

Instrument or any of the other Loan Documents, including but not limited to escrow agreements, and the failure of Borrower to cure such default within any applicable grace period.

2. Borrower's Covenants. Borrower and Manager hereby covenant with Lender that during the term of this Assignment, except as specifically provided in the Loan Agreement: (a) neither Borrower nor Manager shall transfer the responsibility for the Management of any the Property to any other person or entity without prior written notification to Lender and the prior written consent of Lender, which consent may not be unreasonably withheld, conditioned or delayed by Lender; (b) neither Borrower nor Manager shall terminate or amend any of the material terms or provisions of the Management Agreement without the prior written consent of Lender, which consent may be withheld in accordance with the terms of the Loan Agreement; and (c) Borrower or Manager, as the case may be, shall, in the manner provided for in this Assignment, give notice to Lender of any notice or information that Borrower or Manager, as the case may be, receives which indicates that the other party is terminating the Management Agreement or that Manager is otherwise discontinuing its Management of the Property.

3. Termination. At such time as the Loan is paid in full and the Security Instrument is released or assigned of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Management Agreement shall terminate.

4. Estoppel. Manager represents and warrants that (a) the Management Agreement is in full force and effect and has not been modified, amended or assigned other than pursuant to this Assignment, (b) neither Manager nor Borrower is in default under any of the terms, covenants or provisions of the Management Agreement and Manager knows of no event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Management Agreement, (c) neither Manager nor Borrower has commenced any action or given or received any notice for the purpose of terminating the Management Agreement and (d) the Management Fees and all other sums due and payable to Manager under the Management Agreement as of the date hereof have been paid in full.

5. Agreement by Borrower and Manager; Lender's Right to Replace Manager. Borrower and Manager hereby agree that if (a) Manager shall become insolvent or a debtor in any bankruptcy or insolvency proceeding, (b) there exists an Event of Default, or (c) there exists a material default by Manager under the Management Agreement during the term of this Assignment beyond any applicable notice, grace and cure periods set forth therein, then in any such event, at the option of Lender exercised by written notice to Borrower and Manager, Lender may exercise its rights under this Assignment and may immediately terminate the Management Agreement and require Manager to transfer its responsibility for the Management of the applicable Property to a Qualified Manager pursuant to a Replacement Management Agreement.

6. Subordination of Management Agreement. To the extent permitted by Applicable Laws and subject to Article 7 below, the Management Agreement and any and all liens, rights and interests (whether choate or inchoate and including, without limitation, all mechanic's and materialmen's liens under applicable law) owed, claimed or held, by Manager in and to the Property, are and shall be in all respects subordinate and inferior to the liens and

security interests created or to be created for the benefit of Lender, and securing the repayment of the Note and the obligations under the Loan Agreement including, without limitation, those created under the Security Instrument covering, among other things, the Property, and filed or to be filed of record in the public records maintained for the recording of mortgages in the jurisdiction where such Individual Property is located, and all renewals, extensions, increases, supplements, amendments, modifications or replacements thereof. Notwithstanding the foregoing, Leasing Agent shall have the right to collect all amounts owed pursuant to the Leasing Agreement except during the continuance of an Event of Default.

7. Subordination of Management Fees. Borrower and Manager hereby agree that Manager shall not be entitled to receive any fee, commission or other amount payable to Manager under the Management Agreement for and during any period of time that any Event of Default exists (except to the extent the same may be permitted to be paid under the Loan Agreement); provided, however, (a) Manager shall not be obligated to return or refund to Lender any fee, commission or other amount already received by Manager, and to which Manager was entitled under the Management Agreement, (b) Manager shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by Manager in performance of the services contemplated by the Management Agreement at all times, and (c) Manager shall be permitted to terminate the Management Agreement upon failure of Borrower to pay Manager any fee, commission or other amount due or payable to Manager in accordance with the terms of the Management Agreement during any period of time that any Event of Default exists. Subject to the foregoing provisions of this Section 7 and provided further that Manager shall not exercise any action for the enforcement of the same during the continuance of an Event of Default, Manager shall retain any and all rights against Borrower under the Management Agreement for non-payment of any such fees, commissions or other amounts due Manager under the Management Agreement during the continuance of an Event of Default.

8. Consent and Agreement by Manager. Manager hereby acknowledges and consents to this Assignment and the terms and provisions of Section 5.1.18 of the Loan Agreement. Manager agrees that it will act in conformity with the provisions of this Assignment and Section 5.1.18 of the Loan Agreement and Lender's rights hereunder or otherwise related to the Management Agreement. In the event that the responsibility for the management of the Property is transferred from Manager in accordance with the provisions hereof, Manager shall, and hereby agrees to, fully cooperate (at Borrower's expense) in transferring its responsibility to a new Qualified Manager so that Borrower can effectuate such transfer no later than thirty (30) days from the date the Management Agreement is terminated. Further, Manager hereby agrees (a) not to contest or impede the exercise by Lender of any right it has under or in connection with this Assignment; and (b) that it shall, in the manner provided for in this Assignment, give at least thirty (30) days prior written notice to Lender of its intention to terminate the Management Agreement or otherwise discontinue its acting as manager of the Property.

9. Further Assurances. Manager further agrees to (a) execute such affidavits and certificates as Lender shall reasonably require to further evidence the agreements herein contained, (b) on request from Lender, furnish Lender with copies of such information as Borrower is entitled to receive under the Management Agreement and (c) cooperate with Lender's representative in any inspection of all or any portion of the Property (provided that any such inspection shall be in accordance with the terms of the Loan Agreement).

10. Assignment of Proceeds. Manager acknowledges that, as further security for the Note, (a) Borrower has executed and delivered to Lender certain Loan Documents, assigning to Lender, among other things, all of Borrower's right, title and interest in and to all of the revenues of the Property and (b) pursuant to the terms of the Loan Agreement, Borrower has agreed that any Rents and other income and proceeds from the Property are to be deposited directly into an account of Lender (or an account of Borrower in which Lender has a first priority perfected security interest) established pursuant to the Loan Agreement.

11. Manager Not Entitled to Rents. Manager acknowledges and agrees that it is collecting and processing the Rents solely as the agent for Borrower and Manager has no right to, or title in, the Rents. Notwithstanding anything to the contrary in the Management Agreement, Manager acknowledges and agrees that the Rents are the sole property of Borrower, encumbered by the lien of the Security Instrument and the other Loan Documents in favor of Lender. In any bankruptcy, insolvency or similar proceeding, Manager, or any trustee acting on behalf of Manager, waives any claim to the Rents other than as such Rents may be used to pay the fees and compensation of Manager pursuant to the terms and conditions of the Management Agreement.

12. Governing Law. This Assignment shall be governed, construed, applied and enforced in accordance with Section 10.3 of the Loan Agreement.

13. Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Section 10.6 of the Loan Agreement.

All notices to Manager shall be addressed as follows:

TB Realty, Inc.
c/o Turnberry Development
19501 Biscayne Blvd, Suite 400
Aventura, Florida 33180
Attention: Kenneth Bernstein
Facsimile No.: (305) 933-5533

14. No Oral Change. This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

15. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

16. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

17. Headings, etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

18. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

19. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

20. Secondary Market. Lender may sell, transfer and deliver the Note and assign the Loan Agreement, the Security Instrument, this Assignment and the other Loan Documents to one or more Investors in the secondary mortgage market. In connection with such sale, Lender may retain or assign responsibility for servicing the Loan, including the Note, the Loan Agreement, the Security Instrument, this Assignment and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

21. Miscellaneous. (a) Wherever pursuant to this Assignment (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(b) Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, legal fees and disbursements of Lender, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise.

[NO FURTHER TEXT ON THIS PAGE]

.. IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date and year first written above.

FOUNTAINBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company

By: Fontainebleau Las Vegas Retail Mezzanine, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Las Vegas Retail Parent, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Resort Holdings, LLC, a Delaware limited liability company, its managing member

By: Fontainebleau Resorts, LLC, a Delaware limited liability company, its managing member

By: _____
Name:
Title:

[TPW: NYLEGAL:642436.3] 16248-00758 06/04/2007 11:42 PM

LEHMAN BROTHERS HOLDINGS INC., a
Delaware corporation

By: _____
Name:
Title:

[TPW: NYLEGAL:642436.3] 16248-00758 05/04/2007 11:42 PM

TB REALTY, INC., a Nevada corporation

By: _____
Name:
Title:

[TPW: NYLEGAL:642436.3] 16248-00758 06/04/2007 11:42 PM

EXHIBIT A
MANAGEMENT AGREEMENT

[TPW: NYLEGAL:642436.3] 16248-00758 06/04/2007 11:42 PM

EXHIBIT E

FORM OF SUBORDINATION, NON-DISTURBANCE ATTORNMENT AGREEMENT

(attached hereto)

LEHMAN BROTHERS HOLDINGS INC.
(Lender)

- and -

FONTAINEBLEAU LAS VEGAS RETAIL, LLC
(Landlord)

- and -

(Tenant)

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

Dated:
Location:
Section:
Block:
Lot:
County:

PREPARED BY AND UPON
RECORDATION RETURN TO:

Thacher Proffitt & Wood LLP
Two World Financial Center
New York, New York 10281
Attention: Mitchell G. Williams, Esq.
File No.: 16248-00758

[TPW: NYLEGAL:677850.2] 16248-00758 06/01/2007 10:53 AM

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the _____ day of _____, 2007, by and between **LEHMAN BROTHERS HOLDINGS INC.**, a Delaware corporation, having an address at 399 Park Avenue, New York, New York 10022, individually and as Agent for one or more Co-Lenders ("Lender"), **FONTAINEBLEAU LAS VEGAS RETAIL, LLC**, a Delaware limited liability company, having an address at 2827 Paradise Road, Las Vegas, Nevada 89109 ("Lender") and _____, a _____, having an address at _____ ("Tenant").

