

LEASE AGREEMENT

THIS LEASE is entered into this 1st day of _____, in the County of _____, State of _____, by and between _____ [hereinafter referred to as "Landlord"] and _____ [hereinafter referred to as "Tenant"].

Landlord hereby leases to Tenant and Tenant hires Landlord those certain premises situated in the City of _____, State of _____, commonly known as _____, consisting of approximately _____ square feet.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and of the due performances thereof, the parties do hereby bind themselves to each other and subject to the terms, provisions and conditions as follows:

1. **LEASE TERM.** The term of this lease shall be for a period of _____ years commencing on _____, and expiring at midnight of the last day of _____.
2. **BASE RENT.** Tenant shall pay to Landlord for the use and occupancy of the leased premises during the Lease term the sum of: Zero and 00/100 (\$0.00) Dollars payable as follows:

payable on the first day of each and every month successively and continuously thereafter without deduction or offset. Tenant hereby acknowledges that Landlord may/or may not remodel the shopping center in the future. If the remodel does indeed take place then the rental amounts stated in Paragraph 2 will be revised upward after the construction to Tenants building has been completed. The formula that will be used in the revision will be as follows:

The total remodeling costs associated for the remodeling of the Center of which this Lease is a part of = "A". "A" multiplied by .10, multiplied by the percentage of occupancy, divided by 12 = the total monthly increase of the basic rent for Tenant to Landlord. Once the total monthly increase has been determined then that amount will be added to the Basic monthly rental amounts. This new amount will become the new Basic monthly rental. In addition, the Common Area Maintenance charge may be increased based upon the increase, if any, of the costs associated with the remodel. Except as provided in the Paragraphs of this Lease there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations, appurtenances and equipment in the Shopping Center. In the event Landlord remodels all or part of the property of which the said premises are a part, Tenant agrees to remove any existing signs on the building for said premises and reinstall a new sign at Tenant's expense as required by Governing Agencies Codes and/or Landlord's Specifications.

3. **LATE CHARGES AND DISHONORED CHECKS.** If Tenant shall fail to pay any monthly rent payment by the Tenth (10th) day of the month such payment is due, a late charge shall be assessed equal to Six percent (6%) of any unpaid balance. Said late charge is not payment for an extension of time to pay said past due rent and is not a waiver or cure of any default under this lease and is solely imposed to compensate Landlord for the additional costs incurred as a result of Tenant's breach. In the event that any check or other instrument tendered by Tenant is dishonored, in addition to late charges as specified above, Tenant shall pay an additional fee of Twenty Five dollars (\$25.00) to reimburse Landlord for administrative costs incurred in connection with such dishonored instrument.

4. **PROPORTIONATE SHARE.** Whenever under any provision of this Lease, Tenant is required to pay a "proportionate share" of money; Tenant's proportionate share shall be computed based on the ratio of the gross rentable square footage of the Premises to the gross rentable square footage of the entire Shopping Center. "Proportionate share" may from time to time, at Landlord's discretion, mean Tenant's proportionate share shall be computed based on the ratio of the gross rentable square footage of the Premises to the Building or portion thereof, in which Tenant resides.

5. COMMON AREA AND EXTERIOR MAINTENANCE COSTS. As additional rent, Tenant shall pay to Landlord, for their proportionate share for the actual cost of Common Area and Exterior Maintenance for the shopping center. This amount shall be payable monthly in the manner as prescribed in Paragraph 6. Common Area and Exterior Maintenance are defined as all areas and facilities outside the Premises and within the shopping center/project that are provided and designated by Landlord from time to time for the general non-exclusive use of Landlord, Tenant and other tenants of the project and their respective employees, suppliers, customers, and invitees, including, without limitation, to exterior surfaces of the buildings, common entrances, lobbies, corridors, parking areas, loading and unloading areas, trash areas, roadways, sidewalks, landscaped areas, and the cost of equipping, lighting, repairing, replacing and maintaining for the same. The phrase Common Area Expenses as used herein shall include, but not be limited to: all sums expended by Landlord in connection with the Common Area for operations, minor maintenance, repairs, painting, janitorial services for the interior Common Area of the Building, interior and exterior lighting, fire protection systems, security, garbage and trash (not Hazardous Material/Waste), sidewalk and parking lot sweeping, parking lot repair and resurfacing reserves, storm drain maintenance, maintenance and repair of sidewalks, landscape maintenance, irrigation, water, sewer, extermination services, promoting shopping center businesses; all costs and expenses of operating, managing, maintaining, repairing, replacing, lighting, cleaning, painting, striping, and policing all Common Areas and all improvements thereto (including cost of uniforms, equipment, and all employment taxes); costs of utilities for the Common Areas; costs of all roof repair and replacement; costs of all supplies; insurance premiums for liability insurance for personal injury, death, and property damage; costs of workmen's compensation insurance covering personnel and fidelity bonds for personnel; costs of insurance against liability for defamation and claims of false arrest occurring in and about the Common Areas; costs for insurance deductibles; costs of taxes, licenses, and fees; the cost of capital replacements to the Shopping Center, including the Common Areas, amortized over their depreciable life as determined by Landlord's accountant; costs of removal of debris; monitoring of fire and security systems for Common Areas; costs for regulation of traffic; costs and expenses of replacement of paving, curbs, walkways, landscaping, drainage, and lighting facilities for the Common Areas; costs and expenses of planting, replanting, and replacing flowers and shrubbery and planters; all costs of labor, including wages and other payments including disability insurance, payroll taxes, welfare, and all legal fees and other costs or expenses incurred in resolving any labor disputes. Landlord may enroll in a group maintenance contract for the heating and air conditioning ventilation maintenance, should Landlord enroll in said contract, Tenants shall continue to maintain sole responsibility for repairs or replacement as provided under Paragraph 12. Landlord may cause any or all of such service to be provided by an independent contractor or contractor's; cost and expense for rental of music program services and loudspeaker systems, including furnishing electricity therefore; sprinkler maintenance costs; and property and asset management expenses, and other costs as necessary in the Landlord's judgment for the proper maintenance and operation of the Common Area, property management, and an allowance to Landlord for Landlord's supervision of the maintenance and operation of the Common Area in an amount equal to Ten percent (10%) of the total Common Area Expenses. Payments due for common area and exterior maintenance costs shall be subject to the provisions of Paragraph 3 of this Lease relating to late charges and dishonored checks.

