

December 6th, 2022 – 1st Reading

1 **2022-52 (1ST READING):** APPROVING THE EXECUTION AND DELIVERY BY
2 THE CITY OF MYRTLE BEACH, SOUTH CAROLINA, OF A LEASE BETWEEN
3 THE CITY, AS LESSOR, AND, AUTOMONEY, INC. AS LESSEE, WITH RESPECT
4 TO BUILDING LOCATED AT 706 NORTH KINGS HWY IN THE CITY OF MYRTLE
5 BEACH.

6 **Applicant/Purpose:** Staff / to enter into a lease with AutoMoney, Inc. for 706 N. Kings Hwy.
7

8 **Brief:**

- 9 • The City is in the process of acquiring 706 N. Kings Hwy from the owner and operator of
10 AutoMoney, Inc.
- 11 • A condition of the Purchase and Sale Agreement is to provide a one year lease to the
12 current owner.

13
14 **Issues:**

- 15 • The lease provides that any repairs will be considered on a case by case basis. The
16 tenant understands that large system repairs will not be considered.

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18 **Public Notification:** Normal meeting notification
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20 **Alternatives:** Approve the lease or deny the lease.
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22 **Financial Impact:**

- 23 • The lease is 1 year for \$33,600.
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25 **Manager's Recommendation:**

- 26 • I recommend -1st Reading (12/06/2022)
27

28 **Attachment(s):** Proposed ordinance, lease agreement

CITY OF MYRTLE BEACH
COUNTY OF HORRY
STATE OF SOUTH CAROLINA

APPROVING THE EXECUTION AND
DELIVERY BY THE CITY OF MYRTLE
BEACH, SOUTH CAROLINA, OF A LEASE
BETWEEN THE CITY, AS LESSOR, AND,
AUTOMONEY, INC. AS LESSEE, WITH
RESPECT TO BUILDING LOCATED AT 706
NORTH KINGS HWY IN THE CITY OF
MYRTLE BEACH.

WHEREAS, the City of Myrtle Beach, South Carolina (the "City"), is an incorporated municipality located in Horry County, South Carolina, and has all powers granted to municipalities by the Constitution and general laws of this State; and

WHEREAS, Section 5-7-40 of the Code of Laws of South Carolina 1976, as amended, empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property; and

WHEREAS, the City is acquiring the property at 706 North Kings Hwy from the current owner and operating of AutoMoney, Inc.; and

WHEREAS, a condition of the Purchase and Sale Agreement requires that the City provide AutoMoney, Inc. a one-year lease; and

WHEREAS, it is in the best interest of the City to purchase the property and lease it back as it will further the City's program of downtown redevelopment;

NOW, THEREFORE, IT IS ORDAINED that City Council does hereby approve the lease of 706 North Kings Hwy to AutoMoney, Inc. pursuant to the Lease attached hereto as Exhibit A and incorporated herein by reference; and

The form, terms and provisions of the Lease, together with such changes as the officers of the City authorized to execute and deliver the Lease shall approve, are hereby approved. The City Manager and Assistant City Manager, or either one of them, acting alone, are hereby authorized and directed to execute, acknowledge and deliver, the Lease in the name of and on behalf of the City. The Lease is to be in substantially the form attached to this Ordinance as Exhibit A, with such changes as shall be approved by the City Manager or Assistant City Manager, or either one of them, acting alone, such person's or persons' execution and delivery thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the Lease now before this meeting.

The City Manager and the Assistant City Manager, for and on behalf of the City, are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the execution and delivery of the Lease in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents is hereby fully authorized.

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The provisions of this Ordinance shall be effective upon its adoption.

ENACTED by the City Council of the City of Myrtle Beach, South Carolina, this 13th day of December, 2022.

BRENDA BETHUNE, MAYOR

ATTEST:

JENNIFER ADKINS, CITY CLERK

1st Reading: 12/06/2022
2nd Reading:

CITY OF MYRTLE BEACH LEASE

THIS LEASE (the "Lease") is made and entered into as of this _____ day of _____ 20____
("Effective Date") by and between CITY OF MYRTLE BEACH ("Landlord") and AutoMoney, Inc., South
Carolina, Inc. a South Carolina Corporation with an address of _450 Meeting Street, Charleston, SC 29403
("Tenant").

WITNESSETH

ARTICLE I - REFERENCE PROVISIONS, DEMISED PREMISES AND TERM

Section 1.1 Reference Provisions.

Unless otherwise defined herein, the designated terms set forth below shall have the meanings ascribed to such terms in this Section 1.1:

- (a) *Demised Premises.* That certain single-story space, located at the corner of at 706 North Kings Highway, Myrtle Beach, Horry County, also designated as Lots 13 and 14, Block 31 of the Hotel Section of Myrtle Beach. The Demised Premises is shown generally on Exhibit A, which is attached hereto.
- (b) *Term.* One year (1) full Lease Year beginning with the Effective Date.
- (c) *Lease Year.* The Lease Year will commence on the Effective Date and terminate on the last day of the twelfth (12th) full calendar month thereafter.
- (d) *Rent.* The Rent for the Lease Year hereof will be as follows:

Thirty-Five Thousand and No/100 (\$33,600.00) Dollars annually paid in twelve (12) equal monthly installments of Two Thousand Eight Hundred and 00/00 (\$2,800.00) Dollars per month. Rent is due and payable on the first (1st) day of each month. In the event the Effective date is not the first day of any month, then the rent for that month shall be prorated.
- (e) *Renewal Rent.* Intentionally omitted.
- (f) *Permitted Use.* Tenant's use of the Demised Premises as a loan business and no other purpose, unless expressly permitted in writing by Landlord, such permission shall not be unreasonably withheld, conditioned, or delayed. Tenant hereby agrees that Tenant's use and operation of the Demised Premises will be limited to the specific Permitted Use described in this Section 1.1(f), and Tenant will in no event use or operate the Demised Premises in a manner which will violate State or local law or ordinance.
- (g) *Common Areas.* Intentionally omitted.
- (h) *Security Deposit.* Upon the execution of this Lease, Tenant shall provide Landlord the sum of Two Thousand Eight Hundred and No/100 (\$2,800.00) Dollars in certified funds, which shall be repaid without interest to Tenant after the expiration or earlier termination of this Lease, provided Tenant complies with all the terms of this Lease, and otherwise to be applied as provided in Sections 10.2 and 11.3.
- (i) *Addresses for Notices and Rent.*

FOR RENTAL PAYMENTS (Regular Mail)
FOR OVERNIGHT MAIL FOR NOTICES

TO LANDLORD: City of Myrtle Beach
 PO Box 2648
 Myrtle Beach, SC 29577
 Telephone:
 Email:
 ATTN: City Manager

TO TENANT: AutoMoney, Inc.
 450 Meeting Street
 Charleston, SC 29403
 Email:
 ATTN: Linda Derbyshire

- (j) *Rental Payment:* All rent payments shall be made payable to Landlord, and delivered to such address as Landlord designates in writing, or by ACH transfer, or to such other person and place or by such other method as Landlord may hereafter designate in writing. Landlord will provide (or request, if ACH transfer is initiated by the Landlord) all pertinent information with the Rent Commencement Letter.
- (k) *Tenant's Trade Name.* AutoMoney Title Loans
- (l) *Exhibits.* The following Exhibits are attached to this Lease, and are hereby incorporated in this Lease:

Exhibit A	Legal Description
Exhibit B	Rent Calculation
Exhibit C	Rules and Regulations
Exhibit D	Guaranty of Lease

Section 1.2. Granting of the Demised Premises

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Demised Premises, subject to all the terms, conditions, and provisions set forth in this Lease. It is expressly understood and agreed that nothing contained in this Lease will be construed as a grant or rental of or a conveyance of: (i) the public areas (except as specifically provided in this Lease) on any land or adjacent properties owned by the Landlord. Landlord shall at all times have the right to determine the nature and extent of the public areas, and to make such changes thereto as it shall elect, including, without limitation, the location and relocation of driveways, entrances, exits and automobile parking spaces, the direction and flow of traffic, and the designation of prohibited areas, landscaped areas and utilities. However, Landlord shall not make any changes to the property that would interfere with or affect Tenant's business. Landlord shall at all times have the sole and exclusive control of the public areas, including, without limitation, the right to temporarily block space within the Public Areas to tenants for the sale of merchandise and/or services and the right to permit advertising displays, educational displays and entertainment in the Common Areas, including kiosks, carts and other temporary or permanent stands; however, such activities shall not negatively impact Tenant's visibility, or access. Landlord also shall have the right at any time and from time to time to exclude and restrain any person from the use or occupancy thereof. It shall be the duty of Tenant to keep all of the public areas free and clear of any obstructions created or permitted by Tenant or resulting from Tenant's operation.

Section 1.3. Term

- (a) The Term of this Lease will begin as of the Effective Date of this Lease, and will end at midnight on the last day of the of the twelfth (12th) full calendar month thereafter, unless otherwise extended by written agreement of both Parties.

Section 1.4. Acceptance of Demised Premises

Tenant currently occupies the property and as such takes the property in an AS IS, WHERE IS condition, and the Landlord makes no representations or warranties as to any condition, or that the Demised Premises are suitable for any intended use.

