branch and main circuit breakers, panels, transformers, connection to HVAC power supply, temperature controls and connection to Landlord's smoke detector or smoke evacuation system, if required.
 - b. Tenant shall pull copper conductors in conduit and make final connections at Landlord's electrical distribution panel. Conductors shall be continuous with no splices between the switchgear in the distribution room and panels within the Leased Premises.

- c. Tenant's electrical engineer shall include an electrical riser line diagram and a complete electrical panel schedule (quantities and sizes of lamps, appliances, signs, water heaters, etc.), indicating individual and total demand of all electrical loads.
- d. Electrical materials and equipment shall be new and installed per code and shall bear the Underwriters Laboratories label. All wire must be copper.
- e. Lighting fixtures shall be furnished and installed by Tenant, and shall be of a type approved by applicable codes. Recessed fixtures in furred spaces shall be connected by a flexible metal conduit and run to a branch circuit outlet box which is independent of the fixture. Fluorescent ballast shall have individual non-resetting overload protection.
- f. Panel board furnished and installed by Tenant for lighting and power within the Leased Premises shall be equal to type NLAB class panels, and shall meet the requirements of applicable code.
- g. A floor-mounted transformer shall be furnished and installed by Tenant, as required.

3. Water Service

Landlord may provide, at its option, a cold water supply line at or near the boundary of the Leased Premises. The water service will terminate with a valve connection. Tenant shall pay Landlord \$300.00 per valve connection.

4. Sanitary Service

Landlord may provide, at its option sanitary sewer stubs at or near the boundary of the Leased Premises. Tenant shall pay Landlord \$1,000.00 per sanitary sewer stub.

5. Vent Stub

Landlord may provide, at its option, plumbing vent stacks throughout the Shopping Center. Tenant shall pay Landlord \$500.00 per vent connection.

6. Tenant Plumbing Requirements

- a. Tenant is responsible for providing a complete plumbing system from Landlord's point of service within the Leased Premises. This shall include, but not be limited to, all necessary labor, connections to supply stubs, piping, vents, clean-outs, fixtures, etc. necessary for the satisfactory operation of a plumbing system.
- b. Lower Level - Tenant is responsible for connecting to Landlord's sewer stubs where provided. Upper Level - Tenant is responsible for providing the floor penetrations for connecting plumbing to sanitary sewer stubs. All floor penetrations shall be sleeved and sealed as required in the Tenant Criteria Manual to prevent the penetration of odors or liquids to any space below the Leased Premises. Floor penetrations shall be core-drilled; no saw cutting is permitted. All horizontal sanitary sewer lines shall be installed above the ceiling of a lower level tenant and the lines shall be insulated to prevent condensation.
- c. Tenant is responsible for providing cleanouts in accordance with applicable codes.
- d. Where more than one tenant is required to attach to a single sanitary and/or vent stub, the first installing tenant shall install a plugged "Y" branch fitting for future connections, at that tenant's expense. Tenant shall run piping to the nearest stack and connect to the opening provided by Landlord.

7. Water Meter

Tenant is responsible for connecting at the point of service and installing an accessible water meter or accessible remote readout, and extending service according to Tenant's requirements, in accordance with Code and the Tenant Criteria Manual.

8. Water Heaters

Tenant is responsible for providing electric water-heaters for domestic water usage in the Leased Premises. Electric water-heaters shall be automatic and shall be limited to 12-gallon capacity or as per code. Water heaters must have a pressure relief valve discharge piped to the nearest drain in the Leased Premises.

9. Toilet Facilities

Tenant is responsible for providing toilet facilities in compliance with ADA within the Leased Premises, and shall provide and maintain a Landlord approved waterproof membrane, at Tenant's expense. A minimum of one water closet, one lavatory and one cleanout, in accordance with code, is required in the Leased Premises. Food court tenants

shall not be subject to this requirement unless required by applicable code. Upper level tenants shall not place toilet facilities over Landlord's electrical service room.

10. **Natural Gas Service**
If natural gas service is available from the local utility company, Landlord shall arrange for the installation of the meter banks and mains at the designated locations throughout the Shopping Center. Landlord may provide, at its option, a natural gas line to the Leased Premises. Tenant shall pay Landlord \$2,000.00 for natural gas line. All piping, associated work and meter for extension of services to the Leased Premises shall be provided by Tenant, at Tenant's expense, in accordance with applicable code, and subject to Landlord's approval.
11. **Telephone**
Landlord shall arrange with the telephone company to install telephone service to the main telephone terminal. Landlord may provide, at its option, a raceway from the main telephone terminal to the Leased Premises. All telephone work for extension of services to the Leased Premises shall be provided by Tenant, at Tenant's expense, in accordance with applicable code, and subject to Landlord's approval.