6. BILLING. Tenant shall pay on a monthly basis as Additional Rent, its Proportionate Share of Landlord's estimated cost of the Common Area Expenses for the current calendar year. As used herein, Common Area Expenses shall mean and include the expenses as outlined in Paragraph 5. The term Common Area Expenses shall exclude Landlord's cost of leasing and advertising costs associated with leasing spaces for the Building. At the beginning of each calendar year, the Landlord shall estimate Tenant's share of said Common Area Expenses on an annual basis, and shall collect as Additional Rent and impound Tenant's estimated proportionate share in advance on a monthly basis on the first day of the month concurrently with Tenant's payment of Base Rent. Within ninety (90) days after the end of each calendar year, Landlord shall certify to and provide Tenant with a statement in reasonable detail reconciling and substantiating the actual cost of Common Area Expenses incurred in the prior calendar year and providing a computation of Tenant's proportionate share of such Common Area Expenses. All statements shall be sent to Tenant at the address for the Premises. If Tenant has overpaid its proportionate share of Common Area Expenses, Landlord shall issue a refund within 14 days (if the Lease has expired or terminated) or a credit against future sums due. If Tenant has underpaid its proportionate share of

Common Area Expenses, Tenant shall pay Landlord the difference within ten (10) days after receipt of the statement. If Landlord shall fail to submit statements required under this section within the ninety (90) day period, Tenant shall continue to pay monthly Additional Rent in the same amount as Tenant had paid during the immediately prior calendar year. Tenant may within One Hundred Eighty (180) days after receipt of Landlord's annual substantiating Common Area Expenses, notify Landlord in writing of Tenant's intent to review and audit Expenses. Tenant may, at Tenant's sole Expense, request copies of substantiating documents and/or perform an audit of Landlord's books. If Tenant elects to audit Landlord's books such audit shall be conducted at Landlord's office by Tenant or Tenant's agent.

7. USE OF PREMISES. The leased premises shall be used for the sole purpose of operating and conducting thereon and therein _____, and for such purposes as may be reasonably incidental thereto, and none other, without the written consent of Landlord. Tenant shall not do or permit anything therein, which will in any way increase the rate of fire insurance upon the building in which the premises are situated. Tenant shall, at Tenant's own cost and expense, comply with any and all requirements of Landlord's insurance carrier necessary for the continued maintenance at reasonable rates of fire and liability insurance policies on said premises and the improvements thereon. No public telephone shall be authorized or installed on the exterior of said premises by Tenant. Tenant shall not commit, or suffer to be committed, any waste upon the premises or any acts that shall constitute a nuisance, either public or private, affecting either the public or private property or person, or in any way or manner violate any law, statute, ordinance, rule or regulation of any body politic or any subdivision or office thereof affecting said premises and any subdivision or office thereof affecting said premises and any business or operation conducted thereon. Tenant has verified with the appropriate government authorities the said premises for its intended use. Any and all Permits, Licenses, Use Permits, Fees and requirements by Governmental Agencies for the use of said premises shall be the sole responsibility of the Tenant and Tenant will not open for business without all the necessary Permits and approvals. If Landlord is notified by the Governing Authorities of any illegal activities within the Premises, Landlord will send certified mail to the Tenant notifying them of the matter along with a 10 Day Notice to evict. Tenant agrees to abide by the 10 Day Notice and vacate the premises by midnight on the Tenth (10) day with everything left in the premises in good working order.

8. SECURITY DEPOSIT. Tenant has, upon execution of the original lease deposited with Landlord, the sum of Zero and 00/100 (\$0.00) Dollars as security for the full and faithful performance of each and every term, provision, covenant, and condition of the original lease. In the event that Tenant defaults in respect of any term, provision, covenant, or condition of this lease, including but not limited to the payment of rent, Landlord may use, apply or retain the whole or any part of the deposit for the payment of any rent in default or for the payment of any other sum which Landlord may spend or be required to spend by reason of Tenant's default. Any remaining portion of this security deposit, after any lawful deductions as above, shall be returned to Tenant no later than Thirty (30) days after termination of the tenancy, directed to the address left by Tenant or Tenant's last known address. Tenant shall not be entitled to interest on said security deposit. If the check is returned to the Landlord because of Tenant's failure to claim the same or failure to provide a forwarding address, the remaining deposit shall become the property of the Landlord.

9. UTILITIES. Tenant shall pay all utility costs incurred in connection with Tenant's occupation and use of the leased premises.