Section 1.5. Quiet Enjoyment

Tenant, upon paying the rents reserved in this Lease and performing and observing all other terms, covenants and conditions of this Lease on Tenant's part to be performed and observed, and complying with the Permitted Use and all other restrictions, recorded or unrecorded, now or hereafter affecting the Demised Premises, will peaceably and quietly have, hold, and enjoy the Demised Premises during the Term, subject, nevertheless, to the terms of this Lease and to any mortgages, ground or underlying leases, agreements, and encumbrances to which this Lease is or may be subordinated pursuant to the terms of Article IX.

Section 1.6. Due Upon Execution

Upon the execution of this Lease, Tenant shall pay to Landlord the Security Deposit (as set forth in Section 11.3). In the event the Effective date is not the first day of any month, then the rent for that month shall be prorated.

ARTICLE II - RENT AND OTHER CHARGES

Section 2.1. Rent

Tenant will pay to Landlord without previous demand therefor and without any setoff or deduction whatsoever, except as expressly provided in this Lease, the Initial Rent provided on Exhibit B, which is payable, when due, monthly, in advance, on or before the first (1st) day of each and every calendar month throughout the Term. The Rent will commence on the Effective Date. The first payment of Rent will be due on the Effective Date and upon that date Tenant will pay to Landlord the Rent set forth in Exhibit B for the month beginning on that date.

Section 2.2. Taxes

Commencing on the Rent Commencement Date and continuing throughout the Term, Tenant will pay promptly when due all taxes imposed upon the Demised Premises, including ad valorem taxes, Tenant's rent and business operation, and upon all personal property of Tenant.

Section 2.3. Utility Charges

Tenant will pay promptly, when due, all water service and supply fees, rates and charges, all sewer service and supply fees, rates and charges, and all charges for electricity, gas, heat, steam, hot and/or chilled water, air conditioning, ventilating, lighting systems, telephone, cable television, internet, and other utilities supplied to the Demised Premises, and any sewer or water fees, assessments, capacity charges, tap fees, meter deposits or fees, and hookup charges for the Demised Premises. If any such utilities or charges are not separately metered or assessed or are only partially separately metered or assessed and are used in common with other tenants in the Improvement District, Tenant will pay to Landlord, in addition to Tenant's payments of the separately metered charges, a proportionate share of such charges for utilities used in common based on the number of square feet of the Demised Premises as a percent of the total floor area of constructed building space leased to each tenant using such common facilities. Such payment will be made as monthly within fifteen (15) days of notice provided by the Landlord of the amount due.

ARTICLE III – CONSTRUCTION/DELIVERY OF DEMISED PREMISE

Section 3.1. Delivery of Demised Premises

**SINCE THE PROPERTY IS CURRENTLY OCCUPIED BY TENANT,
THIS ARTICLE IS INTENTIONALLY LEFT BLANK**

ARTICLE IV - USE OF DEMISED PREMISES

Section 4.1. Use of Demised Premises

Subject to and in accordance with all rules, regulations, laws, ordinances, statutes and requirements of all governmental authorities, the Fire Insurance Rating Organization, the Board of Fire Insurance Underwriters and Landlord's insurance carrier, Tenant will operate the Demised Premises solely under Tenant's Trade Name specified in Section 1.1(k) and use the Demised Premises only for the Permitted Use specified in Section 1.1(f).

During the Term, Tenant will actively and diligently operate its business therein in reputable manner and so as not to be a nuisance to the public.

Section 4.2. Additional Covenants of Tenant

Tenant's use of the Demised Premises will be subject at all times during the Term to reasonable rules and regulations adopted by Landlord (and not in conflict with any of the express provisions of this Lease) governing the use of any walks, driveways, passageways, signs, exteriors of buildings, lighting and other matters affecting other tenants in, and the general management and appearance of, the area. Tenant agrees to comply with all such rules and regulations upon notice to Tenant from Landlord. Tenant expressly agrees as follows:

- (a) RUBBISH AND TRASH. Tenant shall not permit the accumulation of rubbish, trash, garbage or other refuse in and around the Improvement District and/or Premises. Tenant agrees to keep all refuse in proper containers in the interior of the Premises and (i) to contract, at Tenant's expense, for its removal or (ii) if Landlord shall install compactors or dumpster(s) within the Improvement District, to use said compactor or dumpster(s) designated by Landlord at such times and in such manner as Landlord shall direct by notice to Tenant. If the Tenant is a restaurant or any other user that disposes of food waste, Tenant shall be required to store and dispose of all such food waste in vermin proof containers. In the event Tenant fails to remove any accumulation of rubbish within three (3) days after notice to remove the same, Landlord shall have the right to remove same, in which event the cost thereof shall be paid by Tenant as Additional Rent for the following month except that Landlord shall at no time be obligated to remove same, and may cancel this Lease if continual violations occur.
- (b) Tenant shall not make any modifications or improvements to the Demised Premises involving penetration of the roof without Landlord's prior written consent. All work must be in a first class and workman like manner, performed by licensed professional, and properly permitted by the City of Myrtle Beach or other governmental or regulatory agencies.
- (c) No radio or television antenna or other device will be erected on the roof or exterior walls of the Demised Premises or the Building without first obtaining in each instance the Landlord's consent in writing. Any antenna or device installed without such written consent will be subject to removal at Tenant's expense without notice at any time.
- (d) All loud speakers, televisions, phonographs, radios, tape players or other devices will be used in a manner that is in compliance with all COMB ordinances, including noise ordinances.

- (e) The plumbing facilities will not be used for any other purpose than that for which they are constructed; no foreign substance of any kind will be thrown therein, and the expense of any breakage, stoppage, or damage resulting from a violation of this provision will be borne by Tenant.
- (f)
- (g) Tenant will not burn any trash or garbage of any kind on the Demised Premises.
- (h) Tenant will keep any display windows or signs in or on the Demised Premises clean, maintained, and well-lit at all times. All signage must be in compliance with City Ordinances.
- (i) Tenant will keep and maintain the Demised Premises (including, without limitation, exterior and interior portions of all windows, doors, and all other glass) in a neat and clean condition.
- (j) Tenant will take no action which would violate Landlord's labor contracts, if any, nor create any work stoppage, picketing, labor disruption or dispute, or any interference with the business of Landlord or any other tenant or occupant in the area or with the rights and privileges of any customer or other person(s) lawfully in and upon said area nor will Tenant cause any impairment or reduction of the good will of the area.
- (k) Tenant will pay before delinquency all license or permit fees and charges of a similar nature for the conduct of any business in the Demised Premises.
- (l) Tenant will store and/or stock in the Demised Premises only such merchandise as Tenant is permitted to offer for sale in the Demised Premises pursuant to this Lease.
- (m) Tenant will not conduct or permit any fire, bankruptcy, auction, or "going out of business" sale (whether real or fictitious) on the Demised Premises without the prior written consent of Landlord, or utilize any unethical method of business operation.
- (n) Tenant will not perform or permit any act nor carry on nor permit any practice that may damage, mark, or deface the Demised Premises or any other part of the area.
- (o) Intentionally left blank.
- (p) Tenant will not place a load on any floor in the Demised Premises exceeding the floor load which such floor was designed to carry, nor will Tenant install, operate, or maintain on the Demised Premises any heavy item or equipment except in such manner as to achieve a proper distribution of weight.
- (q) Tenant will not install, operate, or maintain in the Demised Premises any electrical equipment which does not bear underwriter's approval, or which would overload the electrical system or any part thereof beyond its capacity for proper and safe operation as determined by Landlord. Further, Tenant will not operate any video games (or other electrical games) within the Demised Premises without the prior written consent of Landlord.
- (r) Tenant will not suffer, allow, or permit any vibration, noise, light, noxious odor, or other effect to emanate from the Demised Premises, or from any machine or other installation therein in violation of any City of Myrtle Beach ordinance, or otherwise suffer, allow, or permit the same to constitute a nuisance or otherwise interfere with the safety, comfort and convenience of Landlord or any of the other occupants of the Improvement District or their customers, agents or invitees.
- (s) Tenant will not use or occupy the Demised Premises in any manner or for any purpose that would injure the reputation or impair the present or future value of the Demised Premises, or the neighborhood in which the Demised Premises is located.
- (t) Tenant will not store, display, sell, or distribute, pornographic materials, or any dangerous materials

(including, without limitation, fireworks) unless specifically permitted and licensed and allowed by this Lease to do so.

- (u) If, during the Term, Landlord determines in its sole discretion that noxious and nauseating odors are invading adjacent premises and offending neighboring tenants, Landlord shall consider Tenant to be in default of this Lease. If Tenant does not cure such default within fifteen (15) days after notification from Landlord, Landlord shall have the right to terminate this Lease.
- (v) Tenant shall at no time place a cooler, refrigerator, or freezer container outside the Leased Premises without Landlord's express written permission.
- (w) With respect to food service operations within the Demised Premises, if any, Tenant shall obtain and maintain at all times during such operations a grade or class "A" rating (or such comparable rating if the rating schedule is changed); provided, however, if the sanitation rating drops below grade or class "A", Tenant shall immediately commence to regain an "A" rating and shall have the latter of: up to sixty (60) days to cause the rating to be improved to grade or class "A" or until such time as the Health Department re-inspects the Leased Premises and the condition that caused the rating to fall below and "A" rating, before Tenant shall be deemed to be in default hereunder. Tenant may set up outdoor seating in a mutually agreeable location on the Demised Premises at no additional rent so long as Tenant keeps area clean and clear of waste at its own expense and same is in accordance with City of Myrtle Beach ordinances.
- (x) Tenant shall not use the Demised Premises as a theatre, bowling alley, billiard parlor, or other place of recreation or amusement, day care facility, child care facility, preschool or children's nursery, any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana, whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant, without the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion.

