

FONTAINEBLEAU RESORT LAS VEGAS
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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 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 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. In addition, approval by Lessor of the 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 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 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.

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8.05. Lessor shall allow Lessee the Construction Allowance for the completion of Lessee's Work in the Premises to be paid in the following manner: (a) one-third (1/3) of the Construction Allowance (\$ _____) to be paid to Lessee within thirty (30) days after 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 thirty-three and one-third percent (33 1/3%) of Lessee's Work in the Premises 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 (\$ _____) 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 Premises has been completed and Lessee furnishes Lessor waivers of lien in statutory form for such work; and (c) the remainder of the Construction Allowance (\$ _____) to be paid to Lessee only upon the satisfaction of all of the following conditions: (i) Lessee opens for business in the Premises; (ii) completion of Lessee's Work and approval thereof by Lessor; (iii) delivery to Lessor of Lessee's affidavit stating that the work to be performed by Lessee 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 Premises (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 Premises from any general contractor and all subcontractors who have performed work on or furnished materials to the Premises, or in lieu thereof, an attorney's certification that the lien period for the work performed on Lessee's behalf in the Premises has expired and that no liens in connection therewith have been filed; (vi) delivery to Lessor of Lessee's written acceptance of the Premises 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 Minimum Rent 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; 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 Premises, together with a copy of any occupancy certificate issued by the proper governmental authority for the Premises.

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

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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. Lessee shall operate its business in the Premises under the Trade Name and the Premises shall be occupied and used only for the Permitted Use. The Permitted Use is nonexclusive, and other tenants may sell items identical or similar to those sold by Lessee. Lessee warrants that it has the full and unfettered right to use Lessee's Trade Name for the entire Term.

- (a). Lessee shall continuously and without interruption, throughout the Term in good faith, actively use, occupy and operate the entire Premises, with fixtures and decor, an inventory of goods and merchandise and a staff of sales 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 and to achieve the maximum volume of sales so that Lessor will receive the maximum amount of Percentage Rent.
- (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.
- (d). No Gaming Activities or gaming devices, cashless wagering systems or associated equipment (as such terms are defined in NRS Chapter 463, as amended) shall be permitted in or on the Premises. Lessee acknowledges that Tower Owner and Affiliates of Tower Owner are or will be businesses (or engaged in businesses) that are or may be subject to and exist because of privileged licenses issued by Gaming Authorities. Therefore, Lessee agrees that (i) Lessee shall, and shall use commercially reasonable efforts to cause all Persons associated with Lessee to, promptly, and in all events within the applicable time limit, furnish the Gaming Authorities any information reasonably requested thereby and shall otherwise reasonably cooperate with all Gaming Authorities (A Person shall be deemed associated with Lessee if that Person is an Affiliate of Lessee, such Person is employed by Lessee, is an officer, director or agent of Lessee, furnishes services or property to Lessee, has any contractual relationship with Lessee or has the power to exercise a significant influence over Lessee or an Affiliate of Lessee); and (ii) Upon

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request from Lessor. (A) Lessee will disclose to Lessor and Tower Owner the names of all of Lessee's officers and directors; (B) unless it is a publicly traded corporation on a national stock exchange, Lessee shall disclose to Lessor and Tower Owner all direct and indirect ownership interests in the Lessee and all lenders or sources of financing; and (C) Lessee will obtain any license, qualification, clearance or the like which shall be requested or required of Lessee by any Gaming Authority or any regulatory authority having jurisdiction over Tower Owner or any Affiliate of Tower Owner. If Lessee fails to satisfy requirements (i) or (ii)(C) above or if Tower Owner or any Affiliate of Tower Owner is directed not to involve itself in business with Lessee by any such authority, or if Tower Owner determines, in Tower Owner's good-faith judgment, and notifies Lessor that Lessee, or any of its officers, directors, employees, agents, designees or representatives, or a partner, owner, member, or shareholder, or any lender or financial participant (i) is or might be engaged in, or is about to be engaged in, any activity or activities, or (ii) was or is involved in any relationship, either of which could or does jeopardize Tower Owner's business, reputation or such licenses, or those of its Affiliates, or if any such license is threatened to be, or is, denied, curtailed, suspended or revoked because of Lessee, then Lessor shall terminate this Lease and this Lease shall be deemed null and void and of no force and effect.

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. Because of the difficulty or impossibility of determining Lessor's damages by way of loss of the anticipated Percentage Rent from Lessee or percentage rent from other tenants or occupants in the Retail Facility, or by way of loss of value in the property because of diminished saleability, mortgageability, adverse publicity or appearance by Lessee's action, should Lessee (a) fail to take possession and open for business in the Premises fully fixtured, stocked and staffed on the Rental Commencement Date except to the extent prevented from so doing by strikes, fire, casualty or other causes (other than causes relating to financial inability) beyond Lessee's control, or (b) cease operating or conducting Lessee's business therein in accordance with the terms of this Lease, except where the Premises are rendered untenable by reason of fire, casualty, or permitted repairs or alterations (collectively, "failure to do business"), Lessor shall have the right, at Lessor's option, to collect not only Minimum Rent and all items of additional rent, but also additional rent equal to twenty-five percent (25%) of the Minimum Rent reserved for the period of Lessee's failure to do business, computed at a daily rate for each and every day or part thereof during such period. Such additional rent shall be deemed to be liquidated damages in lieu of any Percentage Rent from Lessee or percentage rent from other tenants that might have been earned by Lessor during such period.

9.04. Lessee shall abide by all reasonable rules and regulations established by Lessor, 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.

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- (b). Engaging in any unethical or disreputable method of business operation.
- (c). A so-called "flea market."
- (d). Any Gaming Facility as further described in Section 9.02(d).
- (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). Any wedding chapel, for performing weddings or as part of any wedding-related program, activity or service.
- (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, excessive noise or sound which can be heard or 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).