10. REAL PROPERTY TAXES. As additional rent, Tenant shall pay to Landlord an amount equal to the Tenant's proportionate share of the actual amount of all real property taxes assessed against _____. This amount shall be payable monthly in the manner as prescribed in Paragraph 6. Payments due for real property taxes shall be subject to the provisions of Paragraph 3 of this Lease relating to late charges and dishonored checks. Real property tax shall include any form of real estate tax or improvement bond or bonds, fees, business license taxes on the Lease Premises, Fire Department Fees, levy or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, sanitary, fire, street, drainage, or other improvement district thereof. All taxes and assessments due under this Lease shall be paid to Landlord within Ten (10) days of due date, and if not so paid, then such unpaid

taxes, fees and assessments shall bear a Ten percent (10%) late charge of the amount due plus handling charges for late payments. For purposes of this Lease and this Section 10, "Real Property Taxes" shall be defined as any and all property taxes and property tax increases incurred by Landlord, including supplemental and escape tax assessments, whether resulting from a voluntary, involuntary, full, partial or other transfer of title to the above described assessor's parcel number. Tenant shall be responsible for any supplemental or escape real property tax assessment which is related to the time in which Landlord was in possession of the premises pursuant to this Lease Agreement, even if Tenant has subsequently terminated this Lease or vacated the premises.

11. REAL PROPERTY INSURANCE. As additional rent, Tenant shall pay to Landlord an amount equal to the Tenant's proportionate share of the actual amount of all real insurance assessed against _____ . This amount shall be payable monthly in the manner as prescribed in Paragraph 6. Payments due for real property insurance shall be subject to the provisions of Paragraph 3 of this Lease relating to late charges and dishonored checks. Real property insurance shall include, but is not limited to, fire, casualty and explosion insurance, extended coverage, business interruption insurance, employment practices liability insurance, workman's compensation insurance, public lighting and property damage for liability for injury including death to persons and damages to said property in companies licensed to transact business in California in an amount as determined by Landlord. Reimbursement shall be made by Tenant to Landlord within Ten (10) days after written demand by Landlord. Tenant shall have no interest in or any right to the proceeds of any insurance procured by Landlord.

12. MAINTENANCE BY TENANT. Tenant shall at Tenant's own cost and expense, keep and maintain all interior portions of the leased premises in good order and repair and in as age and clean a condition as there were when received by Tenant, reasonable use and wear excepted. Said obligations shall include maintenance of any damage caused by Earthquake or other Casualty (except structural damage to the walls or roof caused by Earthquake), and without limitation, exterior entrances, all partitions, doors, glass areas, store front, walls, all plumbing, electrical, water, and sewer lines within said premises and at the exterior of said premises that provide service to the said premises, floor, ceilings, ceilings above said premises, door jambs, door closures, door hardware, fixtures, interior and exterior equipment and appurtenances thereof, and plumbing, electrical, lighting, and heating systems which protrude in to the leased premises. Tenant shall be solely responsible for maintenance, repair, and replacement of the HVAC system that services the premises. Tenant shall replace, at the expense of Tenant, any and all plate and other glass damaged or broken resulting from any cause whatsoever in and about the Leased Premises, this includes but is not limited to code compliance upgrades required during the time of replacement. Tenant shall insure, and keep insured, at Tenant's expense, all plate and other glass in the Leased Premises for and in the name of Landlord. Landlord may replace, at the expense of Tenant, any and all plate and other glass damaged or broken from any cause whatsoever in and about the Leased Premises. Bills for the repair and/or the premiums therefore shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from and payable by Tenant when rendered, and the amount thereof shall be deemed to be, and paid as, additional rent. Tenant agrees to clean the Grease Trap as per legal requirements of the governing authorities, if installed in said premises. If Tenant refuses or neglects to repair items required under this paragraph as soon as reasonably possible after written demand, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or the Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's costs for making such repairs plus 20% for overhead, upon presentation of bill thereof, as additional rent.

13. WORKMEN'S COMPENSATION. Lessee shall maintain in force all employee's compensation insurance required under Workmen's Compensation and Safety Act of the State of California with respect to its business conducted on the demised premises.

14. TENANT EMPLOYEE PARKING. Tenant shall cause its employees to park their vehicles and shall so instruct its employees to park their vehicles at only spaces designated by Landlord, or subject to tow-away at vehicle owner's expense. All driveways, walkways, sidewalks and parking areas in the shopping center, of which said premises are a part, shall be used jointly by

all persons in said shopping center. No distinction or restrictions shall be placed on parking areas, walkways, sidewalks or planting areas by Tenant.

15. PERSONAL PROPERTY INSURANCE. Tenant shall at all times during the term of this lease maintain in force on all tenant's improvements, fixtures, appliances and equipment, including Landlord's fixtures, appliances and equipment, in the demised premises, a policy or policies of fire insurance to the extent of at least Eighty percent (80%) of their insurable value, the proceeds of which shall be used for the repair or replacement of the fixtures so insured. It is expressly agreed and understood that Landlord shall not be liable to Tenant for any damage or loss to Tenant's possessions in or about said premises by any means including but not limited to fire, theft, flood, wind, vandalism, sprinkler pipes, and water.

16. MAINTENANCE BY LANDLORD. Landlord shall maintain in good condition and repair the exterior roof, exterior walls and structural supports, and all other portions of the building in which the leased premises are situated except as provided in the preceding paragraphs. There shall be no obligation for Landlord to repair pursuant to this section until after the expiration of Ten (10) days written notice from Tenant to Landlord of the need for such repair. The cost thereof shall be borne pursuant to Paragraph 5 of this Lease.

17. ALTERATIONS. Tenant shall not have the right to make any alterations, improvements or additions to the leased premises without first obtaining the Landlord's written consent. Such consent shall not be unreasonably withheld. Tenant shall present to Landlord plans and specifications for such work at the time consent is sought. In no event and notwithstanding any contrary provision in this Lease, Tenant will not cause or permit any lien to be placed on or accrue upon the leased premises or any part thereof by reason of anything done or omitted to be done upon said premises by or with the permission of Tenant. All alterations, additions, improvements, and fixtures, except furniture and trade fixtures, made or placed in or on the premises by Tenant or any other person shall be the property of Landlord, and upon termination of this lease shall remain upon and be surrendered with the premises as a part thereof at Landlord's sole option and discretion. Any floor covering affixed to the floor of the premises shall be and become the property of Landlord at Landlord's sole option and discretion.