Section 4.3. Enforcement Rights of Landlord

If Tenant fails to comply with any provision of Section 4.2, and such failure continues for a period of ten (10) days after written notice specifying the violation has been given by Landlord to Tenant, then in addition to any other equitable or legal remedies available to Landlord, Landlord may collect from Tenant on the first (1st) day of each calendar month, as Additional Rent, a sum equal to one-half (1/2) of the monthly Rent due at the time of the continued violation, as applicable, for the period during which Tenant fails to comply with Section 4.2, adjusted on a daily basis.

Section 4.4. Signs, Awnings, and Canopies

Tenant shall have the right to erect on the exterior and interior of the Premises, at its expense, any professionally prepared signage (electrical or otherwise) allowed by local codes and ordinances for the City of Myrtle Beach, to conduct its business subject to applicable State of South Carolina and City of Myrtle Beach code of laws, regulations and ordinances. All such signs shall be maintained in a good and safe condition and appearance by Tenant at its own expense. Upon the expiration or sooner termination of this Lease, Tenant shall, at its own expense, remove all signage from the Premises. Tenant shall repair and restore any damage to the Premises, either inside or outside, resulting from the erection, maintenance or removal of said signs, and in the event Tenant fails to do so, Landlord may make such repairs or removal which is not promptly made by Tenant and charge Tenant for the reasonable cost thereof. Tenant hereby agrees to pay such amounts within ten (10) days after written demand thereof by Landlord. The obligations of Tenant set forth in this Article shall survive the expiration or earlier termination of this Lease.

Section 4.5. Hazardous Materials

- (a) **In General.** During the Term, Tenant, its agents or representatives, will not use, generate, produce, transport, treat, bring upon, store, dispose of, or permit the escape or release in, on, under, about or from the Demised Premises, the Building or the Improvement District: (i) any hazardous wastes, hazardous substances, hazardous materials, toxic substances, hazardous air pollutants or toxic pollutants, as those terms are used in the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Clean Air Act and the Clean Water Act, or any amendments thereto, or any regulations promulgated thereunder; (ii) any "PCBs" or "PCB items" (as defined in 40 C.F.R., Section 761.3); or (iii) any "asbestos" (as defined in 40 C.F.R., Section 763.63) (collectively, "Hazardous Materials").
- (b) **Indemnity.** Tenant shall indemnify, protect, defend and hold Landlord (and its members, partners, joint venturers, shareholders, affiliates and property managers, and their respective managers, officers, directors, employees and agents) harmless from and against any and all claims, liability, cost, damage or expense (including, without limitation, reasonable attorney's fees and expenses, court costs and costs incurred in the investigation, settlement and defense of claims) arising out of, in connection with, or directly or indirectly arising out of the use, generation, manufacture, production, storage, treatment, release, disposal or transportation of Hazardous Materials by Tenant, or any successor, assignee or sublessee of Tenant, or their respective agents, contractors, employees, licensees, or invitees, on, under, about or from the Demised Premises, the Building including, but not limited to, all foreseeable and unforeseeable costs, expenses and liabilities related to any testing, repair, cleanup, removal costs, detoxification or decontamination and the preparation and implementation of any closure, remedial action, site assessment reports or other required plans in connection therewith deemed required, necessary or advisable by Landlord or any governmental authority, and any foreseeable or unforeseeable consequential damages. Any defense of Landlord pursuant to any indemnified matter shall be by counsel reasonably acceptable to Landlord. Neither the consent by Landlord to the use, generation, storage, release, disposal or transportation of Hazardous Materials, nor Tenant's strict compliance with all laws related to Hazardous Materials shall excuse Tenant from Tenant's indemnification obligations under this Section 4.5(b). The foregoing indemnity shall be in addition to and not a limitation of the other indemnification provisions of this Lease. Tenant's obligations under this Section 4.5(b) shall survive the expiration or earlier termination of this Lease.
- (c) **Reporting.** Tenant shall notify Landlord in writing immediately after any of the following: (i) Tenant has knowledge, or has reasonable cause to believe, that any Hazardous Materials have been released, discharged or located on, under or about the Demised Premises, the Building or the Improvement District, whether or not the same is in quantities that would otherwise be reportable to a public agency, (ii) Tenant receives any warning, notice of inspection, notice of violation or alleged violation, or Tenant receives notice or knowledge of any proceeding, investigation, order or enforcement action, under any law relating to Hazardous Materials concerning the Demised Premises, the Building or the Improvement District, or (iii) Tenant becomes aware of any claims made or threatened by any third party concerning the Demised Premises, the Building or the Improvement District respecting Hazardous Materials.
- (d) **Confirmation of Tenant's Knowledge.** Upon request from Landlord, at any time, Tenant shall promptly execute all affidavits, representations, and any other similar documents as Landlord or Landlord's mortgagee may request concerning Tenant's best knowledge and belief regarding the presence or absence, or the use, generation, storage, disposal or transportation of Hazardous Materials, under, about or from the Demised Premises, the Building or the Improvement District.

ARTICLE V - INSURANCE

Section 5.1. Insurance Required of Tenant

Tenant will obtain and maintain in full force during the Term the following insurance coverage with respect to the Demised Premises:

- (a) Commercial general liability insurance with limits of not less than Two Million (\$2,000,000.00) Dollars with respect to personal injury, and not less than One Million (\$1,000,000.00) Dollars with respect to property damage.
- (b) Insurance against all casualties included under standard insurance industry practices within the classification "Fire and Lightning, Extended Coverage, Vandalism and Malicious Mischief," and war risk insurance (if obtainable), each in an amount adequate to cover the full replacement value of all personal property, decorations, trade fixtures, furnishings, equipment, alterations, leasehold improvements and betterments, and all other items located or placed in the Demised Premises by Tenant.
- (c)
- (d) Business interruption insurance covering loss of Initial Rent, and all other sums due hereunder resulting from losses covered by the policies referred to in subparagraphs (b) and (c) above.
- (f) Workmen's compensation insurance covering all persons employed, directly or indirectly, in connection with any finish work performed by Tenant or any repair or alteration authorized by this Lease or consented to by Landlord, and all employees and agents of Tenant with respect to whom death or bodily injury claims could be asserted against Landlord or Tenant, as required by laws of the State where the Demised Premises are located or of the United States; provided, however, Landlord may, in its sole discretion, waive this requirement in the case of non-major finish work and/or non-major repairs or alterations (e.g., minor finish work not requiring a permit from any government authority).
- (g) Employer's Liability Insurance
 - Bodily Injury by Accident \$100,000 each accident
 - Bodily Injury by Disease \$500,000 policy limit
 - Bodily Injury by Disease \$100,000 each employee
- (h) Umbrella Liability - Each Occurrence and Aggregate \$2,000,000
- (i) EPLI in the amount of \$1,000,000

All the insurance required by this Section 5.1, except the workmen's compensation insurance required by subparagraph (f), will be written in the name of and will insure Landlord, any designee(s) of Landlord, and Tenant, and will be written by one or more responsible insurance companies satisfactory to Landlord and in form satisfactory to Landlord; all such insurance may be carried under a blanket policy covering the Demised Premises and any other of Tenant's stores (provided such blanket policies meet the requirements of this Section 5.1); all such insurance policies will contain endorsements that: (i) the policy may not be cancelled or amended with respect to Landlord or its designees except upon thirty (30) days prior written notice to Landlord and any such designees by the insurance company; (ii) Tenant will be solely responsible for payment of premiums and that Landlord or its designees will not be required to pay any premium for such insurance; and (iii) in the event of payment of any loss covered by such policy, Landlord or its designees will be paid first by the insurance company for Landlord's loss. All policies of insurance provided for herein shall be issued by insurance companies that have a general policyholder's rating of not less than "A" and a financial rating equivalent to a policyholder's surplus of at least One Hundred Million (\$100,000,000.00) Dollars, as rated in the most current available "Best's" Insurance Reports, and that have been admitted or qualified to do business in the state in which the Demised Premises are located by the insurance commission or other highest board, body or

official responsible for overseeing the insurance business in such state. Tenant's general liability policy as required in Section 5.1(a) shall contain cross-liability endorsements. All public liability, property damage or other casualty insurance policies shall be written as primary policies, not contributory with or secondary to coverage that Landlord may carry. The minimum limits of the comprehensive public liability policy hereinafter set forth will not limit or diminish Tenant's liability under this Lease. Tenant will deliver to Landlord at least fifteen (15) days prior to the Rent Commencement Date and thereafter at least fifteen (15) days prior to the expiration of any such policy, either a duplicate original or a certificate of insurance on all policies procured by Tenant in compliance with its obligations hereunder, together with evidence satisfactory to Landlord of the payment of the premiums therefor. All certificates of insurance delivered to Landlord shall contain an agreement by the company issuing said policy to give Landlord thirty (30) days' advance written notice of any cancellation, lapse, reduction or other adverse change respecting such insurance. If Tenant fails to obtain and provide any or all of the insurance required by this Section 5.1, then Landlord may, but will not be required to, purchase such insurance on behalf of Tenant and add the cost of such insurance as Additional Rent payable on demand.