L. SPECIAL FOOD TENANT REQUIREMENTS

1. **Food Preparation Extinguishing Systems**
- a. Tenant shall design and install automatic extinguishing equipment in accordance with the National Fire Protection Association Standard latest edition. The extinguishing system shall be an Underwriters Laboratories approved pre-engineered system with the following features:
 - i. Protection of the hood and duct;
 - ii. Surface protection for deep fat fryer, griddle, broiler and range;
 - iii. Automatic devices for shutting down fuel or power supply to the appliances. These devices must be of the manual reset type;
 - iv. Provided with a simple means to manually activate the fire extinguishing equipment within a path of ingress or egress. The means of manual activation shall be mechanical (not electrical) and must be clearly identified.
 - b. Tenant shall ensure that extinguishing system is inspected in accordance with code. Tenant shall enter into an inspection agreement with a firm qualified by the system manufacturer to perform such inspections. The systems vendor shall submit plans and other pertinent information on the proposed system to Landlord for prior review and approval.
2. **Grease Removal and Cleaning**
- a. Tenant shall remove grease from all exposed surfaces of the Leased Premises daily. Additionally, Tenant agrees to retain a dependable bonded degreasing service for the Leased Premises on a minimum monthly basis throughout the term of this Lease to clean and degrease the entire kitchen area, ranges, cooking equipment, broilers, stoves, hoods, vents, exhaust and blower systems, filters and all associated ductwork to prevent grease accumulation. If Tenant fails to do so, Landlord may maintain the system and charge Tenant at three times Landlord's cost.
 - b. Copies of maintenance and cleaning reports shall be submitted to Landlord's on-site representative.
 - c. Underwriters Laboratories approved grease-extracting hoods with water wash down cycle or conventional range hood with washable grease filters in accordance with applicable code are acceptable and subject to Landlord's fire protection engineer's approval.
3. **Grease Interceptor**
- a. Landlord may provide, at its option, a common grease trap system for food tenants. Tenant shall pay Landlord \$3.00 per square foot for the common grease trap system.
 - b. If Tenant is unable to connect to Landlord's common grease trap system, Tenant shall install, (in accordance with applicable code and subject to Landlord's approval), a dedicated grease trap system and indicate the location of the dedicated grease trap system on its plumbing plans.
 - c. All food-related tenants shall connect all sinks and floor drains within the Leased Premises (except toilet facility fixtures and drains) to the grease line in accordance with applicable code, and subject to Landlord's approval.

4. Grease Trap Service and Removal
- a. Tenant is responsible for properly maintaining its grease trap system. If Tenant fails to do so, Landlord may maintain the system and charge Tenant at three times Landlord's cost. Tenant shall not place any grease into trash compactor, normal garbage containers, floor & sink drains or toilets. Landlord may provide, at its option, grease containers in a designated area for grease removal. In the event Landlord does not provide grease containers, Tenant is responsible to provide the grease container in a designated area as defined by Landlord. Tenant may be required to use Landlord's pre-approved removal service at Tenant's sole expense.
 - b. Copies of maintenance and cleaning reports shall be submitted to Landlord's on-site representative.