18. INSTALLATION AND REMOVAL OF TRADE FIXTURES. Tenant at Tenant's sole cost and expense may install in the leased premises such fixtures and equipment at Tenant deems advisable, and may remove the same from the leased premises at any time during the term of this lease, except for installed hoods and refrigerated walk in boxes; provided, however, that no injury shall be done to the structural strength of the building when said fixtures or equipment are removed, and the building shall be restored to substantially its original condition. In the event hoods or flues are used in the operation of said premises, Tenant agrees to submit to Landlord documentation by an authorized firm that the hoods and flues have been steamed cleaned and fire retardant treatment used a 3 month intervals and the dry chemical extinguishing system has been serviced at 6 month intervals. In the event Tenant removes any of Tenant's equipment from said premises, Tenant shall repair without limitation any and all damage to said premises. Any trade fixture not removed prior to the expiration or sooner termination of this lease shall be deemed abandoned by Tenant and shall become the property of Landlord at Landlord's option.

19. REMOVAL OF PROPERTY. Tenant hereby irrevocably appoints Landlord attorney-in-fact, to enter upon the premises, in the event of default by Tenant in the payment of any rent herein reserved, or in the performance of any term, covenant, or condition herein reserved, or in the performance of any term, covenant, or condition herein contained to be kept or performed by Tenant for the period of time hereinabove provided, and after notice as provided in Paragraph 29, Landlord may cause to be removed any and all furnishings and furniture and personal property whatsoever situated upon the premises, and to place such property in storage for the account of, and at the expense of Tenant. In the event that Tenant shall not pay the cost of storing any such property after the property has been stored for a period of Ninety (90) days or more, Landlord may sell all or part of such property, at public or private sale, in such manner and at such times and places as Landlord in its sole discretion may deem proper, without notice to Tenant or any demand upon Tenant for the payment of any part of such charges or the removal of any such property, and shall apply the proceeds of such sale first to the cost and expense of such sale, including reasonable attorney's fees incurred; second, to the payment of any other sum or

money which may then or thereafter be due to the Landlord from the Landlord under any of the terms hereof; and fourth, the balance, if any, to Tenant. Landlord will be aware of any security interest of third persons only if Tenant gives Landlord notice of any such lien.

20. **ACCESS BY LANDLORD.** Landlord or its designee shall be permitted to enter upon the leased premises at reasonable times during business hours, and in emergencies at all times, to inspect the premises, to make repairs, additions or alterations to the property owned or controlled by Landlord, or to exhibit the premises to prospective tenants Ninety (90) days prior to the end of the lease term. Notwithstanding the foregoing, Landlord shall make reasonable efforts to enter the premises for such purposes at such times and in such manner as to cause the least disruption to Tenant's business activities.

21. **SIGNS.** Except as otherwise set forth in the Lease, Tenant shall have the right, subject to the requirements of the City where the premises is located, to provide and install a storefront sign in accordance with the criteria for signs established by Landlord for the project. Tenant agrees to pay Landlord the full and total cost of replacing the plastic sign area background in the event that the Landlord's sign criteria is not followed. Except as thus provided, Tenant shall not place or suffer to be placed or maintained on any exterior door, roof, wall, window or common area around the Premises any sign, awning or canopy, or advertising matter or other thing of any kind, and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Premises, without first obtaining Landlord's written approval and consent. Tenant further agrees to maintain such sign, awning, canopy, decoration, lettering, advertising matter or other thing as may be approved in good condition and repair at all times and to remove the same at the end of the Term if requested by Landlord to do so. Upon removal thereof, Tenant agrees to repair any damage to the Premises caused by such installation. Tenant will have Landlord-approved permanent sign installed no later than 60 days after opening for business.

22. **EXTERIOR DISPLAYS.** Tenant shall not keep or display any merchandise on or otherwise obstruct common areas or the sidewalks, walkways or courtyards adjacent to the building of which the leased premises are a part without Landlord's consent. It is further agreed that Tenant shall not place nor permit to be placed, any signs, antennas, ducting, machinery, or any other items whatsoever on the roof over the premises, or any part thereof, without the expressed written consent of the Landlord. Tenant shall not install any air-conditioning units above any exterior doors or through any windows or walls of said premises.

23. **COMMON AREA ACTIVITIES.** Tenant shall not engage, sanction, sponsor or encourage any type of show, exhibitions, product sales or other activities in the parking and/or common area of the Center of which said premises are a part without the expressed written consent of Landlord. In the event the aforesaid should take place, Landlord has the option, in addition to other remedies provided by law, and without any liability whatsoever to Tenant, forthwith terminate and cancel this Lease and Tenant agrees to immediately vacate said premises.

24. **INDEMNIFICATION OF LANDLORD.** Tenant agrees to indemnify and save Landlord harmless from and against any and all claims arising from any act, omission or neglect of Tenant, or its agents, servants, employees, contractors, licensees, or arising from any accident, injury or damage whatsoever caused to any person or property occurring on, in or about the leased premises.

25. **LIABILITY INSURANCE.** Tenant shall, at Tenant's expense, obtain and keep in full force during the term of this lease or any extensions thereof, a policy of comprehensive public liability insurance, insuring Tenant and Landlord, against any liability arising out of the ownership, use, occupancy, or maintenance shall be in the amount of not less than One Million Dollars (\$1,000,000.00) for combined single limit bodily injury and property damage coverage. The limit of any such insurance shall not, however, limit the liability of the Tenant hereunder. Tenant may provide this insurance under a blanket policy, provided that said insurance shall have a Landlord's protective liability endorsement attached thereto. If Tenant shall fail to procure and maintain said insurance, Landlord may, but shall not be requested to procure and maintain the same, and at the expense of Tenant. Tenant shall deliver to Landlord, prior to right of entry, copies of policies of liability insurance required herein, or certificates evidencing the existence and amounts of such insurance, with loss payable clauses satisfactory to Landlord. No policy

shall be cancelable, or subject to reduction of coverage without Thirty (30) days' notice to Landlord at the address indicated below. All such policies shall be written as primary policies, not contributing with and not in excess of coverage which Landlord may carry.