All liability insurance policies required to be obtained and maintained by Tenant under this Lease will contain endorsements deleting from such policies the "Care, Custody and Control," the "Alterations and Extraordinary Repairs" and the "Contract Liability" exclusions and all other exclusions of similar import or effect, to the extent same are commercially reasonable and available, or, in the alternative, Tenant will obtain "Fire Legal Liability" coverage in addition to the liability coverage required by Section 5.1(a).

The minimum limits of the comprehensive public liability policy of insurance required by this Section 5.1 will be subject to increase at any time, and from time to time, after the commencement of the Lease Year, if Landlord deems it necessary for adequate protection. Within thirty (30) days after written demand therefor by Landlord, Tenant will furnish Landlord with a policy meeting the new requirements.

Tenant agrees, at its own expense, to comply with all rules and regulations of the Fire Insurance Rating Organization having jurisdiction of the Demised Premises and to comply with all requirements imposed by Landlord's insurance carrier, if any. If gas is used in the Demised Premises, Tenant will install at its expense both manual and automatic gas cutoff devices. So long as the cutoff devices do not materially affect Tenant's business

Tenant shall not do or cause to be done or permit on the Demised Premises or in the Building anything deemed extra hazardous on account of fire, and Tenant shall not use the Demised Premises or the Building in any manner which will cause an increase in the premium rate for any insurance in effect on the Building or a part thereof. If, because of anything done, caused to be done, permitted or omitted by Tenant or its agent(s), contractor(s), employee(s), invitee(s), licensee(s), servant(s), subcontractor(s) or subtenant(s) the premium rate for any kind of insurance in effect on the Building or any part thereof shall be raised, Tenant shall pay Landlord on demand the amount of any such increase in premium, but in no event shall the increase in premium be more than fifty (50%) percent of the existing premium amount, which Landlord shall pay for such insurance and if Landlord shall reasonably demand that Tenant remedy the condition which caused any such increase in an insurance premium rate, Tenant shall remedy such condition within five (5) days after receipt of such demand.

Section 5.2. Insurance Required of Landlord

Landlord will obtain and maintain in force during the Term the following insurance coverage:

- (a) Any other insurance policies that Landlord, in its sole discretion, deems necessary or desirable with respect to the Improvement District.

Nothing in this Section 5.2 will prevent the taking out of policies of blanket insurance which may cover real and/or personal property and improvements in addition to the Building of which the Demised Premises constitute a part; provided, however, that in all other respects each such policy will comply with the other provisions of this Section 5.2. Nothing contained herein will be deemed to require Landlord to insure those items that Tenant is required to insure pursuant to Section 5.1.

Section 5.3. Waiver of Subrogation

Landlord and Tenant will obtain from any insurer providing insurance to either Landlord or Tenant as required by this Lease, to cover the Demised Premises, the improvements therein or contents thereof, a waiver of any right of subrogation that such insurer of one party may acquire against the other by virtue of payment of any loss under such insurance. The waivers of subrogation will be effective so long as Landlord and Tenant are empowered to grant such waivers under the terms of their insurance policies without payment of any additional premium. The waivers will stand mutually terminated as of the date either Landlord or Tenant ceases to be empowered to grant same, unless the party who would be benefited by such waiver pays the extra cost for obtaining it, if it may be obtained at extra cost.

ARTICLE VI - REPAIRS AND MAINTENANCE

Section 6.1. Repairs by the Landlord

Landlord will keep and maintain in good order, condition, and repair throughout the Term the roof, exterior walls, foundation, and all structural components of the Demised premises. Tenant shall provide Landlord with written notice of any repairs needed and Landlord shall perform repairs or arrange for replacement in a reasonable time necessary for the completion of the project, any and all such repairs and replacements will be at Landlord's sole cost and expense.

Section 6.2. Repairs and Maintenance by Tenant

Tenant will keep and maintain in good order, condition and repair throughout the Term the Demised Premises including, without limitation: fixtures and equipment located therein; the exterior and interior portions of all doors, windows and glass (including plate glass and insulated glass); electrical wiring and conduits; plumbing and sewage facilities within the Demised Premises, including free flow of sewer lines therein; and interior walls, floors and ceilings, including compliance with applicable building codes relative to fire extinguishers; and all parking areas, including all pavement, landscaping, sidewalks, and entry ways. Any and all such repairs, alterations, replacements and modifications, ordinary and extraordinary, foreseen and unforeseen, will be at Tenant's sole cost and expense and will be made using materials and labor of kind and quality equal to the original work. All parts of the interior of the Demised Premises will be painted or otherwise decorated by the Tenant when reasonably necessary as determined by Landlord.

If (i) Tenant does not repair the Demised Premises properly as required hereunder to the reasonable satisfaction of Landlord within thirty (30) days after written notice from Landlord, or (ii) Landlord, in the exercise of its sole discretion, determines that emergency repairs are necessary, or (iii) repairs or replacements to the Demised Premises are made necessary by any negligent act or omission of Tenant, any subtenant or concessionaire of Tenant, or its and their respective agents, employees, contractors, invitees, licensees or visitors, then in any such event, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's merchandise, fixtures, or other property or to Tenant's business by reason thereof, and Tenant will pay to Landlord upon demand the reasonable cost of such repairs plus interest from the date of demand until the date paid at the rate specified in Section 11.11.

Before undertaking any alterations, additions, improvements or construction (including, without limitation, the initial construction of the Demised Premises) Tenant will obtain at its expense a public liability insurance policy (in addition to all other insurance required to be carried by Tenant hereunder) insuring Tenant and the Landlord and its assigns as named insureds against any liability which may arise on account of such proposed alterations, additions, improvements or construction on an occurrence basis with the minimum limits set forth in Section 5.1, and Tenant will require its contractors to obtain and maintain comprehensive public liability and damage insurance in the amounts set forth in Section 5.1 (a) and (b). The comprehensive public liability insurance will include "completed operations coverage."

All new equipment permanently installed by the Tenant in connection with the operation of the business in the Demised Premises will bear a one (1) year operational guarantee that will be provided in writing by the respective contractor prior to its installation.

Section 6.3. HVAC Maintenance

During the Term and all renewals and/or extensions thereof, Tenant shall at all times be solely responsible for maintaining and servicing the air conditioning, heating, and hot water systems and equipment within the Demised Premises. Any necessary replacement or repair of the air conditioning, heating, and hot water systems and equipment within the Demised Premises arising under circumstances other than Tenant's gross negligence shall be performed at Landlord's sole cost.

Section 6.4. Inspection

Landlord or its representatives will have the right to enter the Demised Premises during any business day during the Term, and at any time in an emergency. In cases that are related to formal Landlord/Tenant business and are non-emergent, Landlord shall give Tenant twenty-four (24) hours written notice before entering the Demised Premises.

Section 6.5. Obstructions

Tenant agrees to keep its loading facilities, if any, and the Public Areas immediately adjoining the Demised Premises free from trash, litter, or obstructions, and, in addition, if the Demised Premises opens onto an outside area, to keep said outside sidewalk area immediately adjoining the Demised Premises free from ice and snow.

Section 6.6 Grease Trap Maintenance

During the Lease Term and all renewals and/or extensions thereof, Tenant shall at all times be responsible for its pro-rata share cost of cleaning and maintaining any and all grease traps serving the Demised Premises, if any. (the "Grease Trap").

ARTICLE VII - ADDITIONS AND ALTERATIONS

Section 7.1. By Landlord

This section left intentionally blank.

Section 7.2. By Tenant

Provided that Tenant is not then in default beyond any cure period under this Lease, Tenant may from time to time, at its own expense and upon compliance with the requirements of Section 6.2, alter, renovate, or improve the interior of the Demised Premises. All such work will be performed in a good and workmanlike manner; in accordance with accepted building practices and applicable laws, including, but not limited to, building codes and zoning ordinances; and so as not to weaken or impair the strength or lessen the value of the Building in which the Demised Premises are located. Prior to commencement of all such work, Tenant will obtain Landlord's prior written approval of the plans and specifications therefor, and will cause Landlord's requirements for bonding, insurance, and other contractor requirements to be satisfied. Tenant will make no changes, alterations, or improvements affecting the exterior of the Demised Premises or the structure of the Building within which the Demised Premises are located.

ARTICLE VIII -DAMAGE, DESTRUCTION OR CONDEMNATION OF THE DEMISED PREMISES

Section 8.1. Damage or Destruction.

If all or any part of the Demised Premises is damaged or destroyed by fire or other casualty, this Lease will continue in full force and effect, unless terminated as provided below, and Landlord will repair, restore, or rebuild the Demised Premises to its condition at the time of the occurrence of the loss. Rent shall be held in abeyance during this time until the Tenant returns to business or the Lease is terminated.