RECITALS:

A. Lender is the present owner and holder of a certain deed of trust and security agreement (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, collectively, the "Security Instrument") dated June [___], 2007, given by Landlord (defined below) to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by a certain promissory note, dated June [___], 2007, given by Landlord to Lender (together with any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements thereof, collectively, the "Note");

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain lease dated _____, ___ between Landlord and Tenant, as tenant, [as amended by that certain agreement dated _____, ___] (such lease, as modified and amended as set forth herein being hereinafter referred to as the "Lease"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant and Lender agree as follows:

1. **SUBORDINATION.** The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. NON-DISTURBANCE. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the Lease shall be in full force and effect and (b) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed, beyond any applicable notice and cure periods.

3. ATTORNNMENT. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "Purchaser"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord, being hereinafter referred to as a "Prior Landlord") to perform any obligations of Prior Landlord under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, except to the extent such failure continues after the date Purchaser becomes owner of the Property and Purchaser is provided notice and an opportunity to cure pursuant to this Agreement, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, other than defenses or counterclaims which continue after the date Purchaser becomes owner of the Property and Purchaser is provided notice and an opportunity to cure pursuant to this Agreement, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser or (e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest. In the event that any liability of Purchaser does arise pursuant to this Agreement or the Lease, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest.

4. NOTICE TO TENANT. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents

executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. NOTICE TO LENDER AND RIGHT TO CURE. Tenant shall notify Lender of any default by Landlord under the Lease and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and shall have failed within thirty (30) days after receipt of such notice to cure such default, or if such default cannot be cured within thirty (30) days, shall have failed within thirty (30) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default. Notwithstanding the foregoing, Lender shall have no obligation to cure any such default.

6. NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: _____

Attention: _____
Facsimile No. _____

If to Landlord: Fontainebleau Las Vegas Retail, LLC
2827 Paradise Rd.
Las Vegas, NV 89109
Attn: General Counsel
Phone: (702) 495-8108
Fax: (702) 495-8112

If to Lender: Lehman Brothers Holdings Inc.
c/o Lehman Brothers Holdings
399 Park Avenue
New York, New York 10022
Attention: Josh Freedman
Facsimile No.: (212) 713-1278

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

8. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

9. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[NO FURTHER TEXT ON THIS PAGE]

..IN WITNESS WHEREOF, Lender, Landlord and Tenant have duly executed this Agreement as of the date first above written.

TENANT:

[INSERT LEGAL NAME OF TENANT]

By: _____

Name:

Title:

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LENDER:

LEHMAN BROTHERS HOLDINGS INC., a
Delaware corporation, individually and as Agent for
one or more Co-Lenders

By: _____
Name:
Title:

[TPW: NYLEGAL:677850.2] 16248-00758 06/01/2007 10:53 AM

LANDLORD:

**FONTAINEBLEAU LAS VEGAS RETAIL,
LLC, a Delaware limited liability company**

By: _____

Name:

Title:

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ACKNOWLEDGMENTS
[INSERT ACKNOWLEDGMENTS]

[IPW: NYLEGAL:677850.2] 16248-00758 06/01/2007 10:53 AM

EXHIBIT A
(Description of Property)

[IPW: NYLEGAL:677850.2] 16248-00758 06/01/2007 10:53 AM

EXHIBIT F

Tenant Notice Letter

TENANT DIRECTION LETTER

_____, 200_____

[Addressee]

Re: Payment Direction Letter for _____
_____ (the "Property")

Dear []:

_____, a _____ ("Borrower"),
the owner of the Property, has mortgaged the Property to LEHMAN BROTHERS HOLDINGS
INC., a Delaware corporation (together with its successors and assigns, "Lender") and has agreed
that all rents due for the Property will be paid directly to a bank selected by Borrower and
approved by Lender. Therefore, from and after the date hereof, all rent to be paid by you under
the Lease between Borrower and you (the "Lease") should be sent directly to the following
address:

[BANK'S ADDRESS]

or by wire transfer to:

Bank:
ABA No.:
Account No.:
Account Name: _____ Clearing Account, Lehman Brothers
Holdings Inc., as Secured Party

All checks should be made out to "_____".

These payment instructions cannot be withdrawn or modified without the prior written
consent of Lender or its agent ("Servicer"), or pursuant to a joint written instruction from
Borrower and Lender or Servicer. Until you receive written instructions from Lender or
Servicer, continue to send all rent payments due under the Lease to _____. All
rent payments must be delivered to _____ no later than the day on which such
amounts are due under the Lease.

If you have any questions concerning this letter, please contact _____ of
Borrower at _____ or _____ of Lender at _____
or _____ of Servicer at _____. We appreciate your cooperation in this
matter.

[BORROWER]

By: _____

Name:

Title:

INDEX OF LEASE
 Between
 FONTAINEBLEAU LAS VEGAS RETAIL, LLC
 a Delaware limited liability company
 and
 FONTAINEBLEAU LAS VEGAS, LLC
 a Nevada limited liability company

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Fontainebleau Las Vegas
 Affiliate Lease

(i)

LEASE

THIS LEASE, made and entered into by and between FONTAINEBLEAU LAS VEGAS RETAIL, LLC, a Delaware limited liability company as "Lessor", and FONTAINEBLEAU LAS VEGAS, LLC, a Nevada limited liability company, as "Lessee."

WITNESSETH:

IN CONSIDERATION of the payments of rents and other charges provided for herein and the covenants and conditions hereinafter set forth, Lessor and Lessee hereby covenant and agree as follows:

ARTICLE I Basic Lease Information

1.01. This ARTICLE I is an integral part of this Lease. The following, whenever used in this Lease, shall have the meanings set forth in this Section:

- (a). **Retail Parcel:** That certain airspace contained within that certain Parcel Map recorded on pages _____ in the records of the County of Clark, State of Nevada, consisting of approximately 286,550 square feet of Floor Area leased to Lessor pursuant to the Master Lease and which Lessor and others have constructed or intend to construct or cause to be constructed, comprising a portion of the Fontainebleau Las Vegas Resort, which portion specifically excludes any hotel, gaming, residential, parking, or central energy plant facility.
- (b). **Premises:** Room numbers R1, R2, 110, R4, R7, R9, R10, R11, R12 (each individual retail space is referred to herein as a "Retail Outlet") (2.01), as further described in Exhibit B attached hereto.
- (c). **Floor Area of Premises:** 95,005 square feet of the Retail Facility, irregular in shape (ARTICLE II).
- (d). **Term** Ten (10) Lease Years following the Rental Commencement Date (ARTICLE IV). Lessee may extend the term of this Lease for two (2) consecutive terms of five (5) years by giving certified mail notice of its intention to do so to Lessor. Any such notice of extension must be given by Lessee and received by Lessor at least ninety (90) days prior to the end of the then-existing term, the timeliness of such receipt being the essence of this Article. Said renewal shall be upon all the terms and provisions of this Lease except that Rent and all items of additional rent and shall be determined by Lessor based upon 95% of fair market conditions of the Las Vegas Nevada area for similar type leases and no further renewals or options shall be included.
- (e). **Rental Commencement Date:** The Opening Date (defined below) (ARTICLE IV).
- (f). **Rent:** The annual rental payment by Lessee for each Retail Outlet, payable to Lessor monthly in advance. The total Rent payable for the Premises is as set forth below:

<p>Lease Years 1 – 3 \$9,322,075 / Yr. \$776,839.58 / Mo. With Cost of Living Allowance increases in years 4 and 7</p>

(ARTICLE V).

Fontainebleau Resort Las Vegas
Affiliate Lease

(2)

- (g). **Intentionally Omitted.**
- (h). **Real Estate Tax Payment:** _____ and ____/100 Dollars (\$_____) for the first Lease Year, subject to adjustment as set forth herein (ARTICLE VI).
- (i). **CAM Payment:** _____ and ____/100 Dollars (\$_____) for the first Lease Year, subject to adjustment as set forth herein. (ARTICLE XIII).
- (j). **Utilities Payment:** _____ and ____/100 Dollars (\$_____) for the first Lease Year, subject to adjustment as set forth herein and subject to adjustment if the service is separately metered for Premises. (ARTICLE XIX).
- (k). **HVAC Payment:** _____ and ____/100 Dollars (\$_____) for the first Lease Year, subject to adjustment as set forth herein and subject to adjustment if the service is separately metered for Premises. (ARTICLE X).
- (l). **Intentionally Omitted.**
- (m). **Permitted Use:** shall mean any retail, merchandising, and entertainment use, including restaurant, bar and nightclub facilities, and any related incidental use. (ARTICLE IX).
- (n). **Notice Address:**
- (i) **Lessor:** FONTAINEBLEAU LAS VEGAS RETAIL, LLC, 2827 Paradise Rd., Las Vegas, NV 89109; Attention: Jim Freeman
with a copy to: 19950 West Country Club Drive, Aventura, FL 33180; Attention: Eric Salzinger
with a copy to: Fontainebleau Resorts, LLC, 2827 Paradise Rd., Las Vegas, NV 81909;
Attention: General Counsel
- (ii) **Lessee:** FONTAINEBLEAU LAS VEGAS, LLC, 101 Convention Center Drive, P-250, Las Vegas, NV 89109 Attn: President
with a copy to: Fontainebleau Resorts, LLC, 2827 Paradise Rd., Las Vegas, NV 81909;
Attention: General Counsel (ARTICLE XXX).
- (o). **Construction Allowance:** The dollar allowance provided by Lessor with respect to each Retail Outlet for Lessee to construct certain improvements in such Retail Outlet. The total Construction Allowance for the Premises is twenty-nine million, one hundred ninety-three thousand, seven hundred sixty-seven and 00/100 Dollars (\$29,193,767.00) (ARTICLE VIII).
- 1.02. Reference to Articles and Exhibits appearing in Section 1.01 are intended to designate some of the other places in this Lease where additional provisions applicable to the particular Lease provision appear.

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These references are for convenience only and shall not be deemed all inclusive. Each reference in this Lease to any of the Lease provisions contained in Section 1.01 shall be construed to incorporate all of the terms provided for under such provisions and such provisions shall be read in conjunction with all other provisions of this Lease applicable thereto. If there is any conflict between any of the Lease provisions set forth in Section 1.01 and any other provisions of this Lease, the latter shall control.