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- (o). Any spa, health or fitness club, gym or beauty salon, provided the same shall not prohibit the retail sale of cosmetics and other spa or beauty products.
- (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.

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- (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 set forth in Exhibit B hereof. Lessor shall have the right to recommend

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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 Minimum 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 Marketing and Media Fund

10.01. Lessor shall establish a Marketing Fund which will be used by Lessor to pay all costs and expenses associated with the formulation and execution of an ongoing program for the promotion of the Retail Facility. This program may include, without limitation, promotional events and programs, special events, shows, displays, signs, decor, equipment, promotional and informational literature, public relations and other activities designed to attract customers to the Retail Facility, to enhance the Retail Facility's image or to increase public awareness of the Retail Facility. Lessor may use the Marketing Fund to defray the costs of administration of the Marketing Fund, including, without limitation, the salary of a marketing director and related administrative personnel, rent and insurance. In addition, Lessor may establish a Media Fund which will be used by Lessor to pay all costs associated with the advertising of the Retail Facility, including, without limitation, media space, time, distribution and production costs associated with such media or advertising. Lessor shall have the right, in its sole discretion, to transfer funds from the Marketing Fund to the Media Fund and from the Media Fund to the Marketing Fund.

10.02. Lessee shall pay to Lessor from and after the Rental Commencement Date during the Term the Marketing Payment and Media Payment in advance in equal monthly installments. The Marketing Payment represents Lessee's contribution to the Marketing Fund and the Media Payment represents Lessee's contribution to the Media Fund. In addition, Lessee shall pay to Lessor the Retail Facility Grand Opening Fee as Lessee's initial contribution to the Marketing Fund and Media Fund, the application and disbursement allocation of which shall be in Lessor's sole discretion. Such sum shall be due and payable within ten (10) days after billing therefor is rendered to Lessee. Commencing with the January 1 following the Rental Commencement Date and each January 1 thereafter, the Marketing Payment and the Media Payment shall both be adjusted upward in the manner set forth below. The amount of the Marketing Payment and Media Payment for each year, shall be increased by Five Cents (5¢) per year for each square foot of Floor Area or to an amount, if such amount is greater, determined as follows: Using the "All Items" portion of the "Consumer Price Index for All Urban Consumers: U. S. City Average" (1982-84=100), published by the Bureau of Labor Statistics of the United States Department of Labor, applicable on the date of this Lease as the denominator and the index number for the January 1 following the Rental Commencement Date and each January 1 thereafter as the numerator and multiplying the resulting fraction times the stated Marketing Payment and the stated Media Payment. If the Bureau of Labor Statistics shall change the base period, the new index numbers shall be substituted for the old index numbers in making the above computation. If such Consumer Price Index of the Bureau of Labor Statistics of the United States Department of Labor is discontinued, Lessor shall select another index published by a department or agency of the United States Government to be substituted for the prior index, with any appropriate adjustment required because of the predecessor index. This procedure shall continue until such time as no such index is so published, at which time Lessor shall reasonably substitute an index prepared by any appropriate entity.

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 be in Lessor's sole discretion. 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. 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

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(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

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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.

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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,

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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 _____ percent (10__%) of the annual CAM Payment for the prior Lease Year.

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).

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

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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 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

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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 ARTICLE VII. 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 Minimum 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,

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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. Minimum 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

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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 _____ 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__), or

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

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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.

ARTICLE XX Assignment and Subletting

20.01. Lessee shall not, voluntarily, involuntarily or by operation of law, sell, mortgage, pledge, or in any manner transfer or assign this Lease, in whole or in part, or sublet the whole or any part of the Premises, or permit any other persons to occupy same without the consent of Lessor, references elsewhere herein to assignees, subtenants or other persons notwithstanding. If Lessee requests permission to either assign this Lease, or to sublet the whole or any part of the Premises, or this Lease is deemed to be assigned pursuant to Section 20.02, then Lessor may, in its sole and absolute discretion, elect to consent or withhold consent. If Lessor's consent be obtained (no inference being intended herein that Lessor is in any way obligated to grant such consent), then, in addition to such other conditions as Lessor shall have then imposed, if any, such assignment or subletting shall be subject to and conditioned upon the following: (a) at the time of any such proposed assignment or subletting, Lessee shall not be in default under any of the terms, conditions or covenants of this Lease; (b) that if the Minimum Rent or any items of additional rent required to be paid by any such proposed assignee or sublessee exceeds the Minimum Rent or items of additional rent reserved hereunder, then Lessee shall pay to Lessor monthly the entire amount of such excess, which shall be deemed additional rent; (c) Lessee and its proposed assignee or sublessee shall execute, acknowledge and deliver to Lessor a fully executed counterpart of a written assignment of lease or sublease, as the case may be, duly consented to by any Surety by the terms of which: (i) in case of an assignment, Lessee will assign to such proposed assignee Lessee's entire interest in this Lease, together with all prepaid rents hereunder, and the proposed assignee will accept said assignment and assume and agree to perform, directly for the benefit of Lessor, all of the terms, conditions and covenants of this Lease on Lessee's part to be performed hereunder; or (ii) in case of a subletting, the sublease will in all respects be subject and subordinate to all of the terms, conditions and covenants of this Lease and the proposed sublessee thereunder will agree to be bound by and to perform all of the terms, conditions and covenants of this Lease on Lessee's part to be performed

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hereunder, except the payment of Minimum Rent and all items of additional rent reserved hereunder, which Lessee shall continue to pay to Lessor; (d) notwithstanding any such assignment or subletting under the terms of this Article, both Lessee and any Surety will acknowledge that, notwithstanding such assignment or sublease and the consent of Lessor thereto, both Lessee and any Surety will not be released or discharged from any liability whatsoever under this Lease (as the same may be amended from time to time) and will continue liable thereon with the same force and effect as though no assignment or sublease had been made; (e) an increase, but not decrease, of Minimum Rent and other items of additional rent to the then current market rates; and (f) Lessee shall pay to Lessor, Lessor's administrative costs, overhead and fees of counsel in connection with such assignment or subletting but not less than a minimum sum of One Thousand Dollars (\$1,000). The acceptance of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease or to be a consent to the assignment of this Lease or the subletting of the Premises.