Tenant agrees to notify Landlord in writing within thirty (30) days of Tenant's opening date in the Demised Premises of the actual cost of all permanent leasehold improvements and betterments installed or to be installed by Tenant in

the Demised Premises (whether those improvements have been paid for entirely or partially by Tenant), but exclusive of Tenant's personal property, movable trade fixtures, and contents. Tenant will give similar notifications to Landlord not less than thirty (30) days prior to the commencement of any proposed alterations, additions, or improvements to the Demised Premises subsequent to the initial construction of the Demised Premises. If Tenant fails to comply with the foregoing provisions, any loss or damage Landlord will sustain by reason thereof will be borne by Tenant, and will be paid immediately by Tenant upon receipt of a bill therefor and evidence of such loss, and in addition to any other rights or remedies reserved by Landlord under this Lease, Landlord's obligations under this Article VIII to repair, replace and/or rebuild the Demised Premises will be deemed inapplicable. In lieu thereof, Landlord may, at its election, either restore or require Tenant to restore the Demised Premises to the condition that existed prior to such loss. Notwithstanding the foregoing, if insurance proceeds are available under Landlord's required insurance, then Landlord shall make the proceeds available exclusively for such repairs despite Tenant's lack of providing notice.

Notwithstanding anything to the contrary contained in this Section 8.1 or elsewhere in this Lease, Landlord, at its option, may terminate this Lease by written notice to Tenant if:

- (a) The Demised Premises or the Building in which the Demised Premises are located will be damaged or destroyed as a result of an occurrence which is not covered by Landlord's insurance, or if Landlord reasonably determines it is economically infeasible to reconstruct and/or operate the Improvement District; or
- (b) Any or all of the buildings or Common Areas of the Improvement District are damaged (whether or not the Demised Premises are damaged) to such an extent that, in the sole judgment of Landlord, the Improvement District cannot be operated as an economically viable unit.

If the Demised Premises are damaged or destroyed, and Landlord does not elect to terminate this Lease, Landlord and Tenant will commence their respective obligations under this Article as soon as is reasonably possible, and prosecute the same to completion with all due diligence. Tenant covenants and agrees to reopen for business in the Demised Premises within thirty (30) days after notice from Landlord that the Demised Premises are ready for re-occupancy.

In the event of any termination of this Lease under the provisions of Section 8.1, this Lease will terminate at the end of the calendar month in which such notice of termination is given.

No damage or destruction to the Demised Premises will allow Tenant to surrender possession of the Demised Premises, or affect Tenant's liability for the payment of rents or charges, or any other covenant contained in this Lease, except as may be specifically provided in this Lease. Notwithstanding the foregoing, Initial Rent will be abated proportionately to the degree to which Tenant's use of the Demised Premises is impaired during the period of any damage, repair, or restoration provided for in this Article; provided, however, that Initial Rent and other sums due hereunder will not be abated to an extent which would render Initial Rent to be less than the monthly amount of insurance proceeds to be paid to Landlord under the business interruption policy described in Section 5.1(d); and provided further that if Landlord elects to repair any damage to the Demised Premises, any abatement of Initial Rent will end fifteen (15) days after notice by Landlord to Tenant that the Demised Premises have been repaired. Tenant will continue the operation of its business on the Demised Premises during any such period to the extent reasonably practical from the standpoint of prudent business management. Except for the abatement of Initial Rent provided above, Tenant will not be entitled to any compensation or damage for loss in the use of the whole or any part of the Demised Premises, and/or any inconvenience or annoyance occasioned by any damage, destruction, repair, or restoration.

The proceeds of all insurance carried by Tenant on its property shall be held in trust with Tenant's attorney of choosing for the purpose of said repair and replacement. Tenant will give to Landlord prompt written notice of any damage to or destruction of a portion of the Demised Premises resulting from fire or other casualty.

Section 8.2. Condemnation

All compensation awarded or paid upon such a total or partial taking of the Demised Premises or the Building within which the Demised Premises are located will belong to and be the property of Landlord without any participation by Tenant. Tenant will, however, be entitled to claim, prove, and receive in such condemnation proceedings such award

as may be allowed for relocation costs, fixtures, and other equipment installed by it, but only to the extent that the same will not reduce Landlord's award, and only if such award will be in addition to the award for the land and Building (or portion thereof) containing the Demised Premises. To the extent that the Tenant has a claim in condemnation proceedings, as aforesaid, Tenant may claim from the condemning authority, but not from Landlord, such compensation as may be recoverable by Tenant.

ARTICLE IX - DEFAULT

Section 9.1. Default by Tenant

If Tenant fails to pay any Initial Rent, Renewal Rent, or other payment when due under this Lease, and such failure to pay continues for ten (10) days after written notice from Landlord of such failure, then Tenant shall be in default of this Lease (a "Monetary Default"). If after thirty (30) days after delivery by Landlord to Tenant of written notice of non-performance, Tenant fails to perform any other of the terms of this Lease to be observed or performed by Tenant, or if Tenant fails to cure any breaches of any of Tenant's representations or warranties contained herein, or if Tenant becomes bankrupt or insolvent, or files any debtor proceedings or files or has filed against it in any court pursuant to any statute either of the United States or of any state a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property, or if Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement or suffers this Lease to be taken under any writ of execution or attachment, or if this Lease passes to or devolves upon, by law or otherwise, a person or entity other than Tenant, except as specifically permitted in this Lease, then in any one or more of such events Tenant shall be in default of this Lease (each a "Non-Monetary Default") (both Monetary Default and Non-Monetary Default referred to herein separately and collectively based on the context as a "Default").

Section 9.2. Landlord's Rights on Default

If Tenant does not cure its Default in the manner provided in Section 9.1 or otherwise provided in this Lease, or if Tenant is in Default (regardless of whether such Default is cured) more than two (2) times in any twelve (12) month period during the Term, Landlord may apply the Security Deposit to Tenant's obligations under this Lease without thereby diminishing or affecting any of Tenant's obligations for the payment of Initial Rent or other charges, and exercise any of the following rights without further notice or demand of any kind to Tenant or any other person, except as required by applicable state law:

- (a) Landlord may terminate this Lease and Tenant's right to possession of the Demised Premises and re-enter the Demised Premises, take possession thereof, including all additions, alterations, and improvements, and remove all persons from the Demised Premises, by any suitable action or proceeding at law, or by force or otherwise, without being liable for any prosecution therefore or damages resulting from such action, following which Tenant shall have no further claim thereon or hereunder;
- (b) Without terminating this Lease and the obligations of Tenant hereunder, Landlord may terminate Tenant's right to possession of the Demised Premises and re-enter the Demised Premises and occupy the whole or any part thereof; or
- (c) Even though Landlord may have re-entered the Demised Premises without terminating this Lease, in accordance with subsection (b) above, Landlord may elect thereafter to terminate this Lease.

Should Landlord have re-entered the Demised Premises under the provisions of Section 9.2(b), Landlord shall not be deemed to have terminated this Lease, or to have accepted surrender of the Demised Premises by any such re-entry, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant further covenants that the service by Landlord of any notice pursuant to the unlawful detainer or eviction statutes of the state in which the Demised Premises are located, and the surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to, the serving of such notice and such election is evidenced by a written notice to Tenant) be deemed to be a termination of this Lease. In the event of any re-entry or taking possession of the Demised Premises as aforesaid, Landlord shall have the right, but not the obligation, to

remove from the Demised Premises all or any part of the merchandise, improvements, or personal property located therein, and to place the same in storage at a public warehouse at the expense and risk of Tenant. However, prior to removal by Landlord and irrespective of Landlord's possession rights under 9.2(a), Tenant has the right, but is not required, to remove all FF&E, interior and exterior signage, floor and wall tile, lobby lighting, counters, millwork, soffits, proprietary software, trade or trademarked property, and design elements, and paint the premises a color reasonably acceptable to the landlord, at the expiration or earlier termination of the Lease. Upon any such re-entry, regardless of whether Landlord terminates this Lease, Landlord may, at its option, repair, alter, remodel, and change the character of the Demised Premises as it may deem fit, and at any time re-let the Demised Premises or any part or parts thereof, as the agent of Tenant or otherwise. The exercise by Landlord of any right pursuant to this Section 9.2 shall not relieve Tenant from the obligation to make all payments of Initial Rent or other charges, and to fulfill all other covenants required by this Lease, at the time and in the manner provided in this Lease, regardless of whether this Lease has been terminated by Landlord. If Landlord so desires all current and future monetary obligations of Tenant under this Lease (including, but not limited to, Initial Rent and Additional Rent) will become immediately due and payable. Tenant, throughout the remainder of the Term hereof will pay Landlord, no later than the last day of each month during the Term, the then current excess, if any, of amounts due from Tenant under this Lease over amounts received by Landlord from such re-letting, if any. Landlord will be the sole judge as to whether or not a proposed tenant is suitable and acceptable. Notwithstanding the foregoing, this Lease will not be terminated unless Landlord gives to Tenant express written notice of its exercise of its right to terminate because of a Default. In the event Landlord elects to terminate this Lease, then this Lease and the Term will terminate and come to an end on the date specified in such notice of termination given by Landlord, and Tenant will quit and surrender the Demised Premises to Landlord as if the Term ended by the expiration of the time fixed herein, but Tenant will remain liable as provided in this Article IX.