ARTICLE II Definition of Terms

2.01. The following, whenever used in this Lease, shall have the meanings set forth in this Section:

- (a). "Affiliate" shall mean a Person that Controls, is directly or indirectly Controlled by, or is under common ownership or Control with, another Person.
- (b). "Common Areas" shall mean all those portions of the Resort (as defined below) designated as Common Area in the REA (as defined below). Unless specifically provided otherwise in this Lease, the Common Area shall be maintained, repaired, operated and restored by Tower Owner.
- (c). "Common Area Improvements" shall mean any improvements constructed in the Common Area and all deletions, additions and modifications thereto.
- (d). "Competitor" shall mean a Person that (i) owns or operates (or is an Affiliate of an entity that owns or operates) a hotel located in the metropolitan area of Las Vegas, Nevada or any casino and/or (ii) is a union pension fund.
- (e). "Control" shall mean ownership of a Person in excess of 50% and/or the power, exercisable jointly or severally, to manage and direct a Person through the direct or indirect ownership of partnership interest, stock, trust powers, or other beneficial interests and/or management or voting rights.
- (f). "Construction Allowance" shall mean the dollar allowance provided by Lessor for Lessee to construct certain tenant improvements on the Premises.
- (g). "Design Criteria" shall mean the criteria for the "look and feel," design and quality established by Tower Owner from time to time for the construction and renovation of Improvements on the Site, as further defined in the REA.
- (h). "Floor Area" shall mean the floor space in the specified Parcel, whether or not roofed or occupied or leased, excluding non-leasable areas such as equipment rooms, subterranean area, balconies, mezzanines and the like, but only to the extent the same are not actually leased or leasable, measured from the exterior faces or exterior lines of the exterior walls (including basement walls) and from the center line (as opposed to exterior face) of the party and interior common walls.
- (i). "Gaming Activity" shall mean the Nevada Gaming Control Act, as modified in Chapter 463 of the Nevada Revised Statutes, as amended from time to time, and the regulations of the Nevada Gaming Commission promulgated thereunder, as amended from time to time, and any use, operation,

business, or other activity which requires a license, approval, authorization, registration or a finding of suitability from any Gaming Authority.

- (j). "Gaming Authority" shall mean the Nevada Gaming Commission, the Nevada State Gaming Control Board, the Clark County Liquor and Gaming License Board and any other federal or state agency or authority having jurisdiction over Gaming Activities in the State of Nevada.
- (k). "Gaming Facility" shall mean a facility or facilities devoted substantially to the operation of Gaming Activities as licensed by the Gaming Authority.
- (l). "Gaming Laws" shall mean any statute, regulation, rule, mandate, opinion or similar authority promulgated by a Gaming Authority.
- (m). "Lease Year" shall mean each twelve (12) month period beginning with the Rental Commencement Date, and each anniversary thereof, provided the Rental Commencement Date occurs on the first day of a month. If the Rental Commencement Date occurs on a day other than the first day of a month, then the first Lease Year shall begin on the first day of the month following the Rental Commencement Date. "Partial Lease Year" shall mean any period of less than twelve (12) full calendar months.
- (n). "Lessor's Parcel" shall mean that portion or portions of the airspace in the Retail Facility and the improvements thereon which at any time in question Lessor owns or leases as tenant under an air rights or master lease or sublease, it being understood that Lessor may not own or control portions of the Retail Facility.
- (o). "Material Contracts" shall mean any contract for Lessee's Work that is either (i) greater than ten percent (10%) of the overall cost of Lessee's Work, or (ii) greater than one hundred thousand dollars (\$100,000).
- (p). "Master Lease" shall mean that certain lease agreement dated as of June 6, 2007 by and between Fontainebleau Las Vegas, LLC and Fontainebleau Las Vegas II, LLC (collectively, "Tower Owner") and Fontainebleau Las Vegas Retail, LLC ("Lessor"), pursuant to which Tower Owner has agreed to lease to Lessor that certain Retail Parcel to permit the construction, ownership, operation and maintenance by Lessor of the Retail Improvements within the Retail Parcel.
- (q). "NRS" shall mean Nevada Revised Statutes, as amended from time to time.
- (r). "Opening Date" means the date on which all material amenities of the Resort are open for business to gaming and lodging customers.
- (s). "Person" shall mean an individual, fiduciary, partnership, limited liability company, firm, association, corporation, or any other entity.

- (t). "Plans and Specifications" shall mean for each Retail Outlet all drawings, plans and specifications which describe and show the labor, materials, equipment, fixtures and furnishings necessary for the construction of tenant improvements in such Retail Outlet.
- (u). "REA" shall mean that certain Construction, Operation and Reciprocal Easement Agreement dated as of June 6, 2007 by and between Tower Owner and Retail Owner and recorded in the real estate records of Clark County, Nevada as Document No. _____.
- (v). "Resort" shall mean the land and improvement comprising the entire mixed-use complex developed and operated as the Fontainebleau Las Vegas Resort as described in the REA.
- (w). "Resort Owner" shall mean Fontainebleau Las Vegas, LLC.
- (x). "Retail Facility" shall mean the facilities and Retail Improvements located on the Retail Parcel which shall be devoted to retail use, which shall consist of approximately 286,550 square feet of Floor Area, and which in conjunction with certain common areas and the casino shall have the nature of an enclosed retail and entertainment mixed-use facility located at particular elevations of the Tower Building with various vertical penetrations above and below such elevations, all as more particularly described in the REA.
- (y). "Retail Improvements" shall mean all improvements constructed in or on the Retail Parcel including any present or future construction or alteration thereof in accordance with the terms of the REA, as the same may exist from time to time, but excluding those improvements, if any, designated as Common Area Improvements.
- (z). "Signage Standards" shall mean the signage design standards and guidelines for signage in the Retail Facility as set forth from time to time by Lessor.
- (aa). "Store Architect" shall mean such architect(s) or engineer(s) duly licensed to practice in the State of Nevada as may from time to time be retained by Lessee with respect to architectural and engineering matters relating to the construction of Lessee's Work (as defined in Section 8.01) within the Premises and approved by Lessor.
- (bb). "Store Contractor" shall mean such contractor(s) duly licensed to practice in the State of Nevada as may from time to time be retained by Lessee with respect to architectural and engineering matters relating to the construction of Lessee's Work within the Premises and approved by Lessor.
- (cc). "Tower" shall mean the entire Resort other than the Retail Parcel.

ARTICLE III Premises

3.01. Lessor hereby leases to Lessee and Lessee hereby rents from Lessor the Premises (to be) constructed as a part of the Retail Facility. Lessor's determination of Floor Area shall be final, binding and conclusive.

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3.02. Lessee acknowledges that the construction, development and operation of the Resort and its various components is subject to the terms and provisions of the REA.

ARTICLE IV Term

4.01. To have and to hold for the Term unless sooner terminated as herein provided. Upon the request of Lessor, Lessor and Lessee shall execute an agreement stipulating the Rental Commencement Date and the expiration date of the Term.

4.02. If the Rental Commencement Date does not occur within three (3) years of the date hereof, then this Lease automatically shall become null and void and neither party shall have any liability nor obligation to the other hereunder. Lessor shall have no liability to Lessee for any delay in delivery of possession of the Premises.

4.03. Intentionally Omitted.

ARTICLE V Rent

5.01. Lessee shall pay to Lessor from and after the Rental Commencement Date the Rent in monthly installments, all in advance, on the first day of every calendar month during the Term. If the Rental Commencement Date should occur on a day other than the first day of the month or if the Term ends on a day other than the last day of the month, Lessee shall pay Rent and all items of additional rent prorated based upon the number of rental days in such fractional month divided by the actual number of days contained in such month.

5.02. Intentionally Omitted.

5.03. Intentionally Omitted.

5.04. Intentionally Omitted.

5.05. Intentionally Omitted.

5.06. Intentionally Omitted.

5.07. If Lessee shall fail to pay any installment of Rent or any item of additional rent within five (5) days after the date the same become due and payable, then Lessee shall pay to Lessor a late payment service charge ("Late Charge") covering administrative and overhead expenses equal to the greater of (a) Two Hundred Fifty and 00/100 Dollars (\$250.00), or (b) five cents (5¢) per each dollar so overdue. Provision herein for payment of the Late Charge shall not be construed to extend the date for payment of any sums required to be paid by Lessee hereunder or to relieve Lessee of its obligation to pay all such sums at the times herein stipulated.

5.08. All sums other than Rent payable under any provisions of this Lease shall be deemed additional rent and, upon failure of Lessee to pay any such sum, Lessor shall be entitled to exercise any and all rights and remedies contained herein or at law for the failure to pay Rent.

ARTICLE VI Real Estate Tax Payment

6.01. Lessee shall pay to Lessor a portion of the real estate taxes each Lease Year from and after the Rental Commencement Date (Lessee's share for a Lease Year being the "Real Estate Tax Payment"). The

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term "real estate taxes" shall include all real estate taxes, assessments, water and sewer rents (except water meter charges and sewer rent based thereon) and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, general and special, foreseen and unforeseen, and each and every installment thereof (including any interest on amounts which may be paid in installments) which, during the Term, is levied, assessed, imposed, become due and payable, or liens upon, or arising in connection with, the use, occupancy or possession of or become due and payable out of, or for, the Retail Facility, and all costs incurred by Lessor and others in reviewing, contesting and negotiating the same.

6.02. Lessee's Real Estate Tax Payment will be \$_____ for the first Lease Year and shall be adjusted annually as follows: Beginning on the first day of the second Lease Year in the Term and continuing on the first day of each Lease Year thereafter (each an "Adjustment Date") during the Term, Lessee's Real Estate Tax Payment shall be increased for that Lease Year to an amount equal to one hundred ___ percent (10_%) of the annual Real Estate Tax Payment for the prior Lease Year (i.e., the Real Estate Tax Payment for the prior Lease Year multiplied by 1.0__).

6.03. In the event that the Retail Parcel or any portion thereof becomes separately assessed, Lessee's payment shall be computed by multiplying the total amount of the real estate taxes assessed on the parcel each year by a fraction, the numerator of which shall be the Floor Area of the Premises and the denominator of which shall be the average of the total square feet of all of the Floor Area of the separately assessed parcel.