20.02. If at any time during the Term, any part or all of its outstanding voting stock, if Lessee is a corporation, or any or all of the interest in the partnership, if Lessee is a partnership, shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other dispositions so as to result in a change in the present effective voting control of Lessee by the person or persons owning a majority of said outstanding voting stock or a majority interest in the partnership, as the case may be, on the date of this Lease, then such event shall constitute an assignment for the purposes of this Lease. If there is a Surety, then if at any time during the Term (a) any part or all of such Surety's outstanding voting stock, if such Surety is a corporation, or any or all of the interest in the partnership, if such Surety is a partnership, shall be transferred by sale, assignment, bequest, inheritance, operation of law, or other dispositions so as to result in a change in the present effective voting control of such Surety by the person or persons owning a majority of said outstanding voting stock or a majority interest in the partnership, as the case may be, on the date of this Lease, or (b) such Surety is dissolved, Lessee shall so notify Lessor. Such notice shall be effective in accordance with this Section only if said notice shall include or state all of the following: (a) that said notice is given pursuant to this Section; (b) the occurrences giving rise to such notice, stated with particularity as to the effective dates, parties involved or affected and the shares or interests affected; (c) in the event of a transfer of shares or a partner's interest, a recent financial statement (certified by an independent Certified Public Accountant) of the transferee or transferees; and (d) that Lessor shall have thirty (30) days from receipt of such notice to terminate this Lease as described in this Section. Lessor shall have the right, at its option, to terminate this Lease by notice to Lessee given within thirty (30) days after Lessor's receipt of such notice from Lessee. If Lessor receives other notice of such transfer or of the dissolution of such Surety, then Lessor shall have the right, at its option, within ninety (90) days after receipt of such other notice, to terminate this Lease or to declare an Event of Default under ARTICLE XXII. The foregoing provisions shall not apply to any corporation if, and so long as, all the outstanding voting stock of such corporation is listed on a National Securities Exchange as defined in the Securities Exchange Act of 1934, as amended. For the purposes of this Section, stock ownership shall be determined in accordance with the principles set forth in Section 544 of the Internal Revenue Code of 1986, as the same existed on October 22, 1986, and the term "voting stock" shall refer to the shares of stock regularly entitled to vote for the election of directors of the corporation.

ARTICLE XXI Eminent Domain

21.01. If the Premises or any part thereof shall be permanently taken or condemned or transferred by agreement in lieu of condemnation for any public or quasi-public use or purpose by any competent authority, whether or not this Lease shall be terminated, the entire compensation award therefor, both leasehold and reversion, shall belong to Lessor without any deduction therefrom for any present or future estate of Lessee and Lessee hereby assigns to Lessor all its right, title and interest to any such award. Lessee shall execute all documents required to evidence such result within ten (10) days after receipt of the same. Lessee shall, however, be entitled to claim, prove and receive in such condemnation proceedings such award as may be allowed for trade fixtures and other equipment installed by it, but only if or to the extent such award shall be in addition to the award for the land and the building and other improvements (or portions thereof) containing the Premises and only if or to the extent such award does not diminish any award to Lessor.

21.02. If the entire Premises shall be taken, condemned or transferred as aforesaid, then this Lease shall terminate and shall become null and void from the time possession thereof is required for public use, and from that date, the parties hereto shall be released from further obligation hereunder, but if a portion only of the Premises itself shall be so taken, condemned or transferred, then Lessor may elect to terminate this Lease or, at its own expense, repair and restore the portion not affected by the taking, and thereafter the Minimum Rent to be paid by Lessee shall be equitably and proportionately adjusted.

21.03. If a portion of the Retail Facility shall be taken, condemned or transferred as aforesaid and as a result thereof Lessor, in its sole discretion, elects to discontinue the 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 and the provisions with respect to the awards shall be as set forth in Section 21.01.

ARTICLE XXII Default by Lessee

22.01.

- (a). In the event of any failure of Lessee to pay any installment of Minimum Rent or additional rent or any other payment required to be made by Lessee when due hereunder, or if this Lease or any portion of Lessee's interest hereunder be assigned or the Premises or any portion thereof be sublet, either voluntarily or by operation of law, except as herein provided, or if Lessee shall be in breach of its obligations included under Section 9.01 or if Lessee shall be in breach of its obligations included under Section 9.04 on three (3) or more occasions during any twenty-four (24) month period, or if Lessee defaults in performing any of the other terms, conditions or covenants of this Lease to be observed or performed by Lessee for more than five (5) days after notice of such other default shall have been given to Lessee, or if Lessee or an agent of Lessee shall falsify any report required to be furnished to Lessor pursuant to the terms of this Lease, or suffer this Lease to be taken under any writ of execution, then, and in any one or more of such events (herein sometimes referred to as an "Event of Default"), Lessor shall have the immediate