26. PARTIAL OR TOTAL DESTRUCTION. If during the term of this Lease, the premises shall be only partially destroyed by fire, the elements, or any other cause not the fault of Tenant or Landlord, then Landlord may, at its option, repair the same, providing the same can be made within Three Hundred Sixty-Five (365) days under the laws and regulations of state, federal, county, municipal or other applicable authority, but said partial destruction shall in no way annul or void this Lease. Landlord shall notify Tenant within Sixty (60) days after said destruction of its intent to rebuild, repair or terminate this Lease. If such repairs cannot be made in Three Hundred Sixty-Five (365) days, this Lease may be terminated at the option of either party. In respect to partial destruction which Tenant is obligated to repair or may elect to repair under the terms of this Lease, the provisions of section 1942 and section 1932, subdivision 2, and of section 1933, subdivision 4, of the Civil Code of the State of California and all other statutes, laws or ordinances permitting a tenant to make repairs at the expense of a landlord or to terminate a lease by reason of the condition of said premises, are hereby waived by Tenant. A total destruction of the building or premises shall terminate this Lease.

27. WAIVER OF SUBROGATION. Each of the parties hereto waives any and all rights of recovery against the other or against any other tenant or occupant of the subject premises or against the officers, employees, agents, representatives, customers and business visitors of such other party or of such other tenant or occupant of the subject premises for loss of or damage to such waiving party or its property or the property of others under its control, arising from any cause insured against under the standard form of fire insurance policy with all permissible extension endorsements covering additional perils or under any other policy of insurance carried by such waiving party in lieu thereof, to the extent such loss or damage is insured against by such policy. Such waiver shall not be binding on either party unless the same is permitted by each party's insurance carrier without the payment of additional premium.

28. EMINENT DOMAIN. Should during the term of this lease title to all of the leased premises or so much thereof be taken by any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, so that a reasonable amount of reconstruction of the premises will not result in the premises being reasonable suitable for Tenant's continued occupancy for the use and purposes for which the premises are leased, this lease shall terminate as of the date that possession of said premises, or party thereof, be taken. If any part of the premises shall be so taken and the remaining part thereof (after reconstruction of the then existing buildings in which the premise are located) is reasonably suited for Tenant's occupancy, this lease shall, as to the part so taken, terminate as of the date that possession of said part be take, and the rent shall be reduced in proportion to the amount of floor area taken.

All compensation awarded or paid upon such a total or partial condemnation shall belong to and be the sole property of Landlord; provided, however, that Tenant shall be entitled to any award made for loss of business, depreciation to and cost of removal of stock and fixtures, if paid by the condemning agency to Lessee specifically for that purpose. Any rental bonus value shall belong exclusively to Landlord.

29. SURRENDER OF PREMISES. Tenant shall, at least Ninety (90) days before the last day of the term hereof, give to Landlord a written notice of intention to surrender the premises on that date, but nothing contained herein shall be construed as an extension of the term hereof or as consent of Landlord to any holding over by Tenant. On expiration or sooner termination of this lease, or any extensions or renewals of this lease, Tenants shall promptly surrender and deliver the leased premises to Landlord in as good condition as they now are at the date of this lease, reasonable wear and tear excepted. Tenant shall at the option of the Landlord, terminate all or any existing subleases or subtenancies, if any or may, at the option of the Landlord, operate as an assignment to him of any or all such subleases or subtenancies. Tenant shall permit Landlord at any time within Thirty (30) days prior to the expiration or termination of this Lease, to place upon said premises any usual or ordinary "for rent", "to let", or "for lease" signs.

30. HOLDING OVER. If Tenant holds possession of the premises after the term of this Lease, Tenant shall, at the option of Landlord, to be exercised by Landlord's giving written notice to

Tenant and not otherwise, become a tenant from month to month upon the terms and conditions herein specified, so far as applicable, at a minimum monthly rental of the last month's rental amount plus Fifty (50%) percent, payable in advance, in lawful money, and shall continue to be such tenant until Thirty (30) days after Tenant shall have given to Landlord or Landlord shall have given to Tenant a written notice of intention to terminate such monthly tenancy. Unless Landlord shall exercise the option hereby given him, Tenant shall be a tenant at sufferance only, whether or not Landlord shall accept any rent from Tenant while Tenant is so holding over.

31. INSOLVENCY OF TENANT. Tenant agrees that in the event all or substantially all of the tenant's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of Thirty (30) days, or should Tenant make any assignment for the benefit of creditors or be adjudicated a bankrupt, or should Tenant institute any proceedings under the bankruptcy act or under any amendment thereof which may hereafter be enacted, or under any other act relation to the subject of bankruptcy wherein Tenant seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition, arrangement or reorganization, or should any involuntary proceeding be filed against Tenant under any such bankruptcy laws and Tenant consent thereto or acquiesce therein by pleading or default, then this lease or any interest in and to the leased premises shall not become an asset in any of such proceedings, and, in any such event and in addition to any and all rights and remedies of Landlord hereunder or by law provided, it shall be lawful for Landlord to declare the term hereof ended and to re-enter the leased premises and take possession thereof and remove all persons therefrom, and Tenant shall have no further claim thereon or thereunder. Landlord shall be entitled to the rent.