6.04. Lessee hereby waives any right it may have by statute or otherwise to protest real estate taxes. Lessee shall pay Lessor one-twelfth (1/12) of the Real Estate Tax Payment on the first (1st) day of each calendar month during the Lease Year. If the first day of a Lease Year should occur on a day other than the first day of the month or if the Lease Year ends on a day other than the last day of the month, Lessee shall pay the Real Estate Tax Payment prorated based upon the number of rental days in such fractional month divided by the actual number of days contained in such month.

ARTICLE VII Lessor's Work in the Premises

7.01. Lessor shall construct the Premises substantially in accordance with its construction obligations set forth in Exhibit A-1 "Lessor's Work Done at Lessor's Expense" ("Lessor's Work"). Lessor shall commence and complete Lessor's Work as soon as may practicably be done, but Lessor shall not be liable in any manner whatsoever for its failure to do so. Lessee releases Lessor and its contractors from any claim whatsoever for damages against Lessor or its contractors for any delay in the date on which the Premises is anticipated to be ready for delivery to Lessee. Lessee's taking possession of the Premises shall be conclusive evidence of Lessee's acceptance thereof in good order and satisfactory condition.

ARTICLE VIII Lessee's Work and Approval of Lessee's Plans and Specifications

8.01. Promptly after Lessor notifies Lessee that Lessor's Work is complete, Lessee shall commence and thereafter complete with due diligence its construction work and installation of fixtures with respect to each Retail Outlet in accordance with: (i) its construction obligations set forth in Exhibit A-2; (ii) the performance and project cost milestones for such Retail Outlet as determined by the Store Architect; (iii) the Plans and

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Specifications for such Retail Outlet approved by Lessor as provided for herein; and (iv) the REA ("Lessee's Work").

8.02. Lessee may, but only with the consent of Lessor, enter the Premises for preliminary work prior to the completion of Lessor's Work, provided that: (a) Lessee's Work shall be done in such manner so as not to interfere with the completion of Lessor's Work; (b) Lessee's Work does not interfere with any of Lessor's or Tower Owner's labor agreements; (c) Lessee agrees that all architectural and engineering matters for Lessee's Work will be performed by a Store Architect; (d) Lessee agrees that it shall use Turnberry West Construction, Inc., as its general contractor, unless another Store Contractor is agreed to by Lessor; and (e) neither Lessor nor Tower Owner shall have any responsibility or liability whatsoever for any loss or damage to any fixtures or equipment installed or left in the Premises. Lessee shall perform and cause Lessee's contractor and subcontractors to perform Lessee's Work in a manner so as not to damage, delay or interfere with the prosecution or completion of any work being performed by Lessor, Tower Owner, other tenants in the Resort or their respective contractors in the Premises or in or about any other portion of the Resort, and shall comply with all construction procedures and regulations prescribed in Exhibit A-2 for the prosecution of Lessee's Work and the coordination of such work with any work being performed by Lessor, Tower Owner, other tenants in the Resort and their respective contractors. All such work by Lessee or its contractors shall be performed by union labor. In the event Lessor determines any construction work by Lessee is not being performed in conformance with this Lease or in accordance with any other labor agreements relating to the construction of the Resort, Lessor shall have the right to order Lessee to terminate any construction work at any time during the Term being performed by or on behalf of Lessee in the Premises. Upon notification from Lessor to Lessee to cease any such work, Lessee shall forthwith remove from the Premises all agents, employees and contractors of Lessee performing such work until such time as Lessor consents to resumption of such construction work and Lessee shall have no claim for damages of any nature whatsoever against Lessor in connection therewith.

8.03. Lessee shall furnish to Lessor its Plans and Specifications for each Retail Outlet incorporating Lessee's construction obligations under Exhibit A-2 and all of its Material Contracts for Lessor's prior approval within forty-five (45) days after Lessor's architects provide Lessee with a Lease Outline Diagram and Lessor's Store Design and Construction Manual for the Premises. Such Plans and Specifications shall be prepared by a Store Architect and shall include one (1) complete set of reproducible sepias drawn to scale. Approval by Lessor of such Plans and Specifications shall not constitute the assumption of any liability on the part of Lessor for their compliance or conformity with applicable building codes and the requirements of this Lease or for their accuracy, and Lessee shall be solely responsible for such Plans and Specifications. In addition, approval by Lessor of such Plans and Specifications shall not constitute a waiver by Lessor of the right to thereafter require Lessee to amend the same to provide for any corrections or omissions by Lessee of items required by building codes or this Lease which are later discovered by Lessor. Within fifteen (15) days after the Rental Commencement Date Lessee shall deliver to Lessor all certificates and approvals with respect to the work performed by Lessee or on Lessee's behalf in connection with such Retail Outlet that may be required by any governmental authorities as a condition for the issuance of an occupancy certificate for the Premises together with a copy of any occupancy certificate issued by the proper governmental authority for the Premises. Lessee shall furnish "as built" Plans and Specifications for each Retail Outlet to Lessor within thirty (30) days after Lessee's completion of same.

8.04. All signs shall be subject to the approval of Lessor and shall be designed, erected, maintained and operated in accordance with the REA and the Signage Standards. Lessee shall erect illuminated signs on the exterior storefront of the Premises, maintain said signs in a good state of repair, and repair any damage which may have been caused by the erection, maintenance, existence or removal of such signs. Upon vacating the Premises, Lessee shall remove all signs and repair all damage caused by such removal. Lessee shall save Lessor and Tower Owner harmless from any loss, cost, damage or expense as a result of the erection, maintenance, existence or removal of the same.

8.05. Lessor shall allow Lessee the Construction Allowance for the completion of Lessee's Work in the Retail Outlets to be paid in either of the following manners:

1. Reimbursement Method:

(a) one-third (1/3) of the Construction Allowance for each Retail Outlet to be paid to Lessee within thirty (30) days after satisfying the following conditions: (i) compliance with the first two sentences of Section 8.03 above; (ii) certification by Lessee's architect to Lessor that thirty-three and one-third percent (33 1/3%) of Lessee's Work in the Retail Outlet has been completed; and (iii) provision of waivers of lien in statutory form for such work to Lessor; (b) one-third (1/3) of the Construction Allowance for each Retail Outlet to be paid to Lessee within thirty (30) days after Lessee's architect certifies to Lessor that sixty-six and two-thirds percent (66 2/3%) of Lessee's Work in the Retail Outlet has been completed and Lessee furnishes Lessor waivers of lien in statutory form for such work; and (c) the remainder of the Construction Allowance for each Retail Outlet to be paid to Lessee only upon the satisfaction of all of the following conditions: (i) Lessee opens for business in the Retail Outlet; (ii) completion of Lessee's Work in the Retail Outlet and approval thereof by Lessor; (iii) delivery to Lessor of Lessee's affidavit stating that the work to be performed by Lessee for such Retail Outlet pursuant to the terms of this Lease has been completed in strict compliance with Exhibit A-2 and Lessee's approved Plans and Specifications and that no security interest under the Uniform Commercial Code or chattel mortgages are outstanding or have been filed, it being intended that any such affidavit may be relied upon by Lessor and that any deliberate misstatement by Lessee shall constitute an Event of Default hereunder; (iv) delivery to Lessor of an affidavit of any general contractor performing Lessee's Work stating that all subcontractors, laborers and materialmen who have performed work on or furnished materials to the Retail Outlet (whose names and addresses shall be recited in the affidavit) have been paid in full and that all liens therefor have been discharged of record or waived; (v) delivery to Lessor of a complete release and waiver of lien with respect to the Retail Outlet from any general contractor and all subcontractors who have performed work on or furnished materials to the Retail Outlet, or in lieu thereof, an attorney's certification that the lien period for the work performed on Lessee's behalf in the Retail Outlet has expired and that no liens in connection therewith have been filed; (vi) delivery to Lessor of Lessee's written acceptance of the Retail Outlet stating that Lessor has completed all of Lessor's Work and that Lessee reserves no claims, offsets or backcharges, or stating those claimed; (vii) the payment of the first month's Rent for such Retail Outlet and all items of additional rent together with any monies owing to Lessor for the cost of any work done for or on behalf of Lessee, as set forth in Exhibit A-2 or otherwise; (viii) delivery to Lessor of all "as built" Plans and Specifications for such Retail Outlet; and (ix) delivery to Lessor of all certificates and approvals with respect to the work performed by Lessee or on Lessee's behalf that may be required by any governmental

authorities as a condition for the issuance of any occupancy certificate for the Retail Outlet, together with a copy of any occupancy certificate issued by the proper governmental authority for the Retail Outlet.

2. Advance Method:

At Lessee's option, Lessor shall pay to Lessee the Construction Allowance on a monthly basis in an amount sufficient to cover construction costs then due and payable. To receive such advance payment of the Construction Allowance for each Retail Outlet for Lessee's Work, Lessee shall submit an advance request to Lessor. The advance request shall provide Lessor with evidence of satisfaction of the following conditions: (i) compliance with the first two sentences of Section 8.03 above; (ii) certification by Lessee's architect to Lessor that Lessee's Work to date has been completed; (iii) invoices from its contractors showing that the amount requested is then due and payable; and (iv) provision of conditional waivers of lien in statutory form to Lessor for work completed to date. The final payment of the Construction Allowance for each Retail Outlet shall be paid to Lessee only upon the satisfaction of all of the following conditions: (i) Lessee or its sublessee opens for business in the particular Retail Outlet; (ii) completion of Lessee's Work in the Retail Outlet and approval thereof by Lessor; (iii) delivery to Lessor of Lessee's affidavit stating that the work to be performed by Lessee for each Retail Outlet pursuant to the terms of this Lease has been completed in strict compliance with Exhibit A-2 and Lessee's approved Plans and Specifications and that no security interest under the Uniform Commercial Code or chattel mortgages are outstanding or have been filed, it being intended that any such affidavit may be relied upon by Lessor and that any deliberate misstatement by Lessee shall constitute an Event of Default hereunder; (iv) delivery to Lessor of an affidavit of any general contractor performing Lessee's Work stating that all subcontractors, laborers and materialmen who have performed work on or furnished materials to the Retail Outlet (whose names and addresses shall be recited in the affidavit) have been paid in full and that all liens therefor have been discharged of record or waived; (v) delivery to Lessor of a complete release and waiver of lien with respect to the Retail Outlet from any general contractor and all subcontractors who have performed work on or furnished materials to the Retail Outlet, or in lieu thereof, an attorney's certification that the lien period for the work performed on Lessee's behalf in the Retail Outlet has expired and that no liens in connection therewith have been filed; (vi) delivery to Lessor of Lessee's written acceptance of the Retail Outlet stating that Lessor has completed all of Lessor's Work and that Lessee reserves no claims, offsets or backcharges, or stating those claimed; (vii) the payment of the first month's Rent for such Retail Outlet and all items of additional rent together with any monies owing to Lessor for the cost of any work done for or on behalf of Lessee, as set forth in Exhibit A-2 or otherwise; (viii) delivery to Lessor of all "as built" Plans and Specifications for such Retail Outlet; and (ix) delivery to Lessor of all certificates and approvals with respect to the work performed by Lessee or on Lessee's behalf that may be required by any governmental authorities as a condition for the issuance of any occupancy certificate for the Retail Outlet, together with a copy of any occupancy certificate issued by the proper governmental authority for the Retail Outlet.