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right to reenter the Premises, either by summary proceedings, by force or otherwise, and to dispossess Lessee and all other occupants therefrom and remove and dispose of all property therein or, at Lessor's election, to store such property in a public warehouse or elsewhere at the cost of, and for the account of, Lessee, all without service of any notice of intention to reenter and with or without resort to legal process (which Lessee hereby expressly waives) and without Lessor being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Upon the occurrence of any such Event of Default, Lessor shall also have the right, at its option, in addition to and not in limitation of any other right or remedy, to terminate this Lease by giving Lessee notice of cancellation and upon mailing of said notice, this Lease and the Term shall end and expire as fully and completely as if the date of said notice were the date herein definitely fixed for the end and expiration of this Lease and the Term and thereupon, unless Lessor shall have theretofore elected to reenter the Premises, Lessor shall have the immediate right of reentry, in the manner aforesaid, and Lessee and all other occupants shall quit and surrender the Premises to Lessor, but Lessee shall remain liable as hereinafter provided; provided, however, that if Lessee shall default (i) in the timely payment of any Minimum Rent or any item of additional rent or in the timely reporting of Adjusted Gross Sales as required by ARTICLE V hereof and any such default shall continue or be repeated for two (2) consecutive months, or for a total of four (4) months in any period of twelve (12) months, or (ii) in the performance of any other covenants of this Lease more than six (6) times, in the aggregate, in any period of twelve (12) months, then, notwithstanding that such defaults shall have been cured within the period after notice as above provided, any further similar default shall be deemed to be deliberate and Lessor thereafter may serve said notice of cancellation without affording to Lessee an opportunity to cure such further default.

- (b). If by reason of the occurrence of any such Event of Default, the Term shall end before the date originally fixed herein, or Lessor shall reenter the Premises, or Lessee shall be ejected, dispossessed, or removed therefrom by summary proceedings or in any other manner, Lessor at any time thereafter may relet the Premises, or any part or parts thereof, either in the name of Lessor or as agent for Lessee, for a term or terms which, at Lessor's option, may be less than or exceed the period of the remainder of the Term or which otherwise would have constituted the balance of the Term and grant concessions or free rent. Lessor shall receive the rents from such reletting and shall apply the same, first, to the payment of any indebtedness other than Minimum Rent or any item of additional rent due hereunder from Lessee to Lessor; second, to the payment of such expenses as Lessor may have incurred in connection with reentering, ejecting, removing, dispossessing, reletting, altering, repairing, redecorating, subdividing, or otherwise preparing the Premises for reletting, including brokerage and attorneys' fees; and the residue, if any, Lessor shall apply to the fulfillment of the terms, conditions and covenants of Lessee hereunder and Lessee hereby waives all claims to the surplus, if any. Lessee shall be liable for and shall pay Lessor any deficiency between the Minimum Rent and all items of additional rent reserved herein and the net avails as aforesaid, of reletting, if any, for each month of the period which otherwise would have constituted the balance of the Term. Lessee shall pay such deficiency on an accelerated basis as provided under subsection (d) below or, at Lessor's sole option, in monthly

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installments on the rent days specified in this Lease, and any suit or proceeding brought to collect the deficiency for any month, either during the Term or after any termination thereof, shall not prejudice or preclude in any way the rights of Lessor to collect the deficiency for any subsequent month by a similar suit or proceeding. Lessor shall in no event be liable in any way whatsoever for the failure to relet the Premises or, in the event of such reletting, for failure to collect the rents reserved thereunder. Lessor is hereby authorized and empowered to make such repairs, alterations, decorations, subdivisions or other preparations for the reletting of the Premises as Lessor shall deem fit, advisable and necessary, without in any way releasing Lessee from any liability hereunder, as aforesaid. Lessor shall have a valid and subsisting lien for the payment of all rentals, charges and other sums to be paid by Lessee and reserved hereunder (including all costs and expenses incurred by Lessor in recovering possession of the Premises and the reletting thereof as provided under this Section which shall be deemed to be additional rent) upon Lessee's goods, wares, equipment, signs, fixtures, furniture and other personal property situated in the Premises, and such property shall not be removed therefrom without the consent of Lessor until the arrearages in Minimum Rent and all items of additional rent then due to Lessor hereunder shall have first been paid and discharged. Upon the occurrence of an Event of Default by Lessee, Lessor may, in addition to any other remedies provided herein or by law, enter upon the Premises and take possession of any and all goods, wares, equipment, signs, fixtures, furniture and other personal property of Lessee situated in the Premises without liability for trespass or conversion, and sell the same with or without notice at public or private sale, with or without having such property at the sale, at which Lessor or its assigns may purchase, and apply the proceeds thereof less any and all expenses connected with the taking of possession and the sale of the property, as a credit against any sums due from Lessee to Lessor. Any surplus shall be paid to Lessee, and Lessee shall pay any deficiency forthwith, after demand. Lessor, at its option may foreclose said lien in the manner provided by law. The lien herein granted to Lessor shall be in addition to any Lessor's lien that may now or at any time hereafter be provided by law.

- (c). No such reentry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease unless notice of such intention be given to Lessee or unless the termination thereof shall result as a matter of law or be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Lessor may at any time thereafter elect to terminate this Lease for such previous breach.
- (d). If this Lease is terminated pursuant to the provisions of this Section, or terminates pursuant to the provisions of Section 22.02, Lessor may recover from Lessee all damages it may sustain by reason of Lessee's default, including the cost of recovering the Premises and attorneys' fees, and, upon so electing and in lieu of the damages that may be recoverable under subsection (b) above, Lessor shall be entitled to recover from Lessee, as and for Lessor's damages, an amount equal to the difference between the Minimum Rent and all items of additional rents reserved hereunder for the period which otherwise would have constituted the balance of Term and the then present rental value of the Premises for such period, both discounted in accordance with accepted financial practice to the then present worth, at the average rate established and

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announced for United States Treasury Bills, with a maturity of thirteen (13) weeks at the four (4) weekly auctions held immediately prior to the date of such termination [the four (4) week average bill rate], all of which shall immediately be due and payable by Lessee to Lessor. In determining the rental value of the Premises, the rental realized by any reletting, if such reletting be accomplished by Lessor within a reasonable time after the termination of this Lease, shall be deemed prima facie to be the rental value, but if Lessor shall not undertake to relet or having undertaken to relet, has not accomplished reletting, then it will be conclusively presumed that the Minimum Rent and all items of additional rent reserved under this Lease represent the rental value of the Premises for the purposes hereof (in which event Lessor may recover from Lessee, the full total of all Minimum Rent and all items of additional rent due hereunder, discounted to present value as hereinbefore provided). Lessor shall, however, account to Lessee for the Minimum Rent and additional rents received from persons using or occupying the Premises during the period representing that which would have constituted the balance of the Term, but only at the end of said period, and only if Lessee shall have paid to Lessor its damages as provided herein, and only to the extent of sums recovered from Lessee as Lessor's damages, Lessee waiving any claim to any surplus. Nothing herein contained, however, shall limit or prejudice the right of Lessor to prove and obtain as damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amounts referred to in subsection (b) or in this subsection (d) of this Section.