32. SALE OR CONVEYANCE BY LANDLORD. In the event of a sale of conveyance by Landlord of the real property of which the demised premises are a part, the same shall operate to release the Landlord from any future liability upon any of the covenants or conditions expressed or implied, herein contained in favor of the Tenant, and in such event, the Tenant agrees to look solely to the responsibility of the successor in interest of the Landlord in and to this Lease. If any security be given by Tenant to secure the faithful performance of all or any of the covenants of this Lease on the part of the Tenant, Landlord may transfer and/or deliver the security, as such, to the purchaser of the real property, and thereupon Landlord shall be discharged from any further liability as to such security. In the event of a proposed sale of the business in the said demised premises, Tenant shall deliver to Landlord, for Landlord's review, a list of equipment proposed to be sold.

33. ASSIGNMENT AND SUBLETTING. Tenant shall not transfer, assign or sublet the leased premises in whole or in part, or any right or interest in said premises, without the express written consent of the Landlord first obtained. A consent by Landlord to one transfer, assignment, or subletting, or one occupation of the premises by another person shall not be deemed a consent to any subsequent transfer, assignment, subletting or occupation. Should Tenant attempt to make or suffer to be made any such transfer, assignment, subletting or occupation, except with the consent of Landlord as provided above, or should any of Tenant's rights under this lease be sold or otherwise transferred by or under court order or legal process or otherwise, or should Tenant be adjudged insolvent or bankrupt, then in any of the foregoing events Landlord may, at its option, terminate this lease forthwith by written notice thereof to Tenant.

Any request for assignment or subletting shall be made by the Tenant in writing, to the Landlord, and shall include the following documentation:

all transaction documents;

all financing documents;

the identity of any formal escrow holder;

escrow instructions;

a summary of the proposed assignee's or sublessee's business history;

a personal financial statement of the proposed assignee or sublessee or proposed guarantor;

proposed assignee's or sublessee's business and personal and tax returns for the past three years;
a copy of the proposed assignee's or sublessee's business plan;
a list of all key employees, partners, and financial backers in the proposed venture;
a description of improvements to be made to the premises and how there are to be financed;
and
business, trade, and personal references.

Upon the acceptance by Landlord of the proposed tenant, a transfer fee of \$2,000.00 shall be paid to Landlord by either the proposed tenant or existing Tenant. In the event of any such subletting or assignment, Tenants shall continue to remain responsible under this lease.

34. REFINANCING BY LANDLORD. Landlord shall have the right at any time to sell the premises and assign its interest in the lease without further recourse on the part of Tenant. If any financial institution should, in connection with the sale or other financing of the building of which the leased premises are a part, require any modification of the terms and provisions of this lease, Tenant agrees not to withhold consent unreasonably to such requirements so long as no additional cost is incurred by Tenant. In the event that Landlord shall sell its interest in the premises during the term of this lease, then after the effective date of such transfer Landlord shall be released and discharged from any and all further obligation and responsibilities under this lease except those already accrued.

35. ACCORD AND SATISFACTION. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein provided shall be deemed to be other than on account of the earliest rent due and payable hereunder, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent deemed an accord and satisfaction, and Landlord may accept any such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other proper remedy.

36. SUBORDINATION AND OFFSET. Tenant agrees that this lease shall be subject to any mortgage, trust deed, or encumbrance hereafter placed upon said property by Landlord or its successors in interest to secure the payment of monies loaned, interest thereon, and other obligations. Tenant also agrees to execute, acknowledge and deliver to Landlord, from time to time upon request, an offset statement or estoppel certificate containing such facts pertaining to this lease as a purchaser or lender may require provided such facts are within the knowledge of or are available to Tenant. Tenant hereby irrevocably appoints Landlord as attorney-in-fact for Tenant with full power and authority to execute and deliver in the name of Tenant, any such instruments or certificates. In Fifteen (15) days after the date of written request by Landlord to execute such instruments, Tenant shall not have executed the same, Landlord may, at its option, cancel this lease without incurring any liability on account thereof, and the term hereby granted is expressly limited accordingly.

37. ABANDONMENT. If at any time during the term of this lease Tenant abandons the demised premises or any part thereof, Landlord may, at his option, enter the demised premises by any means without being liable for any prosecution therefore, and without becoming liable to Tenant for damages or for any payment of any kind whatever, and may, at its discretion, as agent for Tenant, relet the premises, or any part thereof, for the whole or any part of the unexpired term, and may receive and collect all rent payable by virtue of such reletting, and at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this lease during the balance of the unexpired term, if this lease had continued in force, and the net rent for such period realized by Landlord by means of such reletting. If Landlord's right to re-entry is exercised following abandonment of the premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on the premises to also have been abandoned, in which case Landlord may dispose of all such personal in any manner Landlord shall deem proper and is hereby relieved of all liability for doing so.

38. **DEFAULT.** In the event of default in the payment of any installment of rent, or in the performance of any other covenant or condition of this lease, which default may continue for Ten (10) business days, excluding Saturday, Sunday, and any national bank holidays, after notice and demand in writing by Landlord to correct such default, or if Tenant abandons the property prior to the expiration of the term provided for in this agreement, the Landlord may at this option terminate this lease recover damages and remedies provided for in California Civil Code section 1951.2 and 1951.4 from Tenant, including (a) the worth at the time of award of the unpaid rent which has been earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonable avoided; (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Tenant proves could be reasonably avoided; and (d) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform his obligations under this lease, which in the ordinary course of things would be likely to result there from. Alternatively, in the event of such default, Landlord may elect not to terminate the Tenant's right to possession, and the lease shall then remain in effect and Landlord may enforce rights and remedies under the lease, including the right to recover rent as it becomes due. As used in subsection (c) above, the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus One percent (1%). In the event of any default which may continue for Ten (10) days, Landlord at its option, instead of canceling this lease, may take possession of said premises and re-let the same for the best price obtainable, and Tenant shall continue to be liable to Landlord for all terms and conditions of this lease including and not limited to the rent due under the term of this lease. All monies due are regarded as rent. In the event Tenant breaches this lease or any covenant, term or condition hereunder, and abandons the premises, this lease shall continue in full force and effect at the option of the Landlord, and Landlord may enforce all rights and remedies under the lease, including, without limitation, the right to recover rent as it becomes due.