8.06. Relocation and Remodeling.

Lessor acknowledges that Lessee shall have an absolute right from time to time to relocate, alter, remodel, "freshen" the concept or change the use of the businesses within the Premises, at Lessee's cost, at any time during the Term, including the right to cease operation of any business in the Premises during such period. If Lessee exercises this right, Lessee shall reconstruct the Premises using the same quality of architectural

standards and otherwise in a form substantially equivalent to the improvements constructed pursuant to the Plans and Specifications and with minimum disturbance to the other lessees. In any such event, Lessee will continue to pay the Rent and additional rent due and owing.

ARTICLE IX Publicity, Reputation and Integrity; Use of Premises

9.01. Lessee acknowledges that each of Lessor and Tower Owner offers entertainment and services to the public and desires to maintain its reputation and receive positive publicity concerning the Resort. If any time after the date of this Lease, any act of violence, criminal conduct, fraud, embezzlement, or other act or failure to act on the part of Lessee (including without limitation on the part of a general manager of the Lessee) or its Principals occurs or is alleged to have occurred, or which brings Lessor, Tower Owner or Lessee into public disrepute, contempt, scandal, or ridicule which in the reasonable judgment exercised in good faith by Lessor or Tower Owner is likely to result in significant negative publicity concerning Lessor, Tower Owner or their respective Affiliates, Lessor shall have the right, in addition to its other legal and equitable remedies, to terminate this Lease on thirty (30) days written notice to Lessee and be released from all further obligations hereunder by giving written notice of termination. Without limiting the foregoing, Lessor acknowledges that such a termination could cause a hardship for Lessee and for Lessor, and Lessor agrees that it will only exercise its rights hereunder after due consideration of the seriousness and adversity created by the situation.

9.02. The Premises shall be occupied and used only for the Permitted Use. Lessee warrants that it has the full and unfettered right to use any applicable trade names for the businesses in the Premises for the entire Term.

- (a). Lessee shall actively use, occupy and operate the entire Premises throughout the Term in good faith, with fixtures and decor, an inventory of goods and merchandise and personnel adequate, sufficient and appropriate to operate the Premises in accordance with the standards established in and pursuant to the REA, as those standards of operation may be interpreted from time to time during the Term. Lessee shall operate its business at the Premises in a respectable, reputable, tasteful, competent and dignified manner in order to enhance the image of the Retail Facility and the Resort and its reputation as a dignified and desirable place to shop.
- (b). Lessee shall not at any time throughout the Term abandon, leave vacant or desert the Premises. The terms "abandon", "leave vacant" or "desert" shall not be defeated because Lessee may have left all or any part of its trade fixtures or other personal property in the Premises or by paying Rent.
- (c). Lessee shall keep the Premises continuously open for business as set forth in the Operating Standards, all except to the extent prevented from doing so by strikes, fire, casualty or other causes (other than causes relating to financial inability) beyond Lessee's control or during any period described in Section 8.06.
- (d). Intentionally Omitted.

Lessor is executing this Lease in reliance upon the covenants contained in Sections 9.01 and 9.02 and such covenants are a material element of the consideration inducing Lessor to enter into and execute this Lease.

9.03. Intentionally Omitted.

9.04. Lessee shall abide by all reasonable rules and regulations established by Lessor and Tower Owner, from time to time, with respect to the use and care of the Premises, the Retail Facility and the Resort, including the Common Areas, and shall not use the Premises for, except in each case to the extent not permitted to be so prohibited under any Applicable Law:

- (a). Conducting or permitting any fire or bankruptcy sale.
- (b). Engaging in any unethical or disreputable method of business operation.
- (c). A so-called "flea market."
- (d). Intentionally Omitted.
- (e). Any office, store, reading room, headquarters, center or other facility devoted or opposed to the promotion, advancement, representation, purpose or benefit of: (i) any political party, political movement or political candidate, (ii) any religion, religious group or religious denomination or (iii) any foreign government.
- (f). Any "off-price" or "discount" store.
- (g). Any swap show selling merchandise that is used, damaged or discontinued, or any "second hand" store or "surplus" store (but excluding stores that sell antiques).
- (h). Intentionally Omitted.
- (i). Any establishment any purpose of which: (i) is to sell, afford or permit on-premises sexual stimulation or sexual liaisons; (ii) permits or presents obscene, nude or semi-nude performances or modeling; (iii) sells "rubber goods" or other sexual or erotic products of a type not commonly found in national chain pharmacies; (iv) sells, rents, displays or permits the viewing of pornographic, obscene or x-rated video, photographs, books or other material (except, in the case of a book store, if such materials do not constitute a primary product of the establishment and if such materials are discreetly displayed in such manner as not to be visible from outside the premises); or (v) offers any other form of so-called "adult entertainment".
- (j). Any facility for the sale of paraphernalia for use with illicit drugs.
- (k). Any pawn shop or auction house.
- (l). Any use which emits an obnoxious odor which can be smelled to a material extent outside of the space occupied for the use.
- (m). Any solicitations or leafleting activity, including, but not limited to, union or collective bargaining solicitations.

- (n). Promoting, marketing or advertising any business, product, good or item of a Competitor or selling any product, good or item, the primary or a significant purpose of which is to promote, market or advertise any business, product, good or item of a Competitor. For example, and without limiting the foregoing, the sale of a guidebook which includes a description of a Competitor's property would be permitted in the Retail Facility, but the sale of a t-shirt bearing the logo of a Competitor's property would not be permitted pursuant to this clause (n).
- (o). Intentionally Omitted.
- (p). Conduct no auction, fire or bankruptcy sales, so-called going out of business or "lost our lease" sales, or similar practices.

Lessee also agrees that it shall:

- (a). Display no merchandise outside the Premises nor in any way obstruct the Common Areas and store all trash in appropriate containers within the Premises and attend to the daily disposal thereof in the manner designated by Lessor. Lessee shall not burn any trash within the confines of the Retail Facility. Lessee shall not operate a garbage grinder without Lessor's prior consent. Lessee shall use Lessor's designated trash management service, provided the cost of such service is competitive with other similar services in the area in which the Retail Facility is located, or if Lessor provides trash management services in the Retail Facility, Lessee shall use said service exclusively for disposal of all refuse, provided the cost of such service is competitive with other similar services in the area in which the Retail Facility is located. If trash management services are not provided by Lessor, and Lessor has not designated a trash management service to be used, Lessee shall use a refuse disposal service approved by Lessor, which such approval shall not be unreasonably withheld.
- (b). Load or unload all merchandise, supplies, fixtures, equipment and furniture, accept deliveries and cause the collection of trash only in accordance with the Operating Standards established under the REA. All deliveries are to be coordinated through the Resort through the use of shared loading docks within the parking facility during designated hours determined in the Resort's reasonable discretion.
- (c). Keep the inside and outside of all glass in the windows and doors of the Premises clean.
- (d). Keep the Premises in a careful, safe, clean and proper manner and free of insects, rodents, and other pests; not permit any trash of any nature emanating from the Premises to accumulate in the Common Areas and not permit the plumbing facilities within or servicing the Premises to be used for any purposes other than for which they were constructed, and no foreign substances of any kind shall be thrown therein. Lessee shall employ a pest exterminating contractor to service the Premises at such intervals as Lessor may require.
- (e). Not solicit business or distribute any handbills or other advertising matter in the Common Areas.
- (f). Not display or affix any sign, placard, name, trademark, insignia, decal, advertising matter or any other item(s) in violation of the Signage Standards. Lessor shall have the right, without notice to

Lessee and without any liability for damage to the Premises reasonably caused thereby, to remove any items displayed or affixed in violation of the foregoing provisions.