In the event of a breach or Default by Tenant of any of the covenants or provisions of this Lease, Landlord will have, in addition to any other remedies which are available to it, the right to invoke any remedy allowed at law or in equity to enforce Landlord's rights or any of them as if re-entry and other remedies were not provided in this Lease.

Section 9.3. Landlord's Damages

Should Landlord terminate this Lease or Tenant's right to possession of the Demised Premises pursuant to the provisions of Section 9.2, Landlord may recover from Tenant, as damages, all of the following:

- (a) Any unpaid Rent that had been earned at the time of such termination until such time that Landlord releases the property;
- (b) All current and future monetary obligations of Tenant under this Lease (including, but not limited to, Rent);
- (c) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease, or which in the ordinary course of things would be likely to result from such failure, including, without limitation, any costs or expenses (including reasonable attorneys' fees) incurred by Landlord in (i) retaking possession of the Demised Premises, (ii) maintaining or preserving the Demised Premises after such Default, (iii) preparing the Demised Premises for re-letting to a new tenant, including repairs to the Demised Premises for such re-letting, (iv) re-letting the Demised Premises (including leasing commissions) and (v) enforcing Tenant's obligations under this Lease; and

Section 9.4. Non-Waiver Provisions

The failure of Landlord to insist upon strict performance of any of the terms, conditions, and covenants of this Lease will not be deemed a waiver of any rights or remedies that Landlord may have, and will not be deemed a waiver of any subsequent breach or Default. In particular, the receipt by Landlord of Rent or other payment with knowledge of the breach of any covenant of this Lease will not be deemed a waiver of such breach, and no provision of this Lease will be deemed to have been waived by Landlord unless such waiver is in writing and signed by Landlord.

The maintenance of any action or proceeding to recover possession of the Demised Premises, or any installment or installments of Initial Rent or any other monies that may be due or become due from Tenant to Landlord, will not preclude Landlord from thereafter instituting and maintaining subsequent actions or proceedings for the recovery of possession of the Demised Premises or of any other monies that may be due or become due from Tenant. Any entry or re-entry by Landlord will not be deemed to absolve or discharge Tenant from liability under this Lease.

Section 9.5. Force Majeure / Inability to Perform

Landlord and Tenant will be excused for the period of any delay and will not be deemed in Default with respect to the performance of any of the terms, covenants, and conditions of this Lease when prevented from so doing by cause or causes beyond such party's control, which will include, without limitation, inability of such party to obtain any or all of its required permits, approvals, licenses, variances, financing, or other matters to begin construction of the Improvement District and/or Demised Premises, weather related delays, all labor disputes, governmental regulations or controls, fire or other casualty, inability to obtain any of the material or services, acts of God, or any other cause, not within the reasonable control of the such party, including acts of war, terrorism and/or bioterrorism (collectively, "Event of Force Majeure"). This Section 9.5 will not apply to or modify Tenant's obligations under this Lease to make prompt payment to Landlord of Initial Rent, and other charges due hereunder. Any issues related to COVID-19 are not included as a Force Majeure.

Section 9.6. Personal Property

In the event of any re-entry or taking possession of the Demised Premises as provided in this Article IX, Landlord shall have the right, but not the obligation, to remove therefrom all or any part of the merchandise or personal property located therein, and to place the same in storage at a public warehouse at the expense and risk of Tenant. However, prior to removal by Landlord and irrespective of Landlord's possession rights under 9.2(a), Tenant has the right, but is not required, to remove all FF&E, interior and exterior signage, floor and wall tile, lobby lighting, counters, millwork, soffits, proprietary software, trade or trademarked property, and design elements, and paint the premises a color reasonably acceptable to the landlord, at the expiration or earlier termination of the Lease. In any event Tenant shall not remove any property that is affixed to the Demised Premises, and if it so shall remove, same shall be done as to not damage the Demised Premises so they can be returned to Landlord in the same condition as possession was turned over to Tenant, general wear and tear expected.

Section 9.7. Default by Landlord

Landlord will in no event be in Default in the performance of any of its obligations contained in this Lease unless and until Landlord will have failed to perform such obligation within thirty (30) days, or such additional time as is reasonably required to correct any such Default, after notice by Tenant to Landlord properly specifying wherein Landlord has failed to perform any such obligation. Provided further, in no event shall Landlord be liable to Tenant for any incidental or consequential damages, including but not limited to lost profits. Provided further, in the event of a successful judgment against Landlord for a Default in Landlord's obligations, any monetary award in favor of Tenant shall be limited to 150% of the verifiable amount that Tenant has expended on the upfitting of the interior of the Demised Premises, plus reasonable attorney's fees and cost of litigation. Notwithstanding anything to the contrary contained in this Lease, in the event of a Landlord Default for failure to deliver the Demised Premises to Tenant in accordance with Article III and/or for the failure of Landlord to acquire fee simple title to the Improvement District, Tenant's sole remedy shall be to terminate this Lease, and Tenant shall not be entitled to seek any other remedies at law or in equity.

Section 9.8. Landlord's Exemption from Liability

Landlord shall not be liable for injury to Tenant's business or loss of income or for damage that may be sustained by the person, merchandise, or personal property of Tenant, its employees, invitees, customers, agents, or contractors or any other person in or about the Demised Premises, caused by or resulting from fire, steam, electricity, gas, water, or rain, which may leak or flow from or into any part of the Demised Premises, or from the breakage, leakage, obstruction or other defects of any utilities servicing the Demised Premises, HVAC system, or other components of the Demised Premises, the Building or the Improvement District, except to the extent that such damage or loss is caused by Landlord's negligence or misconduct. Unless caused by the Landlord's action or failure to act, Landlord shall not be

liable in damages or otherwise for any discontinuance, failure, or interruption of service to the Demised Premises of any utilities or the HVAC system, and Tenant shall have no right to terminate this Lease or withhold Rent because of the same. Landlord shall not be liable for any damages arising from any use, act, or failure to act of any other tenant or occupant, if any, of the Improvement District, unless the action of any other tenant is known to the Landlord to be dangerous, and the Landlord fails to take reasonable steps to eliminate the danger.

ARTICLE X TERMINATION

Section 10.1 Termination by the Tenant

At any time during its tenancy, Tenant shall have the right to terminate its Tenancy and vacate the Property after providing thirty (30) day notice in writing to the Landlord. Tenant shall remove all of its furniture, fixtures, equipment, and other personal property by the end of its tenancy. Upon Termination of the lease and Vacating of the Property by Tenant, all Tenant's obligations for future rent, utilities, and real estate taxes will be terminated.

Section 10.2 Termination by Landlord

After the end of the Initial Term of this Lease, the tenancy shall become a month-to-month, at the current rent and under the same terms. The Landlord shall provide sixty (60) day written notice to Tenant that the month-to-month tenancy will end.

ARTICLE XI - OTHER PROVISIONS

Section 11.1. Definition and Liability of Landlord

The term "Landlord" as used in this Lease will be limited to mean the City of Myrtle Beach, its successors and assigns, and in the event of any transfer or transfers of Landlord's interest (such right being expressly permitted without the need of any prior consent of Tenant) in the Building of which the Demised Premises constitute a part, then Landlord (and in the case of any subsequent transfers, the then grantor) will be automatically freed and relieved from and after the date of said transfer of all liability for the performance of any covenants, conditions, and agreements on the part of Landlord under this Lease accruing after said date. It is the intent of Landlord and Tenant that the covenants, conditions, and agreements contained in this Lease to be performed by Landlord will be binding on Landlord, its successors and assigns, only during their respective periods of ownership.

Section 11.2. Relationship of the Parties

Nothing contained in this Lease will be deemed or construed as creating the relationship of principal and agent, or a partnership, or joint venture between the parties hereto. It being understood and agreed that neither the method of computing rents, nor any other provision contained herein, nor any acts of the parties hereto will be deemed to create any relationship between the parties other than that of Landlord and Tenant.

Section 11.3. Security Deposit

Upon execution of this Lease, Tenant shall deposit with Landlord as security for the performance by Tenant of the terms of this Lease the Security Deposit set forth in Section 1.1(h). Landlord may use, apply, or retain (without liability for interest) during the Term the whole or any part of the Security Deposit to the extent required for the payment of any Rents or other sums which Landlord may expend or any damage Landlord may suffer by reason of Tenant's Default in respect of any of the terms of this Lease, including, but not limited to, any deficiency or damage incurred in re-letting the Demised Premises. In that event, Tenant will pay to Landlord, upon demand, the amount necessary to replenish the Security Deposit to the amount set forth in Section 1.1(h). The covenants in this Section 11.3 are personal covenants between Landlord and Tenant, and not covenants running with the land, and in no event will Landlord's mortgagee(s) or any purchaser at a foreclosure sale or a sale in lieu of foreclosure be liable to Tenant for the return of the Security Deposit.

Provided Tenant complies with all the terms of this Lease, the Security Deposit will be repaid to Tenant by Landlord at the end of the Term of this Lease, or as provided in Section 1.1(h). In the event of a sale of the Improvement District or assignment of this Lease by Landlord to any person other than a mortgagee, Landlord will have the right to transfer the Security Deposit to its vendee or assignee, subject to the provisions of this Lease, and thereupon Landlord will be released from any liability with respect to the Security Deposit.

Tenant will not assign or encumber its interest in the Security Deposit, and neither Landlord nor its successors and assigns will be bound by any attempted assignment or encumbrance.