39. **CUMULATIVE REMEDIES.** All remedies given to Landlord in this lease shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter allowed by law.

40. **TENANT'S PROPERTY.** Tenant agrees to insure the contents of the building against fire, theft, vandalism, and such other hazards as are readily insurable under a normal "fire and extended coverage" policy, and to provide Landlord with a copy of such policy or any policies, and any modifications or replacements thereto, upon execution of this lease. Tenant shall be responsible for and shall pay before delinquency all municipal, county or state taxes assessed during the term of this lease against any leasehold interest or personal property of any kind, owned by or placed in, upon, or about the leased premises by Tenant. If any such taxes on Tenant's or Landlord's personal property or trade fixtures are levied against Landlord or Landlord's property or if the assessed value of Landlord's premises is increased by the inclusion therein of a value placed on such property of Tenant, Landlord shall immediately notify Tenant and Tenant agrees to repay to Landlord, upon demand, the taxes so levied against Landlord resulting from such increase in the assessment.

41. **LOSS AND DAMAGE TO TENANT'S PROPERTY.** Landlord shall not be liable for any damage to property of Tenant or of others located on the leased premises, nor for the loss of or damage to any property of Tenant or of others by theft or otherwise. Landlord shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, water, rain or leaks from any part of the leased premises, or the common areas, or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by any other cause of whatsoever nature. Landlord shall not be liable for any such damage caused by other tenants or persons in the leased premises, occupants of adjacent property, of the common area, or the public, or caused by operations and construction of any private, public or quasi-public work. Landlord shall not be liable for any latent defect in the leased premises or in the building of which they form a part. All property of Tenant kept or stored on the leased premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold Landlord harmless from any claims by Tenant's insurance carriers, unless such damage

shall be caused by the willful act or gross neglect of Landlord, and through no fault of Tenant. Landlord shall not be liable to Tenant or to any person whatsoever for damage occasioned by plumbing, gas, water, steam, sprinkler or other pipe, sewage system, waste, electrical wiring or other lines or pipes, in or about the premises or of the building which they are a part, nor for any damage occasioned by water being upon or coming through the roof, ceiling, skylight, vent, trapdoor, or otherwise, or for damage arising from any act or neglect of co-tenants or adjacent property, or the public, nor shall Landlord be liable in damages or otherwise for any failure to furnish, or interruption of service of any water, gas, electricity, heated water, steam, or chilled water caused by fire, accident, riot, strike, labor disputes, acts of God, or the making of any repairs or improvements or other causes beyond the control of Landlord.

42. **LEGAL COMPLIANCE.** The Tenant shall at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the use of the said premises, and shall faithfully observe in the use of the premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force. In the case of noncompliance, Landlord retains the right to charge any offending Tenants a penalty fee of One Hundred Dollars (\$100.00) for the first offense and increasing an additional One Hundred Dollars (\$100.00) for each offense thereafter with the maximum penalty by Landlord being Five Hundred Dollars (\$500.00) per offense. This penalty fee shall be in addition to any requirements and charges by governing authorities if any.

43. **WAIVER.** The failure of Landlord to enforce any right or remedy for violation by Tenant of any term or condition of this agreement shall not be deemed to be consent by Landlord to such violation, and shall not bar, stop or prevent Landlord from enforcing such right or remedy either for such violation or for any subsequent breach of any term, condition or covenant hereof.

44. **LEGAL EXPENSES.** Tenant shall pay to Landlord all amounts for reasonable attorney's fees incurred by Landlord in connection with any breach or default under this lease or incurred in order to enforce the terms or provisions hereof. Such amount shall be payable upon demand as additional rent. In addition, in the event that any action shall be instituted by either of the parties hereto for the enforcement of any of its rights or remedies in or under this lease, the prevailing party shall be entitled to recover from the other party, all costs incurred by said prevailing party in said action, including reasonable attorney's fees to be fixed by the court therein.

45. **NOTICES.** All notices in writing required by this agreement may be personally served or may be mailed to the following addresses:

Landlord:

1155 Redmond Ave
San Jose, CA 95120

Tenant:

46. **TIME.** Time is of the essence of this agreement.

47. **ENTIRE AGREEMENT.** This agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and to the leased premises, and supersedes all prior and contemporaneous leases, agreements, representations, and understandings of the parties. No supplement, modification, or amendment shall be binding unless executed in writing by all of the parties.

48. **PARTIAL INVALIDITY.** If any term, covenant, or condition of this lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease, or the application of such term, covenant, or condition to persons or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

49. **SUCCESSORS.** All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators,

successors, and assigns of the said parties; and if there shall be more than one tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant, unless the assignment to such assignee has been approved by Landlord as provided above.

50. **NO REPRESENTATIONS.** Tenant agrees that Landlord has not made and Tenant is not relying on any representations, whether verbal or written, by Landlord, his agents or employees.

51. **CHRONIC DELINQUENCY.** Chronic delinquency by Tenant with payment of rent, monthly charges, periodic charges or any other amounts required to be paid by Tenant under this Lease shall constitute a breach of this Lease. Chronic delinquency shall be defined as any failure by Tenant to pay or submit within Ten (10) days of the due date its rent and/or charges required for any Three (3) months, consecutive or nonconsecutive, during any Twelve (12) month period.