- (g). Not use, occupy, suffer or permit any portion of the Premises to be used or occupied as office (other than incidental office use in connection with the Permitted Use), living, sleeping or lodging quarters.
- (h). Promptly comply with all present and future laws, regulations or rules of any county, state, federal and other governmental authority and any bureau and department thereof, and of the National Board of Fire Underwriters or any other body exercising similar function applicable to the Premises, including the making of any required structural changes thereto, subject to the supervision of Lessor. If Lessee shall install any electrical equipment that overloads the lines in the Premises, Lessee shall make all changes necessary to comply with the requirements of the insurance underwriters and governmental authorities having jurisdiction.
- (i). Not store, handle, use, sell, generate or release, or specify, use or dispose of, or permit its architect, contractors, subcontractors or any parties performing any work on behalf of Lessee to specify, use or dispose of, directly or indirectly, on the Premises, Common Areas, Resort, or in the Retail Facility, any hazardous or toxic substances, materials or wastes regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination, remediation or worker safety, including, without limitation, any substance, which now or hereafter is defined or designated as a "hazardous waste" or "hazardous substance" (i) by the United States Department of Transportation or by the Environmental Protection Agency; or (ii) under or pursuant to the (a) Federal Water Pollution Control Act, as amended; (b) Resource Conservation and Recovery Act, as amended; (c) the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (d) the Superfund Amendments and Reauthorization Act; or (e) any other federal, state or local laws relating in any way to the protection of the environment. Upon completion of such work, Lessee shall deliver to Lessor a certificate from its architect, contractor, subcontractor or other performing party stating that no such materials have been specified or used in such work. Upon notice to Lessee, Lessor may conduct an environmental audit of the Premises. If any hazardous waste or hazardous substance is detected or if a violation of the covenants contained herein is discovered, the fees and expenses of such audit shall be paid by Lessee on demand by Lessor. Lessee shall immediately notify Lessor and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Premises or compliance with environmental laws.
- (j). Not install any vending machine or similar type of equipment within any area of the Premises which is accessible to the public. Lessor shall have the right, without notice to Lessee and without any liability for damage to the Premises reasonably caused thereby, to remove any vending machines or similar type of equipment installed, maintained or existing within the Premises in violation of the foregoing provisions.
- (k). Cause Lessee's employees to abide by and comply with the rules of conduct and personal appearance standards as agreed between Landlord and Tenant prior to Opening. Lessor shall have

the right to recommend the removal from employment at the Premises of any employee of Lessee who does not perform to the reasonable satisfaction of Lessor, which recommendations shall be given due consideration by Lessee.

(l). Comply with the provisions of the REA and not act in contravention thereof, including, but not limited to, the following:

(i) Employees are to act so as not to annoy, disturb or be offensive to customers, patrons or others in the Resort, and if any of Lessee's personnel act in a manner contrary to this standard, Lessor will bring such objection to the attention of Lessee, who will immediately take all necessary steps to correct the cause of such objection.

(ii) Lessor requires the implementation of a drug testing program for employees employed at the Premises.

(m). Indemnify, defend and hold Lessor harmless for, from and against any loss, cost, damage or expense resulting from (i) any failure by Lessee to observe the provisions of this Section 9.04, including, but not limited to, the failure by Lessee to comply with the REA and (ii) any action or failure to act by any employee under the direction and supervision of Lessee.

(n). Conduct background checks on all employees and prospective employees employed at the Premises, and Lessee shall take such background checks into account in making its decisions to hire and retain employees.

9.05. If Lessee fails to keep or perform any covenant or term included in Section 9.04, and if Lessee fails to cure such failure immediately upon receipt of written or oral notice from Lessor and with all due diligence, Lessor may cure or prosecute the curing of such failure and Lessee shall pay all expenses in connection with such cure or prosecution of such cure of such failure, including, without limitation, legal fees, with the next installment of Rent due under this Lease.

9.05 Lessee shall take no action which would violate any of Lessor's contracts affecting the Lessor's Parcel, or which would create or contribute to any work stoppage, strike, picketing, labor disruption or dispute, or which would interfere, in any way, with the business of Lessor or any other lessees of the Retail Facility or the Resort or with the rights and privileges of any invitees, licensees, employees or any other persons lawfully in and upon the Resort, or which would cause any impairment or reduction of the good will and reputation of the Resort. In furtherance of the foregoing, and in the interest of preventing and avoiding the frictions traditionally inherent in commerce and industry associated with union and non-union personnel working side-by-side (which oftentimes results in the above-mentioned work stoppages, strikes, picketing, labor disruptions or disputes), it is hereby understood and agreed by Lessee that any and all items of Lessee's initial construction, re-construction, alterations, installations, additions, improvements, changes and/or remodeling of the Premises and the fixtures and appurtenances therein, and the removal of the same, as well as all items of Lessee's maintenance, replacement and repair of the Premises and the fixtures and appurtenances therein shall be performed by union labor only.

ARTICLE X Intentionally Omitted.

ARTICLE XI Alterations

11.01. Lessee shall not make any alterations, improvements or additions of any kind or nature to any part of the Premises without the prior approval of Lessor, which such approval shall not be unreasonably withheld or delayed. All alterations, improvements and additions to the Premises shall be made in accordance with the Plans and Specifications prepared by Lessee and approved by Lessor and in accordance with all applicable building codes and in accordance with the provisions of the REA. Approval by Lessor of the Plans and Specifications shall not constitute the assumption of any liability on the part of Lessor for their compliance or conformity with applicable building codes and the requirements of this Lease or for their accuracy, and Lessee shall be solely responsible for such Plans and Specifications. Such alterations, improvements and additions to the Premises shall be done in a good workmanlike manner using first-quality materials. Lessee shall require its contractor and subcontractors to furnish Lessor Certificates of Insurance evidencing insurance coverages with the limits as specified and referenced in Exhibit A-2.

ARTICLE XII Maintenance of Premises, Indemnification and Insurance

12.01. Lessor shall maintain, or cause to be maintained, the structural portions of the Premises in repair, provided that Lessee shall give Lessor prior notice of the necessity for such repairs, and further provided that any damage thereto shall not have been caused by any act or omission of Lessee, its employees, agents, invitees, subtenants, licensees, assignees or contractors, in which event such damage shall be promptly repaired by Lessee, subject to the supervision of Lessor. The foregoing provision shall not prejudice Lessor's right to include the cost of maintaining the roof over the Premises within the provisions of ARTICLE XIII. Other than as herein provided, Lessor shall not be responsible to maintain or make any improvements or repairs of any kind, in or upon the Premises.

12.02. Lessee shall maintain in good order, condition and repair and shall replace, if necessary, the Premises and every part thereof, except as hereinbefore provided, including, without limitation, the exterior and interior portions of all doors, door checks, security gates, windows, glass, utility facilities, plumbing and sewage facilities within the Premises or under the floor slab including free flow up to the main sewer line, fixtures, heating, air-conditioning including exterior mechanical equipment, exterior utility facilities and exterior electrical equipment serving the Premises and interior walls, floors and ceilings. Lessee shall contract for, in its own name, and shall pay for a qualified service contractor to inspect, adjust, clean and repair heating, ventilating and air-conditioning equipment within the Premises, including changing filters on a quarterly basis. Lessee shall promptly furnish to Lessor's Retail Facility manager a copy of the inspection and service report. If Lessee's use of the Premises requires a grease trap, Lessee shall contract for, in its own name, and shall pay for a qualified service contractor to inspect, clean and repair such grease trap at such intervals as may be required by Lessee's use, but in no event less frequently than once a month. Lessee shall promptly furnish to Lessor a copy of the inspection and service report. If such grease trap services Lessee and other tenants and occupants in the Retail Facility, Lessor may elect to perform such inspection, cleaning and repairing, and Lessee shall pay to Lessor its proportionate share of the cost thereof based upon the number of tenants serviced by such grease trap. Lessee's proportionate share of such cost shall be due and payable within ten

(10) days after billings therefor are rendered to Lessee. If Lessee fails to commence or complete any of the foregoing obligations promptly and adequately, Lessor may but shall not be required to, make or complete said maintenance or repairs and Lessee shall pay the cost thereof to Lessor upon demand. The performance of such work by Lessor shall not relieve Lessee from such obligations or from any liability resulting from the failure to perform such obligations.

12.03.

- (a). Lessee shall protect, defend, indemnify, save and hold harmless Lessor and the Tower Owner (collectively, jointly and severally, the "Indemnified Parties"), against and from any and all claims, liabilities, demands, fines, actions, proceedings, orders, decrees and judgments of any kind by, or in favor of, anyone whomsoever, and costs, damages and expenses, including attorneys' fees, resulting from, or in connection with, loss of life, personal injury or property damage arising, directly or indirectly, out of, or on account of: (i) any accident or other occurrence in, upon, at or from the Premises, or occasioned in whole or in part through the use and occupancy of the Premises or any improvements therein or appurtenances thereto, including, without limitation, the negligence of Lessor, or by any act or omission of Lessee or any subtenant, concessionaire or licensee of Lessee, or their respective employees, agents, contractors or invitees in, upon, at or from the Premises or its appurtenances or any Common Areas; or (ii) any action of Lessor or Lessor's agents or employees which is taken in reliance upon any act, omission or statement of Lessee or any subtenant, concessionaire or licensee of Lessee, or their respective employees, agents or contractors.
- (b). Lessee, and all those claiming by, through and under Lessee, shall store their property in and shall occupy and use the Premises and any improvements therein and appurtenances thereto, and all other portions of the Lessor's Parcel and the Resort solely at their own risk. Further, Lessor and Tower Owner shall not be liable at any time for any defects, latent or otherwise, in any buildings or improvements in the Retail Facility, the Resort, or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Lessor or Tower Owner be liable at any time for loss of life, or injury or damage to any person or to any property or business of Lessee, or those claiming by, through or under Lessee, caused by, or resulting from, the bursting, breaking, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises or caused by, or resulting from, acts of God or the element, or resulting from any defect or negligence in the occupancy, construction, operation or use of any buildings or improvements in the Lessor's Parcel or the Resort, including the Premises, or any of the equipment, fixtures, machinery, appliances or apparatus therein. Lessee, and all those claiming by, through or under Lessee, hereby release the Indemnified Parties, to the full extent permitted by law, from all such claims or liabilities.
- (c). The Indemnified Parties shall not be responsible or liable at any time to Lessee, or to those claiming by, through or under Lessee, for any loss of life, bodily or personal injury, or damage to property or business, or for business interruption, that may be occasioned by any failure by any tenants or occupants of the Lessor's Parcel or the Resort to comply with any of the terms of their leases or agreements or that may be occasioned by or through the acts, omissions or negligence of any other

persons, or any other tenants or occupants of the Retail Facility or the Resort; and Lessee hereby expressly waives any claim for such damages against the Indemnified Parties.

- (d). Lessee shall give prompt notice to the Indemnified Parties in case of fire or other casualty or accidents in the Premises, or in the building of which the Premises forms a part, or of any defects therein or in any of its fixtures, machinery or equipment.
- (e). Lessee shall indemnify Lessor from and against any and all intellectual property claims relating to the Premises made by third parties.
- (f). The provisions of this Section shall apply and become effective from and after the date Lessor shall deliver possession of the Premises to Lessee in accordance with the terms of this Lease.