- (e). In determining the Percentage Rent which would be payable by Lessee for any period when Lessee is no longer in possession of the Premises following an Event of Default, the same shall be deemed to be for each Lease Year (or fractional part thereof) during the remainder of the Term, or the period equivalent thereto which otherwise would have constituted the balance of the Term, the greater of the following sums: (i) twenty-five percent (25%) of the Minimum Rent reserved for such period, or (ii) the average annual Percentage Rent paid or payable by Lessee from the Rental Commencement Date to the end of the Lease Year immediately preceding the occurrence of such Event of Default, or during the immediately preceding three (3) full Lease Years, whichever period is shorter.
- (f). The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Lessor and Lessee created hereby, Lessee's use or occupancy of the Premises, and any claim for injury or damage. If Lessor commences any action or proceeding under this Lease, including, but not limited to, actions for recovery of Minimum Rent and items of additional rent and actions for recovery of possession, Lessee shall not interpose any counterclaim of any nature or description in any such action or proceeding. The foregoing, however, shall not be construed as a waiver of Lessee's right to assert such claim in a separate action or proceeding instituted by Lessee.

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- (g). Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws, if Lessee shall be evicted or dispossessed from the Premises for any cause, or Lessor reenters the Premises following the occurrence of any Event of Default hereunder, or this Lease is terminated before the expiration date thereof originally fixed herein.
- (h). No waiver of any covenant or condition or of the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the nonobservance on any other occasion of the same or of any other covenant or condition hereof, nor shall the acceptance of Minimum Rent or any additional rent by Lessor at any time when Lessee is in default under any covenant or condition hereof, be construed as a waiver of such default or of Lessor's right to terminate this Lease on account of such default, nor shall any waiver or indulgence granted by Lessor to Lessee be taken as an estoppel against Lessor, it being expressly understood that if at any time Lessee shall be in default in any of its covenants or conditions hereunder, an acceptance by Lessor of Minimum Rent or any additional rent during the continuance of such default or the failure on the part of Lessor promptly to avail itself of such other rights or remedies as Lessor may have, shall not be construed as a waiver of such default, but Lessor may at any time thereafter, if such default continues, terminate this Lease on account of such default in the manner herein provided. Lessor is entitled to accept, receive and cash or deposit any payment made by Lessee for any reason or purpose or in any amount whatsoever, and apply the same, at Lessor's option, to any obligation of Lessee and the same shall not constitute payment of any amount owed except that to which Lessor has applied the same. No endorsement or statement on any check or letter of Lessee shall be deemed an accord and satisfaction or otherwise recognized for any purpose whatsoever. The acceptance of any such check or payment shall be without prejudice to Lessor's right to recover any and all amounts owed by Lessee hereunder and Lessor's right to pursue any other available remedy.
- (i). In the event of any breach or threatened breach by Lessee of any of the terms and provisions of this Lease, Lessor shall have the right to injunctive relief as if no other remedies were provided herein for such breach.
- (j). Any rights and remedies reserved by, or granted to, Lessor under this Lease, at law or in equity, are distinct, separate and cumulative, and the exercise of any one of them shall not be deemed to preclude, waive or prejudice Lessor's right to exercise any or all others.
- (k). Lessee expressly waives any right to assert a defense based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein, shall bar Lessor from bringing any subsequent actions or proceedings from time to time.

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- (l). Wherever in this Lease Lessor has reserved or is granted the right of "reentry" into the Premises, the use of such word is not intended, nor shall it be construed, to be limited to its technical legal meaning.
- (m). Lessee waives and releases any claim arising out of or related to the payment of Percentage Rent by any successor tenant in the Premises, to whom Lessor may relet the Premises, but nothing contained herein shall obligate Lessor to relet if Lessee shall default hereunder.
- (n). Except as otherwise specifically required by this Lease, Lessee waives any and all statutory and legal notice requirements.
- (o). Any action, suit or proceeding relating to, arising out of or in connection with the terms, conditions and covenants of this Lease may be brought only in the District Court of Clark County, Nevada. Lessee hereby waives any objection to jurisdiction or venue in any proceeding before said Court.
- (p). If during the Term, as it may be extended, Lessor receives two (2) or more checks from Lessee which are returned by Lessee's bank for insufficient funds, Lessor may require that all checks thereafter be bank certified or cashier's checks (without limiting Lessor's other remedies). All bank service charges resulting from any bad checks shall be borne by Lessee.