M. FIRE PROTECTION SYSTEM

1. Tenant Sprinkler System
 - a. Landlord may provide, at its option, a complete wet sprinkler fire protection grid system within the Leased Premises. Tenant shall pay Landlord \$3.00 per square foot for the sprinkler fire protection grid system.
 - b. Landlord may provide, at its option, a blind flange connection for Tenant's sprinkler system stubbed in the Leased Premises. Tenant shall pay Landlord \$1,000.00 for blind flange connection.
 - c. Tenant shall design and install an engineered wet sprinkler fire protection system within the Leased Premises. In the event Landlord provides a pre-approved sprinkler contractor Tenant will be required use Landlord's contractor for such work at Tenant's expense.
 - d. Tenant's fire protection system shall comply with the requirements of the applicable building codes, fire marshal and be approved by Landlord's insurance carrier. Any modifications or additions to the sprinkler system, main relocation, or installation of any necessary sprinkler heads shall be engineered, fabricated and installed by Tenant at Tenant's expense. Refer to Tenant Criteria Manual for details.
 - e. Tenant's sprinkler drawings and hydraulic calculations shall be prepared by a licensed engineer of the state in which the Shopping Center is located. Drawings are subject to Landlord's approval.
 - f. Tenant shall pay Landlord \$350.00 per shutdown for Tenant's sprinkler system tie-in to Landlord's sprinkler system.
2. Tenant Fire System
 - a. Landlord may provide, at its option, a connection for a fire alarm system within or adjacent to the Leased Premises. Tenant shall pay Landlord a charge of \$1,000.00 for the fire alarm point of connection. In the event Landlord completes final fire alarm system hookup, it shall be at Tenant's expense. Refer to Tenant Criteria Manual for details.
 - b. Tenant may be required to design and install an engineered fire alarm system within the Leased Premises. Tenant's fire alarm system shall be compatible with Landlord's system and comply with the requirements of the applicable building codes, fire marshal and be approved by Landlord's insurance carrier. Refer to Tenant Criteria Manual for details.
 - c. Tenant's fire alarm drawings shall be prepared by a licensed engineer of the state in which the Shopping Center is located. Drawings are subject to Landlord's approval.
3. Tenant Fire Extinguishers

Tenant shall provide and install fire extinguishers in the Leased Premises. The number of extinguishers provided by Tenant shall be as required by applicable building codes, fire marshal and be approved by Landlord's insurance carrier.

N. CONSTRUCTION REQUIREMENTS

1. Construction Deposit

Tenant shall cause its general contractor to deposit with Landlord, without liability for interest, the sum of \$5000.00 prior to construction start. This sum shall be applied toward

any costs incurred by Landlord or Landlord's contractor to repair any damage to Landlord's property and to complete any part of Tenant's Work which Tenant or Tenant's contractor fails to complete within the time period required by ARTICLE 2 of the Lease. This remedy shall be in addition to and not in lieu of any other rights and remedies of Landlord. The balance of the deposit shall be returned to Tenant's general contractor after Tenant's Work has been reviewed and accepted by Landlord.

2. Construction Barricade

Landlord may require Tenant to erect a barricade that complies with mall standards at the start of Tenant's Work, at Tenant's expense. In the event Landlord has previously erected a barricade or if Tenant fails to erect a barricade and Landlord elects to erect a barricade on Tenant's behalf, Tenant shall pay Landlord \$85.00 per lineal foot for the barricade. Tenant's barricade may not be dismantled without Landlord's prior approval.

3. Construction Trash Removal

Tenant is responsible for trash removal during construction, fixturing and stocking at Tenant's expense. Tenant shall break its boxes down and place its trash daily in the containers provided. Trash accumulation shall not be permitted overnight in the Leased Premises, Joint Use Areas or service corridors. In the event Landlord provides construction trash removal, Tenant shall pay Landlord a single charge equal to the greater of \$750.00 or \$0.75 per square foot of the Leased Premises. Compliance with Landlord's recycling program is mandatory.

4. Temporary Electric

Landlord may provide, at its option, temporary electrical service in general areas during construction. Tenant shall request, in writing, permission to connect to the temporary service and distribute temporary service to the Leased Premises in accordance with applicable code. In the event Landlord provides temporary electrical service, Tenant shall pay Landlord a single charge equal to the greater of \$750.00 or \$0.75 per square foot of the Leased Premises.

5. Contractor Requirements

- a. Tenant and or Tenant's contractor shall not commence any work without checking in with Landlord's on-site representative and supplying all required pre-construction documents. Documents shall include but not be limited to a copy of building permit, Certificate of Insurance and contractor's license.
- b. Tenant shall ensure that all Tenant's contractors are bondable and licensed in the state where the Shopping Center is located. Landlord shall have the right to approve Tenant's contractors and subcontractors; however, approval shall not constitute the assumption of any responsibility or liability by Landlord for the actions of Tenant's contractors or subcontractors or the quality or sufficiency of Tenant's Work.
- c. Tenant's contractor or subcontractor shall not post signs in any part of the Shopping Center, on construction barricades or in the Leased Premises without approval from Landlord.
- d. All supplies necessary for construction, fixturing or merchandising the Leased Premises must be delivered through designated truck docks and down the service corridors.
- e. The contractor may perform "noisy" construction, such as jack hammering, saw cutting, core drilling, etc., only during hours approved by Landlord's on-site representative. The Landlord's on-site representative will terminate any construction activity that is deemed excessively noisy or dusty or which is disruptive to the normal operations of the adjacent tenants and/or the mall.
- f. Tenant's contractor shall obtain Landlord's approval regarding all drilling, welding or other attachment to Landlord's structural system. Approval by Landlord shall be in writing before the start of Tenant's Work, and must be clearly identified on Tenant's drawings. Landlord approval of the drawings does not relieve Tenant's contractor of the responsibility to make a request in writing prior to starting Tenant's Work.
- g. Tenant's contractor shall supply fire extinguishers during construction, in accordance with code.