12.04. Lessor shall carry All Risk Property coverage, insuring the improvements constructed by Lessor upon Lessor's Parcel, including Lessor's Work in the Premises provided by Lessor, as set forth in Exhibit A-1, for such amount as may be determined by Lessor but in no event less than the amount required by Lessor's mortgagee, if any, including any deductible permitted by Lessor's mortgagee.

12.05. Lessee shall procure and continue in force from and after the earlier to occur of the date Lessor delivers possession of the Premises to Lessee, or the date Lessee enters upon the Premises, and throughout the Term the following insurance coverages:

- (i) full replacement cost coverage for all improvements and betterments installed by or on behalf of any Lessee and full replacement cost insurance for Lessees' personal property;
- (ii) business interruption insurance on an actual loss sustained basis for a minimum of twelve (12) months;
- (iii) \$1,000,000 commercial general liability insurance;
- (iv) automobile liability insurance for all owned, non-owned and hired vehicles with minimum limits of \$1,000,000 combined single limit;
- (v) statutory workers compensation and employer's liability insurance in limits sufficient to meet the umbrella carrier's requirement;
- (vi) only if alcohol is served or sold in the applicable leased space, liquor legal liability insurance with a minimum limit of \$1,000,000 each common cause/ occurrence; and
- (vii) umbrella/excess insurance of not less than \$1,000,000 if the applicable leased space is not for restaurant use and is less than 2,000 square feet and \$10,000,000 in all other cases, over and above the coverage described in clauses (iii) – (vi) of this Section 12.05.

Lessee, upon written request, shall supply satisfactory evidence of insurance to Lessor.

12.06. All insurance policies required under Section 12.05 clause (ii), clause (iii), clause (v) as it relates to Employers Liability insurance, and under Exhibit A-2 shall name Lessor, Tower Owner, Lessor's property

manager and Lessor's designee(s) as additional insureds, and shall be considered primary insurance applying without the contribution of any other insurance which may be available to Lessor, Tower Owner, Lessor's property manager or Lessor's designee(s). All insurance policies required under Section 12.05 clauses (vi) and (vii) shall be issued in the names and for the benefit of Lessor, Tower Owner, Lessor's property manager, Lessor's designee(s) and Lessee. All insurance policies shall be issued by one or more insurance companies rated A VI or better by the A.M. Best Co. and licensed to do business in the state where the Retail Facility is located. At Lessee's option, such insurance may be carried under a blanket policy covering the Premises and any other of Lessee's stores provided the provisions of such blanket policy comply with the terms of this Lease and coverage with respect to the Premises is as provided in Section 12.05. The Commercial General Liability Insurance shall specifically insure Lessee's liability under Section 12.03 hereof. All insurance policies required under Section 12.05 shall contain the following endorsements: (a) that such insurance may not be canceled or amended with respect to Lessor, Tower Owner, Lessor's property manager and Lessor's designee(s) except upon thirty (30) days prior notice from the insurance company to Lessor; (b) that Lessee shall be solely responsible for the payment of all premiums under such policy and that Lessor shall have no obligation for the payment thereof; and (c) a waiver of subrogation as provided in Section 15.04. In the event of payment of any loss covered by any property damage policy, Lessor shall be paid first by the insurance company for its loss. Lessee shall deliver to Lessor, original Certificates of Insurance evidencing insurance policies required under Section 12.05 and endorsements required by this Section within ten (10) days of the inception of such policies and endorsements. At least ten (10) days prior to the expiration of any such policies and endorsements, Lessee shall deliver to Lessor original Certificates of Insurance evidencing the renewal of such policies and endorsements. The minimum limits of any insurance coverage to be maintained by Lessee hereunder shall not limit Lessee's liability under Section 12.03 or elsewhere in this Lease.

ARTICLE XIII Common Areas

13.01. Lessor hereby grants to Lessee, during the Term, the nonexclusive right to use, in common with all others so entitled, the Common Areas of the Resort (including, but not limited to driveways, parking lots, walkways, sidewalks, lobbies and corridors) as may be designated from time to time by Lessor, subject to such reasonable rules and regulations as Lessor or Tower Owner may from time to time propose for pedestrian and vehicular traffic. Lessor agrees that all Licensed Persons shall abide by such rules and regulations. The Common Areas shall be subject to the control and management of Tower Owner, Lessor and others and to such rules and regulations as Tower Owner, Lessor and others may, from time to time, adopt. Tower Owner, Lessor and others reserves the right to change the areas, locations and arrangement of parking areas and other Common Areas; to enter into, modify and terminate easements and other agreements pertaining to the maintenance and use of the parking areas and other Common Areas; to close any or all portions of the Common Areas to such extent and for such time as may, in the sole discretion of Tower Owner's counsel, Lessor's counsel or other's counsel, be legally necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein; to close temporarily, if necessary, any part of the Common Areas in order to discourage noncustomer parking; and to make changes, additions, deletions, alterations or improvements in and to such Common Areas, including methods of ingress to and egress from such Common Areas, provided that there shall be no unreasonable obstruction of Lessee's right of access to or from the Premises or the Resort. Without limiting the generality of the foregoing, Tower Owner shall specifically have the right to remove, alter, expand or contract, improve or rebuild the lobby, casino, facilities,

apparatus, machinery, equipment and all public and rentable areas of the Resort, other than the Retail Parcel as the same may from time to time be constituted, or any part or parts thereof and Tower Owner and Lessor shall not be liable to Lessee for any expense, injury, loss or damage resulting from any work so done, all claims against Tower Owner and Lessor and its authorized representatives for all such liability being expressly released; provided, however, in no event shall any such action materially impede the visibility of or access to the Premises or the standards for the Resort established in and under the REA.

13.02 Tower Owner, Lessor and others shall operate, maintain and repair the Common Areas in such manner as they shall in their sole discretion determine. For these services Lessee shall pay for the Common Area Maintenance Costs (as hereinafter defined) (the "CAM Payment"). The term "Common Area Maintenance Costs" shall mean all costs, expenses and other charges incurred in connection with the ownership, operation, insurance, maintenance and repair of the Common Areas.

13.03. Lessee's CAM Payment will be \$_____ for the first Lease Year and shall be adjusted annually as follows: On each Adjustment Date during the Term, Lessee's CAM Payment shall be increased for that Lease Year to an amount equal to one hundred X percent (10__%) of the annual CAM Payment for the prior Lease Year (i.e., the CAM Payment for the prior Lease Year multiplied by 1.0__).

13.04. Lessee shall pay Lessor one-twelfth (1/12) of the CAM Payment on the first (1st) day of each and every calendar month during the Term. If the first day of a Lease Year should occur on a day other than the first day of the month or if the Lease Year ends on a day other than the last day of the month, Lessee shall pay the CAM Payment prorated based upon the number of rental days in such fractional month divided by the actual number of days contained in such month.

13.05. Lessor shall maintain public liability insurance (either through the purchase of insurance or a self-insurance plan) on the Common Areas providing coverage in such amounts as may be determined by Lessor, but in no event less than One Million Dollars (\$1,000,000).

13.06. Lessee shall cause it and its employees to park only in accordance with the terms of Article XXXVI below.

ARTICLE XIV Mechanic's Lien or Claims

14.01. Pursuant to NRS §108.234, Lessor hereby informs Lessee that Lessee must comply with the requirements of NRS §108.2403 and NRS § 108.2407. Lessee shall not permit to be created nor to remain undischarged any lien, encumbrance or charge arising out of any work of any contractor, mechanic, laborer or materialman which might be or become a lien or encumbrance or charge upon either the Premises, or the Retail Facility or the income therefrom or suffer any other matter or thing whereby the estate, right and interest of Lessor in the Premises or in the Retail Facility might be impaired, and Lessee shall take all actions necessary to comply with the foregoing, including, but not limited to, recording a notice of posted security in the Official Records of Clark County, Nevada, in accordance with NRS §108.2403, and either (i) establishing a construction disbursement account pursuant to NRS §108.2403(1)(b)(1), or (ii) furnishing and recording, in accordance with NRS §108.2403(1)(b)(2), a surety bond for the prime/general contract for Lessee's Work at the Premises that meets the requirements of NRS § 108.2415. Neither Lessor's Parcel nor the Retail Facility shall be subject to attachment. Lessee shall include in all contracts and subcontracts for work to be performed on Lessee's behalf at the Premises provisions wherein such contractor or subcontractor

Fontainebleau Resort Las Vegas
Affiliate Lease

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acknowledges that Lessor has no liability under such contracts and subcontracts and that such contractor or subcontractor waives, to the fullest extent permitted by law, any right it may have to lien or attach Lessor's Parcel or the Retail Facility. If any lien or notice of lien on account of an alleged debt of Lessee or any notice of contract by a party engaged by Lessee or Lessee's contractor to work in the Premises shall be filed against the Premises or the Retail Facility, Lessee shall, within twenty (20) days after notice of the filing thereof, cause the same to be discharged of record by payment, bond or otherwise. If Lessee shall fail to cause such lien or notice of lien to be discharged within the period provided, then Lessor, may, but shall not be obligated to, discharge the same by either paying the amounts claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings; and in any such event, Lessor shall be entitled, if Lessor so elects, to defend any prosecution of an action for foreclosure of such lien by the lienor or to compel the prosecution of an action for foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount paid by Lessor and all costs and expenses, including attorneys' fees, incurred by Lessor in connection therewith shall be paid by Lessee to Lessor on demand. Nothing in this Lease shall be construed as in any way constituting a consent or request by Lessor, expressed or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration or repair of or to any part of the Premises nor as giving Lessee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials on behalf of Lessee or Lessor that would give rise to the filing of any lien against the Premises or the Retail Facility. In the event the name and address of Lessee's prime/general contractor is not known as of the date of this Lease, then Lessee shall provide Lessor with such information at least ten (10) days prior to the date on which Lessee contracts with such prime/general contractor. Lessee shall notify Lessor immediately upon the signing of any contract with the prime/general contractor for the construction, alteration or repair of any portion of the Premises or Lessee's improvements to the Premises. Lessee may not enter the Premises to begin initial construction on Lessee's improvements or begin any alteration or other work in the Premises until Lessee has delivered evidence satisfactory to Lessor that Lessee has complied with the terms of this Section 14.01. Failure by Lessee to comply with the terms of this Section 14.01 shall permit Lessor to declare Lessee in default and to terminate this Lease. Lessee's failure to comply with the bond and security requirements of NRS § 108.2403 and NRS § 108.2407 within fifteen (15) days of the applicable statutory periods shall permit Lessor to discharge the lien and entitle Lessor to immediate reimbursement by Lessee.