Section 11.4. Indemnity

Tenant, during the Term and extension or renewals thereof, and any period in which Tenant occupies or uses the Demised Premises, will indemnify, defend, and hold harmless Landlord, its agents, servants, and employees from and against any and all claims and demands, whether for injuries to persons or loss of life, or damage to property, related to or arising in any manner whatsoever out of the use and occupancy of the Demised Premises by Tenant, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees, concessionaires, invitees, licensees, and customers. If Landlord will, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant will protect and hold Landlord harmless and will pay all costs, expenses, and attorney's fees incurred or paid by Landlord in connection with such litigation.

Landlord shall have no duty to Tenant to indemnify, defend, or hold harmless.

Section 11.5. Damage to Property or Persons

Landlord will not be liable for any loss of or damage to property of Tenant or of others located in the Demised Premises, by theft or otherwise, nor for any loss or damage whatsoever to any property which Tenant could remove at the end of the Term as provided in Section 11.7. Landlord will not be liable for any injury or damage to persons or property or to the interior of the Demised Premises resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, snow, or leaks from any part of the Demised Premises or from the pipes, appliances, or plumbing works or from the roof, street, or subsurface, or from any other place or by dampness or by any other cause of whatever nature, except as a result of the negligence of the Landlord. Landlord will not be liable for any such injury or damage caused by other tenants or any person(s) either in the Demised Premises, or by occupants of property adjacent to the Demised Premises, or by the public, or by operations in the construction of any private, public, or quasi-public work. Landlord will not be liable for any latent defect in construction. Landlord will not be responsible for damage or loss of property of Tenant kept or stored on the Demised Premises.

Section 11.6. Assignment or Subletting

Tenant may not assign this Lease or any part of the Demised Premises.

If Tenant is a corporation or partnership, then a transfer (other than a transfer by inheritance) of more than fifty (50%) percent of the voting stock or the partnership interests in Tenant (in one transaction or a series of transactions), or a merger, consolidation, dissolution, or other reorganization of Tenant will be deemed an assignment of this Lease for the purposes of this Section 11.6, and will be prohibited without the prior written consent of Landlord. This paragraph will not be applicable to any corporation which has all of its outstanding voting stock listed on a national securities exchange.

Any assignment or sublease purportedly consummated in violation of the provisions of this Section 11.6 shall be null and void, and of no force or effect.

Section 11.7. Surrender of Premises

At the expiration or earlier termination of the Term, Tenant will surrender the Demised Premises to Landlord in as good condition as when received, or in such better condition as the Demised Premises may be put during the Term, excepting ordinary wear and tear or damage by fire and other casualty resulting in termination of this Lease. Tenant will surrender all keys for the Demised Premises to Landlord at the place then fixed for the payment of rent, and will inform Landlord of all combinations on locks, safes, and vaults, if any, in the Demised Premises. Tenant's obligation to observe or perform this covenant will survive the expiration or other termination of this Lease.

Prior to the expiration or earlier termination of this Lease, Tenant will remove any and all trade fixtures, equipment, and other unattached items which Tenant may have installed in the Demised Premises, including, but not limited to, counters, shelving, show cases, chairs, and unattached movable machinery purchased or provided by Tenant, and which are susceptible of being moved without damage to the Building of which the Demised Premises are a part. Tenant will promptly repair any damage to the Demised Premises caused by its removal of such fixtures and movables. If Tenant does not make such repairs, Tenant will be liable for and agrees to pay, as Additional Rent, upon demand, Landlord's costs and expenses in making such repairs. Tenant will not remove any plumbing or electrical fixtures or equipment, heating or air conditioning equipment, floor coverings (including, but not limited to, wall-to-wall carpeting), walls or ceilings, all of which will be deemed to constitute a part of the interest and estate of Landlord, nor will Tenant remove any fixtures or machinery that were furnished or paid for by Landlord, whether initially installed or replaced. The Demised Premises will be left in a broom clean condition. If Tenant fails to remove its trade fixtures or other property as provided in this Section 11.7, the fixtures and other property not removed by Tenant will be deemed abandoned by Tenant, and at the option of Landlord will become the property of Landlord, and may be removed or sold or otherwise disposed of, in which event the proceeds of such sale or other disposition will belong to Landlord.

Section 11.8. Holdover by Tenant

If Tenant fails to surrender the Demised Premises upon the termination of this Lease, or the expiration of the Term, the holding over will be deemed to have created a tenancy at will, and there will be no renewal of this Lease or exercise of an option by operation of law; provided, however, any holding over by Tenant shall be on a month-to-month basis, and Tenant shall be required to pay one hundred fifty (150%) percent of the Annual Rent paid during the last two (2) months of the Term.

If Tenant fails to surrender the Demised Premises upon the termination of this Lease, in addition to any other liabilities to Landlord accruing from such failure, Tenant will indemnify Landlord and hold Landlord harmless from loss or liability resulting from such failure, including, without limitation, any claims made by any succeeding tenant founded on such failure.

Section 11.10. Liens

- (a) **General.** Tenant will discharge any lien filed against the Demised Premises, or any part thereof, for work done or materials furnished at Tenant's request with respect to the Demised Premises within ten (10) days after such lien is filed. If Tenant fails to keep this covenant, in addition to any other remedies available to Landlord under this Lease or otherwise, Landlord may at its option discharge such lien, in which event Tenant agrees to pay Landlord a sum equal to the amount of the lien thus discharged by Landlord plus all costs and expenses, including, without limitation, attorney's fees and court costs, incurred by Landlord in discharging the lien.
- (b) **Contest of Lien.** If Tenant desires to contest the claim of any lien, Tenant shall (i) either post a release bond issued by a responsible corporate surety as prescribed by law or furnish Landlord with adequate security for the amount of the claim, plus estimated costs and interest, and (ii) promptly pay or cause to be paid any and all sums awarded to the claimant on its suit.
- (c) **Landlord's Right to Cure.** If Tenant fails to provide security for or satisfaction of any lien, then Landlord, in addition to any other rights or remedies it may have under this Lease or at law or in equity, may (but shall not be obligated to) discharge said lien by (i) paying the claimant an amount sufficient to settle and

discharge the claim, (ii) posting a release bond, or (iii) taking such action as Landlord shall deem appropriate, and Tenant shall pay to Landlord on demand (and as Additional Rent hereunder) all costs incurred by Landlord in settling and discharging such lien (including reasonable attorneys' fees and bond premiums).

- (d) **Notice of Non-Responsibility.** Landlord shall not be responsible or liable for payment for any work performed for or at the request of the Tenant at the Demised Premises, or materials provided to the Tenant used in the improvement of the Demised Premises, whether such work is done with the consent or approval of the Landlord. Landlord or its representatives shall have the right to go upon and inspect the Demised Premises at all reasonable times, and shall have the right to post and keep posted thereon notices of non-responsibility or such other notices that Landlord may deem to be proper for the protection of Landlord's interest in the Demised Premises. Tenant shall give Landlord at least ten (10) days advance written notice of its intention to commence any work that might result in a lien against the Demised Premises.

Section 11.11. Interest and Late Charges.

If Tenant fails to pay, when due and payable, any installment of Initial Rent or any other sum payable to Landlord under the terms of this Lease, the unpaid amount will bear interest at the greater (i) of twelve (12%) percent per annum or (ii) the maximum interest rate permitted under applicable law, from the date due to the date of payment. In addition, if Tenant fails to pay any monthly installment of Initial Rent by the fifth (5th) day of the month in which it is due, a late charge of Twenty-Five and No/100 (\$25.00) Dollars will be assessed. Notwithstanding the foregoing, in no event may any late charge and/or interest provided in this Section 11.11 exceed the maximum permitted by law or be imposed prior to the date permitted by law. Notwithstanding any other provision of this Lease, installments of Rent and other amounts will not be deemed to have been paid by Tenant unless and until the payment is actually received by Landlord.

Section 11.12. Consents

Where under the terms of this Lease, the consent or approval of Landlord will be required, such consent or approval will be granted in Landlord's sole discretion, unless otherwise expressly provided. With respect to any provision of this Lease which either expressly provides or is held to provide that Landlord will not unreasonably withhold or unreasonably delay any consent or approval, Tenant will not be entitled to make any claim for, and Tenant hereby expressly waives any claim for, damages incurred by Tenant by reason of Landlord's failure to comply with that provision, it being understood and agreed that Tenant's sole remedy for such failure will be an action for specific performance.

Section 11.13. Waiver of Rights of Redemption

Tenant expressly waives any and all rights of redemption granted by or under any present or future laws if Tenant is evicted or dispossessed for any cause, or if Landlord obtains possession of the Demised Premises by reason of the violation by Tenant of any of the terms, covenants, and conditions of this Lease or otherwise.

Section 11.14. Notices

Any notice or communication required or permitted under this Lease will be deemed given when delivered in person (hand delivered), or sent by prepaid, registered or certified mail, return receipt requested, or sent by an overnight delivery service where a signature of receipt is required for delivery, or via facsimile with confirmation of transmittal, to the respective addresses of the parties set forth in Section 1.1(i), or to such other address as either party may designate from time to time by ten (10) days' written notice to the other party.