6. Tenant's Work

- a. Tenant shall conform to and comply with all federal, state, county and local laws, ordinances, permits, rules and regulations in the performance of Tenant's Work or in the performance of any alterations, additions or modifications.
- b. Tenant's Work shall be coordinated with Landlord's Work as well as with the work

of other tenants in the Shopping Center so that Tenant's Work shall not interfere with or delay completion of other construction in the Shopping Center.

- c. In the event Tenant's Work and Landlord's Work shall progress simultaneously, Landlord shall not be liable for any injury to persons or damage to property of Tenant, or of Tenant's employees, licensees or invitees from any cause whatsoever occurring upon or about the Leased Premises, and Tenant shall and will indemnify, defend and save Landlord harmless from any and all liability and claims arising out of or connected with any injury or damage. Tenant acknowledges that these provisions become effective beginning upon the date Tenant or its agents first enter the Leased Premises. This obligation to indemnify shall include reasonable attorneys' fees and other reasonable costs, expenses and liabilities incurred by Landlord and its attorneys from the first notice that any claim or demand is to be made or may be made.
- d. Work performed by Tenant or Tenant's contractor shall be performed so as to avoid a labor dispute. If there is a labor dispute, Tenant shall immediately undertake whatever action may be necessary to eliminate the dispute including, but not limited to, (i) removing all disputants from the job site until the labor dispute is over, (ii) seeking an injunction in the event of a breach of contract action between Tenant and Tenant's contractor and (iii) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute. If, during the period of initial construction of the Leased Premises, any of Tenant's employees, agents or contractors strike, or if picket lines or boycotts or other visible activities objectionable to Landlord are conducted or carried out against Tenant or its employees, agents or contractors, Tenant shall immediately close the Leased Premises and remove all employees until the dispute giving rise to the strike, picket line, boycott or objectionable activity has been settled to Landlord's satisfaction.
- e. Tenant agrees that it will not, at any time prior to or during this Lease, including the period of the performance of Tenant's Work, either directly or indirectly employ or permit the employment of any contractor, or use any materials in the Leased Premises, if the use of the contractor or the materials would, in Landlord's sole opinion, create a difficulty, strike or jurisdictional dispute with other contractors engaged by Tenant or Landlord or others, or would in any way disturb the construction, maintenance or operation of the Shopping Center. If any interference or conflict occurs, Tenant, upon demand by Landlord, shall cause all contractors or all materials causing the interference, difficulty or conflict, to leave or be removed from the Shopping Center immediately.
- f. Tenant's Work shall be subject to inspection by Landlord during the course of construction for the purpose of determining the quality of the workmanship and adherence to Landlord requirements. Tenant shall require its contractor to cooperate with Landlord and correct any deficiencies noted by Landlord. All work performed by Tenant during the Term of the Lease shall be performed in accordance with this Lease, all exhibits thereto, the Tenant Design Manual and as directed by Landlord's representative.
- g. All work by Tenant, including repair work, shall be performed in a first-class workmanlike manner and shall be in a good and usable condition at completion. Tenant shall require any person performing work to guarantee that the work is free from any and all defects in workmanship and materials for one (1) year from the date of completion. Tenant shall also require any such person to be responsible for the replacement or repair, without additional charge, of work done or furnished by or through such person which shall become defective within one (1) year after substantial completion of the work. The correction of work shall include, without additional charge, all expenses and damages in connection with the removal, replacement or repair of any part of work which may be damaged or disturbed. All warranties or guarantees for materials or workmanship on or regarding Tenant's Work shall be contained in the contract or subcontract. The contract shall be written so that all warranties and guarantees shall inure to the benefit of both Landlord and Tenant, as their respective interests appear, and so that either party can directly enforce the contract.
- h. In the event Tenant or Tenant's contractor fails to perform Tenant's Work, or any part of Tenant's Work, in a manner satisfactory to Landlord within 10 days after receipt of Landlord's punch list, Landlord shall have the right, in addition to and not in lieu of Landlord's other rights and remedies, to perform the work and Tenant shall pay Landlord for costs incurred by Landlord in such performance.