ARTICLE XV Destruction and Restoration

15.01. If the Premises shall be damaged by any insured casualty, or damaged by any uninsured casualty, Lessor shall have the option to rebuild or terminate this Lease to be exercised by notice to Lessee given not more than three (3) months from the later to occur of the date of such damage or, if an insured loss, the date Lessor receives its final insurance adjustment. If Lessor elects to rebuild, Lessor shall, at its expense, proceed with so much of the restoration of the Premises as was included in Lessor's Work pursuant to 6.01. All repairs and restorations of the Premises not so included shall be performed by Lessee in conformance with ARTICLE VIII. The parties shall promptly commence and diligently proceed with their restoration obligations hereunder.

15.02. In the event of total destruction of the Premises, Lessee's rent shall completely abate from the date of such destruction. If Lessor elects to rebuild as aforesaid, Lessee's rent shall completely abate from the date of such destruction until sixty (60) days after the date when Lessor notifies Lessee that Lessor's Work in the Premises is complete, or upon the date when Lessee opens for business, whichever event shall first occur. In the event of a partial destruction or damage whereby Lessee shall be deprived of the occupancy and use of only a portion of the Premises, then Rent shall be equitably apportioned according to the area of the Premises which is unusable by Lessee, until such time as the Premises are repaired or restored as provided herein.

15.03. If any portion of the Retail Facility is damaged or destroyed to such an extent that Lessor, in its sole discretion, elects to discontinue operation of the Retail Facility, Lessor may cancel this Lease by giving Lessee notice of its election and this Lease shall terminate and shall become null and void ninety (90) days after said notice.

15.04. Each party hereto ("Releasing Party") hereby releases the other ("Released Party") from any liability which the Released Party would, but for this Section, have had to the Releasing Party arising out of or in connection with any accident or occurrence or casualty (a) which is or would be covered by an All Risk Property coverage policy, including Sprinkler Leakage Legal Liability coverage policy, in the state in which the Premises is located regardless whether such coverage is being carried by the Releasing Party, and (b) to the extent of recovery under any other casualty or property damage insurance being carried by the Releasing Party at the time of such accident or occurrence or casualty, which accident or occurrence or casualty may have resulted in whole or in part from any act or omission of the Released Party, its officers, agents or employees; and insofar as Lessee is the Releasing Party, it also will release the Tower Owner and all tenants of Tower Owner in the Resort from any such liability as if the Tower Owner and such tenants were each a Released Party under this Section provided, however, the release hereinabove set forth shall become inoperative and null and void if the Releasing Party contracts for the insurance required to be carried under the terms of this Lease with an insurance company which (a) takes the position that the existence of such release vitiates or would adversely affect any policy so insuring the Releasing Party in a substantial manner and notice thereof is given to the Released Party, or (b) requires the payment of a higher premium by reason of the existence of such release, unless in the latter case the Released Party, within ten (10) days after notice thereof from the Releasing Party, pays such increase in premium.

ARTICLE XVI Property in Premises

16.01. All leasehold alterations or improvements, such as light fixtures, heating and air-conditioning equipment, and other construction to be done by Lessee as set forth in ARTICLE VIII or ARTICLE XI, including the items as set forth in Exhibit A-2 hereto, shall when installed attach to the fee and become and remain the property of Lessor. Such property shall not be removed unless replaced with like property. All store fixtures or trade fixtures, signs, drapes, inventory and personalty shall remain the property of Lessee, subject at all times to Lessor's lien.

16.02. Lessee shall pay before delinquency all taxes assessed against Lessee's fixtures, furnishings, leasehold improvements, equipment and stock-in-trade placed in or on the Premises. Any such taxes included in Lessor's tax bills and paid by Lessor shall be due and payable within ten (10) days after billings therefor are rendered to Lessee.

ARTICLE XVII Access to Premises

17.01. Lessee shall permit Lessor or Lessor's agents to inspect the Premises at any reasonable time and shall permit Lessor to make such repairs, alterations, improvements or additions in the Premises or to the building of which the Premises is a part, that Lessor may deem desirable or necessary or which Lessee has covenanted herein to do and has failed so to do, or in the exercise of other rights granted Lessor under this Lease, including, without limitation, Sections 19.04 and 19.10, without the same being construed as an eviction of Lessee in whole or in part or as an election by Lessor to terminate this Lease. Lessor shall in no way be liable for such entry. Rent and all items of additional rent shall in no manner abate while such repairs, alterations, improvements or additions are being made by reason of loss or interruption of the business of Lessee because of the prosecution of such work.

ARTICLE XVIII Surrender of Premises

18.01. Lessee shall deliver and surrender to Lessor possession of the Premises upon expiration of this Lease, or its earlier termination as herein provided, broom clean, and in as good condition and repair as the same shall be on the date Lessee opens for business in the Premises, or the date any subsequent improvements to the Premises are completed, ordinary wear and tear and damage by fire or the elements beyond Lessee's control excepted.

18.02. Lessee shall remove all property of Lessee, repair all damage to the Premises caused by such removal and restore the Premises to the condition in which they were prior to the installation of the articles so removed. Any property not so removed at the expiration of the Term shall be deemed to have been abandoned by Lessee, and may be retained or disposed of by Lessor, as Lessor shall desire.

ARTICLE XIX Utilities

19.01. Lessee agrees to pay for the utility services rendered or furnished to the Premises including gas, water, electricity, sprinkler charges assessed by any governmental authority, fire line charges, sewer rental, sewage treatment facilities and the like, together with all taxes levied or other charges on such utilities and governmental charges based on utility consumption, standby utility capacity or potential utility use. Said utility services may be provided directly to the Premises by the local utility company or the Tower Owner or, at Lessor's option, the services may be provided by the local utility company or the Tower Owner directly to Lessor who then distributes to the Premises. Lessee shall pay to Lessor a portion of the costs of utility services provided for the Retail Facility each Lease Year from and after the Rental Commencement Date (Lessee's share for a Lease Year being the "Utilities Payment").

19.02. However, if any such utilities are separately metered or assessed for the Premises, then Lessee shall pay such separately metered or assessed charge and deduct [$<100\%$] of such payment from its Utilities Payment payment. The Utilities Payment to be paid by Lessee is separate from Lessee's payment of the charges for any separately metered utilities. If Lessor shall supply any such separately metered services, Lessee will purchase same from Lessor at charges not in excess of the charges for the services in question made by Tower Owner or by any utility corporation or governmental agency supplying such utilities in the area, but in no event at a lesser rate than that paid by Lessor. Any such charges for services supplied by Lessor, or charges for utilities which may be rebilled by Lessor, shall be due and payable as additional rent within ten (10)

days after billings therefor are rendered to Lessee. In no event shall Lessor or Tower Owner be liable for the quality, quantity, failure or interruption of such services to the Premises.

19.03. Lessee's Utilities Payment will be \$_____ for the first Lease Year and shall be adjusted annually as follows: On each Adjustment Date during the Term, Lessee's Utilities Payment shall be increased for that Lease Year to an amount equal to one hundred _____ percent (10__%) of the annual Utilities Payment for the prior Lease Year, without deduction for any separately metered charges paid by Lessee (i.e., the Utilities Payment, without any deductions, for the prior Lease Year multiplied by 1.0__).

19.04. Lessee shall pay Lessor one-twelfth (1/12) of the Utilities Payment on the first (1st) day of each calendar month during the Lease Year. If the first day of a Lease Year should occur on a day other than the first day of the month or if the Lease Year ends on a day other than the last day of the month, Lessee shall pay the Utilities Payment prorated based upon the number of rental days in such fractional month divided by the actual number of days contained in such month.

19.05. Lessor agrees to provide and maintain, or cause Tower Owner to provide and maintain, a system designed to heat, ventilate and air-condition the Premises (HVAC System). Lessee agrees to use the HVAC System in the Premises and to pay Lessor each Lease Year for such use a position of the total costs for the HVAC System and services (Lessee's share for a Lease Year being the "HVAC System Payment").

19.06. Lessee's HVAC System Payment will be \$_____ for the first Lease Year and shall be adjusted annually as follows: On each Adjustment Date during the Term, Lessee's HVAC System Payment shall be increased for that Lease Year to an amount equal to one hundred _____ percent (10__%) of the annual HVAC System Payment for the prior Lease Year (i.e., the HVAC System Payment for the prior Lease Year multiplied by 1.0__).

19.07. Lessee shall pay Lessor one-twelfth (1/12) of the HVAC System Payment on the first (1st) day of each calendar month during the Lease Year. If the first day of a Lease Year should occur on a day other than the first day of the month or if the Lease Year ends on a day other than the last day of the month, Lessee shall pay the HVAC System Payment prorated based upon the number of rental days in such fractional month divided by the actual number of days contained in such month.

19.08. Lessor warrants that the HVAC System will receive normal maintenance and service; Lessee acknowledges, however, that an HVAC System is subject to breakdown and failure and that, therefore, there may be interruptions in service. In no event shall Lessor be liable for the quality, quantity, failure or interruption of utility services to the Premises.

19.09. Lessor may, with notice to Lessee, or without notice in the case of an emergency, cut off and discontinue gas, water, electricity and any or all other utilities whenever such discontinuance is necessary in order to make repairs or alterations.

19.10. Lessee shall cooperate with Lessor's reasonable directives to reduce energy consumption, including installation of new energy efficient equipment or the modification or replacement of existing equipment, as the case may be. If any governmental authority shall order mandatory energy conservation or if Lessor elects voluntarily to cooperate in energy conservation at the request of any governmental authority, including, without limitation, a reduction in operating hours or lighting usage, then Lessee shall comply with such requirements.