22.02. If at any time after the execution of this Lease, an order for relief is entered in any bankruptcy, insolvency or similar proceeding commenced by or against Lessee or any Surety, or if Lessee or any Surety becomes insolvent or is unable or admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with its creditors or a custodian is appointed or takes possession of Lessee's or any such Surety's property, whether or not a judicial proceeding is instituted in connection with such arrangement or in connection with the appointment of such custodian, then Lessor, besides other rights or remedies it may have, shall have the immediate right to terminate this Lease or reenter without terminating this Lease and to dispossess Lessee and all other occupants therefrom and remove and dispose of all property therein or, at Lessor's election, to store such property in a public warehouse or elsewhere at the cost of, and for the account of, Lessee, all without service of any notice of intention to reenter and with or without resort to legal process (which Lessee hereby expressly waives) and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In any such event, Lessor may retain as partial damages, and not as a penalty, any prepaid rents and any security deposit and Lessor shall also be entitled to exercise such rights and remedies to recover from Lessee as damages such amounts as are specified in Section 22.01 hereof, unless any statute or rule of law governing the proceedings in which such damages are to be proved shall lawfully limit the amount of such claims capable of being so proved, in which case Lessor shall be entitled to recover, as and for liquidated damages, the maximum amount which may be allowed under any such statute or rule of law. Lessee agrees that if Lessee files a petition for reorganization under the provisions of 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), and if Lessee does not within sixty (60) days from the entry of an order for relief by the Bankruptcy Court assume or reject the Lease pursuant to the terms of Section 365 of the Bankruptcy Code, then, effective immediately, the Minimum Rent due under the Lease shall increase at a rate of ten

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percent (10%) per month. Lessee may subsequently reduce the amount of Minimum Rent due to the amount of Minimum Rent in effect prior to any such escalation under this clause by either: (i) assuming the Lease pursuant to Section 365, or (ii) by assuming and assigning Lessee's interest in the Lease to a third party pursuant to Section 365.

ARTICLE XXIII Default by Lessor

23.01. Lessor shall in no event be charged with default in the performance of any of its obligations hereunder unless and until Lessor shall have failed to perform such obligations within thirty (30) days (or within such additional time as is reasonably required to correct any such failure) after notice to Lessor by Lessee properly specifying wherein Lessor has failed to perform any such obligations.

23.02. If the holder of record of any mortgage(s) covering all or any portion of the Retail Facility shall have given prior notice to Lessee that it is the holder thereof and such notice includes the address at which notices to such mortgagee(s) are to be sent, then Lessee shall give to said holder notice simultaneously with any notice given to Lessor to correct any default of Lessor as hereinabove provided. The holder of record of such mortgage(s) shall have the right, but not the obligation, within thirty (30) days after receipt of said notice, to correct or remedy such default before Lessee may take any action under this Lease by reason of such default; provided, however, that if such default cannot by its nature be cured within said thirty (30) days, then Lessee shall not take any action under this Lease by reason of such default provided the correction or remedy of such default commences within said thirty (30) days and is diligently prosecuted thereafter. Any notice of default given Lessor shall be null and void unless simultaneous notice has been given to said mortgagee(s).

ARTICLE XXIV Estoppel Certificate, Attornment and Subordination

24.01. Within ten (10) days after the request by Lessor, Lessee shall deliver to Lessor a written and acknowledged statement in favor of Lessor or any prospective purchaser or mortgagee of the Retail Facility or any other part thereof certifying (a) that Lessee is the tenant under this Lease; (b) that Lessor has completed construction of the Premises (or if Lessor has not completed construction of the Premises, then stating the construction items to be completed by Lessor); (c) that all contributions, if any, required by Lessor for improvements to the Premises have been paid in full to Lessee (or if such contributions, if any, have not been paid in full to Lessee, then stating the amount of contribution remaining to be paid to Lessee); (d) that Lessee has accepted possession of and now occupies the Premises; (e) the date on which the Term commenced, the date on which the Rental Commencement Date occurred and the date on which the Term expires; (f) that no defaults exist under this Lease (or if defaults exist, then specifically stating such defaults); (g) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (h) that Lessee's interest under this Lease has not been assigned or encumbered, and the Premises have not been sublet (or if there have been assignments or encumbrances or the Premises have been sublet, then stating such assignments, encumbrances or subleases and providing copies of all documents relevant thereto); (i) the amount of Minimum Rent and all items of additional rent payable under this Lease and the dates to which any Minimum Rent and all items of

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additional rent payable under this Lease have been paid; (j) that Lessee is not entitled to any credit, offset or deduction against any Minimum Rent and any item of additional rent due under this Lease (or if Lessee is entitled to a credit, offset or deduction, then stating the amount of such credit, offset or deduction and the basis therefor); (k) that Lessee does not have any options or rights to renew or cancel this Lease (or if Lessee shall have options or rights to renew or cancel this Lease, then stating such options or rights); (l) that there are no actions, whether voluntary or otherwise, pending against Lessee under the bankruptcy or insolvency laws of the United States or any state thereof (or if there are actions pending against Lessee under bankruptcy or insolvency laws of the United States or any state thereof, then stating such actions); and (m) such other matters or information as Lessor may reasonably require. If Lessor submits a completed statement to Lessee requesting Lessee certify to the matters set forth herein, and Lessee fails to return said statement, or fails to object to its contents, within said ten (10) day period, the matters set forth in the completed statement shall conclusively be deemed to be correct. Any such statement delivered pursuant to this Section may be relied upon by Lessor or any prospective purchaser or mortgagee of the Retail Facility, any part thereof or any interest therein, direct or indirect.

24.02. Lessee shall, if any proceedings are brought for the foreclosure of, or any exercise of the power of sale under any mortgage made by Lessor covering the Premises, attend to the purchaser upon any such foreclosure or sale and recognize such purchaser as Lessor under this Lease, whether this Lease is subordinate to said mortgage or said mortgage is subordinate to this Lease. In such event, the purchaser shall not be liable for any previous act or omission by Lessor under this Lease or bound by any previous prepayments of Minimum Rent or items of additional rent for a period greater than thirty (30) days.