Section 11.15. Recording and Short Form Lease

Neither party will record this Lease. However, the Parties agree to execute, acknowledge, and deliver a Memorandum of Lease setting forth the commencement and termination dates of the Term, and incorporating such other provisions (exclusive of provisions dealing with monetary terms) as the Parties may desire to incorporate therein; provided,

however, Tenant agrees to promptly subordinate the Memorandum to any future financing documents or real estate transactions impacting the Improvement District. All recording costs, fees, or charges due and payable upon the recording of such Memorandum of Lease (including, without limitation, all taxes due or collectable upon such recording) will be paid by the Landlord.

Section 11.16. Entire and Binding Agreement

This Lease contains all of the agreements between the Parties with respect to the Lease of the Demised Premises, and it may not be modified in any manner other than by agreement in writing, signed by both parties and their successors in interest. All prior conversations or writings between the Parties or their representatives with respect to the Demised Premises are merged in this Lease and extinguished. Tenant acknowledges that it has not relied on any estimates, representations, or statements of opinion or fact by Landlord, or its agents or employees, in entering into this Lease, except as may be expressly provided in this Lease. The terms, covenants, and conditions contained in this Lease will inure to the benefit of and be binding upon Landlord and Tenant and their respective successors and assigns, except as may be otherwise expressly provided in this Lease.

Section 11.17. Provisions Severable

If any term or provision of this Lease or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected thereby and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

Section 11.9. No Presumption, Captions

Although the provisions of this Lease were drafted primarily by Landlord, the parties hereto agree that such fact shall not create any presumption, construction or implication favoring the position of either Landlord or Tenant. The Parties agree that any deletion of language from this Lease prior to its execution by Landlord and Tenant shall not be construed to have any particular meaning or to raise any presumption, construction or implication, including, without limitation, any implication that the Parties intended thereby to state the opposite of the deleted language. Except for the captions serving as defined terms in Section 1.1 herein, the captions contained in this Lease are for convenience and reference only, and will not be deemed a part of this Lease or construed as in any manner limiting or amplifying the terms and provisions of this Lease to which they refer.

Section 11.20. Exhibits

All Exhibits attached to this Lease are incorporated herein by this reference, and made a part hereof.

Section 11.21. Americans with Disabilities Act

Tenant, in its use, upfitting, construction, and/or repair of the Demised Premises, will at all times comply with the terms and provisions of the Americans with Disabilities Act. Any such violation thereof by Tenant will be deemed an event of Default hereunder, and Tenant hereby fully indemnifies Landlord for any losses or costs associated therewith.

Section 11.22. Right to Lease

Landlord shall have the absolute right to lease or permit the use or occupancy of space owned by Landlord, and Landlord shall determine same in its sole and absolute judgment. Tenant does not rely on the fact, nor does Landlord represent, that there shall be any specific occupants or minimum occupancy level of space in the Improvement District at any time.

Section 11.23. Rights of Light, View or Air

This Lease does not grant any rights to light from, or view, or air over, adjacent property, and any diminution or shutting off of light, view, or air by any structure that may be erected adjacent to the Building or the Improvement District shall not affect this Lease or impose any obligation or liability upon Landlord.

Section 11.24. Claims by Brokers

Tenant warrants that all negotiations with respect to this Lease (including, without limitation, preliminary consideration of the Demised Premises, relevant economics and final Lease provisions) were accomplished without the aid, intervention, or employment of any broker or finder of any kind. Tenant shall indemnify, protect, defend, and hold Landlord (and its partners, joint venturers, affiliates, shareholders and property managers, and their respective officers, directors, employees and agents) harmless from and against any and all claims arising out of or in connection with any claims made by any person claiming to be a broker or finder with regard to this Lease as a result of the activities or agreements of Tenant, including, without limitation, claims for commissions and all costs of enforcing this indemnity against Tenant, and including payment of a commission to the Broker. Landlord affirms that no broker represents the Landlord.

Section 11.26. Warranty of Authority

If Tenant is a corporation or other entity, the person or persons executing this Lease on behalf of Tenant represent, covenant, and warrant to Landlord as of the date Tenant executes and delivers this Lease that: (a) Tenant is a duly constituted corporation or other entity in good standing and qualified to do business in the state in which the Demised Premises are located; (b) Tenant has paid all applicable franchise and corporate taxes; (c) Tenant will file when due all forms, reports, fees, and other documents necessary to comply with applicable laws; and (d) the signatories signing on behalf of Tenant have the requisite authority to bind Tenant pursuant to Tenant's Bylaws or other Operating Agreement or a certified copy of a Resolution authorizing the same by Tenant's Board of Directors.

Section 11.27. Guaranty

Intentionally left blank

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written, each acknowledging receipt of an executed counterpart hereof.

LANDLORD:

City of Myrtle Beach, a body politic

By: _____

Name: _____

Title: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGEMENT

COUNTY OF HORRY)

I, the undersigned Notary Public, do certify that _____, the authorized representative of the within named Landlord, personally appeared before me, and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the within Lease.

Witness my official seal this ____ day of _____, 20 ____.

(print Notary Public's name)

Notary Public for South Carolina

My Commission expires: _____

Exhibit A – Legal Description

Lots 13 and 14, Block 31 Hotel Section, bearing TMS 181-07-03-006

Exhibit B – RENT CALCULATION

Initial Rent shall be Thirty-Five Thousand and No/100 (\$33,600.00) Dollars per year, paid in twelve (12) equal monthly payments of Two Thousand Eight Hundred 00/100 (\$2,800.00) Dollars.

Rent is due and payable on the first (1st) day of each month, and shall be late if not paid by the fifth (5th) day of each month.

Exhibit C--Rules and Regulations

Tenant, at its sole cost and expense, shall at all times during the Term of the Lease:

1. Use, maintain, and occupy the Premises in a careful, safe, proper, and lawful manner, keep the Premises and its appurtenances, including adjoining areas and sidewalks, in a clean and safe condition;
2. Keep the sidewalks and areas contiguous to the Premises free of ice, snow and litter;
3. Keep all glass in the doors and windows of the Premises clean;
4. Not, without the prior written consent of Landlord, place, maintain, or sell any merchandise in any vestibule or entry to the Premises, on the sidewalks adjacent to the Premises or elsewhere on the outside of the Premises;
5. Keep the Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin, and other pests, and if by reason of any infestation of the Premises by insects, rodents, vermin, or other pests any other store in the Improvement District becomes infested by any such conditions, Tenant shall be responsible for exterminating any such condition from other infested stores;
6. Not permit undue accumulations of garbage, trash, rubbish, and other refuse in the Premises, keep refuse in closed containers within the interior of the Premises until removed, and arrange for regular removal of refuse at its expense;
7. Not use, permit, or suffer the use of any apparatus or instruments for musical or other sound reproduction or transmission in such manner that sound emanating therefrom or caused thereby shall be in violation of City of Myrtle Beach ordinances or as a nuisance;
8. Not load or unload fixtures or merchandise from any Premises entrance except the rear delivery entrance;
9. Light the show windows and exterior signs of the Premises to the extent that Landlord may from time to time require; light exterior signs from dusk to first light of day;
10. Keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the confines of the Premises;
11. Not cause or permit objectionable noxious odors to emanate or be dispelled from the Premises;
12. Not overload the floors or electrical wiring, and not install any additional electrical wiring or plumbing without Landlord's prior written consent;
13. Not use show windows in the Premises for any purpose other than display of merchandise for sale in a neat and attractive manner;
14. Not conduct, permit, or suffer any public or private auction sale to be conducted on or from the Premises;
15. Not solicit business or individuals in violation of City of Myrtle Beach ordinances;
16. Not use the plumbing facilities for any purpose other than that for which they were constructed;
17. Not sell, display, or offer for sale any roach clip, water pipe, bong, coke spoon, cigarette paper, hypodermic syringe, or other paraphernalia which in Landlord's opinion are commonly used in connection with illegal drugs, or any pornographic, lewd, suggestive or "adult" newspaper, book, magazine, film, picture, or merchandise of any kind;
18. Not install burglar bars in or to the Premises without Landlord's prior approval;
19. Tenant shall not install or operate in the Premises any electrically operated equipment or machinery that operates on greater than 240-volt power or operates on 240-volt power but requires a dedicated circuit without first obtaining the prior written consent of Landlord, who may condition such consent upon the payment by Tenant of additional rent in compensation for the cost of any additional wiring or apparatus that may be occasioned by the operation of such equipment or machinery. Tenant shall not install any equipment of any type or nature that will or may necessitate any changes, replacements or additions to, or in the use of, the water system, heating system, plumbing system, air-conditioning system or electrical system of the Premises or the Property, without first obtaining the prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion. Machines and equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Property or to any space therein to such a degree as to be objectionable to Landlord or to any Tenant in the Property shall be installed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to reduce such noise and vibration to a level satisfactory to Landlord; and

20. Tenant shall not conduct any of the following activities on the exterior of the Premises, in any exterior areas leased or otherwise controlled by Tenant, or in the Common Areas of the Improvement District:
- Sidewalk sales
 - Promotions
 - Product giveaway or distribution
 - Games or activities of amusement or other sporting activities
 - Any other activities which are not directly related to Tenant's use as defined in the Lease.

Exhibit D—Guaranty of Lease
Lease Guaranty

Not Applicable