O. INSURANCE REQUIREMENTS

Tenant's contractor must fulfill the following insurance requirements, and shall maintain at no expense to Landlord:

- a. Workers' Compensation Insurance within statutory limits and Employer's Liability Insurance with limits of not less than \$100,000.
- b. General Liability Insurance with limits of not less than \$2,000,000 combined single limit for bodily injury and property damage, including personal injury, Contractual Liability coverage specifically endorsed to cover the indemnity provisions contained herein and Contractor's Protective Liability coverage if contractor uses subcontractors.
- c. Motor Vehicle Liability Insurance in the Contractor's name, including owned, non-owned, leased and hired car coverage with limits of not less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage.
- d. Tenant shall cause each of its contractors to agree to name Landlord, the parents, subsidiaries and affiliates of Landlord and if Landlord elects, any owner or other occupant in or adjoining the Shopping Center, as Additional Insureds on Contractor's Commercial General Liability Insurance and Motor Vehicle Liability Insurance. In addition to the insurance Tenant is required to maintain under ARTICLE 19, Tenant shall maintain Builders Risk Insurance including water damage and earth movement for the full replacement cost of Tenant's Work.
- e. Each of Tenant's contractors shall also, to the fullest extent permitted under the law, protect, defend, save harmless and indemnify Landlord, the parents, subsidiaries and affiliates of Landlord, and if Landlord elects, any owner or other occupant in or adjoining the Shopping Center, and their employees, officers and agents against any and all liability claims, demands or expenses incurred on account of any injury or damage, alleged or real, arising out of or in any way connected with any act or omission to act on the part of the indemnitor.
- f. Certificate evidence of the required insurance shall be furnished to Landlord before the start of Tenant's Work. Insurance carriers shall have an AM Best's rating of A-VII or better, and shall be registered or authorized to do business in the state in which the Shopping Center is located.

P. GENERAL

1. Landlord's Access
Landlord, Tenant or any local utility company shall have the right, subject to Landlord's approval, to run utility lines, pipes, ducts, etc. above the Leased Premises. It shall be Tenant's responsibility to provide flush-mounted access panels in its finished work where required by Landlord.
2. Additional Landlord's Work
Landlord shall have the right to charge Tenant for certain improvements and other work performed by Landlord or caused to be performed by Landlord at Tenant's request within the Leased Premises although they may not be itemized in the Lease. This work shall be paid for by Tenant as additional rental upon notice by Landlord. Landlord has no duty, however, to do any work which Landlord is not specifically and expressly required to perform under this Lease or which, under any provisions of this Lease, Tenant may be required to perform. The performance of work by Landlord shall not constitute a waiver of Tenant's default in failing to perform the work
3. Hazardous Materials
Tenant shall comply with any existing or future city, state, county or federal regulations or legislation regarding the control of pollution. Tenant shall not use or install, nor shall permit its contractors to use or install, any building materials containing asbestos or other Hazardous Material. Upon expiration of the Term or the earlier termination of this Lease, Tenant shall provide Landlord with a statement signed by Tenant that the Leased Premises do not contain any Hazardous Material. If Tenant fails to do so, Landlord shall have the right to have the Leased Premises inspected for the presence of Hazardous Material, and if Hazardous Materials are present in the Leased Premises, to take all actions which are necessary to return the Leased Premises to the condition it was in prior to the presence of Hazardous Material in the Leased Premises, all at Tenant's expense. This obligation by Tenant shall survive the Expiration Date or earlier termination of this Lease and shall survive any transfer of Landlord's interest in the Shopping Center.
4. Tenant's Refuse
Tenant is responsible for keeping the Leased Premises, the corridor, mall or arcade adjacent to the Leased Premises broom clean and free of trash. If Landlord removes Tenant's or Tenant's contractor's trash, the charge to Tenant will be three (3) times Landlord's cost.