52. **HAZARDOUS AND TOXIC SUBSTANCES.** Tenant shall not use, generate, store or dispose, or give consent to anyone else to use, generate, store or dispose, any hazardous, toxic, or radioactive materials [hereinafter referred to collectively as "Hazardous Materials"]. As herein used, Hazardous Materials shall include, without limitation, those materials identified in Section 66680 through 66685 of Title 22 of the California Administrative Code Division 4, Chapter 30, as amended from time to time, and those substances defined as "hazardous substances," "hazardous materials," "hazardous waste," or other similar designations in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC, Section 9601 et seq., the Hazardous Materials Transportation Act, 49 USC, Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, and regulations now or hereafter in effect. Tenant shall indemnify, defend and hold Landlord from and against any and all claims, damages, costs and liabilities, including all foreseeable and unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials by Tenant for any person claiming under Tenant, including, without limitation, the cost of any required or necessary repairs, clean up, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the termination of this lease, to the full extent that such action is attributable, directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials nor the strict compliance by Tenant with all statutes, laws, ordinances, rules and regulations pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification pursuant to this paragraph. Tenant's obligation pursuant to the foregoing indemnity shall survive the termination of this lease.

53. **WAIVER OF JURY.** Landlord and Tenant hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Landlord against Tenant or Tenant against Landlord on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

54. **INDEPENDENT COVENANTS.** All of the Tenant's obligations under this Lease to pay moneys to Landlord shall be deemed to be independent covenants and Tenant shall not have the right to withhold such payments because of Landlord's failure to perform covenants under this Lease. Such covenants shall include, but not be limited to, rents, taxes, assessments, insurance, late charges and interest.

55. **LOUD NOISE.** Tenant agrees to not have any loud music or noise in such premises as to disturb other tenants. The maximum decibel level shall not exceed 75 decibels within said premises.

56. **ODORS AND FUMES.** Without otherwise limiting Tenant's rights to conduct the Premises for the Permitted Use, Tenant shall not cause or permit (or conduct any activities that would cause) any release of any odors or fumes of any kind from the Premises. Tenant shall, at Tenant's sole cost and expense, provide odor eliminators and other devices (such as filters, air cleaners, scrubbers and whatever other equipment may in Landlord's commercially reasonable judgment

be necessary or appropriate from time to time) to abate any odors, fumes or other substances in Tenant's exhaust stream that, in Landlord's reasonable judgment, emanate from Tenant's Premises. Tenant's responsibility to abate odors, fumes and exhaust shall continue throughout the Term. If Tenant fails to install satisfactory odor control equipment within Ten (10) business days after Landlord's written demand made at any time, then Landlord may, without limiting Landlord's other rights and remedies, require Tenant to cease and suspend any operations in the Premises that, in Landlord's reasonable determination, cause odors, fumes or exhaust. If Tenant refuses or neglects to repair items required under this paragraph after written demand, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or the Tenant's business by reason thereof, and upon completion thereof, Tenant shall pay Landlord's costs for making such repairs plus 20% for overhead, upon presentation of bill thereof, as additional rent.

57. AGENT NEGOTIATIONS. Tenant warrants that Tenant has not had any dealings with any Realtor, Broker or Agent other than _____ in connection with the negotiations of this lease and agrees to pay and hold Landlord harmless from any cost, expense or liability for any compensation, commissions or charges claimed by any other Realtor, Broker or Agent with respect to this Lease and/or negotiation thereof.

58. SECURITY SERVICE. Tenant shall reimburse Landlord, simultaneously and in addition to the minimum monthly rental, its proportionate share for any costs for security service which Landlord deems necessary for the Center of which the demised premises are a part.

59. SHOPPING CENTER USE. Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interest of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent that any specific Tenant or number of Tenants shall, during the term of this lease, occupy any space in the Shopping Center. This lease shall be considered to be the only agreement between the parties hereto and their representatives and agents.

60. INSPECTION OF PREMISES. Tenant hereby acknowledge that they have thoroughly inspected the said premises and found them in good condition and repair including, but not limited to, all glass areas, doors, store front and sign areas. It is further expressly acknowledged that all glass areas have no holes or damage.

61. ESTOPPEL CERTIFICATE. Tenant shall, upon not less than Ten (10) days prior written notice, execute, acknowledge and deliver to Landlord a statement in writing certifying that this Lease is in unmodified and in full force and effect (or, if modified, stating the nature for such modification and certifying that this Lease as so modified is in full force and effect) and the dates to which rental and other charges have been paid in advance, if any, and acknowledging that there is not, to Tenant's knowledge, any uncured default on the part of Landlord, specifying the default if any be claimed. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect without modification except as may be represented by Landlord, that there are not uncured defaults in Landlord's performance and that not more than one month's rental has been paid in advance.

62. AMERICANS WITH DISABILITIES ACT. Landlord notifies the Tenant that this property has not undergone an inspection by the Certified Access Specialist (CASp). It is unknown as to whether this property meets the applicable construction-related accessibility standards. Pursuant to Paragraph 42, above, Tenant is exclusively responsible for complying with all applicable legal requirements relating to the accessibility of the Premises, whether under the Americans with Disabilities Act or other similar state or federal laws, and Tenant will indemnify, defend, and hold harmless Landlord from any such claims which arise in connection with the Premises during the Term of this Lease, including any extension thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the day and year first hereinabove specified.

TENANT:

LANDLORD:

By:
Address:

Date:

By: Joseph Kovalik

Date:

Phone:
Email:

MOVE IN COSTS

First month's rent: \$0.00
First month's triple nets: \$0.00
Security deposit: \$0.00

Total due: \$0.00