24.03. This Lease and all rights of Lessee hereunder hereby are made and shall be subject and subordinate in all respects to (a) the provisions of the REA; (b) the Master Lease and all present and future ground leases of the Retail Facility, or any portion thereof of which the Premises is a part and all renewals, modifications, replacements, supplements, substitutions and extensions thereof, hereinafter collectively referred to as "Superior Lease" and (c) all mortgages or other methods of financing which may now or hereafter encumber Lessor's interest in the Retail Facility, or any portion thereof of which the Premises is a part and all renewals, modifications, replacements, supplements, substitutions and extensions thereof and all advances made or to be made thereunder hereinafter collectively referred to as "Superior Mortgage". The foregoing provisions shall be self-operative and no further instrument of subordination shall be required. However, in confirmation of such subordination, Lessee shall, if requested, promptly execute and deliver such instrument that Lessor or the holder of any Superior Lease or Superior Mortgage requests to evidence such subordination. Notwithstanding the foregoing provisions, Lessor's lender shall have the right to subordinate or cause to be subordinated the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Retail Facility, or any portion thereof of which the Premises is a part, or against any buildings hereafter placed upon the Retail Facility of which the Premises is a part, to this Lease, hereinafter referred to as "Subordinate Mortgage". In such event, this Lease shall not be subordinate to the lien of any other mortgage or mortgages, or the lien resulting from any other method of financing or refinancing so long as said Subordinate Mortgage is a lien.

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24.04. In the event of the termination of the Master Lease, this Lease shall not terminate or be terminable by Lessee. In the event of any action for foreclosure by Lessor's lender against Lessor's Parcel, this Lease shall not terminate or be terminable by Lessee by reason of the termination of the Master Lease unless Lessee is specifically named and joined in any such action and unless a judgment is obtained therein against Lessee. In the event that the Master Lease is terminated as aforesaid, Lessee shall attorn to the Lessor under the Master Lease or to the purchaser at the sale of Lessor's Parcel on such foreclosure, as the case may be.

24.05. Lessee, upon request of any party in interest, shall execute promptly such instruments or certificates to carry out the intent of Sections 24.01, 24.02 and 24.03 above. Lessee hereby irrevocably appoints Lessor as attorney-in-fact for Lessee with full power and authority to execute and deliver in the name of Lessee any such instruments or certificates.

24.06. This Lease shall not be recorded without the prior consent of Lessor and if Lessee records this Lease without Lessor's consent, then Lessee shall be deemed in default of this Lease. Upon the request of Lessor, Lessee shall execute a short form of this Lease which may be recorded in Lessor's sole discretion.

ARTICLE XXV Holding Over

25.01. If Lessee or any party claiming under Lessee shall remain in possession of all or any part of the Premises after the expiration of the Term, no tenancy or interest in the Premises shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate eviction and removal, and Lessee shall pay upon demand to Lessor during any period which Lessee shall hold the Premises after the Term has expired, as rent for said period, a sum equal to all Percentage Rent and all items of additional rent provided for in this Lease plus an amount computed at the rate of double the Minimum Rent for such period. Percentage Rent shall be due and payable on a monthly basis and the Percentage Break Point shall be proportionately reduced to reflect such monthly period or such lesser period that Lessee holds over in the Premises.

ARTICLE XXVI Quiet Enjoyment

26.01. If Lessee pays the Minimum Rent, Percentage Rent and all items of additional rent and performs all of the covenants and agreements to be performed on Lessee's part, Lessee shall, during said period, have the peaceable and quiet enjoyment and possession of the Premises, subject to the terms, conditions and covenants of this Lease and any mortgages or ground leases superior to this Lease, without any manner of hindrance from Lessor or any persons lawfully claiming through Lessor.

ARTICLE XXVII Security Deposit

27.01. Lessor hereby acknowledges receipt, subject to collection if by check, from Lessee of the Security Deposit, to be held by Lessor as security for the full and faithful performance by Lessee of each and every term, condition and covenant of this Lease on the part of Lessee to be observed and performed. Such

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Security Deposit is not an advance payment of rental or a measure of Lessor's damages in the case of default by Lessee. Lessor will not be required to account for the use of such Security Deposit, to keep such Security Deposit sequestered or to pay interest on such Security Deposit. Such Security Deposit shall not be mortgaged, assigned, transferred or encumbered by Lessee without the consent of Lessor and any such act on the part of Lessee shall be without force and effect and shall not be binding upon Lessor. Should Lessee fail to perform any of the terms of this Lease including any failure to timely pay the Minimum Rent or any item of additional rent payable by Lessee to Lessor or should Lessor make payments on behalf of Lessee, then Lessor may, at its option, and without prejudice to any other remedy which Lessor may have on account thereof, appropriate and apply said entire Security Deposit or so much thereof as may be necessary to compensate Lessor towards any loss, damage or expense sustained by Lessor resulting from such default on the part of Lessee or toward the payment of Minimum Rent or any item of additional rent due from Lessee; and in such event Lessee shall forthwith upon demand restore said Security Deposit to the original sum deposited. If Lessee shall fully and faithfully comply with all of the terms, covenants and conditions of this Lease and promptly pay all of the Minimum Rent and all items of additional rent as they fall due to Lessor, any remaining balance of such Security Deposit shall be returned by Lessor to Lessee following the date of the expiration or termination of this Lease and the surrender of the Premises by Lessee in compliance with the provisions of this Lease. If any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Lessee, or its successors or assigns, or any Surety, such Security Deposit shall be deemed to be applied first to the payment of any Minimum Rent and any item of additional rent due Lessor for all periods prior to the institution of such proceedings and the balance, if any, of such Security Deposit may be retained by Lessor in partial liquidation of Lessor's damages. Lessor may deliver the Security Deposit by Lessee hereunder to the purchaser of Lessor's interest in the Premises if such interest be sold or transferred and, thereupon, Lessor shall be discharged and released from all further liability with respect to such Security Deposit or the return thereof to Lessee, and Lessee shall look solely to the new lessor for the return of said Security Deposit, and this provision shall also apply to any subsequent transferees. No holder of a mortgage or deed of trust or lessor under a ground or underlying lease to which this Lease is or may be subordinate shall be responsible in connection with the Security Deposit hereunder, unless such mortgagee or holder of such deed of trust or lessor shall have actually received the Security Deposit hereunder.