Any material, whether trash or otherwise, placed outside of the Leased Premises for more than 24 hours shall be subject to removal and disposal without notice.

5. Certificate of Occupancy

Tenant is responsible for obtaining a Certificate of Occupancy promptly following completion of Tenant's Work, and shall promptly forward a copy of it to Landlord prior to Tenant opening for business in the Leased Premises. Tenant shall not be permitted to open for business without a Certificate of Occupancy. Upon completion of Tenant's Work or any alterations under ARTICLE 12 of the Lease, Tenant shall submit an original contractor's notarized affidavit, all subcontractors' original notarized affidavits and original notarized final waivers of lien, as well as any original notarized lien waivers that Landlord may require from contractors, subcontractors, laborers, and material suppliers. The documents must be in a form and detail satisfactory to Landlord.

6. Lien Protection

a. Neither Landlord nor any mortgage lender of Landlord shall be liable for any labor or materials furnished to Tenant upon credit, and no mechanics or other lien for labor or materials shall attach to or affect any interest of Landlord or the mortgage lender in the Leased Premises or the Shopping Center. Nothing in this Lease shall be deemed or construed to constitute Tenant as Landlord's agent or contractor for the performance of Tenant's Work. Tenant acknowledges that Tenant's Work is to be performed solely for the benefit of Tenant. Nothing in this Lease shall be construed as constituting the consent or request of Landlord to any contractor for the performance of labor or the furnishing of any materials for Tenant, nor as giving Tenant authority to contract as the agent of or for the benefit of Landlord.

b. If Landlord's insurance premium or real estate tax assessment increases as a result of Tenant's improvements to the Leased Premises, Tenant shall pay the increase as additional rental upon notice from Landlord.

7. Square Footage Calculations

The calculations of the dimensions and square footage of the Leased Premises are from the centerline of interior partitions, from the outside face of exterior walls, and from the full thickness of corridor and shaft walls. No deductions are allowed for the space occupied by columns, interior partitions, or other interior construction or equipment installed or placed in the Leased Premises. The Leased Premises shall not include any space above the bottom of the structural framework supporting the upper level or roof of the Shopping Center, as the case may be, or below the floor level of the Leased Premises.

HVAC CHARGE SCHEDULE

EXHIBIT F

MIZNER PARK
BOCA RATON, FLORIDA

ALL TENANTS

I. GENERAL

The charges described in this EXHIBIT F shall be deemed a portion of the Environmental Charges for purposes of ARTICLE 16 and shall be deemed additional rental under this Lease. The methods of computation and the factors and assumptions contained herein are subject to periodic adjustment and modification by Landlord in order to more accurately reflect changing operating conditions including, without limitation, changes in applicable codes, statutes, laws, ordinances and regulations.

As part of Tenant's plan submittal, Tenant shall provide to Landlord a complete description of all electrical, natural gas, water and sewer devices and equipment serving the Leased Premises. Such description shall include detailed specifications for such devices and equipment including, without limitation, the quantities and capacities.

II. ENVIRONMENTAL CHARGE FOR HEATING, VENTILATION, AIR CONDITIONING (the "HVAC Environmental Charge")

~~A. CHARGE FOR LANDLORD PROVIDED HVAC EQUIPMENT, MAINTENANCE AND NON-ENERGY OPERATION EXPENSES~~

~~Tenant shall be obligated to pay a HVAC Equipment, Maintenance and Non-Energy Operation Charge in the amount of \$*_____ per square foot of the Leased Premises, subject to an increase in the amount of 4% each January 1 following the Opening Date. This charge is for the cost and expense of the Landlord provided HVAC system to the Leased Premises, together with its repairs and maintenance, materials and supplies, wages and other compensation (including supervisory personnel), Workers' Compensation, payroll taxes and compressor or boiler insurance and all other non-energy costs or expenses. As Tenant's payments due hereunder are predetermined and not subject to adjustment except as expressly provided herein, Tenant shall have no express or implied right to examine, inspect or audit Landlord's records pertaining to the HVAC Equipment, Maintenance and Non-Energy Operation Expenses.~~

~~B. LANDLORD PROVIDED HVAC SYSTEM ENERGY EXPENSE~~

- ~~1. Tenant shall also pay its share of the energy expenses necessary to operate the Landlord provided HVAC System. Landlord's engineer shall calculate Tenant's share of the HVAC System Energy Expense based on the anticipated cooling load required for the Leased Premises based upon Tenant's Plans. The calculation may be further adjusted to the extent Tenant varies the temperature of the Leased Premises from the standard Shopping Center temperature set point or otherwise modifies the Leased Premises such that the cooling load might be affected.~~
- ~~2. Tenant's share of HVAC System Energy Expense shall be computed by multiplying the applicable energy expenses and costs incurred by Landlord in connection with operating the Landlord provided HVAC System (i.e., electricity, natural gas, water, steam and sewer (as the case may be)), by a fraction, the numerator of which shall be Tenant's relative cooling load factor, and the denominator of which shall be the total of all relative cooling load factors for non-Anchor spaces in the Shopping Center which are leased, open and operating, and which utilize the corresponding Landlord provided HVAC system.~~
- ~~3. Prior to Tenant adding or removing equipment or devices or otherwise modifying the Leased Premises to either increase or decrease usage of HVAC services, or modifying its hours of operations, Tenant shall notify Landlord of such modification or change in writing and shall provide Landlord's engineer with a detailed description of the change or modification. Landlord's engineer shall then recalculate the Tenant's cooling load factor. The revised HVAC load factor shall become effective as of the date the modifications or changes are made. Landlord, at Landlord's Option, may elect to check Tenant's consumption of HVAC services from time to time and adjust the HVAC load factor accordingly.~~

C. TENANT SUPPLIED HVAC

For Leased Premises for which Tenant supplies its own HVAC services, the provisions of Lease EXHIBIT C and Lease ARTICLE 16 shall apply (in lieu of paragraphs A & B above), and Tenant shall be responsible for all costs and expenses relating to Tenant's own HVAC services.

FIRST AMENDMENT OF LEASE

THIS FIRST AMENDMENT OF LEASE ("Amendment") is made this 7 day of December 2022, between **CROCKER DOWNTOWN DEVELOPMENT ASSOCIATES**, a Florida general partnership ("Landlord") and **KAPOW OF BOCA RATON INC.**, a Florida corporation, d/b/a "Kapow Asian Noodle Bar" ("Tenant"). Landlord and Tenant are collectively referred to herein as the "Parties".

BACKGROUND

The Parties hereto, or their predecessors, have heretofore entered into a Lease (the "Original Lease", which with any amendments thereof is referred to herein as the "Lease") for premises numbered 1402 (the "Leased Premises" containing a total area of approximately 5,175 square feet in the MIZNER PARK Shopping Center (the "Shopping Center", as such term or like term is defined in the Lease).

Landlord and Tenant wish to amend the terms of the Lease to provide for a temporary abatement of the rental amounts payable by Tenant under the Lease.

In consideration of the mutual benefits and covenants contained in this Amendment, the sum of \$10.00 paid by each party to the other, (the receipt and sufficiency of which is acknowledged), as of the date of this Amendment, it is hereby agreed:

THE AGREEMENT

1. The parties acknowledge and agree that the Rent Commencement Date under the Lease is **April 26, 2022**.
2. Effective **4/26/2022** through **7/31/2022** (the "Rent Deferment Period"), the amount of **\$89,756.64** from Tenant's payment of Minimum Annual Rental and, if applicable, Percentage Rental, Operating Expenses Payment or Joint Use Area Costs and Property Taxes (the "Deferred Rental"), shall accrue and be allocated to the Rent Deferment Period, without interest and be payable to Landlord on the first day of each month in equal monthly installments of **\$3,739.86** beginning on **8/1/2022** and continuing through and including **7/31/2024** (the "Deferred Rent Payback Period"), if not sooner paid. Tenant shall not be entitled to pay a reduced rental under any other provision in the Lease during the period from the first day of the Rent Deferment Period through and including the last day of the Deferred Rent Payback Period.
3. This Amendment and the terms contained herein are expressly contingent upon Tenant becoming current in its rental payments for the Leased Premises (other than the Deferred Rental defined above) (the "Accounts Receivable Balance"). Tenant acknowledges and agrees that the Accounts Receivable Balance for amounts billed by Landlord for amounts due under the Lease for the period through and including November 30, 2022) is equal to **\$85,797.55**. Tenant acknowledges and agrees that the amount of **\$85,797.55** will be deducted from the payment of the Construction Allowance to Tenant, in order to satisfy the noted Accounts Receivable Balance. Tenant will in any event be responsible for providing all required documentation, as set forth in Reference Provision 1.18 of the Lease, for the full amount of the Construction Allowance.
4. In consideration of Landlord's acceptance of the Deferred Rental, Tenant, for and on behalf of itself and its respective future, current and former officers, directors, shareholders, employees, agents, parents, affiliates, subsidiaries, successors and assigns (the "Tenant Related Parties"), hereby releases and forever discharges Landlord and its respective future, current and former general and limited partners, trustees, beneficiaries, officers, directors, shareholders, members, employees, agents, parents, affiliates, subsidiaries, successors and assigns (the "Landlord Related Parties") of and from any and all charges, expenses, claims, counterclaims, damages, debts, actions, causes of action, demands, suits, promises, covenants, doings and liabilities of any kind, type or nature whatsoever whether in law or equity, whether sounding in tort, contract or under other applicable law, whether known or unknown, absolute or contingent, whether anticipated or unanticipated and whether previously asserted or otherwise; and from any defense (including, but not limited to claims of set off or any defense to non-payment of rent under the Lease), that Tenant or the Tenant Related Parties may have, may have had or may hereafter claim, whether known or unknown, that accrued or commenced accruing prior to the date of this Amendment.
5. If at any time during or following the Rent Deferment Period Tenant ever fails, in whole or in part, to fulfill a monetary or other obligation under the terms of this Amendment or the Lease, prior to the expiration of the applicable notice and cure period under the Lease, the failure will constitute a default. Tenant will reimburse Landlord, within 10 days following notice from Landlord of such default, for the full amount of any then-unpaid balance of the Deferred Rental. This Amendment is personal to Tenant and is non-assignable. Therefore, the remaining balance of the Deferred Rental as of the effective date of any assignment, sublease or other transfer of the Lease will be due and payable in full to Landlord, as a condition to the effectiveness of such assignment, sublease or other transfer of the Lease.
6. Tenant will keep in complete confidence and not divulge the existence, contents or provisions of this Amendment to anyone without the written consent of Landlord (unless Tenant is ordered to do so by a court of law and/or administrative body). A breach of this covenant of confidentiality will be deemed a default and in addition to subjecting Tenant to all of Landlord's rights and/or remedies under the Lease, at law and in equity, will result in the automatic termination of the Rent Deferment Period and Tenant's immediate payment to Landlord of the Shortfall without further notice to Tenant.
7. The Lease is not otherwise modified and remains ratified and confirmed.

8. **Electronic Signatures.** Landlord and Tenant intend to have the option for either party or both parties, to enter into this Amendment with electronic signatures or with signatures signed, scanned to Portable Document Format ("PDF") and delivered via email and, if so, each party hereby consents to the other party entering into this Amendment with electronic signatures or with signatures signed, scanned to PDF and delivered via email. Landlord and Tenant hereby agree that the electronic signature of Landlord and/or Tenant to this Amendment or with signatures signed, scanned to PDF and delivered via email shall be as valid as an original handwritten signature of such party to this Amendment and shall be effective to bind such party to this Amendment. Neither Landlord nor Tenant shall contest the admissibility of true and accurate copies of this Amendment as signed by the Landlord and Tenant with electronic signatures or with signatures signed, scanned to PDF and delivered via email on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means an electronic symbol or process attached to or logically associated with a contract or other record intended to serve as a manual signature.

This Amendment is dated as of the date first above written.

TENANT:

KAPOW OF BOCA RATON INC., a Florida corporation
dba "Kapow Asian Noodle Bar"

By: Vaughan Dugan
Authorized Signatory

LANDLORD:

CROCKER DOWNTOWN DEVELOPMENT ASSOCIATES, a Florida general partnership

By: MIZNER PARK HOLDINGS I, LLC, & MIZNER PARK HOLDINGS II, LLC, Delaware limited liability companies, being all of the partners

By: MIZNER PARK VENTURE, LLC, a Delaware limited liability company, sole member of both partners

By: GGP-MIZNER PARK, LLC, a Delaware limited liability company, its managing member

By: Kristin Pat
Authorized Signatory

CONSENT OF THE NON-MANAGING MEMBER (Not a Brookfield Entity)

MIZNER MALL HOLDINGS, INC., the non-managing member of Mizner Park Venture, LLC

By: [Signature]
Authorized Signatory

MJ GS
APPROVAL

NOT A CERTIFIED COPY