ARTICLE XXVIII Reimbursement

28.01. All terms, covenants and conditions herein contained, to be performed by Lessee, shall be performed at its sole cost and expense. If Lessor shall pay any sum of money or do any act which requires the payment of money, by reason of the failure of Lessee to perform such term, covenant or condition, the sum of money so paid by Lessor shall be payable by Lessee to Lessor with the next succeeding installment of rent. If Lessee shall fail to pay Lessor any sums when due under this Lease or if Lessor shall pay any sum of money or do any act which requires the payment of money as aforesaid, such sums shall bear interest from the due date or from the respective dates of Lessor's making of the payment, as the case may be, at the lesser of (a) the interest rate announced publicly by Citibank N.A. in New York, New York from time to time as its prime or base rate plus two percent (2%), or (b) the maximum rate permitted by law. All sums payable by Lessee to Lessor under this Lease shall be paid in legal tender of the United States of America without any prior demand or

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notice and without any deduction or setoff whatsoever and shall be payable at the place designated for the delivery of notices to Lessor at the time of payment unless otherwise designated by Lessor.

ARTICLE XXIX Changes and Additions to Retail Facility

29.01. Lessor and/or Resort Owner shall have the exclusive right to use all or any part of the roof over the Retail Facility and/or Lessor's Parcel for any purpose; to erect in connection with the construction thereof, temporary scaffolds and other aids to construction on the exterior of the Premises or other areas of the Retail Facility, Lessor's Parcel and Resort, provided that access to the Premises shall not be denied, and to install, maintain, use, repair and replace pipes, ducts, conduits and wires leading through the Premises and serving other parts of the Retail Facility or the Resort in locations which will not materially interfere with Lessee's use thereof. In addition to the foregoing, Lessor may make any use it desires of the side and rear walls of the Premises, provided that there shall be no encroachment upon the interior of the Premises. Lessor hereby reserves the right at any time to make alterations or additions to, and to build additional stories on, the building in which the Premises are contained and to build adjoining the same. Lessor also reserves the right to construct other buildings or improvements in the Retail Facility, Lessor's Parcel and Resort from time to time and to make alterations thereof or additions thereto and to build additional stories on such building or buildings and to change the methods of access to and from the Retail Facility, the Resort and the Premises and to incorporate additional land into the Retail Facility and/or Resort and build thereon.

29.02. If Lessor or others exercise any rights reserved under this Article or granted by any other provisions of this Lease and makes any use of, or alterations, modifications, improvements or additions to the Retail Facility, the Resort or the Premises, Lessor shall in no way be responsible or liable for any effect on Lessee's business or customer traffic of any nature whatsoever, either during or after such use, alterations, modifications, improvements or additions.

ARTICLE XXX Notices

30.01. Any notice, request, demand, approval, consent or other communication which Lessor or Lessee may be required or permitted to give to the other party shall be in writing and shall be mailed or delivered by a nationally recognized courier service providing receipt of delivery to the other party at the Notice Address, or to the Premises if such communication is to Lessee, or to such other Notice Address as either party shall have designated by notice to the other. The delivery date of such shall be the date the same is deposited in an official United States Post Office, postage prepaid, certified or registered mail, return receipt requested, or the date delivered by such courier service with the service fee prepaid.

ARTICLE XXXI Brokerage

31.01. Lessee covenants, warrants and represents to Lessor that no broker (except _____, which represents Lessor) was instrumental in consummating this Lease and that Lessee had no conversation or prior negotiations with any broker, other than the aforementioned

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broker, concerning the renting of the Premises. Lessee shall protect, indemnify, save and hold harmless Lessor against and from all liabilities, claims, losses, costs, damages and expenses, including attorneys' fees, arising out of, resulting from or in connection with a breach of the foregoing covenants, warranties and representations.

ARTICLE XXXII General Provisions

32.01. "Lessor", so far as covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner of the Retail Facility (or lessee of the Retail Facility under the Master Lease). If the Retail Facility or Master Lease is transferred, the seller (or assignor of the Master Lease) automatically shall be entirely released of all covenants and obligations under this Lease from and after the date of such transfer, provided the transferee (or the sublessee or assignee of the ground or underlying lease as aforesaid) has assumed and agreed to carry out all covenants and obligations of Lessor hereunder. The covenants and obligations contained in this Lease to be performed on the part of Lessor shall be binding upon Lessor, its successors and assigns, only during their respective successive periods of ownership. The covenants and undertakings herein made and entered into by Lessor are solely for the purpose of binding Lessor to the extent specifically of Lessor's interest in the Retail Facility only. No personal liability is assumed by or shall at any time arise or be asserted or enforced against Lessor, or against any general or limited partner of Lessor, or any of their respective agents, employees, officers, partners, successors or assigns, on account of this Lease or on account of the covenants herein contained, either express or implied, all such liability, if any, being expressly waived and released by Lessee and by any persons claiming by, through or under Lessee, and that recourse hereunder, if any, by Lessee, its successors or assigns, shall be limited specifically and exclusively to Lessor's interest in the Retail Facility.

32.02. Lessee's obligations with respect to (a) the payment of Minimum Rent, Percentage Rent and all items of additional rent; (b) the retention of books and records pursuant to ARTICLE V; (c) any provisions of this Lease with respect to indemnities given to Lessor, including, without limitation, the provisions of Section 12.03; and (d) the removal of all property of Lessee and the repair of all damage to the Premises caused by such removal at the expiration or termination of this Lease, shall survive the expiration or termination of this Lease.

32.03. If any term or provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law; provided, however, if Lessee's obligation to pay Percentage Rent or Lessee's obligation to continuously operate its business in the Premises is deemed invalid or unenforceable as determined by Lessor based upon the then existing applicable statutes or case law, then Lessor may at any time thereafter terminate this Lease by giving Lessee notice of its election and this Lease shall terminate and become null and void thirty (30) days after said notice.

32.04. Except as herein otherwise expressly provided, the terms and provisions hereof shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns,