

**TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY  
BOARD MEETING**

**Nathan L. Bennett Pavilion\*  
One Washington Street, Hempstead, NY  
AGENDA**

**Tuesday, March 21, 2023, 9:00 AM**

**\*Notes:**

- Masks are no longer mandated. The Town of Hempstead IDA continues to encourage social distancing at public meetings.
- A livestream of the meeting may also be viewed at [www.tohida.org](http://www.tohida.org) . Select "Watch Meetings"

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\*\*\*\*

The Agenda will include but not be limited to:

**AGENDA:**

- Confirm the presence of a Quorum
- Public Comment with respect to Agenda items

**VILLAGE BUSINESS:**

**Village of Freeport:** None

**Village of Hempstead:** None

**NEW BUSINESS - Applications, Transaction Resolutions and Presentations:**

- Consideration of an Authorizing Resolution for a 7-year PILOT Extension for **2 Endo Boulevard LLC**, 2 Endo Boulevard, Garden City
- Presentation and Consideration of an Inducement Resolution for **CenterPoint Inwood, LLC**, 65 Rason Road, Inwood
- Consideration of a Tenant Consent for Real Fruit Bubble Tea for **Valley Stream Green Acres**, 2034 Green Acres Mall, Valley Stream
- Consideration of a Tenant Consent for GNC Live Well for **Green Acres Adjacent**, 750 West Sunrise Highway, Valley Stream

**NEW BUSINESS - Other:**

- CEO's Report
- Compliance Review 2022
- Summary of Board Member Self-Evaluations (tabled from February meeting)
- Appointment of Compliance/Contracting Officer
- Consideration and Adoption of the 2022 Annual Financial Report
- Consideration and Adoption of the 2022 Audited Financial Statements
- Consideration and Adoption of the Mission Statement 2023 and Measurement Report 2022
- Consideration and Adoption of the Property Disposition Policy
- Consideration and Adoption of the Operations and Accomplishments 2022

- Consideration and Adoption of the Purchasing Guidelines
- Consideration and Adoption of the Board Self Evaluation Policy and Procedures
- Consideration and Adoption of the Code of Ethics
- Consideration and Adoption of the Investment Policy and Guidelines
- Consideration and Adoption of Assessment of Effectiveness of Internal Controls

**OLD BUSINESS:**

**READING AND APPROVAL OF MINUTES OF PREVIOUS MEETING(s):**

- Consideration and Adoption of the Minutes of February 28, 2023
- Consideration and Adoption of the Minutes of March 7, 2023

**REPORT OF THE TREASURER:**

- Financial Statements and Expenditure List: February 22, 2023 - March 14, 2023

**COMMITTEE UPDATES :**

**EXECUTIVE SESSION:**

**ADJOURNMENT**

Chairman Approval: 3/10/23

**2 Endo Boulevard (Richner Communications)**  
**Project: 2802-23-02C**

Building Renovations	\$340,000
Machinery and Equipment	\$315,000
Legal Fees	\$20,000
Total	\$675,000

Employment:

	Full	Part
Present	95	15
1 <sup>st</sup> Year	96	16
2 <sup>nd</sup> Year	98	16

Original Application had retention of 108 FTE

LMA: 92.5

Creation of 3.5 FTE

Retention of 102.5 FTE

Average of Salary Wage Earners: \$141,000

Average of Commission Wage Earners: \$72,500

Approx 8 Construction Jobs

Benefits Sought: 7 Year PILOT Extension, Sales Tax Exemption, Mortgage Recording Tax Exemption

Benefit Analysis:

Sales Tax Exemption Renovation, Furnishing and Fixture:

$\$519,000.00 \times 8.625\% = \$44,763.75$

Mortgage  $\$675,000 \times .75\% = \$5,062.50$

Current Tax Information:

Section; 44, Block: F, Lots: 187

Parcels: 1

SD-Uniondale 2

Total Tax if not within PILOT: \$378,742.83

Last Year of Pilot which expired 12/31/22: \$176,979.00

23 General: \$163,448.44

22-23 School: \$215,294.39

Village: N/A

Estimated Taxes Once Built: N/A Only internal renovations.

Applicant Attorney: Dan Deegan and John Gordon

IDA Transaction Counsel: Bill Weir/Terance Walsh



2 Endo Boulevard (Richner Communications)  
Second Extension  
DRAFT PILOT  
2802-23-02C

2 Endo Boulevard  
Garden City, New York 11530  
Current Tax Information:  
Section; 44, Block: F, Lots: 187  
Parcels: 1  
SD-Uniondale 2

*Last year of PILOT, which expired 12/31/22: \$176,979.00*

Current Total Taxes if not within a PILOT: \$378,742.83

Estimated Taxes Once Built: N/A (only internal renovations being made)

Year	Total
1	\$230,000
2	\$240,000
3	\$260,000
4	\$280,000
5	\$310,000
6	\$335,000
7	\$370,000

2/17/23 – DRAFT

This Pilot has NOT been approved by the Hempstead IDA Board

*PROJECT ABSTRACT*  
*TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY*

**CenterPoint Inwood, LLC**  
**(Second Application)**  
**Project: 2802 -22-08A**

Application Date: 8/2/22      Contact: Ronel Borner

Applicant Name and Address:    CenterPoint Inwood, LLC  
65 Rason Road  
Inwood, NY 11096

Project Address:                    65 Rason Road  
Inwood, NY 11096

Project:

The applicant intends to develop a vacant parcel as an approximate 138,245 square foot two-story structure, which will include high-ceiling warehouse and office space, with integrated rooftop surface parking, 31 drive-up loading docks, and 2 drive-ins. Additional surface parking storm water and landscaping improvements are also proposed. This will be located on 8.7 acres of land located at 65 Rason Road, Inwood. There will also be 15,000 square feet of wet land buffer upgrades. No tenant has been determined.

Project Costs:

Land and/or building acquisition	\$30,000,000
Building Demo/Construction	\$38,000,000
Site Work	\$5,000,000
Machinery and Equipment	\$1,000,000
Legal Fees	\$2,000,000
Architectural/Engineering Fees	\$3,000,000
Financial Charges	\$5,000,000
 Total	 \$84,000,000

Employment:

	Full	Part
Present	0	0
1 <sup>st</sup> Year	25	0
2 <sup>nd</sup> Year	25	0

LMA : TBD

Creation: of 25 FTE by year one

Salary Average: \$40,000

Construction Jobs: 75

Benefits Sought: 15 Year PILOT, Sales Tax Exemption

Benefit Analysis:

Sales Tax Exemption Renovation, Furnishing and Fixture:

\$26,400,000 x 8.625% = \$ 2,277,000

Mortgage \$0

Current Tax Information:

Section: 40    Block: A    Lot: 1196

Parcels: 1

SD- Lawrence - 15

Total Taxes: \$ 209,957.53

Full Assessed Value: \$4,853,900

Total Assessment: \$48,539

23 General: \$123,735.63

22/23 School: \$86,221.90

Village: N/A

Estimated Taxes Once Built: \$978,018

Applicant Counsel: Dan Deegan

Transaction Counsel: Bill Weir

**CenterPoint Inwood, LLC**  
**(Second Application)**  
**Project: 2802 -22-08A**  
**DRAFT PILOT**

Section: 40     Block: A     Lots: 1196

Parcels: 1

SD- Lawrence 15

Current Tax Information: \$209,957.53

Estimated Taxes Once Built: \$978,018

Year	Total
1	\$209,957.00
2	\$209,957.00
3	\$209,957.00
4	\$450,000.00
5	\$500,000.00
6	\$550,000.00
7	\$625,000.00
8	\$700,000.00
9	\$775,000.00
10	\$880,000.00
11	\$925,000.00
12	\$1,000,000.00
13	\$1,100,000.00
14	\$1,175,000.00
15	\$1,200,000.00

8/16/22 – DRAFT

3/9/23 – Amended DRAFT

This Pilot has NOT been approved by the Hempstead IDA Board

PREPARED FOR:

Town of Hempstead Industrial Development Agency  
350 Front Street, Room 234-A  
Hempstead, NY 11550

# Economic and Fiscal Impact

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CETNERPOINT INWOOD, LLC

Town of Hempstead  
Industrial Development Agency

MARCH 10, 2023

PREPARED BY:



PO Box 3547  
Saratoga Springs, NY 12866  
518.899.2608  
[www.camoinassociates.com](http://www.camoinassociates.com)

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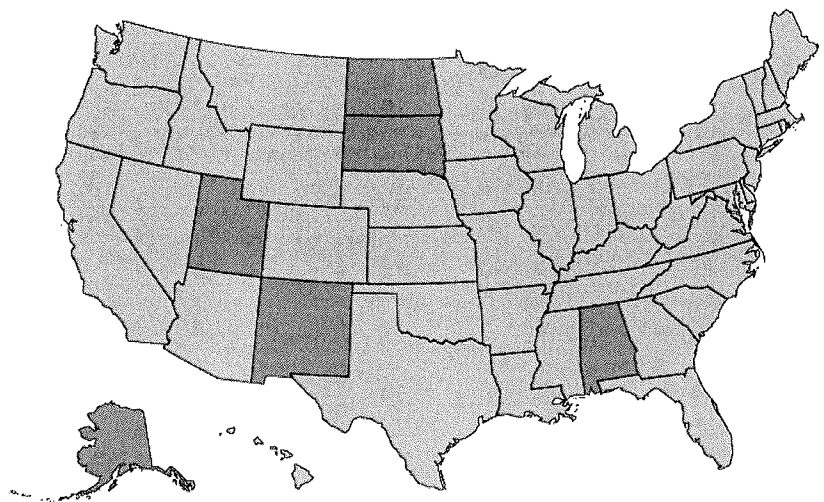
# ABOUT CAMOIN ASSOCIATES

Camoin Associates has provided economic development consulting services to municipalities, economic development agencies, and private enterprises since 1999. Through the services offered, Camoin Associates has had the opportunity to serve EDOs and local and state governments from Maine to California; corporations and organizations that include Lowes Home Improvement, FedEx, Amazon, Volvo (Nova Bus) and the New York Islanders; as well as private developers proposing projects in excess of \$6 billion. Our reputation for detailed, place-specific, and accurate analysis has led to projects in 44 states and garnered attention from national media outlets including Marketplace (NPR), Crain's New York Business, Forbes magazine, The New York Times, and The Wall Street Journal. Additionally, our marketing strategies have helped our clients gain both national and local media coverage for their projects in order to build public support and leverage additional funding. We are based in Saratoga Springs, NY, with regional offices in Portland, ME; Boston, MA; Richmond, VA and Brattleboro, VT. To learn more about our experience and projects in all of our service lines, please visit our website at **[www.camoinassociates.com](http://www.camoinassociates.com)**. You can also find us on Twitter **@camoinassociate** and on **Facebook**.

## THE PROJECT TEAM

Rachel Selsky  
*Vice President*

Jessica Tagliafierro  
*Senior Research Analyst*



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# ABOUT THE STUDY

Camoin Associates was retained by the Town of Hempstead Industrial Development Agency to measure the potential economic and fiscal impacts of a project proposed by CenterPoint Inwood, LLC. The proposed project involves the construction of a 138,245 square foot office and warehouse space at 65 Rason Road, Inwood, Town of Hempstead, Nassau County, New York. The goal of this analysis is to provide a complete assessment of the total economic, employment, and tax impact of the project on the Town of Hempstead that result from the renovation of the facility and on-site operations.

The primary tool used in this analysis is the input-output model developed by Lightcast (formerly Emsi). Primary data used in this study was obtained from the developer's application for financial assistance to the Town of Hempstead Industrial Development Agency and included the following data points: renovation spending, on-site jobs, exemptions, and PILOT schedule.

The economic impacts are presented in four categories: direct impact, indirect impact, induced impact, and total impact. The indirect and induced impacts are commonly referred to as the "multiplier effect."

## STUDY INFORMATION

**Data Source:**  
CetnerPoint Inwood, LLC  
Application for Assistance and the  
Town of Hempstead Industrial  
Development Agency

**Geography:**  
Town of Hempstead

**Study Period:**  
2022

**Modeling Tool:**  
Lightcast (formerly Emsi)

## DIRECT IMPACTS

*This initial round of impacts is generated as a result of spending on renovation and operations.*

## INDIRECT IMPACTS

*The direct impacts have ripple effects through business to business spending. This spending results from the increase in demand for goods and services in industry sectors that supply both the facility.*

## INDUCED IMPACTS

*Impacts that result from spending by facility employees, employees of town businesses, and employees of suppliers. Earnings of these employees enter the economy as employees spend their paychecks in the town on food, clothing, and other goods and services.*

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# EXECUTIVE SUMMARY

The Town of Hempstead Industrial Development Agency (the "Agency") received an application for financial assistance from CenterPoint Inwood, LLC (the "Applicant") for the construction of a 138,245 square foot office and warehouse facility (the "Project") at 65 Rason Road, Inwood, Town of Hempstead, Nassau County, New York (the "Site"). The Applicant is seeking a 15-year PILOT agreement from the Agency. The Agency commissioned Camoin Associates to conduct an economic and limited fiscal impact analysis of the Project on the Town of Hempstead (the "Town").

The following is a summary of our findings from this study, with details below and in the following sections.

Table 1

## Summary of Benefits to Town

Total Jobs	31
Direct Jobs	25
Total Earnings	\$ 1,498,058
Direct Earnings	\$ 1,146,837
Annual Sales Tax Revenue to County	\$ 11,142
Annual Sales Tax Revenue to Town	\$ 983
Average Annual PILOT Payment	\$ 700,658
Average Annual PILOT Payment to Town	\$ 66,653
Average Annual PILOT Cost	\$ 461,341
Average Annual PILOT Cost to Town	\$ 43,887
<b>Average Annual Net Benefit to Town</b>	<b>\$ 44,870</b>

- ◆ The Project supports 31 net new jobs in the town, with nearly \$1.5 million in associated earnings. These figures include net new jobs resulting from both on-site direct jobs and indirect/induced activity.
- ◆ The Applicant has negotiated terms of a proposed 15-year PILOT agreement with the Agency, where the applicant would pay an average of \$700,658 each year, of which nearly \$67,000 will be allocated to the Town.
- ◆ On an annual basis, the Project will support an estimated \$11,142 new sales tax revenue in Nassau County, of which \$983 will be allocated to the Town.
- ◆ The average annual net benefit to the Town will be \$44,870. In this case, this is the sum of the average annual PILOT cost to the Town and projected new sales tax revenue to the Town.
- ◆ Through negotiations with the Agency the Applicant could have access to a sales tax exemption valued at up to \$2,277,000. However, if we assume that the Project would not occur absent IDA benefits, this is not actually a "cost" to the state and county since no future revenue stream would exist without the exemption.

Table 2

## Summary of Costs to Affected Jurisdictions

	State and County
Sales Tax Exemption	\$ 2,277,000

**Source:** Applicant, Camoin Associates

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# ECONOMIC IMPACT ANALYSIS

The estimates of direct economic activity generated by facility operation and renovation spending as provided by the Applicant were used as the direct inputs for the economic impact model. Camoin Associates uses the input-output model designed by Lightcast (formerly Emsi) to calculate total economic impacts. Lightcast allows the analyst to input the amount of new direct economic activity (spending or jobs) occurring within the town and uses the direct inputs to estimate the spillover effects that the net new spending or jobs have as these new dollars circulate through the Town of Hempstead's economy. This is captured in the indirect and induced impacts and is commonly referred to as the "multiplier effect." See Attachment A for more information on economic impact analysis.

The Project would have economic impacts upon the Town of Hempstead as a result of Project operation, new permanent jobs, and renovation spending.

## CONSTRUCTION PHASE IMPACTS

The Applicant anticipates that private sector investment in the construction of the Project would cost approximately \$47.0 million<sup>1</sup>, of which 70%<sup>2</sup> would be sourced from within the town. This means that there will be approximately \$32.9 million in net new spending in the town associated with the construction phase of the Project.

Table 3

### Construction Phase Spending - Town

Total Construction Cost	\$ 47,000,000
Percent Sourced from Town	70%
<b>Net New Constuction Spending</b>	<b>\$ 32,900,000</b>

Source: Applicant, Camoin Associates

Based on \$32.9 million worth of net new direct spending associated with the construction phase of the Project, Camoin Associates determined that there would be nearly \$42.5 million in total one-time renovation related spending supporting 154 jobs and an associated \$15.5 million in earnings over the construction period throughout the town. Table 4 outlines the economic impacts of construction.

Table 4

### Town Economic Impact - Construction Phase

	Jobs	Earnings	Sales
Direct	108 \$	12,120,426 \$	32,900,000
Indirect	21 \$	1,578,623 \$	4,920,302
Induced	25 \$	1,775,770 \$	4,647,350
<b>Total</b>	<b>154 \$</b>	<b>15,474,818 \$</b>	<b>42,467,652</b>

Source: Lightcast (formerly Emsi), Camoin Associates

<sup>1</sup> Includes project costs and provided by the Applicant in Part IV of the application, excluding acquisition and legal fees.

<sup>2</sup> According to Lightcast (formerly Emsi), approximately 70% of demand by the construction industry is met within the town.

## CAMOIN ASSOCIATES

**IMPACTS OF ON-SITE EMPLOYMENT**

While the tenant of the space has yet to be determined, the Applicant estimates that 25 new jobs will be on-site within three years following Project completion. The table below details the impact that these 25 jobs will have on the Town of Hempstead (Table 5).

Table 5

**Town Total Annual Economic Impact**

	<b>Jobs</b>		<b>Earnings</b>		<b>Sales</b>
Direct	25	\$	1,146,837	\$	2,364,771
Indirect	4	\$	225,131	\$	674,896
Induced	2	\$	126,090	\$	326,331
<b>Total</b>	<b>31</b>	<b>\$</b>	<b>1,498,058</b>	<b>\$</b>	<b>3,365,998</b>

**Source:** Lightcast (formerly Emsi), Camoin Associates

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# FISCAL IMPACT ANALYSIS

In addition to the economic impact of the Project on the local economies (outlined above), there would also be a fiscal impact in terms of annual property tax and sales tax generation. The following section of the analysis outlines the impact of the completion of the Project on the local taxing jurisdictions in terms of the cost and/or benefit to municipal budgets.

## PAYMENT IN LIEU OF TAXES (PILOT)

The Applicant has applied to the Agency for a Payment In Lieu of Taxes (PILOT) agreement. The Applicant has proposed a 15-year payment schedule based on the current tax rate, taxable value, and assessed value of the Project. Based on the terms of the PILOT as proposed, Camoin Associates calculated the potential impact on the Town of Hempstead and other applicable jurisdictions.<sup>3</sup>

Table 6

### Tax Payments with PILOT

Year	Total		Portion of Payment by Jurisdiction			
	PILOT Payments	Town	County	School District	Special Districts	
1	\$ 209,957	\$ 19,973	\$ 63,769	\$ 86,222	\$ 39,993	
2	\$ 209,957	\$ 19,973	\$ 63,769	\$ 86,222	\$ 39,993	
3	\$ 209,957	\$ 19,973	\$ 63,769	\$ 86,222	\$ 39,993	
4	\$ 450,000	\$ 42,808	\$ 136,677	\$ 184,799	\$ 85,717	
5	\$ 500,000	\$ 47,564	\$ 151,863	\$ 205,332	\$ 95,241	
6	\$ 550,000	\$ 52,321	\$ 167,050	\$ 225,865	\$ 104,765	
7	\$ 625,000	\$ 59,456	\$ 189,829	\$ 256,665	\$ 119,051	
8	\$ 700,000	\$ 66,590	\$ 212,608	\$ 287,464	\$ 133,337	
9	\$ 775,000	\$ 73,725	\$ 235,388	\$ 318,264	\$ 147,623	
10	\$ 880,000	\$ 83,713	\$ 267,279	\$ 361,384	\$ 167,623	
11	\$ 925,000	\$ 87,994	\$ 280,947	\$ 379,864	\$ 176,195	
12	\$ 1,000,000	\$ 95,129	\$ 303,726	\$ 410,664	\$ 190,481	
13	\$ 1,100,000	\$ 104,642	\$ 334,099	\$ 451,730	\$ 209,529	
14	\$ 1,175,000	\$ 111,776	\$ 356,879	\$ 482,530	\$ 223,815	
15	\$ 1,200,000	\$ 114,155	\$ 364,472	\$ 492,796	\$ 228,577	
<b>Total</b>	<b>\$ 10,509,871</b>	<b>\$ 999,792</b>	<b>\$ 3,192,125</b>	<b>\$ 4,316,021</b>	<b>\$ 2,001,933</b>	
<b>Average</b>	<b>\$ 700,658</b>	<b>\$ 66,653</b>	<b>\$ 212,808</b>	<b>\$ 287,735</b>	<b>\$ 133,462</b>	

Source: Town of Hempstead IDA, Camoin Associates

<sup>3</sup> It is assumed that the jurisdictions will continue to receive the same portion of the PILOT that they currently receive from the full tax bill.

## CAMOIN ASSOCIATES

**TAX POLICY COMPARISON**

Without financial assistance from the Agency, Camoin Associates assumes the Applicant would not undertake the Project. Based on the current taxes applicable on the Site as provided by the Town of Hempstead IDA and an assumed annual increase to the tax rate of 2.00%<sup>4</sup> (holding taxable value constant), Table 7 outlines the estimated tax payments made by the building owner without the Project.<sup>5</sup>

Table 7

**Tax Payments without Project**

Year	Total Property Tax Payment		Portion of Payment by Jurisdiction			
	Without Project*		Town	County	School District	Special Districts
1	\$	207,579	\$ 19,747	\$ 63,047	\$ 85,245	\$ 39,540
2	\$	211,731	\$ 20,142	\$ 64,308	\$ 86,950	\$ 40,331
3	\$	215,965	\$ 20,545	\$ 65,594	\$ 88,689	\$ 41,137
4	\$	220,285	\$ 20,955	\$ 66,906	\$ 90,463	\$ 41,960
5	\$	224,690	\$ 21,375	\$ 68,244	\$ 92,272	\$ 42,799
6	\$	229,184	\$ 21,802	\$ 69,609	\$ 94,118	\$ 43,655
7	\$	233,768	\$ 22,238	\$ 71,001	\$ 96,000	\$ 44,528
8	\$	238,443	\$ 22,683	\$ 72,421	\$ 97,920	\$ 45,419
9	\$	243,212	\$ 23,136	\$ 73,870	\$ 99,878	\$ 46,327
10	\$	248,076	\$ 23,599	\$ 75,347	\$ 101,876	\$ 47,254
11	\$	253,038	\$ 24,071	\$ 76,854	\$ 103,913	\$ 48,199
12	\$	258,098	\$ 24,553	\$ 78,391	\$ 105,992	\$ 49,163
13	\$	263,260	\$ 25,044	\$ 79,959	\$ 108,111	\$ 50,146
14	\$	268,526	\$ 25,545	\$ 81,558	\$ 110,274	\$ 51,149
15	\$	273,896	\$ 26,055	\$ 83,189	\$ 112,479	\$ 52,172
<b>Total</b>	<b>\$</b>	<b>3,589,751</b>	<b>\$ 341,489</b>	<b>\$ 1,090,302</b>	<b>\$ 1,474,180</b>	<b>\$ 683,780</b>
<b>Average</b>	<b>\$</b>	<b>239,317</b>	<b>\$ 22,766</b>	<b>\$ 72,687</b>	<b>\$ 98,279</b>	<b>\$ 45,585</b>

**Source:** Town of Hempstead IDA, Camoin Associates

**\*Note:** Assumes an average annual increase of 2.00%

<sup>4</sup> The tax rate is increased by 2.00% annually. Although inflation has fluctuated in recent years, using 2.00% for the purposes of comparing future otherwise applicable property tax payments without the Project to the proposed PILOT schedule provides a conservative estimate of the Project's benefit/cost to the town.

<sup>5</sup> Note that current total taxes are \$758,181.14 however estimated taxes for next year within the opinion letter are \$605,233. Next year's estimated taxes are used for the tax policy comparison.

## CAMOIN ASSOCIATES

Table 8 calculates the benefit to the affected taxing jurisdictions as the difference between the PILOT payments associated with the Project and the property tax payments without the Project. Approximately \$461,341 more in PILOT revenue will be received annually than property taxes that would be received without the Project. The total benefit would be over \$6.9 million over the 15-year period.

Table 8

**Tax Policy Comparison (All Jurisdictions)**

<b>Year</b>	<b>Property Tax Payment Without Project</b>	<b>PILOT Payment</b>	<b>Benefit (Cost) of Project</b>
1	\$ 207,579	\$ 209,957	\$ 2,378
2	\$ 211,731	\$ 209,957	\$ (1,774)
3	\$ 215,965	\$ 209,957	\$ (6,008)
4	\$ 220,285	\$ 450,000	\$ 229,715
5	\$ 224,690	\$ 500,000	\$ 275,310
6	\$ 229,184	\$ 550,000	\$ 320,816
7	\$ 233,768	\$ 625,000	\$ 391,232
8	\$ 238,443	\$ 700,000	\$ 461,557
9	\$ 243,212	\$ 775,000	\$ 531,788
10	\$ 248,076	\$ 880,000	\$ 631,924
11	\$ 253,038	\$ 925,000	\$ 671,962
12	\$ 258,098	\$ 1,000,000	\$ 741,902
13	\$ 263,260	\$ 1,100,000	\$ 836,740
14	\$ 268,526	\$ 1,175,000	\$ 906,474
15	\$ 273,896	\$ 1,200,000	\$ 926,104
<b>Total</b>	<b>\$ 3,589,751</b>	<b>\$ 10,509,871</b>	<b>\$ 6,920,120</b>
<b>Average</b>	<b>\$ 239,317</b>	<b>\$ 700,658</b>	<b>\$ 461,341</b>

**Source:** Town of Hempstead IDA, Camoin Associates

## CAMOIN ASSOCIATES

**TOWN**

Table 9 calculates the benefit to the Town. The Town would receive approximately \$43,887 more in PILOT revenue annually than it would receive in property taxes without the Project. The total benefit to the Town would be \$658,303 over the 15-year period.

Table 9

**Tax Policy Comparison for Town**

Year	Property Tax Payment Without Project	PILOT Payment	Benefit (Cost) of Project
1	\$ 19,747	\$ 19,973	\$ 226
2	\$ 20,142	\$ 19,973	\$ (169)
3	\$ 20,545	\$ 19,973	\$ (572)
4	\$ 20,955	\$ 42,808	\$ 21,853
5	\$ 21,375	\$ 47,564	\$ 26,190
6	\$ 21,802	\$ 52,321	\$ 30,519
7	\$ 22,238	\$ 59,456	\$ 37,217
8	\$ 22,683	\$ 66,590	\$ 43,907
9	\$ 23,136	\$ 73,725	\$ 50,588
10	\$ 23,599	\$ 83,713	\$ 60,114
11	\$ 24,071	\$ 87,994	\$ 63,923
12	\$ 24,553	\$ 95,129	\$ 70,576
13	\$ 25,044	\$ 104,642	\$ 79,598
14	\$ 25,545	\$ 111,776	\$ 86,232
15	\$ 26,055	\$ 114,155	\$ 88,099
<b>Total</b>	<b>\$ 341,489</b>	<b>\$ 999,792</b>	<b>\$ 658,303</b>
<b>Average</b>	<b>\$ 22,766</b>	<b>\$ 66,653</b>	<b>\$ 43,887</b>

**Source:** Town of Hempstead IDA, Camoin Associates



## CAMOIN ASSOCIATES

**COUNTY**

Table 10 calculates the benefit to the County. The County would receive approximately \$140,122 more in PILOT revenue annually than it would receive in property taxes without the Project. The total benefit to the County would be over \$2.1 million over the 15-year period.

Table 10

**Tax Policy Comparison for County**

<b>Year</b>	<b>Property Tax Payment Without Project</b>	<b>PILOT Payment</b>	<b>Benefit (Cost) of Project</b>
1	\$ 63,047	\$ 63,769	\$ 722
2	\$ 64,308	\$ 63,769	\$ (539)
3	\$ 65,594	\$ 63,769	\$ (1,825)
4	\$ 66,906	\$ 136,677	\$ 69,771
5	\$ 68,244	\$ 151,863	\$ 83,619
6	\$ 69,609	\$ 167,050	\$ 97,440
7	\$ 71,001	\$ 189,829	\$ 118,828
8	\$ 72,421	\$ 212,608	\$ 140,187
9	\$ 73,870	\$ 235,388	\$ 161,518
10	\$ 75,347	\$ 267,279	\$ 191,932
11	\$ 76,854	\$ 280,947	\$ 204,093
12	\$ 78,391	\$ 303,726	\$ 225,335
13	\$ 79,959	\$ 334,099	\$ 254,140
14	\$ 81,558	\$ 356,879	\$ 275,320
15	\$ 83,189	\$ 364,472	\$ 281,282
<b>Total</b>	<b>\$ 1,090,302</b>	<b>\$ 3,192,125</b>	<b>\$ 2,101,823</b>
<b>Average</b>	<b>\$ 72,687</b>	<b>\$ 212,808</b>	<b>\$ 140,122</b>

**Source:** Town of Hempstead IDA, Camoin Associates

## CAMOIN ASSOCIATES

**SCHOOL DISTRICT**

Table 11 calculates the benefit to the school district. The school district would receive approximately \$189,456 more in PILOT revenue annually than it would receive in property taxes without the Project. The total benefit to the school district would be over \$2.8 million over the 15-year period.

Table 11

**Tax Policy Comparison for School District**

Year	Property Tax Payment Without Project	PILOT Payment	Benefit (Cost) of Project
1	\$ 85,245	\$ 86,222	\$ 977
2	\$ 86,950	\$ 86,222	\$ (728)
3	\$ 88,689	\$ 86,222	\$ (2,467)
4	\$ 90,463	\$ 184,799	\$ 94,336
5	\$ 92,272	\$ 205,332	\$ 113,060
6	\$ 94,118	\$ 225,865	\$ 131,747
7	\$ 96,000	\$ 256,665	\$ 160,665
8	\$ 97,920	\$ 287,464	\$ 189,545
9	\$ 99,878	\$ 318,264	\$ 218,386
10	\$ 101,876	\$ 361,384	\$ 259,508
11	\$ 103,913	\$ 379,864	\$ 275,950
12	\$ 105,992	\$ 410,664	\$ 304,672
13	\$ 108,111	\$ 451,730	\$ 343,618
14	\$ 110,274	\$ 482,530	\$ 372,256
15	\$ 112,479	\$ 492,796	\$ 380,317
<b>Total</b>	<b>\$ 1,474,180</b>	<b>\$ 4,316,021</b>	<b>\$ 2,841,841</b>
<b>Average</b>	<b>\$ 98,279</b>	<b>\$ 287,735</b>	<b>\$ 189,456</b>

**Source:** Town of Hempstead IDA, Camoin Associates

## CAMOIN ASSOCIATES

**SPECIAL DISTRICTS**

Table 12 calculates the benefit to the special districts. The special districts would receive approximately \$87,877 more in PILOT revenue annually than it would receive in property taxes without the Project. The total benefit to the special districts would be over \$1.3 million over the 15-year period.

Table 12

**Tax Policy Comparison for Special Districts**

Year	Property Tax Payment Without Project	PILOT Payment	Benefit (Cost) of Project
1	\$ 39,540	\$ 39,993	\$ 453
2	\$ 40,331	\$ 39,993	\$ (338)
3	\$ 41,137	\$ 39,993	\$ (1,144)
4	\$ 41,960	\$ 85,717	\$ 43,756
5	\$ 42,799	\$ 95,241	\$ 52,441
6	\$ 43,655	\$ 104,765	\$ 61,109
7	\$ 44,528	\$ 119,051	\$ 74,522
8	\$ 45,419	\$ 133,337	\$ 87,918
9	\$ 46,327	\$ 147,623	\$ 101,296
10	\$ 47,254	\$ 167,623	\$ 120,370
11	\$ 48,199	\$ 176,195	\$ 127,996
12	\$ 49,163	\$ 190,481	\$ 141,318
13	\$ 50,146	\$ 209,529	\$ 159,383
14	\$ 51,149	\$ 223,815	\$ 172,666
15	\$ 52,172	\$ 228,577	\$ 176,405
<b>Total</b>	<b>\$ 683,780</b>	<b>\$ 2,001,933</b>	<b>\$ 1,318,153</b>
<b>Average</b>	<b>\$ 45,585</b>	<b>\$ 133,462</b>	<b>\$ 87,877</b>

Source: Town of Hempstead IDA, Camoin Associates

## CAMOIN ASSOCIATES

## OTHER EXEMPTIONS

There are additional benefits to working with the Agency including a one-time sales tax exemption on construction materials and furniture, fixtures, and equipment. Tax exemptions are for the state and county taxes and are not applicable to the town and village.

Table 13

**Summary of Costs to Affected Jurisdictions**

	<b>State and County</b>	
Sales Tax Exemption	\$	2,277,000

**Source:** Applicant, Camoin Associates

The additional incentives offered by the Agency will benefit the Applicant but will not negatively affect the taxing jurisdictions because, without the Project, the Town by definition would not be receiving any associated sales tax or mortgage tax revenue.

## SALES TAX REVENUE

**SALES TAX REVENUE – CONSTRUCTION PHASE**

The one-time construction phase earnings described by the total economic impact of the construction work (described in the above section) would lead to additional sales tax revenue for the Town. It is assumed that 70%<sup>6</sup> of the construction phase earnings would be spent within the county and that 25% of those purchases would be taxable.

Table 14

**One-Time Sales Tax Revenue, Construction Phase**

Total New Earnings	\$	15,474,818
Amount Spent in County (70%)	\$	10,832,373
Amount Taxable (25%)	\$	2,708,093
<b>Nassau County Sales Tax Revenue (4.25%)</b>	<b>\$</b>	<b>115,094</b>
New Town Sales Tax Revenue Portion*		0.375%
<b>New Town Sales Tax Revenue</b>	<b>\$</b>	<b>10,155</b>

**Source:** Town of Hempstead IDA, Camoin Associates

**\*Note:** Nassau County's sales tax rate is 4.25%, of which 0.75% is allocated to the towns and cities within the county. For this analysis we assume half of the 0.75% is allocated to the Town of Hempstead.

<sup>6</sup> According to Lightcast (formerly Emsi), 70% demand for industries in a typical household spending basket is met within Nassau County.

## CAMOIN ASSOCIATES

**SALES TAX REVENUE – EMPLOYEE EARNINGS**

The earnings generated by on-site jobs that will occur as a result of building operation at the Project (described under Impacts of On-Site Employment) would lead to additional annual sales tax revenue for the town. It is assumed that 70% of the earnings would be spent within Nassau County and that 25% of those purchases will be taxable. Table 15 displays the annual tax revenue that the Town will receive.

Table 15

**Annual Sales Tax Revenue, On-Site Operations**

Total New Earnings	\$	1,498,058
Amount Spent in County (70%)	\$	1,048,641
Amount Taxable (25%)	\$	262,160
<b>Nassau County Sales Tax Revenue (4.25%)</b>	<b>\$</b>	<b>11,142</b>
New Town Sales Tax Revenue Portion*		0.375%
<b>New Town Tax Revenue</b>	<b>\$</b>	<b>983</b>

**Source:** Town of Hempstead IDA, Camoin Associates

**\*Note:** Nassau County's sales tax rate is 4.25%, of which 0.75% is allocated to the towns and cities within the county. For this analysis we assume half of the 0.75% is allocated to the Town of Hempstead.

## ATTACHMENT A: WHAT IS ECONOMIC IMPACT ANALYSIS?

The purpose of conducting an economic impact study is to ascertain the total cumulative changes in employment, earnings and output in a given economy due to some initial "change in final demand". To understand the meaning of "change in final demand", consider the installation of a new widget manufacturer in Anytown, USA. The widget manufacturer sells \$1 million worth of its widgets per year exclusively to consumers in Canada. Therefore, the annual change in final demand in the United States is \$1 million because dollars are flowing in from outside the United States and are therefore "new" dollars in the economy.

This change in final demand translates into the first round of buying and selling that occurs in an economy. For example, the widget manufacturer must buy its inputs of production (electricity, steel, etc.), must lease or purchase property and pay its workers. This first round is commonly referred to as the "Direct Effects" of the change in final demand and is the basis of additional rounds of buying and selling described below.

To continue this example, the widget manufacturer's vendors (the supplier of electricity and the supplier of steel) will enjoy additional output (i.e. sales) that will sustain their businesses and cause them to make additional purchases in the economy. The steel producer will need more pig iron and the electric company will purchase additional power from generation entities. In this second round, some of those additional purchases will be made in the US economy and some will "leak out". What remains will cause a third round (with leakage) and a fourth (and so on) in ever-diminishing rounds of industry-to-industry purchases. Finally, the widget manufacturer has employees who will naturally spend their wages. Again, those wages spent will either be for local goods and services or will "leak" out of the economy. The purchases of local goods and services will then stimulate other local economic activity. Together, these effects are referred to as the "Indirect Effects" of the change in final demand.

Therefore, the total economic impact resulting from the new widget manufacturer is the initial \$1 million of new money (i.e. Direct Effects) flowing in the US economy, plus the Indirect Effects. The ratio of Total Effects to Direct Effects is called the "multiplier effect" and is often reported as a dollar-of-impact per dollar-of-change. Therefore, a multiplier of 2.4 means that for every dollar (\$1) of change in final demand, an additional \$1.40 of indirect economic activity occurs for a total of \$2.40.

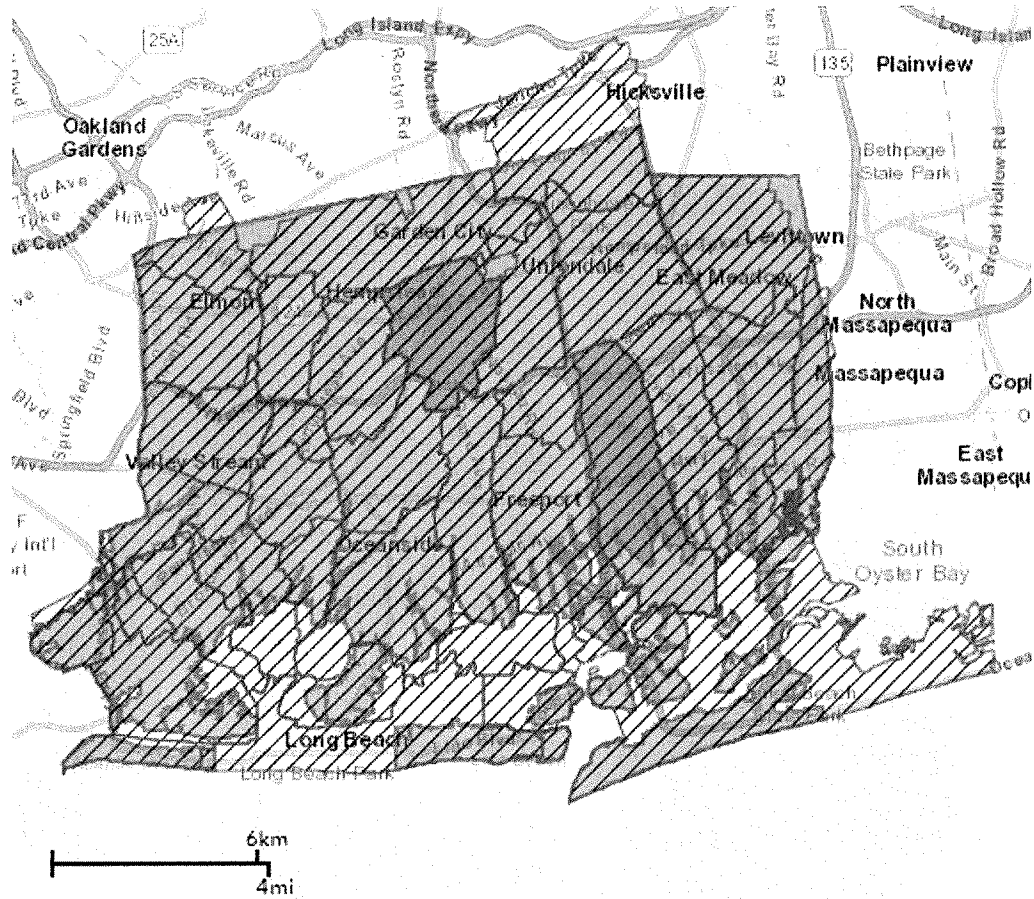
Key information for the reader to retain is that this type of analysis requires rigorous and careful consideration of the geography selected (i.e. how the "local economy" is defined) and the implications of the geography on the computation of the change in final demand. If this analysis wanted to consider the impact of the widget manufacturer on the entire North American continent, it would have to conclude that the change in final demand is zero and therefore the economic impact is zero. This is because the \$1 million of widgets being purchased by Canadians is not causing total North American demand to increase by \$1 million. Presumably, those Canadian purchasers will have \$1 million less to spend on other items and the effects of additional widget production will be cancelled out by a commensurate reduction in the purchases of other goods and services.

Changes in final demand, and therefore Direct Effects, can occur in a number of circumstances. The above example is easiest to understand: the effect of a manufacturer producing locally but selling globally. If, however, 100% of domestic demand for a good is being met by foreign suppliers (say, DVD players being imported into the US from Korea and Japan), locating a manufacturer of DVD players in the US will cause a change in final demand because all of those dollars currently leaving the US economy will instead remain. A situation can be envisioned whereby a producer is serving both local and foreign demand, and an impact analysis would have to be careful in calculating how many "new" dollars the producer would be causing to occur domestically.

CAMOIN ASSOCIATES

## ATTACHMENT B: STUDY AREAS

Town of Hempstead (Green) and Zip Code Region (Red outline with dashes)



Leading action to  
grow your economy

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@camoinassociate





March 7, 2023

Via email [AEames@tohmail.org](mailto:AEames@tohmail.org)

Attn: Arlyn Eames, Deputy Financial Officer  
Town of Hempstead Industrial Development Agency  
350 Front Street  
Hempstead, New York 11550

Re: IDA Approval of Tenant Sublease  
Valley Stream Green Acres LLC 2015 Facility  
2034 Green Acres Road South, Valley Stream, NY 11581

Dear Ms. Eames:

In accordance with instructions from Daniel Baker of Greenberg Traurig LLP, attached please find sent directly to you a copy of the tenant sublease for your approval in accordance with Section 9.3 of the Lease Agreement dated May 1, 2015 for the above referenced location ("Valley Stream Green Acres Lease") related to the following:

- **Size of Premises:** 670 square feet
- **Tenant:** REAL FRUIT BUBBLE TEA INC - Real Fruit Bubble Tea
- **Estimated employees:** 5-10
- **Estimated average salaries:** \$20.00 per hour

Also enclosed is a chart regarding the corresponding tenant sublease provisions compared to the provisions listed in Exhibit G of the Valley Stream Green Acres Lease as indicated in Nancy Rendos' 7/15/15 memo to you.

Please note, there is no NDA requested in connection with this Lease.

Please confirm your approval of the lease and execution of the resolution by the TOHIDA approving the lease by a reply email to me so I may proceed with execution of the tenant sublease as soon as possible. If you have any questions in the meantime, please do not hesitate to contact me at 310.463.1562.

Sincerely,

Stephanie S. Malayil

cc: Daniel J. Baker, Esq., via email ([dan.baker@gtlaw.com](mailto:dan.baker@gtlaw.com))  
Edie Longo, [elongo@tohmail.org](mailto:elongo@tohmail.org) (with attachments)  
Terance Walsh, Nixon Peabody, via email [twalsh@nixonpeabody.com](mailto:twalsh@nixonpeabody.com) (with attachments)  
Beth Wood, Nixon Peabody, via email [ewood@nixonpeabody.com](mailto:ewood@nixonpeabody.com) (with attachments)  
Emma Feary, Nixon Peabody, via email [efeary@nixonpeabody.com](mailto:efeary@nixonpeabody.com) (with attachments)  
Nancy Rendos (via email [nancy.rendos@macerich.com](mailto:nancy.rendos@macerich.com))  
Joe Floccari (via email [joe.floccari@macerich.com](mailto:joe.floccari@macerich.com))

# LEASE AGREEMENT

BY AND BETWEEN

**VALLEY STREAM GREEN ACRES LLC**

AS LANDLORD

AND

**REAL FRUIT BUBBLE TEA INC.**

doing business as

**Real Fruit Bubble Tea**

AS TENANT

FOR PREMISES LOCATED WITHIN

**Green Acres Mall  
Valley Stream, New York**



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### Exhibits

A	Depiction of Center
B	Depiction of Premises
C	Provisions for the Design and Construction of the Premises
D	Certain Defined Terms
E	Center Rider
F	Provisions for Tenants Selling Food
G	Monthly and Annual Sales Statement Form

# LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made as of \_\_\_\_\_ ("Effective Date") by and between **VALLEY STREAM GREEN ACRES LLC**, a Delaware limited liability company ("Landlord"), and **REAL FRUIT BUBBLE TEA INC.**, a New York corporation ("Tenant").

## W I T N E S S E T H:

In consideration of the rents to be paid and the covenants to be performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following described Premises, upon the following terms and conditions (capitalized terms used herein without definition shall have the meanings ascribed to such terms in Exhibit D):

### 1. FUNDAMENTAL LEASE PROVISIONS

1.1. **Center:** Green Acres Mall, located in the Village of Valley Stream, County of Nassau, State of New York Section 2.1

1.2. **Premises:** Space # 2218E Section 2.1

1.3. **Floor Area of the Premises:** 670 square feet Section 2.1

1.4. **Term:** From the Delivery Date until the Expiration Date, unless sooner terminated pursuant to the terms of this Lease

1.5. **Required Opening Date:** 90 days following the Delivery Date. Section 2.1

1.6. **Rent Commencement Date:** The earlier to occur of (a) the date on which Tenant first opens the Premises for business or (b) the Required Opening Date.

1.7. **Expiration Date:** The day immediately preceding the seventh (7<sup>th</sup>) anniversary of the Rent Commencement Date (however, if the Rent Commencement Date does not occur on the first day of a calendar month, then the Expiration Date shall be the last day of the calendar month in which such anniversary occurs).

1.8. **Fixed Minimum Rent:** Section 3.4

<u>Dates</u>	<u>Annual Fixed Minimum Rent*</u>	<u>Monthly Fixed Minimum Rent*</u>
† - Expiration Date	\$ 85,000.00	\$ 7,083.33

†From the Rent Commencement Date

\*Subject to increases pursuant to Section 3.4

1.9. **Percentage Rent Rate:** 8% Section 3.5

1.10. **Annual Breakpoint:** Section 3.5

<u>Dates</u>	<u>Annual Breakpoint**</u>
‡ - Expiration Date	\$ 850,000.00

‡From the Rent Commencement Date  
\*\*Subject to increases pursuant to Section 3.5

- 1.11. Permitted Use:** The Premises shall be solely for the retail sale of bubble tea beverages, and real fruit beverages (collectively "Primary Use") and as ancillary to Primary Use, the sale at retail of sandwiches, cookies, muffins and croissants (collectively "Ancillary Use"), provided in no event shall the Gross Sales attributable to the Ancillary Use exceed 10% of Tenant's Gross Sales in any month during the Term. The Premises shall be used for no other use or purpose. Section 7.1
- 1.12. Trade Name:** Real Fruit Bubble Tea Section 7.1
- 1.13. Center Hours:** Monday through Saturday 10:00 a.m. to 9:00 p.m. and Sunday 11:00 a.m. to 7:00 p.m., or such other hours that the Center is open for business as such hours are designated from time-to-time by Landlord.
- 1.14. Radius:** 1 mile, measured from the outside boundaries of the Center, as the Center is constituted on the Effective Date. Section 7.3
- 1.15. Landlord's Address For Notices:** Valley Stream Green Acres LLC  
2034 Green Acres Mall  
Valley Stream, NY 11581-1545  
Attention: Center Manager Article 14
- With a copy of notices to:  
Valley Stream Green Acres LLC  
c/o Macerich  
P.O. Box 2172  
401 Wilshire Boulevard, Suite 700  
Santa Monica, California 90407  
Attn: Correspondence Routing System/Legal Department
- 1.16. Tenant's Address For Notices:** Real Fruit Bubble Tea Inc. Article 14  
80 Bentley Street  
Markham, Ontario  
L3R 3L2  
Attention: Ken Yang
- 1.17. Address For Payment of Rent:** Valley Stream Green Acres LLC Section 3.1  
Dept # 880508  
P.O. Box 29650  
Phoenix, AZ 85038-9650
- 1.18. Landlord's Broker(s):** None. Section 21.3
- 1.19. Tenant's Broker(s):** Ryan McGrath Section 21.3

- 1.20. **Guarantor(s):** None.
- 1.21. **Rent Inquiry Address:** Landlord: Section 3.1  
Phone: (866) 811-1095  
Email: GreenAcresAR@macerich.com
- Tenant:  
Real Fruit Bubble Tea Inc.  
80 Bentley Street  
Markham, Ontario  
L3R 3L2  
Attention: Ken Yang  
Email: [ken@realfruitbubbletea.com](mailto:ken@realfruitbubbletea.com)  
Phone:
- 1.22. **Landlord's Sales Reporting Address:** Valley Stream Green Acres LLC Section 3.5  
Attention: Sales Associate  
P.O. Box 2188  
Santa Monica, CA 90406
- Phone: (866) 811-1095  
Facsimile: (602) 953-8354  
Email: greenacres.salesreporting@macerich.com
- 1.23. **Fixed CAM:** \$16,750.00 per annum, subject to increases pursuant to Section 3.6  
Section 3.6

## 2. PREMISES AND CONSTRUCTION OF IMPROVEMENTS

2.1. **Center and Premises.** The Center, as of the Effective Date, is known by the name set forth in Section 1.1. Exhibit A is an approximate depiction of the Center; however, the depiction of the Center on Exhibit A is not a representation, warranty or covenant of any kind by Landlord that all or any part of the Center is, will be, or will continue to be configured as indicated on Exhibit A. Landlord expressly reserves the right at any time to change the name of the Center without any liability to Tenant. The approximate location of the Premises is depicted by crosshatching on Exhibit B.

2.2. **Tenant's Work.** Promptly following (a) the Delivery Date, (b) Landlord's approval of the Approved Plans and (c) Tenant's receipt of all permits and licenses required by governmental authorities, Tenant shall, at its sole cost and expense, cause Tenant's Contractor to commence Tenant's Work in accordance with the Approved Plans, this Lease, Exhibit C and the Tenant Package and to diligently pursue the same to completion so as to open the Premises for business to the public on or before the Required Opening Date.

2.3. **Timely Opening.** Tenant acknowledges the financial success of the Center depends, in part, on Tenant completing Tenant's Work and opening the Premises for business to the public on or before the Required Opening Date ("Timely Opening Requirement") and Landlord's damages arising from Tenant's failure to comply with the Timely Opening Requirement are difficult to ascertain. Therefore, if Tenant fails to complete Tenant's Work and/or open the Premises for business to the public on or before the Required Opening Date, then in addition to Landlord's other remedies under this Lease, Landlord shall have the right

to collect from Tenant, in addition to all Rent, an amount equal to 50% of the Fixed Minimum Rent (prorated on a daily basis) for each such full or partial day that the Timely Opening Requirement is not met.

2.4. **Prior Occupant.** Tenant acknowledges that, as of the Effective Date, the Premises are occupied by another Occupant ("Prior Occupant"). Landlord shall use all reasonable means to obtain possession of the Premises from the Prior Occupant. However, if for any reason Landlord is unable to obtain possession of the Premises from the Prior Occupant and to deliver the Premises to Tenant, this Lease shall not be void or voidable nor shall Landlord or the Landlord Parties be liable to Tenant therefor, monetarily or otherwise. If, after using reasonable means to obtain possession of the Premises from the Prior Occupant, Landlord is unable to obtain possession of the Premises and deliver the Premises to on or before March 1, 2024, then either Landlord or Tenant may elect to terminate this Lease by written notice to the other (which notice must be given to the other prior to the date Landlord delivers possession of the Premises to Tenant), in which case this Lease shall terminate and Landlord and Tenant shall each be discharged from all further obligations and liability under this Lease (other than obligations and liabilities which have theretofore accrued hereunder).

### 3. RENT

3.1. **Payment of Rent.** Tenant shall pay all Rent to Landlord without notice, demand, deduction or offset, in lawful money of the United States of America, to the Address for Payment of Rent or at such other place as Landlord may from time-to-time designate in writing to Tenant. Tenant shall be obligated to pay Rent when due regardless of whether Tenant receives a statement therefor. Landlord and Tenant may each use the other's Rent Inquiry Address for any inquiries relating to Rent. The acceptance by Landlord of partial payment of any sum due from Tenant shall not be deemed a waiver by Landlord of any of its rights to the full amount due or an admission by Landlord of the accuracy of any Monthly Sales Statement or any Annual Sales Statement submitted by Tenant. Any endorsement or statement on any check or accompanying letter from Tenant shall not be deemed an accord and satisfaction. Any Rent payments received from Tenant or any other person shall be conclusively presumed to have been paid on Tenant's behalf; however, in no event shall the foregoing be construed as requiring Landlord to accept any Rent from any person other than Tenant. The acceptance by Landlord of Rent from Tenant or any person other than Tenant shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer or to be a release of Tenant from any obligation under this Lease. The acceptance by Landlord of delinquent payment shall not constitute a waiver of any default and shall not constitute a waiver of timely payment of the particular payment involved. Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, in such order and amounts as Landlord, in its sole discretion, may elect.

3.2. **Prorations.** If the Rent Commencement Date begins on a day other than the first day of a month or if the Term expires on a day other than the last day of a month, then Fixed Minimum Rent, Fixed CAM and Tenant's Share of Real Estate Taxes for such month shall be an amount equal to the product obtained by multiplying the respective annual amounts by a fraction, the numerator of which shall be the number of days in such month and the denominator of which shall be the actual number of days in such calendar year, unless otherwise provided. If the Lease Year is less than 12 full calendar months, then the Annual Breakpoint for such Lease Year shall be an amount equal to the product obtained by multiplying the Annual Breakpoint by a fraction, the numerator of which shall be the number of days in such Lease Year and the denominator of which shall be 365. If the Premises are closed for any full or partial day during Center Hours, then Annual Breakpoint shall be prorated for the Lease Year in which such closure occurs.

3.3. **Late Payments.** If Tenant fails to pay any Rent to Landlord when due, Landlord shall have the right to collect, as a fair estimate of the expenses Landlord would incur by reason of Tenant's late payment of Rent or a dishonored check: (a) interest on the unpaid Rent at the Agreed Rate from the date payment is due until the date payment is made and (b) a monthly service charge equal to 10% of the overdue amount. If payment is made by a check which is dishonored by the drawing bank, Tenant shall pay to Landlord a service charge equal to \$50.00, and Landlord may require that all future payments of Rent shall be made by electronic money transfers. The imposition of such interest and service charges shall neither

constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any other right or remedy available to Landlord.

3.4. **Fixed Minimum Rent.** From and after the Rent Commencement Date, Tenant shall pay in equal monthly installments, in advance on the first day of each month (except for the first installment, which shall be paid on the Rent Commencement Date), the Fixed Minimum Rent. Commencing on January 1, 2024 and on each January 1st thereafter (each such date is sometimes referred to as a "Rent Adjustment Date"), the Fixed Minimum Rent then in effect (or which would then have been in effect absent any abatement or reductions in Fixed Minimum Rent, except for permanent reductions in Fixed Minimum Rent due to a permanent Taking) shall be increased by 5%.

3.5. **Percentage Rent**

3.5.1. **Percentage Rent.** Tenant shall owe Percentage Rent to Landlord for each Lease Year commencing upon the calendar month in which Tenant's Gross Sales first exceed the Annual Breakpoint for each Lease Year. Percentage Rent shall be payable to Landlord concurrently with Tenant's submittal of the Monthly Sales Statement for each calendar month thereafter in an amount equal to the product obtained by multiplying the Percentage Rent Rate by the amount of Gross Sales during the preceding calendar month that is in excess of the Annual Breakpoint. If Fixed Minimum Rent during any Lease Year is reduced pursuant to a provision in this Lease or by express written agreement between Landlord and Tenant, then the Annual Breakpoint shall likewise be reduced by a percentage equal to the percentage decrease in the Fixed Minimum Rent payable for the period during which the change in Fixed Minimum Rent is in effect. On each Rent Adjustment Date, the Annual Breakpoint shall be adjusted by a percentage equal to the increase in Annual Fixed Minimum Rent on such Rent Adjustment Date.

3.5.2. **Sales Statements.** Within 10 days after the end of each calendar month, Tenant shall deliver to Landlord at Landlord's Sales Reporting Address a Monthly Sales Statement specifying the Gross Sales made for the preceding calendar month. Within 20 days after the end of each Lease Year, Tenant shall deliver to Landlord at Landlord's Sales Reporting Address an Annual Sales Statement specifying the Gross Sales made for the preceding Lease Year. If Tenant should fail to timely provide any Monthly Sales Statement or any Annual Sales Statement in the manner and form required by this Lease, then, without limitation as to any and all rights and remedies available to Landlord in this Lease, at law and in equity, Landlord shall also have the right to invoice Tenant the sum of \$250.00 per incident per month to cover the additional time and expense involved to obtain each such Monthly Sales Statement or Annual Sales Statement.

3.6. **Fixed CAM.** From and after the Rent Commencement Date, Tenant shall pay in equal monthly installments, in advance on the first day of each month (except for the first installment, which shall be paid on the Rent Commencement Date), the Fixed CAM. Commencing on the Rent Adjustment Date and on each January 1st thereafter, the Fixed CAM then in effect (or which would then have been in effect absent any abatement or reductions in Fixed CAM) shall be increased by 5%.

3.7. **Tenant's Share of Real Estate Taxes.** From and after the Rent Commencement Date, Tenant shall pay Tenant's Share of Real Estate Taxes in the time frames and in the manner herein set forth in this Section 3.7. Landlord shall notify Tenant from time-to-time of Landlord's estimate of the monthly installments payable by Tenant as Tenant's Share of Real Estate Taxes. From and after the date of any such notice, Tenant shall pay to Landlord such estimated monthly amounts, in advance, on or before the first day of each month. Following the end of each Lease Year, Landlord shall submit to Tenant a statement containing the amount of Tenant's Share of Real Estate Taxes for such Lease Year. If such statement discloses that there was an underpayment of Tenant's Share of Real Estate Taxes, Tenant shall pay the amount of such underpayment within 10 days after the date of such statement. If such statement discloses that Tenant made an overpayment of Tenant's Share of Real Estate Taxes, Landlord shall apply the amount of the overpayment against the next installment(s) of Rent then due until such overpayment has been exhausted; however, within 30 days following the Refund Date, any such excess sums not previously credited shall be refunded to Tenant.



3.8. **Personal Property and Other Taxes.** Tenant shall pay directly to Landlord or to the appropriate taxing authority, before delinquency, any and all taxes (including any excise, transaction, sales or privilege tax imposed upon Landlord on account of, attributed to, or measured by Rent), assessments and public charges levied, assessed or imposed by governmental authorities upon Tenant's business, upon Tenant's sales, upon Rent, upon Tenant's leasehold interest, and upon all Personal Property and Improvements, as well as upon Tenant's right to occupy, and do business at, the Premises.

3.9. **Abatement of Rent.** Provided Tenant is not in default of this Lease, then for the period commencing on the first day of the first calendar month of the Term and continuing through the last day of the 5<sup>th</sup> calendar month of the Term ("Abatement Period"), Fixed Minimum Rent, Fixed Costs and Variable Costs shall be wholly ("Abated Rent"). During the Abatement Period, Tenant shall continue to timely pay, in full, all Percentage Rent and Additional Rent and the Rent Commencement Date shall not be modified, altered, delayed or advanced as a result of the Abated Rent or the Abatement Period. For purpose of computing Percentage Rent due during the Abatement Period, it shall be deemed that Fixed Minimum Rent was payable in full to Landlord during the Abatement period as if there had been not been Abated Rent. If for any reason this Lease is terminated prior to the Expiry Date, then the amount of Fixed Minimum Rent, Fixed Costs and Variable Costs theretofore abated shall become immediately due and payable to Landlord.

#### 4. GROSS SALES

4.1. **Definition of Gross Sales.** "Gross Sales" means the aggregate selling price of all goods, wares, merchandise, tickets, food, beverages and services sold, leased, licensed or delivered from any part of the Premises by Tenant and Tenant's Occupants and shall include, but not be limited to, (a) sales or charges for cash or credit regardless of collections, (b) sales by vending devices, (c) proceeds from audio games and video games, (d) commissions and fees received for the sale of lottery tickets, money orders, check cashing, phone and gift card sales and any other similar income, (e) rent income, (f) orders received or filled at the Premises (including, without limitation, orders made by use of the mail, Internet, wire and telephone), (g) all deposits not refunded to purchasers, (h) fees, commissions and catalogue sales, (i) sales from solicitations, regardless of where conducted, by personnel operating from, or reporting to any person at, the Premises and (j) all service, finance and interest charges on any type of account or note receivable to the extent the principal amount would constitute Gross Sales. Gross Sales shall be deemed to be the average daily Gross Sales for the same month in the calendar year immediately preceding (or if no such Gross Sales are available for such month in the immediately preceding calendar year then the average daily Gross Sales for the 3 months immediately preceding the closure) for each day of nonoperation by Tenant.

4.2. **Tenant's Records.** All business upon the Premises shall be operated so that evidence of payment shall be issued with each sale, transaction or other event resulting in Gross Sales ("Tenant's Receipts"). For the purpose of permitting verification by Landlord of any amounts due as Percentage Rent, Tenant shall keep and preserve at all times during the period required, at the Premises all books and records reflecting Tenant's operations solely at the Premises ("Tenant's Records"). Tenant's Records shall (a) disclose in detail all information reasonably required to permit Landlord to verify Tenant's Gross Sales, (b) conform to and be in accordance with generally accepted accounting principles consistently applied with respect to all operations of the business conducted from the Premises, (c) be maintained in the English language and (d) be kept and preserved for at least 36 months following the end of the Lease Year for which the same pertain (or such longer period, if and while the same may need to be consulted in reference to any dispute or audit, until such dispute or audit has been finally resolved).

#### 5. INDEMNIFICATION AND INSURANCE

##### 5.1. Indemnification

5.1.1. **Indemnification by Tenant.** Tenant hereby agrees to indemnify, defend and hold Landlord and the Landlord Parties harmless from and against any and all Claims for property damage, personal injury or any other matter arising, claimed, charged or incurred against or by Landlord or any of the Landlord Parties in connection with or relating to any event, condition, matter or thing which (a) occurs in, on, under or about the Premises from any cause except to the extent due to the gross

negligence or willful misconduct of Landlord or any of the Landlord Parties, (b) occurs in, on, under or about the remainder of the Center due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties or (c) is caused by or relates to any default, breach, violation or non-performance by Tenant of any provision of this Lease.

5.1.2. **Indemnification by Landlord.** Landlord hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all Claims for property damage, personal injury or any other matter arising, claimed, charged or incurred against or by Tenant in connection with or relating to any event, condition, matter or thing which (a) occurs in, on, under or about the Common Area from any cause except due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties, (b) occurs in, on, under or about the Premises due to the gross negligence or willful misconduct of Landlord or any of the Landlord Parties or (c) is caused by or relates to any default, breach, violation or non-performance by Landlord of any provision of this Lease.

5.1.3. **Release and Waiver of Subrogation.** If any part of the Premises or the Center is damaged by fire or other cause for which a party is required to carry insurance pursuant to this Lease ("Insuring Party"), the other party shall not be liable to the Insuring Party (and the Insuring Party hereby waives all claims on behalf of itself and shall cause its insurance company to waive all such claims) for any loss, cost or expense arising out of or in connection with such damage. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant or any of the Tenant Parties for any damages or injury arising out of or in connection with (a) any act or omission of any Occupant or for losses arising out of or in connection with theft or burglary or other acts or omissions of third parties or (b) fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises or the Center, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures or (c) injuries to Tenant's employees in the Center.

5.2. **Tenant's Insurance.** Tenant shall procure and maintain, at its sole cost and expense, the following policies of insurance:

5.2.1. **Liability.** Commercial general liability insurance on an occurrence basis (including personal and advertising injury) with coverage limits of not less than \$3,000,000.00 per occurrence, and \$5,000,000.00 general aggregate per location, specifically including liability insurance covering the consumption of alcoholic beverages by customers of Tenant, if the sale of alcoholic beverages is permitted in the Premises. Tenant's general liability insurance shall (a) not include an abuse or molestation exclusion, and (b) contain cross-liability endorsements or a separation of insureds clause. Such insurance may be satisfied by a combination of primary and excess limits.

5.2.2. **Property.** Property insurance covering any peril generally included in the classification ISO Causes of Loss - Special Form covering all (a) Personal Property, and (b) Improvements in an amount not less than 100% of their full replacement cost without co-insurance or margin clauses. Such insurance shall include coverage for all plate glass on the Premises. If the Center is located in the Federal Emergency Management Area flood zone A or V, Tenant shall also procure and maintain, at its sole cost and expense, flood insurance with a deductible not to exceed \$10,000.00, including purchase of the National Flood Insurance Policy, if applicable. If the Center is located in the New Madrid seismic areas or the states of California, Oregon or Washington, Tenant shall also procure and maintain, at its sole cost and expense, earthquake insurance with a deductible not to exceed 5% of the total insured value. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed, unless this Lease is terminated under the provisions of Article 18. The insurance required pursuant to this Section 5.2.2 shall also include business interruption or rental loss insurance sufficient to cover, for a period of not less than 12 full calendar months, all Rent and other payment obligations of Tenant under this Lease which would be borne by or due from Tenant under this Lease if the Premises and Tenant's business was fully open and operating.

5.2.3. **Other Insurance.** Tenant [or Tenant's contractor as to the insurance required in

subsection (c) below] shall maintain the following insurance: (a) workers' compensation insurance and employers' liability insurance on an "occurrence" basis but, in either case, with a limit of not less than the greater of the amount required in the state in which the Center is located or \$1,000,000.00 each accident, \$1,000,000.00 each employee by disease and \$1,000,000.00 policy aggregate by disease, for the benefit of Tenant's employees, (b) boiler and machinery insurance on all Utility Facilities exclusively serving the Premises, (c) builder's risk insurance in an amount equal to 100% of the value of any construction and installation of Improvements to the Premises, together with such other insurance as Landlord may reasonably require and (d) business automobile liability insurance covering vehicles of Tenant or Tenant's employees used in connection with the operation of its business from the Premises, with limits of not less than \$1,000,000.00 per occurrence combined single limit, insuring for bodily injury, death and property damage.

5.2.4. **Policy Requirements.** All policies of insurance provided for in this Section 5.2 shall (a) be issued by insurance companies that have a general policyholder's rating of not less than "A" and a financial rating of not less than Class VIII as rated in the most current available "Best's Insurance Reports", and that have been admitted or qualified to do business in the state where the Center is located, (b) name Landlord, Landlord's Manager, all Mortgagees and such other individuals or entities as Landlord may from time-to-time designate, as "additional insureds", and (c) not contain a deductible, nor be subject to a self-insured retention, in an amount greater than \$5,000.00, except as otherwise expressly set forth in this Lease. Tenant shall provide to Landlord, at least 10 days prior to the Delivery Date and thereafter 30 days prior to the expiration of any such policies, certificates of insurance to evidence insurance procured by Tenant as required hereunder. All commercial general liability insurance, property damage or other casualty policies shall be written as primary policies, not contributory with or secondary to coverage that Landlord may carry. If Tenant fails to obtain and maintain any insurance required under this Lease, or fails to timely provide Landlord with certificates of insurance, Landlord shall have the right (but not the obligation) to procure such insurance and Tenant shall pay to Landlord, promptly on demand, the costs and expenses thereof as a Reimbursed Cost. Tenant shall deliver (or cause its insurance carrier to deliver) to Landlord a copy of any insurance policy maintained by Tenant hereunder in connection with any applicable Claim within 20 days after Landlord's written request therefor. The amount or availability of Tenant's insurance shall not limit Tenant's liability or relieve Tenant of any obligation hereunder.

## 6. UTILITIES

6.1. **Utilities.** Tenant shall be solely responsible for obtaining, and shall promptly pay all charges for use and consumption of, all Utilities furnished to the Premises. Landlord may (at its election) supply some or all of the Utilities to the Premises, and, so long as Landlord continues to provide such Utilities to the Premises, Tenant agrees to pay Landlord on the first day of each month, Tenant's share of such Utilities (based on Landlord's engineer's calculations or such other reasonable measuring methodologies). Landlord may also charge Tenant: (a) an Administrative Charge on any Utilities Tenant receives from Landlord, and (b) a pro rata share of the costs and expenses of operating, maintaining, repairing, installing and servicing the Utility Facilities at the Center (including any depreciation, reserves and interest costs). Tenant shall promptly provide Landlord, upon Landlord's written request therefor, such details as Landlord or its engineer may reasonably require to calculate amounts which are payable by Tenant pursuant to this Article 6. Landlord shall have the right to designate alternate third party provider(s) to provide any Utilities to the Premises. Tenant shall be required to use the facilities installed by Landlord at the Center to transmit voice, data and any other utilities to the Premises and access to such facilities must be coordinated by Tenant through Landlord's designated system administrator at Tenant's cost. Landlord shall not be in default and neither Landlord nor the Landlord Parties shall be liable for any damages directly or indirectly resulting from an interruption in any of the Utilities, the quality or quantity of the Utilities, the unavailability of any of the Utilities, or from cooperating with the energy conservation efforts of governmental agencies or utility suppliers and none of the preceding shall (i) constitute an eviction or disturbance of Tenant's use and possession of the Premises, (ii) constitute a termination of this Lease, (iii) entitle Tenant to an abatement of any Rent or (iv) relieve Tenant from performing any of its obligations under this Lease.

## 7. USE AND OPERATION

7.1. **Days and Hours of Operation.** Tenant shall, continuously during only the Center Hours, (i) operate in the entire Premises only for the Permitted Use and only under the Trade Name and for no other use or purpose and under no other trade name, (ii) maintain an adequate sales force so as to maximize Gross Sales, (iii) keep in stock a full line of merchandise, and (iv) keep display windows, exterior signs and exterior advertising adequately illuminated and in first-class condition (collectively, "Operating Covenant"). Tenant acknowledges that its failure to comply with the Operating Covenant will cause Landlord to suffer damages which will be difficult to ascertain. Therefore, if Tenant fails to comply with the Operating Covenant, then in addition to Landlord's other remedies under this Lease, Landlord shall have the right to collect from Tenant, in addition to all Rent, an amount equal to 50% of the Fixed Minimum Rent (prorated on a daily basis) for each such full or partial day Tenant fails to comply with the Operating Covenant.

7.2. **Prohibited and Restricted Uses.** Tenant shall do none of the following: (a) permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of, or affect any, fire or other insurance upon the Premises or the Center or cause a cancellation of any insurance policy covering the Premises or the Center or any part thereof or any of its contents; (b) permit anything to be done in or about the Premises or bring or keep anything therein that may cause any deleterious or harmful substance including, without limitation, mold or fungus, to exist in, on, under or about the Premises or elsewhere in the Center, (c) obstruct or interfere with the rights of Occupants or injure or annoy them; (d) use any loudspeakers, televisions, speakers or other devices of similar nature in such manner so as to cause a disturbance; (e) emit any obnoxious noise, odors, fumes or smoke; (f) use the Premises for any improper, unethical, immoral, unlawful, pornographic or other similarly objectionable or offensive purpose; (g) conduct or permit in the Premises any fire, bankruptcy, auction, "closeout", "going out of business" or similar sale; (h) use any part of the Center outside of the Premises for the sale, display or storage of any merchandise or Personal Property or for the solicitation of customers or for any other business, occupation or undertaking, including, without limitation, hawking, calling out or otherwise verbally or by motions offering or distributing samples of Tenant's merchandise to any person in the Common Area; (i) install or use upon or outside the Premises or any coin- or token-operated vending machine or other coin- or token-operated device for the sale of any goods, wares, merchandise, food, beverages and/or services; (j) install or use an automated teller machine or other cash dispensing machines; (k) use any portion of the Premises as living quarters, sleeping quarters or for lodging purposes; (l) keep or place any obstruction in the Common Area; (m) store or stock any merchandise which Tenant is not permitted to sell within the Premises; (n) install or operate any device, equipment or facility for transmitting, receiving, relaying or amplifying communications signals used or operated as a part of a telecommunications network or global positioning system, or otherwise emitting or receiving signals, frequencies, video, data or voice communications, including, without limitation, any dish, panel, antenna, satellite or cellular communications equipment, amplifiers, microcells, picocells or other similar devices or equipment which transmit or receive signals into or from the Common Area more than an 8' radius from the Premises or which otherwise interfere with the operation of any other transmission or receiving device at the Center; (o) operate any sales reporting, credit verification or such other similar electronic devices through the use of Landlord's public wireless fidelity (Wi-Fi) network; and (p) display, sell or promote cigarettes, electronic cigarettes, MOD's, atomizers, any other supplies, accessories or devices used in connection with cigarettes, electronic cigarettes, vaporizers, atomizers, herbal vaporizers, e-liquids, cannabis [including without limitation the cannabis plant and any and all parts, seeds, derivatives, cannabinoids (such as CBD), and extracts thereof] or any products constituting a technological evolution thereof for vaping. The Premises shall be kept in a clean condition, and all health and police regulations shall, in all respects and at all times, be fully complied with by Tenant. Tenant shall not commit or allow to be committed any waste upon the Premises.

7.3. **Radius.** Neither Tenant nor any person or entity in which Tenant has a financial interest or who or which has a financial interest in Tenant (other than stock of Tenant if such stock is publicly traded) shall, at any time after the Effective Date, directly or indirectly (other than stock held in a public company) own, operate or otherwise become financially interested in any business similar to or competing with the business operating in the Premises ("Competing Interest") within the Radius. If Tenant violates the

provisions of this Section 7.3, then Landlord, in its sole discretion and without limiting Landlord's remedies under this Lease, at law or in equity, may (a) declare such violation to be an incurable default under this Lease and terminate this Lease and/or (b) include the gross sales made from any such business(es) within the Radius in the Gross Sales under this Lease for so long as there continues to be a violation of this Section 7.3. If Landlord elects to include the gross sales from such other business in the Gross Sales pursuant to (b) preceding, then all gross sales and Tenant's records from such business shall be subject to the provisions of Article 3 and Landlord's audit rights under Section 21.1.

## **8. REPAIRS, MAINTENANCE, IMPROVEMENTS AND SIGNS**

**8.1. Landlord's Repair and Maintenance Obligations.** Landlord shall maintain in good order, condition and repair the exterior structural walls, load bearing walls, the outside face of the exterior walls, foundations, exterior roofs and all Utility Facilities serving the Premises on a non-exclusive basis (except to the extent that the applicable utility provider is responsible for the repair and maintenance of any such Utility Facilities). Landlord shall be under no obligation to maintain, repair or replace any portion of the Premises (except as otherwise expressly set forth in this Section 8.1), nor shall Landlord be liable for any failure to make any such repairs or to perform any maintenance required of Landlord hereunder unless Tenant has notified Landlord, in writing, of the need of such repairs or maintenance, and such failure shall then persist for an unreasonable period of time after such written notice.

**8.2. Tenant's Repair and Maintenance Obligations.** Tenant shall, at its sole cost and expense, maintain, keep and repair the Premises in good order, condition and repair. Such obligations of Tenant shall include, without limitation, the maintenance, repair and replacement of interior surfaces of exterior and demising walls, exterior doors and entrances, locks and closing devices, all plate glass, frames, moldings and trim of all doors and windows, all partitions, door surfaces, floor covering, fixtures, equipment and appurtenances thereof, lighting, plumbing fixtures (including any grease traps, grease lines and piping exclusively serving the Premises), toilet facilities and fixtures, windows, window sashes, showcases, storefronts, security grilles and similar enclosures, all of Tenant's signs (including the Storefront Sign) and any HVAC exclusively serving the Premises (provided that maintenance work regarding parts of the HVAC or plumbing systems which protrude outside of the Premises shall be completed by a contractor selected by Landlord, as a Reimbursed Cost). Tenant shall promptly, at its sole cost and expense, comply, and cause the Premises to comply, with all Governmental Regulations affecting the Premises and Tenant's activities in the Center.

**8.3. Improvements.** Tenant shall make no Improvements without Landlord's express, prior written consent in each instance. All Improvements approved by Landlord shall be performed by Tenant (at its sole cost and expense) in accordance with Exhibit C and in such a manner as to not impede access to the premises of any other Occupant or of any part of the Common Area, and in a good and workman-like manner, with diligence. Tenant shall give Landlord at least 10 business days' prior written notice of the commencement of any work at the Premises. Tenant shall keep the Premises, the Building and the Center free from any liens and other claims arising out of work performed, materials furnished, or obligations incurred by or on behalf of Tenant. If, as a result of any work performed or materials furnished or obligations incurred for the benefit of the Premises, any claim of lien is filed against the Premises or any part of the Center or any similar action affecting title to such property is commenced, Tenant shall immediately cause such lien to be released of record by payment or by recording of a proper statutory discharge of lien bond. If Tenant fails to cause such lien to be released within 20 days following the imposition of any lien or the filing of a lawsuit seeking foreclosure of such lien, Landlord shall have, in addition to all other remedies provided herein and at law, the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien, as a Reimbursed Cost.

**8.4. Signs.** Tenant shall, at its sole cost and expense, obtain all necessary licenses and permits for, and purchase, install, operate, repair and replace, as necessary, all of Tenant's signs (including the Storefront Sign) and such signs shall (a) comply with all Governmental Regulations and the Rules and shall have received the prior written approval of Landlord and, if required, of governmental authorities, (b) comply with the provisions of this Lease (including the Tenant Package) and (c) be maintained in working, first-class

condition.

## 9. SURRENDER OF PREMISES

9.1. **Surrender.** Prior to the Expiration Date or date of earlier termination of this Lease, Tenant shall surrender to Landlord the Premises, broom-clean and in good condition and perform the following (collectively, "Surrender Obligations") at its sole cost and expense: (a) remove all Personal Property, including all Tenant's signs (including the Storefront Sign) but exclusive of Attached Fixtures and (b) repair all damage caused by or in connection with Tenant's performance of the Surrender Obligations (including without limitation thereto, repairing the floor and patching and painting the walls if damaged beyond ordinary wear and tear). If Tenant's performance of the Surrender Obligations would damage or otherwise affect the Building structure, Tenant shall give Landlord prior written notice thereof and Landlord may elect to perform selected Surrender Obligations as a Reimbursed Cost. All Improvements (including any Attached Fixtures) shall become the property of Landlord upon the Expiration Date or date of earlier termination of this Lease.

9.2. **Personal Property.** Landlord may dispose of any Personal Property remaining on the Premises after the Expiration Date or date of earlier termination of this Lease in accordance with applicable statutes relating to the disposition of abandoned property. If no such statutes exist, Landlord may retain, store or dispose of such Personal Property and title to any such Personal Property retained by Landlord shall vest in Landlord. Tenant waives all claims against Landlord for any damage or loss to Tenant arising out of Landlord's retention, storage or disposition of Personal Property and shall be liable to Landlord for Landlord's costs incurred pursuant to this Section 9.2 as a Reimbursed Cost.

9.3. **Holding Over.** If Tenant holds over after the Expiration Date or date of earlier termination of this Lease without the express written approval by Landlord, (a) such tenancy shall be at sufferance only and not a renewal of this Lease or an extension of the Term, (b) monthly installments of Fixed Minimum Rent, Percentage Rent and Additional Rent shall be payable in an amount equal to 200% times the Fixed Minimum Rent, Percentage Rent and Additional Rent in effect as of the last full calendar month of the Term (not taking into consideration any Rent abatement to which Tenant might have been entitled for such month), and each shall be due and payable at the times specified therefor in this Lease and (c) such tenancy shall be subject to every other term, covenant and agreement contained herein other than any provisions for rent concessions, Landlord's Work, or optional rights of Tenant requiring Tenant to exercise the same by written notice (such as any options to extend the Term). Nothing contained in this Section 9.3 shall be construed as consent by Landlord to any holding over by Tenant (or limit any of Landlord's rights and remedies incident to a holding over under this Lease, at law or in equity), and nothing in this Section 9.3 shall affect Landlord's right to require Tenant to perform all obligations under this Article 9 and surrender possession of the Premises to Landlord as provided in this Lease upon the Expiration Date or date of earlier termination of this Lease or at any time subsequent thereto as Landlord shall specify.

9.4. **No Merger on Surrender of Lease.** The voluntary or other surrender of this Lease by Tenant, or a mutual termination thereof, shall not work as a merger. Such surrender or termination shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies. The delivery of keys to the Premises to Landlord or its agent and/or the taking of physical possession of the Premises by Landlord shall not constitute a surrender or termination of this Lease absent Landlord's written agreement that this Lease has been so surrendered or terminated.

## 10. ASSIGNMENT AND SUBLETTING

10.1. **Prohibited Transactions.** Tenant is prohibited from (a) Assigning this Lease or Subletting the Premises to a governmental agency or instrumentality thereof and/or (b) mortgaging, pledging or encumbering this Lease or Tenant's interest in the Premises to any entity and/or (c) making any Involuntary Assignment. Tenant shall not effect a Transfer, by operation of law or otherwise, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld (subject to the provisions of this Article 10). No Transfer shall relieve Tenant of any obligation to be performed by Tenant under this Lease.

10.2. **Tenant's Application.** If Tenant desires to effect a Transfer, Tenant shall submit in writing to Landlord at least 45 days prior to the proposed effective date of the Transfer a notice of intent to Transfer ("Request to Transfer"). Each Request to Transfer must contain, or be accompanied with, pertinent and reasonable information concerning the proposed Transfer and the proposed Transferee as Landlord shall require to evaluate the Request to Transfer.

10.3. **Standards for Approval and Disapproval.** In determining whether to grant or withhold its consent to a proposed Transfer, Landlord may consider any reasonable factor. Without limiting the conditions that may be construed as a reasonable factor, it is deemed reasonable that Tenant demonstrate to Landlord's reasonable satisfaction each of the following: (a) the proposed Transferee has sufficient financial worth to fully and timely discharge all of the then remaining obligations of Tenant under this Lease, (b) the proposed Transferee is of sound business reputation, (c) the use of the Premises by the proposed Transferee will be the Permitted Use, (d) the proposed Transferee is likely to maintain the same levels and increases in Percentage Rent as Tenant is anticipated to generate during the remaining Term of this Lease, (e) the proposed Transferee has sufficient retail experience to successfully undertake its business at the Premises, (f) the proposed Transferee does not occupy premises in the Center, (g) the proposed Transferee has not delivered a letter of intent to Landlord or Landlord's agent to lease space in the Center and (h) the proposed Transferee is not actively negotiating with Landlord or Landlord's agent to lease space in the Center. Furthermore, if Tenant is then in default of any obligation of Tenant under this Lease, it shall be reasonable for Landlord to elect, in its sole discretion, to deny its consent to such proposed Transfer so long as such default exists. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under this Article 10 or otherwise has breached or acted unreasonably under this Article 10, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives all other remedies, including, without limitation any right at law or in equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

10.4. **Landlord's Notification to Tenant.** Within 30 days after Landlord's receipt of the Request to Transfer and all of the information required pursuant to Section 10.2, Landlord shall notify Tenant in writing that Landlord has elected to (a) terminate this Lease by notice to Tenant ("Notice of Transfer Termination"), or (b) consent to such proposed Transfer or (c) withhold consent to such proposed Transfer. If Landlord delivers the Notice of Transfer Termination to Tenant and Tenant does not rescind the Request to Transfer as provided below, then (a) this Lease shall terminate upon the date set forth therein and (b) provided Tenant has performed all Surrender Obligations, Tenant shall be released from all further obligations accruing under this Lease from and after such date. Landlord may lease the Premises, or any portion thereof, to the prospective Transferee without liability to Tenant. If Landlord elects to terminate this Lease as provided in this Section, Tenant shall have the right to rescind the Request to Transfer by providing Landlord written notice of such rescission within 10 days after Tenant's receipt of the Notice of Transfer Termination, in which event (i) the Notice of Transfer Termination shall be null and void for such proposed Transfer and (ii) Tenant shall thereafter for the Term be prohibited from resubmitting a Request to Transfer for the same proposed Transferee.

10.5. **Review Fee.** Simultaneously with the delivery to Landlord of the Request to Transfer Tenant shall pay to Landlord a fee in the amount of \$1000 for Landlord's review of each such transaction.

10.6. **Permitted Transfer.** Notwithstanding anything contained in this Article 10 to the contrary, Landlord's consent shall not be required for a Transfer to a corporation or entity (a) into or with which Tenant is merged or consolidated, (b) to which all or substantially all of Tenant's assets are transferred, provided Tenant is the Tenant entity on Page 1 of this Lease, or (c) acquiring in one (1) contemporaneous transaction at least 60% of all of its stores under the same trade name in the North East region of the United States but in no event less than 5 stores; provided that, in any of such events, in each instance, each and every one of the following requirements has been satisfied:

10.6.1. The successor of Tenant has a tangible net worth, computed in accordance with

generally accepted accounting principles, at least equal to \$10,000,000.00 calculated in 2023 U.S. Dollars. Proof reasonably satisfactory to Landlord of such net worth shall be delivered to Landlord at least 10 days prior to the Proposed Transfer Date.

10.6.2. Any such Transfer shall be subject to all of the terms and provisions of this Lease (including, without limitation, the Permitted Use), and such Transferee shall assume, in a written document reasonably satisfactory to Landlord and delivered to Landlord prior to the effective date of such Transfer, all the obligations of Tenant under this Lease.

10.6.3. Tenant shall remain fully liable for all obligations to be performed by Tenant under this Lease.

10.6.4. Tenant shall pay Landlord, promptly on demand, the Review Fee.

10.6.5. Tenant shall notify Landlord in writing no less than 10 business days prior to the effective date of such transaction by providing Landlord with the name of such resulting entity and such other details as Landlord may reasonably request.

10.6.6. Such Transfer is not a subterfuge by Tenant to avoid its obligations under the Lease.

10.7. **Affiliate Transfers.** Notwithstanding anything contained in this Article 10 to the contrary, Landlord's consent shall not be required for a Transfer to a corporation that Controls, is Controlled by, or is under common Control with Tenant; provided that, in any of such events, in each instance, each and every one of the following requirements has been satisfied:

10.7.1. The successor of Tenant has the financial ability to satisfy Tenant's obligations and responsibilities under the Lease. Proof reasonably satisfactory to Landlord of such net worth shall be delivered to Landlord at least 10 business days prior to the Proposed Transfer Date.

10.7.2. Any such Transfer shall be subject to all of the terms and provisions of this Lease (including, without limitation, the Permitted Use), and such Transferee shall assume, in a written document reasonably satisfactory to Landlord and delivered to Landlord prior to the effective date of such Transfer, all the obligations of Tenant under this Lease.

10.7.3. Tenant shall remain fully liable for all obligations to be performed by Tenant under this Lease.

10.7.4. Tenant shall notify Landlord in writing no less than 10 business days prior to the effective date of such transaction by providing Landlord with the name of such resulting entity and such other details as Landlord may reasonably request.

10.7.5. Such Transfer is not a subterfuge by Tenant to avoid its obligations under the Lease.

In the event any Transferee under this Section 10.8.5 shall at any time after the date of such Transfer no longer be a parent, subsidiary or affiliate corporation or entity of the entity making such Transfer, then such event shall constitute a Transfer requiring Landlord's consent pursuant to the provisions of this Article 10.

10.8. **Transfers of Interests to Family Members.** Notwithstanding anything to the contrary contained herein, Landlord's consent shall not be required and no notice to Landlord shall be required for transfers of beneficial interests in the entity constituting Tenant by gift, bequest, or inheritance between or among the present holders of beneficial interests in Tenant, to their immediate family (i.e., spouses, parents, brothers, sisters, children and grandchildren); provided, however, that upon such transfer by bequest or inheritance, there is no material change in the daily operation of the business being conducted on the Premises as a result thereof, and the Premises is operated at all times for the Permitted Use and pursuant to all the other provisions of this Lease. The provisions of this Section shall not operate to waive Landlord's right with respect to any further Transfer of beneficial interests in the entity constituting Tenant by the



aforesaid transferees.

## **11. TRANSFER OF LANDLORD'S INTEREST**

Landlord shall have the right to sell or transfer its ownership of all or any part of the Center to one or more third parties. If Landlord sells or transfers its interest in the Premises (other than a transfer for security purposes), (a) Landlord shall be released from all obligations and liabilities accruing thereafter under this Lease and Landlord's successor shall be deemed to have assumed Landlord's obligations thereafter accruing under this Lease and (b) Tenant agrees to attorn to the purchaser or assignee.

## **12. COMMON AREA**

Tenant and the Tenant Parties shall have the non-exclusive right in common with Landlord and all others to whom Landlord has or shall give the same or similar rights, to use the Common Area for its intended purposes subject to (a) the right of Landlord, Occupants and their respective invitees, customers, agents, employees and independent contractors to use the Common Area, (b) any Superior Agreements, and (c) each provision of this Lease. Landlord shall, or shall cause others to, operate (including making available for use or closing portions thereof), repair, equip and maintain the Common Area in a manner deemed by Landlord in its business judgment to be reasonable and appropriate. The Common Area shall be subject to the exclusive control and management of Landlord. Landlord may, from time-to-time, impose parking charges at the Center.

## **13. LANDLORD'S RESERVATION OF RIGHTS**

**13.1. Reservation of Rights and Changes to the Center.** Landlord reserves the right, and shall have the right and privilege, from time-to-time, as Landlord deems desirable, to: (a) expand, reduce, remove, demolish, change, renovate, rearrange, add or construct any existing or new improvements at the Center including, without limitation, the location, relocation, enlargement, reduction, addition and/or elimination of driveways, malls, entrances and exits, automobile parking spaces, employee and customer parking areas, buildings and other structures, the direction and flow of traffic, establishment of protected areas, landscaped areas and any and all other facilities of the Common Area, the right at any time to locate on the Common Area permanent and/or temporary RMUs, and/or other building(s) and/or other improvements of any type and the right at any time to enclose or un-enclose any portions of the Common Area and/or Mall, and/or convert Common Area to leasable space and to convert leasable space to Common Area, (b) expand, reduce or otherwise change the size, configuration or boundaries of the Center and (c) to lease space in the Center to any person or entity and for any purpose Landlord shall deem appropriate, including retail, office, non-retail, residential, mixed use and commercial purposes. Landlord shall have complete and exclusive control of the design, structure, construction, materials, colors, architectural elements and aesthetics of all improvements and Common Area at the Center, as well as all uses and activities undertaken by Landlord and other Occupants in connection therewith. This Lease does not grant any rights to light or air over or about the Center. Landlord reserves exclusively to itself the use: (i) roofs and exterior walls, (ii) telephone, electrical, utility, communication and janitorial closets, (iii) equipment rooms, building risers or similar areas used by Landlord for the provision of services, (iv) portions of the Premises for the installation, repair, maintenance and replacement of machinery, pipes, conduits, utility lines and the like serving other Occupants and/or the Center, and (v) the areas beneath, adjacent to and above the Premises (including the plenum within the Premises). Notwithstanding any contrary provision contained in this Lease, services and facilities may be discontinued, and access to the Premises and the Center restricted, in whole or in part, during such times as the Center is not open for business, and any other times as are necessary for temporary purposes such as repairs, alterations, strikes and other reasonable purposes.

**13.2. Entry by Landlord.** Landlord and its representatives (including contractors) shall have the right at all reasonable times upon reasonable prior notice to Tenant (and at all times without notice in the event of an emergency), to enter the Premises (a) for any purpose permitted by law, (b) to ascertain if the

Premises are in good order, condition and repair, including to inspect the Premises to insure that the Premises are clean and free from vermin and pests, (c) to post notices permitted or required by law or notices of non-responsibility or other notices which Landlord may deem necessary for the protection of Landlord, the Premises, the Center and any other party having any interest therein, against mechanics' and materialmen's liens, (d) to show the Premises to prospective purchasers, mortgagees or ground or underlying lessors (each of which may then also enter the Premises), (e) to perform any obligation of Landlord under this Lease, (f) to take possession of the Premises due to an event of default or (g) to perform environmental assessments. During the 12 months prior to the Expiration Date, Landlord may show the Premises to brokers, consultants, prospective tenants and their representatives. Landlord shall use good faith efforts during any entry upon the Premises pursuant to this Section 13.2 not to unreasonably interfere with Tenant's conduct of business. No exercise by Landlord of any rights in this Section 13.2 shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent.

13.3. **Relocation.** Landlord may, by written notice delivered to Tenant ("Relocation Notice"), require that Tenant surrender possession of the Premises, provided and on condition that (a) Landlord and Tenant shall, for a period of 30 days following delivery of the Relocation Notice, negotiate in good faith to enter into a lease for substitute premises at the Center ("Substitute Premises") on substantially the same terms and conditions as those contained in this Lease ("Substitute Lease") to the extent applicable, for the balance of the remaining Term, or (b) if, despite such good faith negotiations, the parties are unable to enter into the Substitute Lease on or before the 30th day following the delivery of the Relocation Notice, Landlord may elect, by written notice delivered to Tenant, to terminate this Lease. If Landlord terminates this Lease, the termination shall be effective on the date specified in Landlord's written notice (which shall be at least 15 days after the sending of such notice) upon the date Tenant vacates the Premises and performs all the Surrender Obligations, Landlord shall pay to Tenant the Unamortized Tenant Costs. The relocation of the Premises in accordance with (a) herein or the payment of the consideration in accordance with (b) herein shall be Tenant's sole recourse and right in the event Tenant is required to surrender possession of the Premises as provided in this Section 13.3. The Substitute Premises shall be similar to the Premises in terms of size, access and visibility. surrender

#### 14. NOTICES

Any notice, demand or communication required or permitted to be given by one party to the other shall be in writing and addressed to Landlord's Address for Notices or Tenant's Address for Notices, as the case may be, or to such other address(es) and/or to such other parties as one party may from time-to-time reasonably designate in writing to the other party, and shall be (a) personally served, (b) deposited in the United States mail, duly registered or certified with postage fully prepaid thereon or (c) delivered by an overnight courier service that confirms delivery. Notice shall be effective upon receipt or refusal to receive, in the event of personal service; or upon receipt or refusal to receive (but in no event more than 3 days after the date first mailed in the manner herein required), in the event of depositing notice in the United States mails; or upon receipt or refusal to receive, in the event of delivery by overnight courier service. Any notice required or permitted by Article 15 shall be in lieu of, and not in addition to, any notice required under any Governmental Regulations providing for notice and any cure period. Landlord may (at its discretion) serve a statutory notice to quit, a statutory notice to pay rent or quit, or a statutory notice of default, to effect the giving of any notice required by Article 15. No notice and opportunity to cure is conferred upon Tenant with regard to any default except as expressly set forth in Article 15.

#### 15. DEFAULTS BY TENANT

The occurrence of any one or more of the following events shall constitute a default by Tenant under this Lease:

15.1. **Monetary.** The failure by Tenant to make any payment of Rent or of any other sum required to be made by Tenant when due (however Tenant shall have up to 3 days after written notice from Landlord to cure such default).

15.2. **Failure to Timely Open.** If Tenant should fail to complete Tenant's Work and initially open the Premises for business on or before the Required Opening Date fully fixtured, staffed and stocked or, thereafter, to keep the Premises open for business as required by this Lease.

15.3. **Abandonment and Vacation.** The vacation or abandonment of the Premises by Tenant. "Vacation" means any absence from the Premises for 14 or more consecutive days.

15.4. **Intentionally Omitted.**

15.5. **Bankruptcy.** The making by Tenant of any general assignment for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days), or the appointment of a trustee or receiver to take possession of, or the attachment, execution or other judicial seizure of, substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. If, in the context of the filing of any bankruptcy, insolvency, reorganization, assignment for benefit of creditors, or other debt relief proceeding (an "Insolvency Proceeding") by or against the Tenant or any sublessee, Tenant, the Trustee, or sublessee shall immediately reimburse Landlord for all expenses, including reasonable attorneys' fees, Landlord may incur in connection with any act that Landlord deems necessary, either through legal proceedings or otherwise, to monitor such Insolvency Proceeding, to enforce or attempt to enforce any provision of the Lease, to enforce or attempt to enforce any actions required under the Bankruptcy Code to be taken by the Tenant, Trustee, or sublessee, or in the negotiation of any amendment, sublease, modification or other agreement made to the Lease during or related to such Insolvency Proceeding. For avoidance of doubt, such expenses incurred by Landlord shall be payable to Landlord as part of the cure payment paid to Landlord in connection with any assumption or assumption and assignment of the Lease, and to the extent necessary, such expenses shall be awarded to Landlord as an administrative expense by the Bankruptcy Court, or other court overseeing such Insolvency Proceeding.

15.6. **Other Non-Monetary Defaults.** The failure by Tenant or any of the Tenant Parties to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant not previously covered by Section 15.1 through Section 15.5 above (however Tenant shall have up to 10 days after written notice from Landlord to cure such default except if the nature of Tenant's default is such that it cannot be cured solely by payment of money and more than 10 days are reasonably required for its cure, then Tenant shall be obligated to commence such cure within the 10-day period and thereafter diligently prosecute such cure to completion).

## 16. LANDLORD'S REMEDIES

16.1. **Landlord's Remedies.** Upon a default hereunder, should Tenant fail within the time period, if any, specified in Article 15 to fully cure such default, then without limiting Landlord in the exercise of any other right or remedy at law or in equity which Landlord may have (all remedies provided herein being non-exclusive and cumulative), Landlord may do any one or more of the following:

16.1.1. **Continue Lease.** Landlord may continue this Lease in effect after Tenant's default and recover Rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time-to-time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other monetary charges as they become due.

16.1.2. **Terminate Lease.** Landlord may terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including (without limitation) the following: (a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus (c) the worth at the time

of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus (d) any other amount and court costs necessary to compensate Landlord for all the detriment proximately caused by Tenant's default or which in the ordinary course of things would be likely to result therefrom (including, without limiting the generality of the foregoing, the amount of any commissions, finder's fee, advertising costs, remodeling costs and attorneys' fees in connection with obtaining a replacement tenant); plus (e) at Landlord's election, Unamortized Landlord Costs and such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable law. As used in subparagraphs (a) and (b) of this Section 16.1.2, the "worth at the time of award" shall be computed by allowing interest at the Agreed Rate, and, as used in subparagraph (c) of this Section 16.1.2, the "worth at the time of award" is to be computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank of San Francisco at the time of award, plus 1%. For the purpose of determining the amount of Tenant's Share of Real Estate Taxes which constitute "unpaid Rent which would have been earned after termination" or which constitute "unpaid Rent for the balance of the term" (as referenced in subparagraphs [b] and [c] hereof), such amounts shall be deemed to increase annually for the balance of the Term by an amount equal to the average annual percentage increase in Real Estate Taxes during the 3 calendar years preceding the year in which the Lease was terminated, or, if such termination shall occur prior to the expiration of the third calendar year occurring during the Term of this Lease, then the amount of Tenant's Share of Real Estate Taxes shall be deemed to increase monthly for the balance of the Term by an amount equal to the average monthly percentage increase in Tenant's Share of Real Estate Taxes during all of the calendar months preceding the month in which the Lease was terminated.

16.1.3. **Collect Sublease Rents.** Landlord may collect sublease rents (or appoint a receiver to collect such rents) and otherwise perform Tenant's obligations at the Premises, it being agreed, however, that neither the filing of a petition for the appointment of a receiver for Tenant nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

16.1.4. **Cure Default.** Landlord may proceed to cure the default at Tenant's sole cost and expense, without waiving or releasing Tenant from any obligation hereunder. If at any time Landlord pays any sum or incurs any expense as a result of or in connection with curing any default of Tenant (including any administrative fees provided for herein and reasonable attorneys' fees), the amount thereof shall be immediately due as a Reimbursed Cost.

16.2. **No Offsets.** All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any offset to or abatement of Rent, except as otherwise expressly provided in this Lease. Tenant hereby waives any right to plead all non-compulsory counterclaims or offsets in any action or proceeding brought by Landlord against Tenant for any default. This waiver shall not be construed, however, as a waiver of any right of Tenant to assert any non-compulsory counterclaims or offsets in any separate action brought by Tenant.

## 17. DEFAULTS BY LANDLORD

17.1. **Defaults by Landlord.** If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within 30 days after written notice of default from Tenant or, when more than 30 days shall be required because of the nature of the default, if Landlord shall fail to commence to cure such default after written notice thereof from Tenant and thereafter diligently pursue such cure to completion, said failure shall constitute a default by Landlord under this Lease.

17.2. **Limitations on Recovery Against Landlord.** The aggregate liability of Landlord and the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with the operation, management, leasing, repair, renovation, alteration of, or any other matter relating to, the Center or the Premises shall be limited solely and exclusively to an amount equal to the interest of Landlord in the Center. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability

for the performance of Landlord's obligations under this Lease. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

## 18. CASUALTY AND TAKING

18.1. **Insured Casualty.** Upon the occurrence of an Insured Casualty to the Premises, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment and payment, issuance of permits or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 18, restore the damaged Premises (except for such work with respect to the Premises which is the responsibility of Tenant pursuant to this Article 18). Tenant, at its sole cost and expense, shall be responsible for the prompt and diligent repair and restoration, in accordance with Exhibit C and the Tenant Package, of all items constituting Improvements and Personal Property (which repair and restoration work shall be completed no later than 60 days after the completion of Landlord's work under this Section 18.1).

18.2. **Uninsured Casualty.** Upon the occurrence of an Uninsured Casualty to the Premises, Landlord shall have the right (in its sole discretion) to elect either to commence repair and restoration of the Premises (in which event this Lease shall continue in full force and effect and Landlord and Tenant shall diligently perform their respective repair and restoration obligations required pursuant to Section 18.1) or not to perform such repair and restoration, in which event this Lease shall cease and terminate 60 days after Landlord's notice of its election to terminate. Landlord shall give Tenant notice of its election under this Section 18.2 within 90 days following the later of (a) the date of such Uninsured Casualty, or (b) the date that Landlord's insurers determine that the Casualty is an Uninsured Casualty.

18.3. **Rent Adjustment.** Landlord shall not be liable for any inconvenience or annoyance to Tenant or the Tenant Parties, or injury to Tenant's business, resulting in any way from any Casualty or repair and restoration work. If any Casualty damages the Premises, or if the Premises are not reasonably accessible and are not used by Tenant due to any Casualty to the Common Area, Tenant shall be entitled to an abatement of Fixed Minimum Rent during such time the Premises are unfit for occupancy for the Permitted Use and are not used by Tenant, or the Premises are not reasonably accessible and are not used by Tenant due to damage to the Common Area unless Tenant receives proceeds from its insurer in accordance with the requirements of Section 5.2.2. However, if the Casualty is due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties, Tenant shall be responsible for any reasonable, applicable insurance deductible (which shall be payable to Landlord upon demand) and there shall be no Rent abatement. In the event of termination of this Lease pursuant to this Article 18, all proceeds from Tenant's insurance (including self-insurance and deductibles) covering the Improvements (but excluding proceeds for Personal Property) shall be payable to Landlord. In no event shall Tenant be entitled to share in Landlord's insurance proceeds or to take any action which would result in a reduction of Landlord's insurance proceeds.

18.4. **Major Destruction.** Notwithstanding any of the foregoing provisions of this Article 18, should there be a Major Destruction of the Center, Landlord shall have the right to terminate this Lease by written notice to Tenant, which notice shall be given within 120 days following the date of such Major Destruction (in which case such termination shall then take effect on the date specified in Landlord's termination notice).

18.5. **Taking.** If there is a Taking of the Premises, this Lease shall terminate as of the date of such Taking, and Landlord and Tenant shall have no further liability or obligation (except as otherwise provided for in this Lease) arising under this Lease after such date.

## 19. HAZARDOUS MATERIALS

Tenant covenants and agrees that Tenant shall, at its sole cost and expense, comply with and assume responsibility and liability under all Environmental Laws applicable to occupancy or use of or operations at

the Premises by Tenant and the Tenant Parties. In the event that Tenant proposes to undertake any Improvements, Tenant shall comply (at Tenant's sole cost) with Landlord's criteria (as established from time to time) for testing and remediation of Hazardous Materials. Tenant agrees that should it or any of the Tenant Parties know of (a) any violation of Environmental Laws relating to the Premises, or (b) the escape, release or threatened release of any Hazardous Materials in, on, under or about the Premises, Tenant shall promptly notify Landlord in writing of such violation, escape, release or threatened release, and that it will provide all warnings of exposure to Hazardous Materials in, on, under or about the Premises in strict compliance with all applicable Environmental Laws. Tenant shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on, under or about the Premises or the Center, any Hazardous Materials, or permit or allow any of the Tenant Parties to do so.

## 20. SUBORDINATION

Tenant covenants and agrees that (a) this Lease is and shall automatically and without further act or deed by Tenant be subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of the Center (each a "Mortgage") and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, (b) any mortgagee, grantee, master lessor, beneficiary or trustee (each a "Mortgagee") may elect to have this Lease made a prior lien to its Mortgage and (c) Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises and if requested by Landlord's successor, Tenant shall attorn to the successor and shall recognize that successor as Landlord under this Lease, provided Mortgagee shall agree in writing to assume Landlord's obligations under this Lease. If so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

## 21. MISCELLANEOUS

21.1. **Audits.** Landlord and Tenant shall each have the right to audit the other party's books and records respecting Gross Sales and Tenant's Share of Real Estate Taxes (respectively) upon not less than 20 days' prior written notice to the other party. Such audits shall be conducted during business hours by a non-contingency fee auditor who was not previously employed by the other and is not employed by a competitor of the other at such offices as the audited party shall reasonably specify. A party may not conduct an audit (a) more than once in each Lease Year or (b) while such party is in default of the Lease. If an audit should disclose that the audited party shall have misstated Gross Sales or overstated Tenant's Share of Real Estate Taxes (as applicable) by more than 5%, then the audited party shall pay to the other party all reasonable costs and expenses relating to such audit (including, without limitation, reasonable travel costs) in addition to paying any additional amounts due under this Lease or refunding any overpayment made under this Lease as a result of such understatement or overstatement, as applicable. Neither party shall have any right (whether at law, at equity or under this Lease) to audit any Rent under this Lease except as expressly set forth in this Section 21.1. If Tenant fails to audit Landlord's books and records for Tenant's Share of Real Estate Taxes within 2 years after the expiration of any calendar year, Tenant's right to audit Landlord's books and records for such year shall be deemed waived.

21.2. **Authority of Signatories.** Each person maintaining executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of Tenant, and that Tenant is qualified to do business in the state where the Center is located. Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound.

21.3. **Brokers.** Landlord and Tenant shall each indemnify, defend and hold the other harmless

from and against, all damages (including reasonable attorneys' fees and costs) resulting from any claims that may be asserted against Landlord or Tenant by any broker, consultants, finder, or other person with whom the indemnifying party has or purportedly has dealt.

21.4. **Captions and Form.** The names of Articles and Sections are for convenience only and shall not be used to interpret or construe the meaning of any provision in this Lease. All references to Articles, Sections and Exhibits are references to Articles and Sections contained in this Lease and Exhibits attached to this Lease unless otherwise expressly provided. Landlord and Tenant acknowledge and agree that (a) this Lease has been freely negotiated by Landlord and Tenant; and (b) in no event shall any ambiguity, controversy, dispute or disagreement over the interpretation, validity or enforceability of this Lease or any of its covenants, terms or conditions, any inference, presumption or conclusion whatsoever be drawn against Landlord by virtue of the initial draft of this Lease having been generated by Landlord.

21.5. **Confidentiality.** Tenant shall keep the content of this Lease, documents related thereto and any audits under Section 21.1 strictly confidential.

21.6. **Costs of Suit.** If either party brings action for relief against the other, arising out of this Lease, the non-prevailing party shall pay the prevailing party its reasonable costs, fees, expenses and attorneys' fees incurred in connection with and in preparation for said action.

21.7. **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. All counterparts shall be construed together and shall constitute a single Lease. Any signature to this Lease transmitted electronically through DocuSign shall be deemed an original signature and be binding upon the parties hereto (it being agreed that such electronic signature shall have the same force and effect as an original signature).

21.8. **Estoppel.** Tenant shall, from time-to-time within 10 days after prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing in such form as may be reasonably required by Landlord.

21.9. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other Casualty, in each case if due to a cause beyond the reasonable control of the party obligated to perform, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent payable by Tenant pursuant to this Lease and Tenant's obligations to comply with Governmental Regulations (collectively, "Force Majeure") shall, notwithstanding anything to the contrary contained in this Lease, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused by a Force Majeure. For purposes of this Section 21.9, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees or contractors. The parties agree that Force Majeure will include (i) inability to perform Tenant's or Landlord's construction and (ii) business closures, in each case required by federal, state or local government order, rule or mandate related to a pandemic or other widespread epidemic as recognized by the World Health Organization, such as the COVID-19, provided, for Tenant to avail itself of a delay in Tenant's Work due to Force Majeure, Tenant will notify Landlord of such Force Majeure event within 5 business days following the commencement of such Force Majeure event.

21.10. **Governing Law.** This Lease shall be governed by the laws of the state where the Center is located.

21.11. **Labor Contracts.** Neither Tenant nor any of the Tenant Parties shall take any action which creates any work stoppage, picketing, labor disruption or dispute, or interferes with the business of Landlord or any Occupant in the Center or with the rights and privileges of any customer or other person(s) lawfully in the Center, or causes any impairment or reduction of the goodwill of the Center. If there shall be any work stoppage, picketing, labor disruption or dispute as the result of the actions of Tenant or any of the Tenant Parties, Tenant shall immediately undertake such action as may be necessary to eliminate such dispute or

potential dispute, including, but not limited to, (a) removing all disputants from the job site until such time as the labor dispute no longer exists, (b) seeking a judgment for a breach of contract between Tenant and Tenant's contractor and (c) filing appropriate unfair labor practice charges in the event of a union jurisdictional dispute.

21.12. **Merger.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, negotiations, brochures, arrangements or understanding pertaining to any such matter shall be effective for any purpose unless expressed herein. Tenant has not relied upon any representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, made by Landlord or any of the Landlord Parties concerning or relating to the (a) Center, (b) Occupants, (c) Premises, (d) Lease, (e) Tenant's obligation to pay Rent or Additional Rent or (f) the Tenant's business, other than set forth within the Lease. Tenant acknowledges that it has thoroughly and independently investigated the potential for the success of its operations in the Center and has not relied upon any inducements or representations on the part of Landlord or any of the Landlord Parties other than those contained within this Lease. Tenant also acknowledges, understands and agrees that, to the extent any projections, materials or discussions have related to Tenant's projected or likely sales volume, customer traffic, or Tenant's success or profitability, that any and all such projections, materials and discussions are based solely upon Landlord's past experiences with other Occupants or upon standardized marketing studies, and have not been relied upon by Tenant, and any such discussions or marketing studies shall not be construed as a promise or guarantee that Tenant will realize the same or similar results.

21.13. **OFAC Certification.** Tenant represents and warrants that it is not, and shall not become, a person or entity with whom Landlord is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, without limitation, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ["Executive Order 13224"]), or other governmental action and is not, and shall not, engage in any dealings or transactions or otherwise be associated with such persons or entities; and it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation with whom Landlord is restricted from doing business under the regulations of OFAC (including, but not limited to, Executive Order 13224) or other governmental action and is not and shall not engage in any dealings or transactions, employ or otherwise be associated, with such person, group, entity or nation. Any breach of the representation and/or warranty contained in this Section 21.13 shall constitute a non-curable default and is grounds for immediate termination of this Lease by Landlord. Any such exercise by Landlord of its remedies under this Section 21.13 shall not constitute a waiver by Landlord to recover (a) any Rent due under this Lease and (b) any damages arising from such breach by Tenant.

21.14. **Other Miscellaneous Provisions.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and Tenant hereby expressly waives the benefit of any statute to the contrary. If any provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall be valid and enforceable to the fullest extent permitted by law. No provision of this Lease may be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest. Landlord's or Tenant's consent to or approval of any act by the other requiring its consent or approval shall not constitute a consent or approval of any subsequent act by the other. No delay or omission in the exercise of any right or remedy of Landlord or Tenant for any default by the other shall impair such right or remedy or be construed as a waiver. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease. Except as otherwise expressly provided in this Lease, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

21.15. **Quiet Enjoyment.** So long as Tenant timely pays all Rent, timely performs its covenants and obligations under this Lease and recognizes any successor to Landlord in accordance with the terms



of this Lease, Tenant shall lawfully and quietly have, hold and enjoy the Premises without hindrance or molestation by Landlord or anyone claiming by, through or under Landlord, subject, however, to all Superior Agreements. This Lease and Tenant's rights hereunder are subject and subordinate in all respects to all Superior Agreements.

21.16. **REIT Qualifications.** Landlord and Tenant agree that all Rent paid to Landlord under this Lease shall qualify as "rents from real property" as defined in Internal Revenue Code Section 856(d) and as further defined in Treasury Regulation Section 1.856-4, as each is amended from time-to-time. Should the requirements of the said Internal Revenue Code Section or Treasury Regulation Section be amended so that any rent no longer qualifies as "rents from real property" for the purposes of the Internal Revenue Code or the Treasury Regulation, the Rent payable to Landlord shall be adjusted so that such Rent will qualify as "rents from real property" under the Internal Revenue Code and Treasury Regulation. Tenant shall, within 10 days after Landlord's written request therefor, execute and deliver to Landlord any amendments to this Lease as may be reasonably required by Landlord to adjust rent pursuant this Section 21.16 or to avoid jeopardizing Landlord's status as a real estate investment trust.

21.17. **Rules.** Tenant shall (and shall cause all of the Tenant Parties to) comply with all Rules as established by Landlord from time-to-time.

21.18. **Security.** Landlord may from time-to-time elect to obtain or cease to provide security services and/or devices for the protection of the Common Area. To the extent that such security services and devices are provided, they are not intended to provide protection for the Premises or the persons thereon or the contents thereof and, therefore, Tenant shall obtain any and all security services and/or devices as Tenant shall reasonably require for the protection of the Premises, the Tenant Parties, and Improvements and Personal Property. No firearms or other devices that could cause grievous bodily harm shall be used, possessed or carried by any of Tenant's security services, or any of Tenant or the Tenant Parties, unless Landlord shall have agreed to the same in writing (which consent Landlord may grant or withhold in its sole discretion) and Tenant shall have provided Landlord with such instruments as Landlord shall require to protect Landlord and the Landlord Parties from any and all liability in connection with the use of such firearms or devices.

21.19. **Survey.** Tenant acknowledges Landlord's commitment to corporate responsibility. In furtherance of Landlord's commitment, Landlord will be collecting anonymized data not more than one time per year which identifies the demographics of the employees working at the Center. Tenant will respond promptly to Landlord's request for reasonable information regarding the demographics of Tenant's employees working in the Premises.

21.20. **Survival.** Every obligation to pay Rent, every indemnification of one party by the other and every provision relating to Hazardous Materials shall survive the expiration or earlier termination of this Lease, unless and to the extent otherwise expressly provided in this Lease.

21.21. **Time is of the Essence.** Time is of the essence of this Lease and each and every provision hereof, except as may be expressly provided otherwise. Tenant shall not record this Lease or a memorandum hereof.

21.22. **Waivers.** Tenant hereby waives for Tenant and for all those claiming under Tenant to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease, including any right to seek relief against forfeiture. Except as otherwise expressly provided herein, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any part of the Premises or the Center. Tenant hereby waives the right to make repairs at Landlord's expense under the provisions of any such applicable laws. The provisions of Article 18 constitute an express agreement between Landlord and Tenant with respect to any Casualty. Therefore, the provisions of Article 18 shall govern and prevail over any statute or regulation in conflict thereof. LANDLORD AND TENANT EACH 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 OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY AND OTHER STATUTORY REMEDY WITH RESPECT THERETO. LANDLORD AND TENANT ALSO AGREE THAT THE VENUE OF ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE IN THE CITY, COUNTY AND STATE IN WHICH THE CENTER IS LOCATED OR AT SUCH OTHER CITY AND COUNTY AS MAY BE DETERMINED BY LANDLORD IN ITS SOLE AND ABSOLUTE DISCRETION.

///SIGNATURE PAGE TO FOLLOW///

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

VALLEY STREAM GREEN ACRES LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

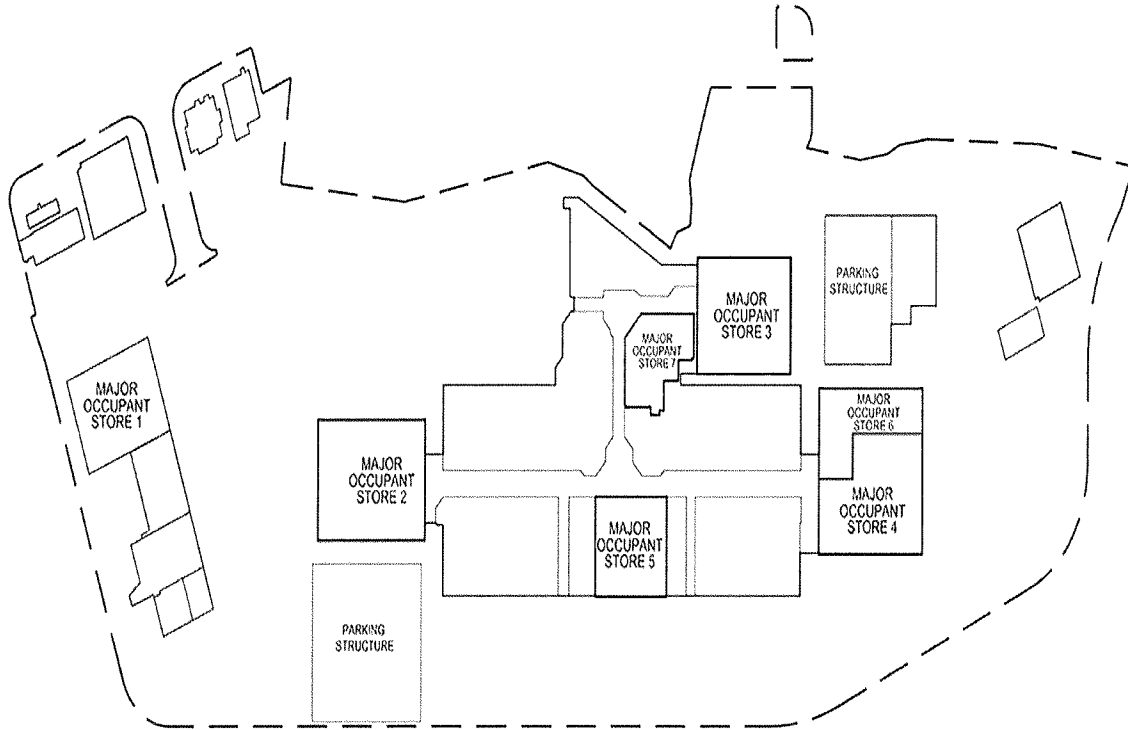
**TENANT:**

REAL FRUIT BUBBLE TEA INC.,  
a New York corporation

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

# EXHIBIT A DEPICTION OF CENTER



## LEGEND:

— — CENTER BOUNDARY LINE

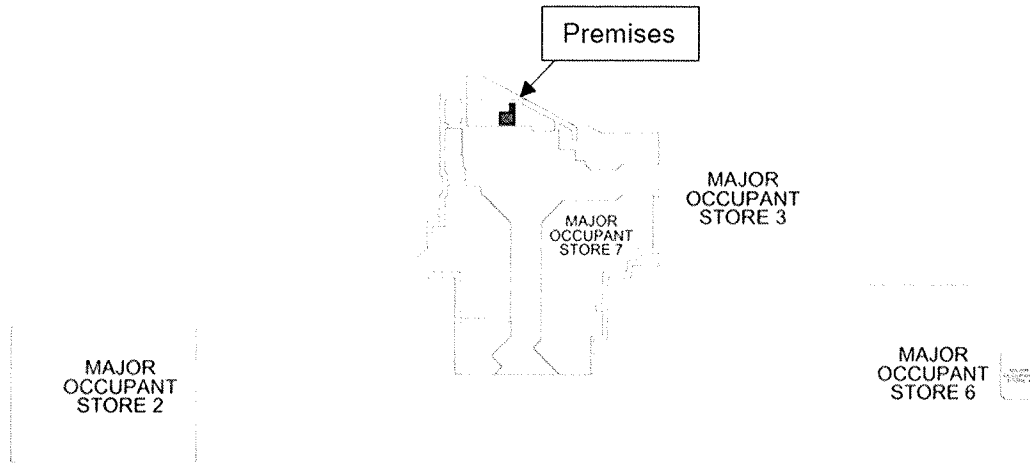


NORTH

## GREEN ACRES

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, vary, add to or omit whole or in part any structures, and/or improvements, and/or Common Area, and/or land area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and distances are approximate. This plan is not to be scaled. Landlord does not covenant or represent that any Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing as set forth in this plan is a representation, agreement or easement right except as specifically set forth in the Lease.

## EXHIBIT B DEPICTION OF PREMISES



### GREEN ACRES SECOND LEVEL

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, omit, add to or change the location, size, shape, and/or equipment of any portion of the Center or a part thereof at any time. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and dimensions are approximate. This plan is not to be scaled. Landlord does not warrant or represent that any Occupant indicated herein is, or will remain, a tenant or other occupant of the Center and nothing set forth in this plan is a representation, agreement or equivalent right except as specifically set forth in the Lease.

**EXHIBIT C  
PROVISIONS FOR THE DESIGN  
AND CONSTRUCTION OF THE PREMISES  
AS IS WITH REMODEL**

1. **GENERAL PROVISIONS.** This Exhibit C sets forth certain provisions with respect to Landlord's Work and Tenant's Work. Capitalized terms used in this Exhibit C without definition shall have the meaning ascribed to such terms in the Tenant Package. Unless otherwise expressly provided in this Exhibit C, references to Articles, Sections and captions are references to Articles, Sections and captions contained in this Exhibit C.
2. **TENANT PACKAGE.** Tenant acknowledges that Landlord has made available to Tenant on Landlord's website ([www.macerich.com](http://www.macerich.com)) a Tenant Package which shall govern all of Tenant's Work. Tenant shall, and Tenant shall cause, Tenant's Architect, Tenant's engineer and Tenant's Contractor and subcontractors to, in all respects comply with, and Tenant's Work shall in all respects be subject to, the Tenant Package. "Tenant Package" means the package(s) containing, among other materials, the following: (a) Tenant Design and Construction Criteria, (b) Sign Criteria and Plan Submittal Guidelines, (c) Contractors' Rules and Regulations and (d) Technical Manual. The Tenant Package is hereby incorporated herein and made a part of this Exhibit C by this reference.
3. **LANDLORD'S WORK.** "Landlord's Work" means the work, if any, which Landlord is expressly obligated to undertake pursuant to this Article 3. Except as set forth herein or in the Tenant Package, Landlord shall have no obligation to improve, remodel, alter or otherwise modify or prepare the Premises, Building or the Center in connection with Tenant's occupancy, to furnish any additional materials upon any part of the Center or to provide any additional Utilities or other systems for the benefit of the Premises. Landlord shall designate a person, or persons, as Tenant Coordinator ("Tenant Coordinator") who alone shall have authority on behalf of Landlord to oversee and manage the review and approval of Preliminary Documents, Construction Documents, As Built Documents, Plan Revisions and other matters specified in this Exhibit C and the Tenant Package. No matter shall be deemed approved by Landlord under this Exhibit C or the Tenant Package unless approved in writing by the Tenant Coordinator.
4. **DESCRIPTION OF TENANT'S WORK**
  - 4.1. **Condition of Premises.** Upon the Delivery Date, Tenant shall accept delivery of the Premises, Building and the Center in an "As Is" condition and "With All Faults", except to the extent otherwise expressly stated in Article 3. Tenant hereby represents each of the following: (a) Tenant or its authorized representative has inspected the Premises and has made all inquiries, tests and studies that it deems necessary in connection with its leasing of the Premises and, (b) Tenant is relying solely on Tenant's own inspection, inquiries, tests and studies conducted in connection with, and Tenant's own judgment with respect to, the condition of the Premises and Tenant's leasing thereof. Landlord or its predecessor-in-interest has constructed the Center, and the Building and other improvements upon the Center (exclusive of improvements constructed by or on behalf of each present and prior Occupant). Tenant has inspected the Center, the Building, the Utilities, the types, quantities and qualities of the Utilities, and the other systems and Tenant has found the same to be suitable, sufficient and in acceptable condition for the purpose of Tenant conducting the Permitted Use upon the Premises.
  - 4.2. **Tenant's Work Defined.** "Tenant's Work" means the purchase, installation, construction and performance of the improvements and duties specified in the Approved Plans and as described in the Tenant Package for a full and complete remodel of the Premises and the purchase, installation and construction of all Tenant's furniture, equipment and Personal Property, all at Tenant's sole cost and expense (except to the extent otherwise expressly provided in the Tenant Package) and in compliance with applicable Governmental Regulations. All Tenant's Work shall be performed by a licensed, bondable contractor retained by Tenant and approved in advance, in writing, by Landlord ("Tenant's Contractor"). Tenant's Contractor shall construct Tenant's Work in a good and workmanlike manner pursuant to the Approved Plans, the Lease and the Tenant Package, and in compliance with all Governmental Regulations. Tenant shall engage a licensed architect ("Tenant's Architect") to prepare the Preliminary Documents,

Construction Documents and As-Built Documents (collectively, "Tenant's Plans"). Landlord's approval of Tenant's Plans shall not constitute any representation or warranty by Landlord that the same are complete or sufficient for (a) purposes of Tenant's design, (b) purposes of constructing the Premises or any part thereof or (c) complying with any Governmental Regulations. Landlord shall not be liable to Tenant if Tenant's Plans fail to satisfy subsections (a), (b) and/or (c) preceding and Tenant shall not be relieved of any obligations under this Exhibit C, the Tenant Package, the Lease or Governmental Regulations on account of any approval by Landlord. Tenant shall pay the Plan Review Fee for review of the Preliminary Documents within 10 days after Landlord's demand therefor. No mezzanines shall be permitted upon the Premises, unless expressly set forth in the Approved Plans.

4.3. **Landlord's Right to Access.** Landlord, Landlord's authorized representatives (including Tenant Coordinator) and Landlord's contractors shall have the right to access the Premises and inspect the progress of Tenant's Work, Tenant's and Tenant's Contractor's compliance with the provisions of the Lease, this Exhibit C and the Tenant Package.

**EXHIBIT D**  
**CERTAIN DEFINED TERMS**

1. **INTENT.** The purpose of this Exhibit D is to set forth certain defined terms which are used in the Lease. Terms which are not defined in this Exhibit D are defined in the Lease or the Exhibits attached to the Lease. All references to Articles, Sections and captions contained in this Exhibit D are Articles, Sections and captions contained in the Lease unless otherwise provided.
2. **CERTAIN DEFINED TERMS**
  - 2.1. **Additional Rent** means all amounts payable by Tenant under this Lease, other than Fixed Minimum Rent and Percentage Rent.
  - 2.2. **Administrative Charge** means 15% of the subject sum. The Administrative Charge is intended to reimburse Landlord for additional administrative costs incurred by Landlord for providing work, materials or services.
  - 2.3. **Affiliate** means any entity that Controls, is Controlled by or is under common Control with another specified entity.
  - 2.4. **Agreed Rate** means the prime commercial rate of interest charged from time-to-time by Wells Fargo Bank, National Association (or, if the same does not exist, such other comparable bank selected by Landlord), plus 2% per annum, but not to exceed the maximum rate of interest allowable under law.
  - 2.5. **Annual Sales Statement** means a written statement in the form attached as Exhibit G to the Lease certified to be true and correct by an Authorized Officer of Tenant.
  - 2.6. **Approved Plans** means the final set of plans for Landlord's Work and/or Tenant's Work (as the case may be) which have received the final written approval of both Landlord and Tenant to the extent required by any applicable provisions of this Lease and the Tenant Package.
  - 2.7. **Assignment, Assign and Assigning** mean any assignment of Tenant's interest in the Lease and Assignment Instrument means the instrument by which an Assignment is made.
  - 2.8. **Attached Fixtures** means such trade fixtures, equipment and other Personal Property which is attached or affixed to the Premises (including, without limitation, carpeting, flooring, lighting, light fixtures, electrical systems, communications wiring and cabling, built-in shelving, built-in furniture and the cash wrap).
  - 2.9. **Authorized Officer** means (a) each natural person who executed the Lease (or the most recent amendment of the Lease), if Tenant is one or more natural persons, (b) an authorized officer, if Tenant is a corporation, (c) an authorized or managing partner, if Tenant is a partnership or a limited liability partnership or (d) an authorized member, if Tenant is a limited liability company.
  - 2.10. **Building** means the building, if any, of which the Premises are a part.
  - 2.11. **Casualty** means fire or any other casualty.
  - 2.12. **Claims** means, collectively, claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses, including reasonable attorneys' and other expert and third party fees and costs.
  - 2.13. **Common Area** means all improvements, facilities, equipment, signs, land and areas within the exterior boundaries of the Center which are now or hereafter made available for general use, convenience or benefit of more than one (1) Occupant, which may include, but not limited to, parking areas, access and perimeter roads, driveways, loading docks, pedestrian malls and courts, corridors, stairs, ramps, elevators, escalators, first-aid stations, security stations, drinking fountains, toilets, public washrooms, community halls, auditoriums, and other public facilities, parcel pick-up stations and landscaped areas. Common Area shall include any other land which Landlord acquires, and which land is



not presently part of the Center, to the extent Landlord designates any such land as Common Area.

2.14. **Control, Controlled and Controls** mean the ownership, directly or indirectly, of at least 51% of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least 51% of the voting interest in, any person or entity.

2.15. **Delivery Date** means the date Landlord delivers possession of the Premises to Tenant.

2.16. **Environmental Laws** means any and all federal, state and local laws, regulations, ordinances, codes and policies, and any and all judicial or administrative interpretations thereof by governmental authorities, as now in effect or hereinafter amended or enacted, relating to:

2.16.1. Pollution or protection of the environment, natural resources or health and safety; including, without limitation, those regulating, relating to, or imposing liability for emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, release, transport or handling of Hazardous Materials; and

2.16.2. The use of chemical, electrical, radiological or nuclear processes, radiation, sophisticated electrical and/or mechanical equipment, sonar and sound equipment, lasers, and laboratory analysis and materials.

2.17. **Excluded Floor Area** means the total Floor Area of the following (but excluding the Floor Area of the Premises): Major Occupant Stores, premises between 15,000 and 40,000 square feet of Floor Area, premises having an exterior entrance if the Center is enclosed, movie theatres, pad sites, educational facilities, offices, restaurants, mezzanines, storage areas, Occupants under leases, licenses or other agreements each with an original stated term of 12 months or less, Landlord's management office(s), merchants' association offices, marketing service offices, maintenance buildings and offices, equipment rooms, and such facilities and areas the primary purpose of which is to afford services, convenience or recreation to customers and invitees or for municipal and community purposes.

2.18. **Fixed Minimum Rent** means the annual and/or monthly rent sum specified at Section 1.8, as the same may be adjusted from time-to-time.

2.19. **Floor Area** means Landlord's calculation of the number of square feet of floor area of all floors in such space measured from the exterior faces of all exterior walls (and from the extensions thereof in the case of openings) and from the center line of interior demising walls inclusive of the floor area of mezzanines and basements (unless otherwise excluded), except RMUs shall be Landlord's calculation of the floor area of the footprint of each of the RMUs.

2.20. **Governmental Regulations** means all laws, statutes, ordinances, rules, regulations, zoning codes, building codes, standards and requirements of all governmental and quasi-governmental authorities, and of all board of fire insurance underwriters, having jurisdiction of the Premises or the Center.

2.21. **Intentionally Omitted.**

2.22. **Hazardous Materials** means any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any Environmental Laws, including, without limitation, any (a) substance defined as a 'hazardous substance', 'extremely hazardous substance', 'hazardous material', 'hazardous chemical', 'hazardous waste', 'toxic substance' or 'air pollutant' by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Clean Air Act, 42 U.S.C. Section 7401, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001, et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; or the Occupational Safety and Health Standards, 25 C.F.R. 1910-1000 et seq., or regulations promulgated thereunder, all as amended to date and as amended hereafter; (b) hazardous substance, hazardous waste,

toxic substance, toxic waste or hazardous material, waste, chemical or compound described in any other Environmental Laws; and (c) asbestos, polychlorinated biphenyls, urea formaldehyde insulation, flammable or explosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including, without limitation, crude oil or any component thereof), petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, and other regulated chemical products.

2.23. **HVAC** means heating, ventilating and air conditioning system(s).

2.24. **Improvements** means all existing and future fixtures, installations, alterations, replacements, additions, changes and improvements to the Premises.

2.25. **Insured Casualty** means damage or destruction the repair of which is fully covered by insurance proceeds made available to Landlord for repair and restoration pursuant to any insurance policy required to be carried by Landlord under the terms of this Lease.

2.26. **Involuntary Assignment** means any transfer of interest of Tenant in the Lease by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy, or in any bankruptcy or insolvency proceeding) and each of the following acts shall be considered an Involuntary Assignment: (a) if Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under any bankruptcy law in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other such person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (b) if a writ of attachment or execution is levied on this Lease; (c) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises; or (d) there is any assumption, assignment, sublease or other transfer under or pursuant to the Bankruptcy Code 11 U.S.C. 101 et seq., as amended from time-to-time.

2.27. **Landlord Parties** means, collectively, the Manager, Landlord's Designees and the respective past, present and future partners, officers, directors, shareholders, beneficiaries, trustees, employees, agents and independent contractors of both Landlord and Manager.

2.28. **Landlord's Designees** means, collectively, the Manager, the Mortgagee, any lessors under any ground or underlying leases lien on the Premises and such person(s) designated by Landlord as having an insurable interest in the Premises.

2.29. **Lease Year** means, as to the first Lease Year, the period from the Rent Commencement Date through the immediately following December 31, and as to each subsequent Lease Year, the period of January 1 of a given year through the immediately following December 31 of the same year; however, the last Lease Year shall end upon the Expiration Date.

2.30. **Major Destruction** means any destruction (whether or not an Insured Casualty) (a) to the extent of more than 25% of the full replacement cost of any of the Premises, the Building, the parking structures located at the Center or the Center, as the case may be, as of the date of destruction, (b) that will take in excess of 1 year to complete repair and restoration, or (c) that occurs at any time during the last 24 months of the Term.

2.31. **Major Occupant** means each Occupant (if any) occupying premises containing at least 40,000 square feet of contiguous Floor Area, and shall include such Occupants who have (if any) contiguous stores with different trade names but with direct access between or among such stores.

2.32. **Major Occupant Stores** means (a) each of the premises (if any) identified on Exhibit A as a "Major Occupant Store" and (b) the premises occupied, or designated for occupancy, by Major Occupants.

2.33. **Mall** means (a) that portion of the Common Area which is contained in the enclosed mall, if the Center contains an enclosed mall, or (b) the Common Area of the Center, if the Center does not contain an enclosed mall.

2.34. **Manager** means such entity with whom Landlord then has an agreement to manage the Center.

2.35. **Monthly Sales Statement** means a written statement in the form attached as Exhibit G to the Lease certified to be true and correct by an Authorized Officer of Tenant.

2.36. **Occupant** means any entity, inclusive of Tenant and exclusive of Landlord (except to the extent Landlord operates any retail business open to the public in the Center), entitled by any form of instrument to occupy Floor Area in the Center.

2.37. **Percentage Rent** means the amount, if any, equal to the product obtained by multiplying the Percentage Rent Rate by the amount of Gross Sales for each Lease Year that is in excess of the Annual Breakpoint for each such Lease Year.

2.38. **Personal Property** means all of the following which do not otherwise constitute Attached Fixtures: Tenant's trade fixtures, equipment, appliances, furniture, displays, Storefront Sign, other signs, inventory, merchandise and other personal property.

2.39. **Plan Review Fee** means the sum of \$2,500.00; however, (a) if the scope of the plans depicts nothing more than painting, carpeting, installing or remodeling the storefront and Storefront Sign, such sum shall be in the amount of \$1,250.00, and (b) if the scope of the plans depicts nothing more than the Storefront Sign, such sum shall be in the amount of \$500.00.

2.40. **Real Estate Taxes** means, without limitation, all taxes (except for franchise, gift, estate, inheritance or net income taxes [unless and then only to the extent that net income taxes are a substitute for real estate taxes]), assessments and reassessments (whether resulting from any new construction, renovation or replacement of existing improvements or a transfer of all or any portion of the Center or otherwise), whether special or general, bonds, permit fees, license fees, license taxes, levies and penalties imposed, assessed or levied against the Center or any portion thereof by any authority having the direct or indirect power to impose, assess or levy the same, including, without limitation, any city, county, state or federal government or agency thereof, or any school, agricultural, lighting, drainage, fire, street, sanitary, community facilities or other improvement district thereof; all taxes, fees and/or charges on the operation and use of the Center or Common Area imposed by any federal, state or local governmental entity; taxes on Landlord's personal property used in connection with the maintenance or operation of the Center or made available for general use, convenience or benefit of more than one (1) Occupant; all impositions (whether or not such impositions constitute tax receipts to governmental agencies) in substitution, partially or totally, of any impositions now or previously included within the definition of real estate taxes, including, without limitation, those imposed or required by governmental agencies to increase tax increments to governmental agencies and for such services as fire protection, street, sidewalk and road maintenance, refuse removal and/or for other governmental services formerly provided without charge to property owners or occupants (it being the intention of Landlord and Tenant that all such new and/or increased impositions and all similar impositions be included within the definition of Real Estate Taxes for purposes of this Lease); interest on the foregoing to the extent any of the same are paid in installments; and the costs of professionals and counsel to analyze tax bills and/or prosecute any challenges, protests, refunds and appeals. An Administrative Charge shall be calculated on Real Estate Taxes prior to calculating Tenant's Share of Real Estate Taxes.

2.41. **Refund Date** means the date which is the later of (a) the Expiration Date or date of earlier termination of this Lease, or (b) the date Tenant has fully performed all of its Surrender Obligations under Section 9.1.

2.42. **Reimbursed Cost(s)** means Landlord's cost for performing specific work or services, or providing materials on behalf of Tenant, together with interest at the Agreed Rate, calculated from the date Landlord performs such work or services, or provides such materials, until the date that any such cost(s) are paid by Tenant. Tenant shall pay any Reimbursed Costs within 10 days after Landlord's written demand therefor.

- 2.43. **Rent** means Fixed Minimum Rent, Percentage Rent and Additional Rent.
- 2.44. **RMUs** means carts, kiosks and other retail merchandising units of Occupants located in the Common Area.
- 2.45. **Rules** means such rules and regulations established by Landlord.
- 2.46. **Storefront Sign** means the sign for the Premises facing onto the Mall which shall contain no name other than the Trade Name.
- 2.47. **Subletting** and **Sublet** mean a subletting of all or any portion of the Premises or any concession, franchise or license with respect to the Premises.
- 2.48. **Superior Agreements** means all mortgages, deeds of trust, ground leases, reciprocal easement agreements, declarations, covenants, conditions, restrictions, easements, rights-of-way and other matters of record (whether placed of record on, prior to, or after the Effective Date) affecting all or any portion of the Center, as the same may be modified, amended and supplemented from time-to-time.
- 2.49. **Taking** means any taking or appropriation for public or quasi-public use by the right of eminent domain or otherwise by a taking in the nature of inverse condemnation, with or without litigation, or a transfer by agreement in lieu thereof.
- 2.50. **Tenant Parties** means, collectively, Tenant's Occupants and the respective past and present officers, directors, shareholders, invitees, customers, agents, employees and independent contractors of both Tenant and Tenant's Occupants.
- 2.51. **Tenant's Occupants** means all concessionaires, licensees, subtenants, assignees and others holding any rights to, or interest in, any part of the Premises under Tenant.
- 2.52. **Tenant's Share** means a fraction, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of the Center (inclusive of the Premises, but exclusive of the Excluded Floor Area), which is from time-to-time occupied and open for business.
- 2.53. **Transfer** and **Transferring** mean an Assignment, a Subletting, and/or a transfer, assignment or hypothecation of 25% or more of the total stock, or the legal or beneficial interest, in Tenant or Guarantor, whether in a single transaction or a series of related or unrelated transactions and whether on a direct or indirect basis.
- 2.54. **Transferee** means all of the following: concessionaire(s), franchisee(s), licensee(s), assignee(s) and subtenant(s), as the case may be.
- 2.55. **Unamortized Landlord Costs** shall mean an amount equal to (i) the unamortized portion of the Construction Allowance, if any, which was theretofore disbursed by Landlord to Tenant, (ii) the unamortized portion of any brokerage commission paid to Tenant's Broker, and/or (iii) the unamortized portion of the cost of Landlord's Work, all amortized as of the effective date of any termination on a straight-line basis over the initial term of the Lease commencing on the Rent Commencement Date.
- 2.56. **Unamortized Tenant Costs** shall mean an amount equal to the remaining unamortized net cost paid by Tenant for initial Improvements (less all amounts either [a] paid by Landlord toward such Improvements, or [b] spent by Tenant on Personal Property) amortized as of the effective date of any termination on a straight-line basis over the initial term of the Lease commencing on the Rent Commencement Date.
- 2.57. **Uninsured Casualty** means damage or destruction resulting from any flood, earthquake, act of war, act of terrorism, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty of any kind or nature whatsoever which is not an Insured Casualty.
- 2.58. **Utilities** means all water, gas, sewer, heat, electricity, steam, chilled water, conditioned water, hot water, sprinklers, fire-life safety systems, lighting, power, HVAC, telecommunications services (including telephone, data and other telecommunications services including any technological evolution

related to the transfer of sound or data), sewer service, refuse removal service and all other utilities and related services.

2.59. **Utility Facilities** means any and all systems, machinery, facilities, installations, supply lines, transformers, pipes, conduits, ducts, penetrations, components, appurtenances and equipment, located on or at the Center, for the generation or supply of any Utilities (including, without limitation, any central plants and individual HVAC units owned or maintained by Landlord).

**EXHIBIT E**  
**CENTER RIDER**  
**GREEN ACRES MALL**

**1. GENERAL PROVISIONS**

- 1.1. **Purpose.** This Exhibit E sets forth certain provisions particular to the Center and the state in which the Premises are located.
- 1.2. **Prevailing Provisions.** If there are any inconsistencies between the Lease and the provisions of this Exhibit E, the provisions of this Exhibit E shall prevail.
- 1.3. **Definitions.** Unless otherwise expressly defined in this Exhibit E, all capitalized words shall have the meanings specified in the Lease.

**2. AMENDMENT AND SUPPLEMENTS**

1.1. The following Articles and Sections of the Lease are amended and supplemented as follows:

- 2.1. **Article 2 (Premises)** is amended by adding the following new Section(s) to the end thereof:

***New York Real Property Law.*** If a Section of this Article provides that the Premises are occupied upon the Effective Date by another Occupant, then the provisions thereof are intended to constitute 'an express provision to the contrary' within the meaning of Section 223-a of the New York Real Property Law, as the same may be amended from time-to-time, or under any similar statute now or hereafter in force, or under any present or future laws or case decisions to the same effect.

- 2.2. **Section 3.9 (Security Deposit)** is amended by adding the following to the end thereof:

Notwithstanding the foregoing, Landlord shall keep the Security Deposit separate from its general funds.

- 2.3. **Section 5.2.4 (Policy Requirements)** is amended by adding the following to the end thereof:

Tenant shall include The Town of Hempstead Industrial Development Agency as an additional insured as well as the parties provided for under the Lease and as designated by Landlord pursuant to the terms of the Lease.

- 2.4. **Section 9.3 (Holding Over)** is amended by adding the following to the end thereof:

In addition to the other provisions of this Section, Tenant hereby expressly agrees that the acceptance by Landlord of any payments from Tenant after the expiration or earlier termination of this Lease shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding (the foregoing being an 'agreement expressly providing otherwise' within the meaning of Section 232-c of the Real Property Law of the State of New York) nor shall any such acceptance be deemed anything other than an acceptance of payment on account of the amounts to be paid by Tenant in accordance with the provisions of this Section. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions this Section.

- 2.5. **Section 16.1.2 (Terminate Lease)** is amended by adding the following to the end thereof:

In addition to the other provisions of this Section 16.1.2, Landlord reserves the right to terminate this Lease at any time after an event of default by Tenant which is not cured by Tenant within the applicable notice and/or cure period, if any, by giving written notice to Tenant specifying a date (not less than five [5] business days from the date on which such notice is given) on which this Lease shall terminate provided such default has not been cured, and, on such date, the Term shall end, and all rights of Tenant under this Lease shall cease, but the foregoing provisions of this Section shall not relieve Landlord from first complying with all applicable provisions and proceedings required by law

as conditions precedent for any such termination.

- 2.6. **Article 18 (Casualty and Taking)** is amended by adding the following new Section to the end thereof:

**Waiver.** Except as otherwise specifically provided herein, Tenant hereby expressly waives all rights to terminate this Lease under Section 227 of the New York Real Property Law, as the same may be amended from time-to-time, or under any similar statute now or hereafter in force as the result of such Casualty, or under any present or future laws or case decisions to the same effect.

- 2.7. **Article 21 (Miscellaneous)** is amended by adding the following new Section(s) to the end thereof:

**AGENCY PROVISIONS:** The following items 1-7 shall be collectively referred to as the Agency Provisions:

1. **Payment in Lieu of Taxes**

(a) **PILOT Program Defined.** The financial incentive program offered by the Town of Hempstead Industrial Development Agency (the "Agency"), for eligible proposals that involve the creation, expansion, improvement or retention of property and facilities within The Town of Hempstead by companies moving to or remaining in the Town, including all benefits and requirements contained therein (collectively, the "PILOT Program").

(b) **Reporting Requirements.** Tenant covenants on behalf of itself, its successors and assigns to timely complete and return to Landlord, the Agency, or its successors and assigns upon written request, not more often than twice per calendar year, a copy of Tenant's NYS-45 reports submitted to the New York State Department Of Labor for the most recent calendar year (or, if Tenant has multiple retail business locations operating within the state of New York, copies of form BLS 3020 completed to show the employee information for the Premises for the most recent calendar year or the form attached hereto as Schedule 1 of Exhibit E), concerning, in substance, the total payroll, its operations, the number of part time and full time employees Tenant employs at the Center, and such other matters as may be necessary for Landlord to comply with the terms of the PILOT Program and the Agency to make and submit its annual reports. Such information shall be provided within thirty (30) days following written request from the Agency or Landlord. Tenant shall furnish to the Agency within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to Tenant.

2. **Qualification as Project.** Tenant shall not take any action, or fail to take any action, which action or failure to act would cause the Center not to constitute a "project" as such quoted term is defined in Title 1 of Article 18A of the General Municipal Law of the State of New York, as amended (collectively, the "Act"). In accordance with Section 862(1) of the Act, the occupancy of the Premises by Tenant will not result in the removal of a facility or plant of the Tenant from one area of the State of New York to another area of the State or in the abandonment of one or more plants or facilities of Tenant located within the State of New York; provided, however that neither restriction shall apply if the Agency shall determine:

- (i) that such occupation of the Premises by Tenant is reasonably necessary to discourage the Tenant from removing such other plant or facility to a location outside the State of New York, or
- (i) that such occupation of the Premises by Tenant is reasonably necessary to preserve the competitive position of Tenant in Tenant's business.

3. **No Warranty of Condition or Suitability by Agency.** THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE CENTER OR THAT IT IS OR WILL BE SUITABLE FOR TENANT'S PURPOSES OR NEEDS.

4. **Employment Opportunities; Notice of Jobs.** Tenant covenants and agrees that, in consideration of the participation of the Agency in the PILOT, Tenant will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Premises to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Center is located (collectively, the "**Referral Agencies**"). Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.
5. **Agency as Third Party Beneficiary.** The Agency is a third party beneficiary of these Agency Provisions with the full right to enforce all provisions hereof in an action at law or in equity.
6. **Confidential Information.** The Agency shall hold as confidential all non-public information provided by Tenant pursuant to the terms of this Lease except to the extent that the Agency is required by applicable law to disclose such information.
7. **Successors and Assigns.** The rights and obligations hereunder of the Agency under these Agency Provisions shall bind and inure to the benefit of the successors and assigns of the Agency.
  - 2.8. **Exhibit C, Section 2.1, Tenant Package.** Add the following sentence to the end of Section 2.1 of Exhibit C: Tenant acknowledges per the Tenant Package, Tenant is required to use local building trades to complete all Tenant Work.
  - 2.9. **Exhibit D, Section 2.27, Landlord Parties.** Landlord Parties shall also include the Town of Hempstead Industrial Development Agency of the Town of Hempstead, New York.



## SCHEDULE 1

### Tenant Employee Questionnaire Form

Business Mailing Address (please print):

ANNUAL REPORT INFORMATION

Business Name: \_\_\_\_\_

\_\_\_\_\_, Suite \_\_\_\_\_

CALENDAR YEAR ENDING: 12/31/20

Valley Stream, NY \_\_\_\_\_

Number of Employees:	Month 1	Month 2	Month 3	Quarterly Wages of Location (round to the nearest dollar)
1 <sup>st</sup> Quarter				
2 <sup>nd</sup> Quarter				
3 <sup>rd</sup> Quarter				
4 <sup>th</sup> Quarter				

I certify under penalty of perjury under the laws of the State of New York that the foregoing information is true and correct.

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

**EXHIBIT F**  
**PROVISIONS FOR TENANTS SELLING FOOD**

**1. APPLICABILITY OF THIS EXHIBIT F**

1.1. **Applicability.** The provisions of this Exhibit F shall be applicable only to Occupants whose permitted use provides for the sale of any food.

1.2. **References.** Unless otherwise expressly provided in this Exhibit F, references to Articles, Sections and captions are references to Articles, Sections and captions contained in this Exhibit F.

**2. TENANT'S ADDITIONAL COVENANTS**

2.1. Tenant shall comply with the reasonable and non-discriminatory rules and regulations and standards of merchandising as Landlord shall establish for the Occupants selling food and/or located within the space designated on Exhibit A or Exhibit B as the "Food Court" and shall remove from sale and display any merchandise that does not meet such standards.

2.2. Tenant shall promptly address any complaint received by Landlord from a customer of Tenant and reasonably resolve the matter constituting such complaint to the reasonable satisfaction of both Landlord and the customer making such complaint.

2.3. Tenant's employees shall at all times wear clean uniforms consistent with a family friendly, first-class food establishment. Landlord shall have the right to require any employee of Tenant that is not in compliance with the provisions of this Article 2 to immediately leave the Center.

2.4. Tenant shall at all times comply with all applicable health and safety codes promulgated by governmental authorities. If any of the governmental authorities issues a grading system for standards of food handling and cleanliness, Tenant shall conduct its business upon the Premises so that it shall at all times receive the highest available grade in such grading system. In addition to Landlord's rights of entry in the Lease, Landlord shall have the right, from time-to-time, to inspect the Premises to ensure that the Premises is clean and free from vermin and pests.

2.5. Tenant shall (a) collect all refuse produced and accumulated on the Premises in a manner directed by Landlord, (b) place all food refuse in refrigerated containers set aside specifically and solely for holding refuse and (c) at the close of each day (and more often, if required by Landlord) remove the same to a trash room or other area designated by Landlord. All wet refuse and all food refuse shall be kept at all times in sealed bags.

2.6. Tenant shall prevent odors from the Premises from permeating the Building. However, Landlord recognizes that because of the nature of the Permitted Use, certain odors will emanate from the Premises due to the preparation and sale of Tenant's product. Accordingly, Landlord hereby consents to such odors so long as they do not exceed normal pleasant levels. Landlord shall be the sole judge of what constitutes an abnormal or unpleasant odor, and Tenant shall, upon written notice from Landlord delivered to any employee of Tenant on the Premises, take appropriate action to reduce an abnormal or unpleasant odor or otherwise restore a normal, pleasant odor level.

2.7. Each day and throughout the day, Tenant shall remove grease from all exposed surfaces of the Premises. Tenant shall not place any grease into any trash compactor, normal garbage containers, floor drains, sink drains or toilets. Tenant, at Tenant's sole cost and expense, shall maintain all grease traps on the Premises, including providing a daily treatment program to chemically degrease sewer and drainage lines. Tenant, at Tenant's sole cost and expense, shall provide outside grease containers. Tenant shall retain a dependable, bonded degreasing service for the Premises who shall, at least once each month, clean and degrease the entire kitchen area, ranges, cooking equipment, broilers and stoves. Landlord may, at its election, provide for the maintenance of the grease traps and the degreasing of the sewer and drainage lines as a Reimbursed Cost.

2.8. Tenant shall comply with NFPA Code 96 which, in part, requires the entire hood plenum and the blower section to be cleaned a minimum of once every 3 months by an independent contractor. Tenant shall maintain documentation that the services under this Section have been performed as required hereunder for 3 years and shall provide said documentation to Landlord upon prior verbal or written request.

**EXHIBIT G**  
**MONTHLY AND ANNUAL SALES STATEMENT FORM**

Center: \_\_\_\_\_

Store Name/Number: \_\_\_\_\_

	CERTIFIED GROSS SALES
January	_____
February	_____
March	_____
April	_____
May	_____
June	_____
July	_____
August	_____
September	_____
October	_____
November	_____
December	_____
TOTALS	_____

I certify that the sales indicated above are true and correct.

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Signatory

**Green Acres and Green Acres Commons – Parallel Provisions Check Sheet – REAL FRUIT BUBBLE TEA**

<b>PILOT Agreement Exhibit G Provision</b>	<b>Parallel Approved Macerich Lease Provision [Full Lease Form]</b>	<b>Parallel Approved Macerich Lease Provision [Version 5]</b>	<b>Check if Provision Substantially Conforms</b>	<b>Explanation of Substantial Deviation</b>
2.1 and 2.2	Section 8.2, including 8.2.1 – 8.2.8 (w/includes self-insurance)	Section 5.2 including 5.2.1 – 5.2.4	x	
2.3	Section 23.5 and Exhibit D, definition of <b>Insured Casualty</b> (alphabetically)	Section 181, 18.2 and 18.3 and Exhibit D, definition of Insured Casualty (alphabetically)	x	
2.4	Lines 15 – 19 of Section 8.2.8, Policy Requirements (and Exhibit E provision modifying 8.2.8 including the TOHIDA as an additional insured)	Lines 12 – 16 of Section 5.2.4, Policy Requirements (and Exhibit E provision modifying 5.2.4 including the TOHIDA as an additional insured)	x	
3.1	Exhibit C, Section 3.2 and 4.1, and Exhibit E provision labeled “No Warranty of Condition or Suitability by Agency.”	Exhibit C, Section 4.1, and Exhibit E provision labeled “No Warranty of Condition or Suitability by Agency.”	X	
3.2	Sections 8.1.1 and 8.1.3, and Exhibit E, change to Exhibit D definition of Landlord Parties (final provision in Exhibit E unless something else is negotiated into Exhibit E.)	Sections 5.1.1 and 5.1.3; and Exhibit E, change to Exhibit D definition of Landlord Parties (final provision in Exhibit E)	X	
3.3	17.4	Section 13.2	X	
3.4 and 3.5	12.1.2 and 27.4	Sections 8.2 and 21.2	X	
3.6	Exhibit E, Agency Provision 1(a) and 2	Exhibit E, Agency Provision 1(a) and 2	X	
3.7(a)	12.1.2 (w/includes Tenant alteration language from formbook)	Section 12.1.2	X	
3.7(b)	Art. 25	Art.19	X	
3.8	Exhibit E, Agency Provision 1.(b) labeled “Reporting Requirements”	Exhibit E, Agency Provision 1.(b) labeled “Reporting Requirements”	X	
3.9	Exhibit E, Agency Provision 4. Labeled “Employment Opportunities; Notice of Jobs.”	Exhibit E, Agency Provision 4. Labeled “Employment Opportunities; Notice of Jobs.”	X	
3.10	Article 14 (w/includes Corporate, Affiliate & Franchise transfer language from our formbook)	Article 10	X	
3.11, 1 <sup>st</sup> sentence	Section 7.2	Section 4.2	X	

3.11, 2 <sup>nd</sup> sentence	Exhibit E, Agency Provision 1(b), labeled "Reporting Requirements."	Exhibit E, Agency Provision 1(b), labeled "Reporting Requirements."	X	
3.12	Exhibit E, labeled Agency Provision 5, "Agency as Third Party Beneficiary".	Exhibit E, labeled Agency Provision 5, "Agency as Third Party Beneficiary".	X	
3.13	Exhibit E, labeled Agency Provision 6, "Confidential Information"	Exhibit E, labeled Agency Provision 6, "Confidential Information"	X	
3.14	Exhibit E, Agency Provision 7, "Successors and Assigns".	Exhibit C, Section 2(f)	X	
NDA	Form provided		N/A	No – NDA not requested



Direct Dial: (214) 373-5233  
E-Mail: [tina.barry@macerich.com](mailto:tina.barry@macerich.com)

March 2, 2023

VIA EMAIL ([aeames@tohmail.org](mailto:aeames@tohmail.org))

Arlyn Eames, Deputy Financial Officer  
Town of Hempstead Industrial Development Agency  
350 Front Street  
Hempstead, New York 11550

**Re: IDA Approval of Tenant Sublease  
Green Acres Adjacent, LLC 2015 Facility  
750 Sunrise Highway, Valley Stream, NY 11581**

Dear Ms. Eames:

In accordance with instructions from Daniel Baker of Certilman Balin Adler & Hyman, LLP, attached please find sent directly to you a copy of the tenant sublease for your approval in accordance with Section 9.3 of the Lease Agreement dated May 1, 2015 for the above referenced location ("Green Acres Adjacent Lease") related to the following:

- **Size of Premises:** 1,490 square feet
- **Tenant:** GNC Holdings, LLC, a Delaware limited liability company d/b/a GNC Live Well.
- **Address:** 106 Green Acres Commons, Valley Stream, NY 11581
- **Estimated employees:** 1 FTE; 3 PTE
- **Estimated average salaries:** \$22.00 per hour FTE; \$15.00 per hour PTE

Also enclosed is a chart regarding the corresponding tenant sublease provisions compared to the provisions listed in Exhibit G of the Green Acres Adjacent Lease as indicated in Nancy Rendos' 7/15/15 memo to you.

Please note, there is no NDA requested in connection with this Lease.

Please confirm your approval of the lease and execution of the resolution by the TOHIDA approving the lease by a reply email to me so I may proceed with execution of the tenant sublease as soon as possible. If you have any questions in the meantime, please do not hesitate to contact me at 214.373.5233.

Sincerely,

Tina Barry  
Senior Manager and Senior Paralegal,  
Legal Leasing

cc: Daniel J. Baker, Esq. via email [dan.baker@gtlaw.com](mailto:dan.baker@gtlaw.com) (w/attachments)  
Edie Longo, via email [elongo@tohmail.org](mailto:elongo@tohmail.org) (w/attachments)  
Terance Walsh, Nixon Peabody, via email [twalsh@nixonpeabody.com](mailto:twalsh@nixonpeabody.com) (w/attachments)  
Roz Doran, Nixon Peabody, via email [rdoran@nixonpeabody.com](mailto:rdoran@nixonpeabody.com) (w/attachments)  
Beth Wood, Nixon Peabody, via email [ewood@nixonpeabody.com](mailto:ewood@nixonpeabody.com) (w/attachments)  
Emma Feary, Nixon Peabody, via email [efeary@nixonpeabody.com](mailto:efeary@nixonpeabody.com) ((w/attachments)

# **LEASE AGREEMENT**

BY AND BETWEEN

**GREEN ACRES ADJACENT LLC**

AS LANDLORD

AND

**GNC HOLDINGS, LLC**

doing business as

**GNC Live Well**

AS TENANT

FOR PREMISES LOCATED WITHIN

**Green Acres Commons  
Valley Stream, New York**





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### Exhibits

A	Depiction of Center
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D	Certain Defined Terms
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F	Intentionally Omitted
G	Monthly and Annual Sales Statement Form
H	Relocation Zone

# LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made as of \_\_\_\_\_ ("Effective Date") by and between GREEN ACRES ADJACENT LLC, a Delaware limited liability company ("Landlord"), and GNC HOLDINGS, LLC, a Delaware limited liability company ("Tenant").

## WITNESSETH:

In consideration of the rents to be paid and the covenants to be performed by Tenant, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the following described Premises, upon the following terms and conditions (capitalized terms used herein without definition shall have the meanings ascribed to such terms in Exhibit D):

### 1. FUNDAMENTAL LEASE PROVISIONS

- |   |   |                                    |                                   |                                    |                 |              |             |             |
|---|---|------------------------------------|-----------------------------------|------------------------------------|-----------------|--------------|-------------|-------------|
| 1.1. <b>Center:</b>                     | Green Acres Commons, located in the City of Valley Stream, County of Nassau, State of New York  | Section 2.1                        |                                   |                                    |                 |              |             |             |
| 1.2. <b>Premises:</b>                   | Space #0106   | Section 2.2                        |                                   |                                    |                 |              |             |             |
| 1.3. <b>Floor Area of the Premises:</b> | 1,490 square feet   | Section 2.2                        |                                   |                                    |                 |              |             |             |
| 1.4. <b>Term:</b>                       | From the Delivery Date until the Expiry Date, unless sooner terminated pursuant to the terms of this Lease.   | Section 4.1                        |                                   |                                    |                 |              |             |             |
| 1.5. <b>Required Opening Date:</b>      | 120 days following the Delivery Date.   | Section 3.2                        |                                   |                                    |                 |              |             |             |
| 1.6. <b>Rent Commencement Date:</b>     | The earlier to occur of (a) the date on which Tenant first opens the Premises for business or (b) the Required Opening Date.  |                                    |                                   |                                    |                 |              |             |             |
| 1.7. <b>Expiry Date:</b>                | July 31, 2028   |                                    |                                   |                                    |                 |              |             |             |
| 1.8. <b>Fixed Minimum Rent:</b>         | <table border="0" style="width: 100%;"> <tr> <td style="text-align: center;"><u>Dates</u></td> <td style="text-align: center;"><u>Annual Fixed Minimum Rent*</u></td> <td style="text-align: center;"><u>Monthly Fixed Minimum Rent*</u></td> </tr> <tr> <td style="text-align: center;">† - Expiry Date</td> <td style="text-align: center;">\$156,450.00</td> <td style="text-align: center;">\$13,037.50</td> </tr> </table> <p>†From the Rent Commencement Date<br/>*Subject to increases pursuant to Section 5.5.1</p> | <u>Dates</u>                       | <u>Annual Fixed Minimum Rent*</u> | <u>Monthly Fixed Minimum Rent*</u> | † - Expiry Date | \$156,450.00 | \$13,037.50 | Section 5.5 |
| <u>Dates</u>                            | <u>Annual Fixed Minimum Rent*</u>   | <u>Monthly Fixed Minimum Rent*</u> |                                   |                                    |                 |              |             |             |
| † - Expiry Date                         | \$156,450.00  | \$13,037.50                        |                                   |                                    |                 |              |             |             |
| 1.9. <b>Percentage Rent Rate:</b>       | 4%  | Section 5.6                        |                                   |                                    |                 |              |             |             |
| 1.10. <b>Annual Base Sales:</b>         | <table border="0" style="width: 100%;"> <tr> <td style="text-align: center;"><u>Dates</u></td> <td style="text-align: center;"><u>Annual Base Sales**</u></td> </tr> <tr> <td style="text-align: center;">‡ - Expiry Date</td> <td style="text-align: center;">\$1,600,000.00</td> </tr> </table> <p>‡From the Rent Commencement Date<br/>**Subject to increases pursuant to Section 5.6.1</p>  | <u>Dates</u>                       | <u>Annual Base Sales**</u>        | ‡ - Expiry Date                    | \$1,600,000.00  | Section 5.6  |             |             |
| <u>Dates</u>                            | <u>Annual Base Sales**</u>  |                                    |                                   |                                    |                 |              |             |             |
| ‡ - Expiry Date                         | \$1,600,000.00  |                                    |                                   |                                    |                 |              |             |             |

1.11. <b>Permitted Use:</b>	<p>The Premises shall only be used primarily for the retail sale of a complementary mix of pre-packaged health foods, vitamins, mineral and herbal supplements, weight gain products, diet and weight loss products, and sports nutrition supplements (provided such supplements and products are in compliance with any applicable governmental statutes, health codes and/or regulations and further provided Tenant shall not be permitted to dispense or sell any prescription pharmaceutical drugs or products). Ancillary to such primary use, Tenant shall use the Premises for the retail sale of a complementary mix of natural source cosmetics and other natural source beauty aids; exercise apparel; exercise equipment and exercise CDs, related accessories (including exercise charts, books and DVDs); health related diagnostic equipment (including meters, watches, kits and scales); body care products such as oils, soaps, shampoos and bath gels, aromatherapy products and aromatherapy related gifts and accessories, and relaxation products, provided no category of ancillary items becomes predominant in Tenant's display of merchandise within the Premises. In addition, Tenant shall be permitted to sell non-yogurt based blended health drinks, provided the sale of such shall not account for more than five percent (5%) of Tenant's total sales. Incidental to the primary and ancillary uses, Tenant shall use the Premises for the retail sale of such other items as are normally sold from time to time in all or substantially all of Tenant's other stores with a permitted use similar to the Permitted Use and operating under the Trade Name specified in Section 1.12 provided no such incidental item or type of item shall become predominant in Tenant's display of merchandise within the Premises. Additionally, Tenant shall be permitted to operate three (3) coin operated health diagnostic machines within the rear portion of the sales Floor Area of the Premises. The Premises shall be used for no other use or purpose.</p>	Section 10.1
1.12. <b>Trade Name:</b>	GNC Live Well, GNC or General Nutrition Center	Section 10.1
1.13. <b>Security Deposit:</b>	None	Article 6
1.14. <b>Grand Opening Charge:</b>	Intentionally Omitted	Section 5.8
1.15. <b>Center Hours:</b>	<p>Monday through Saturday 10:00 a.m. to 9:00 p.m. and Sunday 11:00 a.m. to 7:00 p.m., or such other hours that the Center is open for business as such hours are designated from time-to-time by Landlord.</p>	
1.16. <b>Radius:</b>	<p>1 mile, measured from the outside boundaries of the Center, as the Center is constituted on the Effective Date.</p>	Section 10.4

- 1.17. **Landlord's Address For Notices:** Green Acres Adjacent LLC  
750 West Sunrise Highway  
Valley Stream, NY 11581-1007  
Attention: Center Manager  
  
With a copy of notices to:  
Green Acres Adjacent LLC  
c/o Macerich  
P.O. Box 2172  
401 Wilshire Boulevard, Suite 700  
Santa Monica, California 90407  
Attn: Correspondence Routing System/Legal Department  
  
Section 18.1
- 1.18. **Tenant's Address For Notices:** GNC Holdings, LLC  
75 Hopper Place Suite 501  
Pittsburgh, PA 15222  
Attn: Real Estate Counsel (KK #9641)  
  
Section 18.1
- 1.19. **Address For Payment of Rent:** Green Acres Adjacent LLC  
Dept #880509  
P.O. Box 29650  
Phoenix, AZ 85038-9650
- 1.20. **Landlord's Broker(s):** None  
  
Section 27.6
- 1.21. **Tenant's Broker(s):** The Shopping Center Group  
  
Section 27.6
- 1.22. **Guarantor(s):** None
- 1.23. **Rent Inquiry Address:** Landlord:  
Phone: (866) 811-1095  
Email: GreenAcresAR@macerich.com  
  
Tenant:  
GNC Holdings, LLC  
75 Hopper Place Suite 501  
Pittsburgh, PA 15222  
Attn: Lease Administration (KK #9641)  
Email: jamie-sero@gnc-hq.com  
  
Section 5.1
- 1.24. **Landlord's Sales Reporting Address:** Green Acres Adjacent LLC  
Attn: Sales Associate  
P.O. Box 2188  
Santa Monica, CA 90406  
  
Phone: (866) 811-1095  
Facsimile: (602) 953-8354  
Email: greenacres.salesreporting@macerich.com  
  
Section 5.6

1.25. **Fixed Costs:** \$4,842.50 per annum, subject to increases beginning January 1, 2025 ("First Fixed Costs Adjustment Date") pursuant to Section 5.7.1 Section 5.7.1

## 2. PREMISES

2.1. **Center.** The Center, as of the Effective Date, is known by the name set forth in Section 1.1. Exhibit A is an approximate depiction of the Center; however, the depiction of the Center on Exhibit A is not a representation, warranty or covenant of any kind by Landlord that all or any part of the Center is, will be, or will continue to be configured as indicated on Exhibit A.

2.2. **Premises and Floor Area.** The approximate location of the Premises is depicted by crosshatching on Exhibit B. Notwithstanding the depiction of the approximate location of the Premises as set forth at Exhibit B, the Floor Area of the Premises for all purposes is stipulated to be the square feet of Floor Area specified at Section 1.3 and in no event shall the Floor Area of the Premises as set forth at Section 1.3 be remeasured or otherwise adjusted.

## 3. CONSTRUCTION OF IMPROVEMENTS

3.1. **Condition of Premises.** The Premises shall be delivered to Tenant in the condition set forth at Exhibit C.

3.2. **Tenant's Work.** Tenant shall, at its sole cost and expense, promptly commence Tenant's Work and diligently pursue the same to completion pursuant to the provisions of Exhibit C so as to open the Premises for business to the public on or before the Required Opening Date. As part of Tenant's Work, Tenant shall perform a full and complete remodel of the Premises in accordance with Exhibit C and the Tenant Package.

3.3. **Timely Opening.** Tenant acknowledges the financial success of the Center depends, in part, on Tenant completing Tenant's Work and opening the Premises for business to the public on or before the Required Opening Date and Landlord's damages arising from Tenant failing to timely complete Tenant's Work and open the Premises for business to the public on or before the Required Opening Date are extremely difficult and impractical to determine. Therefore, if Tenant fails to complete Tenant's Work and open the Premises fully stocked and staffed within twenty (20) days following the Required Opening Date, then in addition to Landlord's other remedies under this Lease, Landlord shall have the right to collect from Tenant, in addition to the other Rent, a sum equal to 150% of the Fixed Minimum Rent (prorated on a daily basis) for each such full or partial day from the twenty-first (21<sup>st</sup>) day following the Required Opening Date until the date Tenant completes Tenant's Work and opens the Premises fully stocked and staffed for business.

## 4. TERM

4.1. **Term.** This Lease shall be for the Term, unless sooner terminated pursuant to the terms of this Lease.

4.2. **Option to Extend Term.** Landlord hereby grants Tenant one (1) option ("Option to Extend Term") to extend the initial Term ("Initial Term"), which must be exercised by written notice ("Notice to Extend Term") delivered by Tenant to Landlord at least eight (8) months, but not more than eighteen (18) months, prior to the then current Expiry Date, in accordance with the provisions of this Section 4.2. The Option to Extend Term shall extend the term of this Lease for an additional sixty (60) months ("Extended Term") commencing upon the expiration of the Initial Term. This Lease shall be extended for the Extended Term upon all the same terms, covenants and conditions contained in this Lease, specifically excluding Fixed Minimum Rent. Fixed Minimum Rent for the Extended Term shall be increased on the first day of the Extended Term by 10%. Commencing on the January 1<sup>st</sup> immediately following the first day of the Extended Term, and on each Rent Adjustment Date thereafter Fixed Minimum Rent shall be increased in accordance with Section 5.5.1. Tenant shall have no further right to

extend the term of this Lease beyond the Extended Term. In no event shall Tenant have the right to exercise the Option to Extend Term while Tenant is delinquent in the payment of any Rent, not open and operating for business in the Premises or otherwise in default of this Lease.

4.2.1. **Personal Option.** The Option to Extend Term is personal to Tenant named at Page 1 of this Lease. If Tenant effects a Transfer after the exercise of the Option to Extend Term, but prior to the commencement of the Extended Term, the Option to Extend Term shall lapse and this Lease shall expire as if the Option to Extend Term had not been exercised, unless such restriction is expressly waived in writing by Landlord (which election shall be in Landlord's sole discretion).

## 5. RENT

5.1. **Payment of Rent.** Tenant shall pay all Rent to Landlord on the day(s) specified therefor, without notice, demand, deduction or offset, in lawful money of the United States of America, to the Address for Payment of Rent or at such other place as Landlord may from time-to-time designate in writing to Tenant. If Landlord so notifies Tenant in writing (and Tenant is able to reasonably comply), Rent payments shall be made by electronic money transfers in accordance with Landlord's written directive therefor. Tenant shall be obligated to pay Rent when due regardless of whether Tenant receives a statement therefor. If Fixed Minimum Rent or any item of Additional Rent increases or decreases during the Term and if the amount of such increase or decrease has not been determined as of the date such Rent is to be paid, then (a) Tenant shall continue to pay such Rent in the amount payable for the immediately preceding month (or other period for which such Rent is due) and (b) within thirty (30) days after the date Landlord notifies Tenant of such adjusted Rent, Tenant shall pay to Landlord any additional amount owed due to such adjusted Rent or if Tenant has paid Rent in excess of the adjusted Rent, such excess shall be credited against the next monthly payment(s) of Rent until such excess has been exhausted; however, within thirty (30) days following the Refund Date, any such excess shall be refunded to Tenant. Landlord and Tenant may each use the other's Rent Inquiry Address to communicate to the other party any inquiries relating to the calculation of the various components constituting Rent or the payment of Rent.

5.2. **Prorations.** If the Rent Commencement Date begins on a day other than the first day of a month or if the Term expires on a day other than the last day of a month, then Fixed Minimum Rent, Fixed Costs, Tenant's Share of Variable Costs and the Marketing Fund Charge for such month shall be prorated. Unless otherwise provided, all prorations of Rent for fractional periods shall be based on the actual number of days in such month and the actual number of days in such year. If the Lease Year is less than twelve (12) full calendar months, then Annual Base Sales for such Lease Year shall be an amount equal to the product obtained by multiplying the Annual Base Sales by a fraction, the numerator of which shall be the number of days in such Lease Year and the denominator of which shall be three hundred sixty-five (365). If the Premises are closed for any full or partial day during Center Hours, then Annual Base Sales shall be prorated for the Lease Year, in which such closure occurs.

5.3. **Late Payments.** If Tenant fails to pay any Rent to Landlord when due, Landlord shall be entitled to (a) interest on the unpaid Rent at the Agreed Rate from the date payment is due until the date payment is made and (b) a service charge equal to ten percent (10%) of the overdue amount. If payment is made by a check which is dishonored by the drawing bank, Tenant shall pay to Landlord a service charge equal to Fifty Dollars (\$50.00) and, in addition, Landlord may require that all future payments of Rent shall be made by cashier's check. For the first time in any calendar year that Tenant has failed to pay any such monthly installment of Rent, such service charge shall not apply unless Tenant has failed to make such payment within five (5) days after receipt of Landlord's written notice of such delinquency. Landlord shall not be required to give Tenant such notice more than once in any calendar year prior to assessing such service charge. Tenant acknowledges the late payment of Rent or the use of a dishonored check by Tenant will cause Landlord to incur costs and expenses not contemplated by this Lease, the exact amounts of which will be extremely difficult to ascertain, and that such service charges represent fair estimates of the costs and expenses which Landlord would incur by reason of Tenant's late

payment of Rent or use of a dishonored check. The imposition of such interest and service charges shall neither constitute a waiver of Tenant's default with respect to such overdue amount nor prevent Landlord from exercising any other right or remedy available to Landlord.

5.4. **Acceptance.** The acceptance by Landlord of partial payment of any sum due from Tenant shall not be deemed a waiver by Landlord of any of its rights to the full amount due or an admission by Landlord of the accuracy of any Monthly Sales Statement or any Annual Sales Statement submitted by Tenant. Any endorsement or statement on any check or accompanying letter from Tenant shall not be deemed an accord and satisfaction. Any Rent payments received from Tenant or any other person shall be conclusively presumed to have been paid on Tenant's behalf; however, in no event shall the foregoing be construed as requiring Landlord to accept any Rent from any person other than Tenant. The acceptance by Landlord of payment from any person other than Tenant shall not be deemed to be a waiver by Landlord of any provision of this Lease or to be a consent to any Transfer or to be a release of Tenant from any obligation under this Lease. The acceptance by Landlord of delinquent payment shall not constitute a waiver of any default and shall not constitute a waiver of timely payment of the particular payment involved. The acceptance by Landlord of any Rent shall not constitute a consent by Landlord or a waiver of any of Landlord's rights under this Lease.

5.5. **Fixed Minimum Rent**

5.5.1. **Fixed Minimum Rent.** From and after the Rent Commencement Date, Tenant shall pay in equal monthly installments, in advance on the first day of each month (except for the first installment, which shall be paid on the Rent Commencement Date), the Fixed Minimum Rent. Commencing on January 1, 2025 and on each January 1<sup>st</sup> thereafter (each such date is sometimes referred to as the "Rent Adjustment Date") the Fixed Minimum Rent then in effect (or which would then have been in effect absent any abatement or reductions in Fixed Minimum Rent, except for permanent reductions in Fixed Minimum Rent due to a permanent Taking) shall be increased by 3%.

5.5.2. **Grand Opening Event.** Intentionally Omitted.

5.6. **Percentage Rent**

5.6.1. **Percentage Rent.** From and after the Rent Commencement Date, in addition to Fixed Minimum Rent to be paid by Tenant, Tenant shall pay Percentage Rent to Landlord. Percentage Rent shall be payable annually in arrears, all as more particularly described in this Section 5.6. If Fixed Minimum Rent during any Lease Year is reduced pursuant to a provision in this Lease or by express written agreement between Landlord and Tenant, then the Annual Base Sales shall likewise be reduced by a percentage equal to the percentage decrease in the Fixed Minimum Rent payable for the period during which the change in Fixed Minimum Rent is in effect. On each Rent Adjustment Date, Annual Base Sales shall be adjusted by a percentage equal to the increase, if any, in Annual Fixed Minimum Rent on such Rent Adjustment Date.

5.6.2. **Monthly Sales Statements.** Within twenty (20) days after the end of each calendar month, Tenant shall deliver to Landlord at Landlord's Sales Reporting Address a Monthly Sales Statement specifying the Gross Sales made for the preceding calendar month together with details of any Permitted Exclusions.

5.6.3. **Annual Sales Statements.** Within forty-five (45) days after the end of each Lease Year (including, without limitation, the last Lease Year of the Term), Tenant shall (a) deliver to Landlord at Landlord's Sales Reporting Address an Annual Sales Statement specifying the Gross Sales for each month of the preceding Lease Year together with details of any Permitted Exclusions and (b) pay to Landlord at the Address for Payment of Rent an amount equal to the product obtained by multiplying the Percentage Rent Rate by the amount of Gross Sales during the preceding Lease Year that are in excess of the Annual Base Sales for such Lease Year. If Landlord so notifies Tenant in writing (and Tenant is able to reasonably comply), Monthly Sales Statements

and Annual Sales Statements shall be submitted by Tenant to Landlord electronically, in accordance with Landlord's written directive therefor.

#### 5.7. **Costs**

5.7.1. **Fixed Costs.** From and after the Rent Commencement Date, Tenant shall pay in equal monthly installments, in advance on the first day of each month (except for the first installment, which shall be paid on the Rent Commencement Date), the Fixed Costs. Commencing on the First Fixed Costs Adjustment Date and on each January 1<sup>st</sup> thereafter (each such date is sometimes referred to as the "Fixed Costs Adjustment Date"), the Fixed Costs then in effect (or which would then have been in effect absent any abatement or reductions in Fixed Costs) shall be increased by 4%.

5.7.2. **Tenant's Share of Variable Costs.** From and after the Rent Commencement Date, Tenant shall pay to Landlord Tenant's Share of Variable Costs in the time frames and in the manner herein set forth in this Section 5.7.2. Landlord shall notify Tenant from time-to-time of Landlord's estimate of the monthly installments payable by Tenant as Tenant's Share of Variable Costs. From and after the date of any such notice, Tenant shall pay to Landlord such estimated monthly amounts, in advance, on or before the first day of each month. Following the end of each Lease Year, Landlord shall submit to Tenant a statement containing the amount of Tenant's Share of Variable Costs for such Lease Year. If such statement discloses that there was an underpayment of Tenant's Share of Variable Costs for such Lease Year, Tenant shall pay to Landlord the amount of such underpayment within ten (10) days after the date such statement is delivered to Tenant. If such statement discloses that Tenant made an overpayment of Tenant's Share of Variable Costs for such Lease Year, Landlord shall apply the amount of the overpayment against the next installment(s) of Tenant's Share of Variable Costs then due until such overpayment has been exhausted; however, within thirty (30) days following the Refund Date, any such excess sums not previously credited shall be refunded to Tenant.

5.7.3. **Variable Cost Pool.** Landlord shall have the right, from time to time, to equitably allocate some or all of the Variable Costs among different portions or user groups of the Center and other properties owned or managed by Landlord which are either adjacent to or which may otherwise comprise a part of the Center, or if certain Variable Costs are not attributable to all Occupants and/or an Occupant maintains a certain service and/or an Occupant pays its own Real Estate Taxes at that Occupant's own expense and/or the Center contains separate tax parcels, then in any such event Landlord may, at Landlord's sole and absolute discretion, establish equitable, alternative methods of allocating such Variable Costs (the "Variable Cost Pool"). The Variable Costs within each such Variable Cost Pool shall be allocated and charged to the occupants within such Variable Cost Pool in an equitable manner as determined in Landlord's good faith and reasonable business judgment.

5.8. **Grand Opening Charge.** Intentionally Omitted.

5.9. **Personal Property and Other Taxes.** Tenant shall pay directly to Landlord or to the appropriate taxing authority, before delinquency, any and all taxes (including any excise, transaction, sales or privilege tax imposed upon Landlord on account of, attributed to, or measured by Rent), assessments and public charges levied, assessed or imposed by governmental authorities upon Tenant's business, upon Tenant's sales, upon Rent, upon Tenant's leasehold interest, and upon all Personal Property and Improvements, as well as upon Tenant's right to occupy, and do business at, the Premises.

#### 6. **INTENTIONALLY OMITTED.**

#### 7. **GROSS SALES**

##### 7.1. **Definition of Gross Sales**

7.1.1. **Gross Sales Defined.** "Gross Sales" means the aggregate selling price of all goods, wares, merchandise, tickets, food, beverages and services sold, leased, licensed or



delivered from any part of the Premises by Tenant and Tenant's Occupants and shall include, but not be limited to, (a) sales or charges for cash or credit regardless of collections, (b) sales by vending devices, including coin telephones, (c) proceeds from audio games and video games, (d) commissions and fees paid for the sale of lottery tickets, (e) rent income, (f) mail orders received or filled at the Premises, (g) electronic orders received or filled at the Premises (including, without limitation, orders made by use of the Internet, facsimile, telegraph, wire and telephone), (h) all deposits not refunded to purchasers, (i) orders taken at the Premises although filled elsewhere, (j) fees, commissions and catalogue sales, (k) sales from solicitations, regardless of where conducted, by personnel operating from, or reporting to any person at, the Premises and (l) all service, finance and interest charges on any type of account or note receivable to the extent the principal amount would constitute Gross Sales.

7.1.2. **Permitted Exclusions.** The following (collectively, "Permitted Exclusions") shall not be part of Gross Sales: (a) returns and refunds to customers for goods previously included as Gross Sales, (b) the amount of any sales tax or other excise tax imposed upon sales and charges (but only if such sales tax, excise tax or similar tax is billed to the purchaser as a separate item), (c) returns to shippers and manufacturers, (d) exchanges of goods between Tenant's stores and warehouses when the same is for a legitimate business purpose and not for the purpose of depriving Landlord of any Percentage Rent, (e) sales of fixtures not constituting Tenant's stock-in-trade, (f) sales from vending machines located in non-sales areas and used only by employees of Tenant, (g) sums and credits received in the settlement of claims for loss of, or damage to, merchandise, (h) charges for alterations, gift-wrapping and deliveries if such services are incidental to the Permitted Use and for which Tenant reasonably demonstrates it makes no profit, (i) fees paid by Tenant to third-party credit card companies (specifically excluding captive credit card companies) and/or banking institutions in accordance with credit card purchase plans, provided said fees shall not exceed three percent (3%) of such third-party credit card purchases in any single Lease Year; (j) bad checks and/or debts, provided that if subsequently collected, said checks and/or debts shall be included within Gross Sales in the Lease Year in which subsequently collected, and said checks and/or bad debts shall not exceed a total of one percent (1%) of Gross Sales in any single Lease Year; (k) sales to Tenant's employees who work at the Premises at a discount, provided such sales to employees shall not exceed a total of two percent (2%) of Gross Sales in any single Lease Year; and (l) any internet sales (1) that are ordered and paid for through the internet from a location that is outside the Premises (even if delivery is made from the Premises) or (2) of items not then in the inventory at the Premises that are ordered and paid for through the internet from a computer or other device located in the Premises and available to be operated directly by customers, provided (A) such items are not being delivered from the inventory at the Premises, (B) Tenant has continuously kept in stock a full line of merchandise in a full range of product to meet the consumer demands at the Premises so that the Premises is not a showroom or concept where limited merchandise is kept and (C) any internet sales that are rung through a register at the Premises will be included in Gross Sales.

7.1.3. **Credit Sales.** Each sale on an installment basis (such as so-called lay-away sales) or otherwise involving the extension of credit shall be treated as a sale for the full price in the period in which occurs the earliest of the following: (a) Tenant first considers the same a sale for accounting purposes, (b) the first payment therefor is received or (c) delivery or performance is first commenced.

7.2. **Tenant's Records.** All business upon the Premises shall be operated so that duplicate, dated sales slips, dated invoices, register receipts or similar evidence of payment serially numbered, shall be issued with each sale, transaction or other event resulting in Gross Sales or Permitted Exclusions ("Tenant's Receipts"). For the purpose of permitting verification by Landlord of any amounts due as Percentage Rent, Tenant shall keep and preserve at all times during the period required, at the Premises, Tenant's Receipts, a general ledger, sales receipts and disbursements journals, sales records and other supporting documentation and full, complete and accurate non-consolidated books of account (i.e., books

and records reflecting Tenant's operations solely at the Premises) (collectively "Tenant's Records"). Tenant's Records shall (a) disclose in detail all information reasonably required to permit Landlord to verify Tenant's Gross Sales, (b) conform to and be in accordance with generally accepted accounting principles consistently applied with respect to all operations of the business conducted from the Premises, (c) be maintained in the English language and (d) be kept and preserved for at least thirty-six (36) months following the end of the Lease Year for which the same pertain (or such longer period, if and while the same may need to be consulted in reference to any dispute or audit, until such dispute or audit has been finally resolved).

7.3. **Failure of Tenant to Provide Statements.** If Tenant should fail to timely provide any Monthly Sales Statement or any Annual Sales Statement in the manner and form required by this Lease, then, without limitation as to any and all rights and remedies available to Landlord in this Lease, at law and in equity, Landlord shall also have the right to invoice Tenant the sum of \$250.00 per incident to cover the additional time and expense involved to obtain each such Monthly Sales Statement or Annual Sales Statement. For the first (1st) two (2) times in any two (2) calendar year period that Tenant has failed to timely provide any Monthly Sales Statement in accordance with Section 5.6.2, such \$250.00 charge shall not apply unless Tenant has failed to provide such Monthly Sales Statement within ten (10) days of receipt of Landlord's written notice of Tenant's failure to provide said Monthly Sales Statement. Landlord shall not be required to give Tenant such notice more than twice in any two (2) calendar year period prior to assessing said \$250.00 charge. In no event shall Tenant be relieved of the responsibility to provide any Annual Sales Statement in a timely manner pursuant to Section 5.6.3.

7.4. **Intentionally Omitted.**

7.5. **Intentionally Omitted.**

## 8. INDEMNITY AND INSURANCE

### 8.1. Indemnification

8.1.1. **Indemnification by Tenant.** Tenant hereby agrees to indemnify, defend and hold Landlord and the Landlord Parties harmless from and against any and all Claims for property damage, personal injury or any other matter arising, claimed, charged or incurred against or by Landlord or any of the Landlord Parties in connection with or relating to any event, condition, matter or thing which (a) occurs in, on, under or about the Premises from any cause except to the extent due to the gross negligence or willful misconduct of Landlord or any of the Landlord Parties, (b) occurs in, on, under or about the remainder of the Center to the extent due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties or (c) is caused by or relates to any default, breach, violation or non-performance by Tenant of any provision of this Lease. Subject to the provisions of this Section, wherever Tenant has a duty hereunder to indemnify, defend and hold Landlord harmless from any claim or claims, Landlord shall (i) give Tenant prompt notice of such claim provided Landlord has actual knowledge of said claim, (ii) grant Tenant the authority to settle or defend such claim and (iii) cooperate with Tenant in any reasonable manner in the defense of such claim provided any such cooperation is at Tenant's sole cost and expense.

8.1.2. **Indemnification by Landlord.** Landlord hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all Claims for property damage, personal injury or any other matter arising, claimed, charged or incurred against or by Tenant in connection with or relating to any event, condition, matter or thing which (a) occurs in, on, under or about the Common Area from any cause except to the extent due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties, (b) occurs in, on, under or about the Premises to the extent due to the gross negligence or willful misconduct of Landlord or any of the Landlord Parties or (c) is caused by or relates to any default, breach, violation or non-performance by Landlord of any provision of this Lease.

8.1.3. **Release and Waiver of Subrogation.** If any part of the Premises or the Center is damaged by fire or other cause for which a party is required to carry insurance pursuant to this

Lease ("Insuring Party"), the other party shall not be liable to the Insuring Party (and the Insuring Party hereby waives all claims on behalf of itself and shall cause its insurance company to waive all such claims) for any loss, cost or expense arising out of or in connection with such damage. Notwithstanding anything to the contrary contained herein, in no event shall Landlord be liable to Tenant or any of the Tenant Parties for any damages arising out of or in connection with (a) any act or omission of any Occupant or for losses arising out of or in connection with theft or burglary or other acts or omissions of third parties or (b) fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises or the Center, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures.

8.2. **Tenant's Insurance.** At all times during the Term, Tenant shall procure and maintain, at its sole cost and expense, the following policies of insurance:

8.2.1. **Liability.** Commercial general liability insurance (including personal and advertising injury) with coverage limits of not less than Three Million Dollars (\$3,000,000.00) combined single limit, per occurrence, and Five Million Dollars (\$5,000,000.00) general aggregate per location, specifically including liability insurance covering the consumption of alcoholic beverages by customers of Tenant, if the sale of alcoholic beverages is permitted in the Premises. Tenant's general liability insurance shall (a) not include an abuse or molestation exclusion, (b) contain cross-liability endorsements, and (c) be on an occurrence basis, not a claims-made basis. Notwithstanding anything in this Section 8.2.1 to the contrary, Tenant's product liability insurance need not be an on occurrence basis policy.

8.2.2. **Workers' Compensation.** Workers' compensation insurance and employers' liability insurance on an "occurrence" basis but, in either case, with a limit of not less than the greater of the amount required by the state in which the Center is located or One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) each employee by disease and One Million Dollars (\$1,000,000.00) policy aggregate by disease, for the benefit of Tenant's employees.

8.2.3. **Plate Glass.** Insurance covering the full replacement cost of all plate glass on the Premises; provided, however, that Tenant shall be permitted to self-insure for plate glass coverage.

8.2.4. **Equipment.** Boiler and machinery insurance on all HVAC, electrical, mechanical, plumbing, telecommunications and other equipment, systems and facilities exclusively serving the Premises.

8.2.5. **Property.** Property insurance covering any peril generally included in the classification ISO Causes of Loss - Special Form covering all (a) Personal Property, and (b) Improvements in an amount not less than one hundred percent (100%) of their full replacement cost, without co-insurance or margin clauses. If the Center is located in the Federal Emergency Management Area flood zone A or V, Tenant also shall procure and maintain, at its sole cost and expense, flood insurance with a deductible not to exceed Ten Thousand Dollars (\$10,000.00), including purchase of the National Flood Insurance Policy, if applicable. If the Center is located in the New Madrid seismic areas or the states of California, Oregon or Washington, Tenant shall also procure and maintain, at its sole cost and expense, earthquake insurance with a deductible not to exceed five percent (5%) of the total insured value. Any policy proceeds shall be used for the repair or replacement of the property damaged or destroyed, unless this Lease is terminated under the provisions of Article 23. The insurance required pursuant to this Section 8.2.5 shall also include business interruption or rental loss insurance sufficient to cover, for a period of not less than twelve (12) full calendar months, all Rent and other payment obligations of Tenant under this Lease which would be borne by or due from Tenant under this Lease if the Premises and Tenant's business was fully open and operating. Provided Tenant is the tenant entity specified on Page 1 of this Lease, Tenant shall be permitted to satisfy the insurance requirements referred to in Sections 8.2.3, 8.2.5

and 8.2.6 in whole or in part through any plan of self-insurance maintained from time to time, provided Tenant or Tenant's Guarantor: (1) shall have and maintain a net worth of at least Twenty Million Dollars (\$20,000,000.00) and net current assets of at least Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), (2) upon Landlord's request, shall furnish Landlord with evidence, in a form reasonably acceptable to Landlord, of such net worth and net current assets and (3) shall agree to assume all duties, obligations and responsibilities of an insurance company with respect to any claim made under such self-insurance program. In the event Tenant elects to self-insure as provided herein and thereafter elects to terminate such self-insurance program, Tenant shall provide Landlord at least thirty (30) days' prior written notice of such termination together with copies of replacement policies of insurance or certificates in accordance with the requirements set forth in Section 8.2.8. In the event Tenant elects to self-insure as provided herein and this Lease is terminated pursuant to the provisions of Article 23 then, subject to the provisions of Section 23.5, Tenant shall pay, or cause to be paid, to Landlord that amount payable to Landlord had Tenant carried insurance for the entire one hundred percent (100%) of the full replacement cost.

8.2.6. **Construction Insurance.** Prior to commencing the construction or installation of any Improvements, Tenant shall provide Landlord with evidence that Tenant carries construction risk insurance in an amount reasonably approved by Landlord covering the construction and installation of such Improvements, together with such other insurance as Landlord may reasonably require. All Improvements shall be insured by Tenant under the other policies required under this Article 7.5 immediately upon completion of such work.

8.2.7. **Automobile Insurance.** Business automobile liability insurance covering all owned, non-owned and hired or borrowed vehicles of Tenant or any of the Tenant Parties used in connection with the operation of its business from the Premises, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit, insuring for bodily injury, death and property damage.

8.2.8. **Policy Requirements.** All policies of insurance provided for in this Section 8.2 shall (a) be issued by insurance companies that have a general policyholder's rating of not less than "A" and a financial rating of not less than Class VIII as rated in the most current available "Best's Insurance Reports", and that have been admitted or qualified to do business in the state where the Center is located by the insurance commission or other highest board, body or official responsible for overseeing the insurance business in such state, (b) name Landlord, Landlord's Manager, all Mortgagees and such other individuals or entities that have an ownership interest in the Center as Landlord may from time-to-time reasonably designate, as "additional insureds", and (c) contain a deductible in a commercially reasonable amount, except as otherwise expressly set forth in this Lease. Tenant shall provide to Landlord, at least ten (10) days prior to the Rent Commencement Date and thereafter thirty (30) days prior to the expiration of any such policies, certificates of insurance to evidence insurance procured by Tenant as required hereunder. All commercial general liability insurance, property damage or other casualty policies shall be written as primary policies, not contributory with or secondary to coverage that Landlord may carry. If, at any time during the Term, Tenant fails to obtain and maintain any insurance which Tenant is required to obtain and maintain under this Lease or to timely provide Landlord with certificates of insurance, Landlord shall have the right (but not the obligation) to procure such insurance and Tenant shall pay to Landlord, promptly on demand, the costs and expenses thereof together with interest at the Agreed Rate from the date Landlord first made any expenditures therefor. Tenant shall deliver (or cause its insurance carrier to deliver) to Landlord a certified copy of any insurance policy maintained by Tenant hereunder in connection with any applicable Claim within twenty (20) days after Landlord's written request therefor. All insurance policies required to be carried by Tenant hereunder shall insure Tenant's performance of the indemnity provisions of this Lease, but the amount of insurance shall not limit Tenant's liability or relieve Tenant of any obligation hereunder.

8.3. **Landlord's Insurance.** Landlord shall obtain and maintain throughout the Term property insurance that shall include the Premises, other premises and the Center (excluding Improvements and Personal Property from time-to-time located on the Premises and the premises of all Occupants) insuring against risks of direct physical loss or damage written by insurance companies licensed to do business in the state of California (or such other state in which Landlord's principal business office is located), together with such other insurance, and in such amounts, covering such other risks as Landlord may from time-to-time determine in its reasonable judgment, including, without limitation (if Landlord so elects), Commercial General Liability insurance and insurance against earthquake, flood and rental loss. Any insurance procured by Landlord under this Section 8.3 may be included in a policy or policies of blanket insurance covering additional items or locations or insureds, provided that the requirements of this Section 8.3 are otherwise satisfied.

## 9. UTILITIES

9.1. **Utilities.** Throughout the Term, Tenant shall be solely responsible for obtaining, and shall promptly pay all charges for use and consumption of, all Utilities furnished to the Premises. Landlord may (at its election) supply some or all of the Utilities to the Premises, and, so long as Landlord continues to provide such Utilities to the Premises, Tenant agrees to purchase such Utilities from Landlord and pay Landlord for such Utilities, Tenant's share thereof (based on Landlord's engineer's calculations of such share or such other reasonable measuring methodologies as Landlord may utilize from time-to-time); provided the rate shall be no more than the rate that would be charged to Tenant, from time to time, by the local utility company which otherwise would furnish such Utilities to the Premises if it provided such Utilities and metered the same directly to the Premises. Landlord may also charge Tenant: (a) an administrative charge of ten percent (10%) on any Utilities Tenant receives from Landlord, and (b) a pro rata share of the costs and expenses of operating, maintaining, repairing, installing and servicing the Utility Facilities at the Center (including any depreciation, reserves and interest costs). Tenant shall promptly provide Landlord, upon Landlord's written request therefor, such details as Landlord or its engineer may reasonably require to calculate amounts which are payable by Tenant pursuant to this Article 9. Landlord may also require Tenant, at Tenant's sole cost, to install, maintain and replace meter(s) or submeter(s) (as applicable) to measure consumption of Utilities at the Premises. Landlord shall have the right to designate alternate third party provider(s) to provide any of the foregoing Utilities to the Premises. Landlord shall notify Tenant from time-to-time of the monthly installments payable by Tenant pursuant to this Article 9 and Tenant shall pay such monthly installments on the first day of each month (except for the first installment which shall be paid on the Rent Commencement Date).

9.2. **Interruption of Services.** Landlord shall not be in default and neither Landlord nor the Landlord Parties shall be liable for any damages directly or indirectly resulting from an interruption in any of the Utilities, the quality or quantity of the Utilities, the unavailability of any of the Utilities, or from cooperating with the energy conservation efforts of governmental agencies or utility suppliers and none of the preceding shall (a) constitute an eviction or disturbance of Tenant's use and possession of the Premises, (b) constitute a termination of this Lease, (c) entitle Tenant to an abatement of any Rent or (d) relieve Tenant from performing any of its obligations under this Lease. If (i) there is an interruption in any of the Utilities due to the negligence or willful misconduct of Landlord or the Landlord Parties ("Utility Interruption") and (ii) the Utility Interruption materially and adversely interferes with Tenant's use and occupancy of the Premises such that Tenant cannot reasonably conduct business upon the Premises and (iii) Tenant does not use the Premises during the period of the Utility Interruption and (iv) Tenant has notified Landlord in writing of the Utility Interruption ("Utility Interruption Notice"), then if the Utility Interruption continues for three (3) consecutive days following the date Landlord receives the Utility Interruption Notice, Fixed Minimum Rent and Tenant's Share of Costs shall be abated until the earlier of the date the Utility Interruption ceases or Tenant conducts any business upon the Premises.

## 10. USE AND OPERATION

10.1. **Permitted Use.** Tenant shall use the Premises (a) only for the Permitted Use and for no other use or purpose and (b) solely and specifically under the Trade Name and under no other trade

name; provided, however, that Tenant shall have the right to change the Trade Name provided that; (i) said name includes "GNC" and/or "General Nutrition Center" and (c) to store or stock only the merchandise which Tenant is permitted to sell at retail pursuant to this Lease and no other merchandise. Nothing herein shall be deemed to grant to Tenant an exclusive or preferential right to the Permitted Use in the Center.

**10.2. Prohibited and Restricted Uses.** Tenant shall do none of the following: (a) permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate of, or affect any, fire or other insurance upon the Premises or the Center or cause a cancellation of any insurance policy covering the Premises or the Center or any part thereof or any of its contents; (b) permit anything to be done in or about the Premises or bring or keep anything therein that may cause any deleterious or harmful substance including, without limitation, mold or fungus, to exist in, on, under or about the Premises or elsewhere in the Center, (c) obstruct or interfere with the rights of Occupants or injure or annoy them; (d) use any loudspeakers, phonographs, televisions or other devices of similar nature in such manner as to be heard or viewed outside of the Premises; (e) emit any noise, odors, fumes or smoke; (f) use the Premises for any improper, unethical, immoral, unlawful, pornographic or other similarly objectionable or offensive purpose; (g) conduct or permit in the Premises any fire, bankruptcy, auction, "closeout", "going out of business" or similar sale; (h) use any part of the Center (other than the inside of the Premises) for the sale, display or storage of any merchandise or for the solicitation of customers or for any other business, occupation or undertaking; (i) install or use upon the Premises or the Center any coin- or token-operated vending machine or other coin- or token-operated device (specifically excluding the three (3) coin operated health diagnostic machines permitted pursuant to Section 1.11) for the sale of any goods, wares, merchandise, food, beverages and/or services (including, but not limited to, pay-telephones within the sales area of the Premises, pay-lockers, pay-toilets, scales, amusement devices, slot machines and other gambling devices and machines for the sale of beverages, foods, candy, cigarettes or other commodities); (j) install or use an automated teller machine or other cash or credit dispensing machines; (k) use any portion of the Premises as living quarters, sleeping quarters or for lodging purposes; (l) keep or place any Personal Property or other obstruction in any part of the Common Area; (m) install or operate any device, equipment or facility for transmitting, receiving, relaying or amplifying communications signals used or operated as a part of a telecommunications network or global positioning system, or otherwise emitting or receiving signals, frequencies, video, data or voice communications, including, without limitation, any dish, panel, antenna, satellite or cellular communications equipment, amplifiers, microcells, picocells or other similar devices or equipment which transmit or receive signals into or from the Common Area more than an eight foot (8') radius from the Premises or which otherwise interfere with the operation of any other transmission or receiving device at the Center; (n) operate any sales reporting, credit verification or such other similar electronic devices through the use of Landlord's public wireless fidelity (Wi-Fi) network; and (o) display, sell or promote cigarettes, electronic cigarettes, MOD's, atomizers or any other supplies, accessories or devices used in connection with cigarettes, electronic cigarettes, vaporizers, atomizers, herbal vaporizers, e-liquids or any products constituting a technological evolution thereof for vaping.. The Premises shall be kept in a clean condition, and all health and police regulations shall, in all respects and at all times, be fully complied with by Tenant. Tenant shall not commit or allow to be committed any waste upon the Premises.

**10.3. Days and Hours of Operation.**

**10.3.1. Days and Hours of Operation.** Tenant shall operate for the Permitted Use diligently and efficiently, keep in stock a sufficient line of merchandise and maintain an adequate sales force so as to maximize Gross Sales and shall keep display windows, exterior signs and exterior advertising adequately illuminated, continuously from and after the Rent Commencement Date throughout the remainder of the Term, during the Center Hours. Notwithstanding the foregoing to the contrary, Tenant shall only be required to open for business during those hours that at least seventy percent (70%) of the total number of Occupants, excluding Major Occupants, are obligated to be open for business; provided, however, this provision shall affect only the hours during which

Tenant is required to operate, and shall not be deemed to give Tenant the right to close for business for any full day (and Tenant acknowledges that Tenant is obligated to continuously operate in the Premises, except as otherwise specifically set forth in this Lease). Tenant acknowledges that its failure to comply with this Section 10.3 will cause Landlord to suffer damages which will be difficult to ascertain and that the following sum payable by Tenant under this Section 10.3 represents a fair estimate of such damages. Therefore, if Tenant fails to comply with the provisions of this Section 10.3, then in addition to Landlord's other remedies under this Lease, Landlord shall have the right to collect from Tenant, in addition to the other Rent, a sum equal to one hundred fifty percent (150%) of the Fixed Minimum Rent (prorated on a daily basis) for each such full or partial day Tenant fails to comply with the provisions of this Section 10.3. In no event shall Tenant be permitted to open and operate the Premises for business to the public before or after Center Hours without Landlord's prior written consent.

10.3.2. ***Intentionally Omitted for this Lease at Green Acres Commons.***

10.4. **Radius.** Intentionally Omitted.

## **11. SIGNS**

11.1. **Tenant's Signs.** Tenant shall, at its sole cost and expense, obtain all necessary licenses and permits for, and purchase, install, maintain, operate, repair and replace, as necessary, all of Tenant's signs (including the Storefront Sign). All Tenant's signs (including the Storefront Sign) shall (a) comply with all Governmental Regulations and the Rules and shall have received the prior written approval of Landlord and, if required, of governmental authorities and (b) comply with the provisions of this Lease (including the Tenant Package). The removal of all Tenant's signs (including the Storefront Sign) and all work associated with such removal, including without limitation the cost of restoring the storefront due to such removal prior to the Expiry Date or date of earlier termination of this Lease, shall be undertaken by, and at the sole cost and expense of, Tenant. All Tenant's signs (including the Storefront Sign) shall at all times be maintained in working, first-class condition. Notwithstanding anything contained within this Section 11.1, so long as the Tenant is the tenant entity named in the first paragraph at the top of page 1 of this Lease or a Transferee permitted pursuant to Section 14.13, Tenant may, without Landlord's written consent, place signs within the Premises that are visible to public view from the Common Area providing said signs are professionally prepared and similar to signs Tenant places in a majority of its stores.

## **12. REPAIRS, MAINTENANCE, IMPROVEMENTS AND COMPLIANCE WITH LAW**

### **12.1. Repairs and Maintenance**

12.1.1. **Landlord's Obligations.** Landlord shall maintain in good order, condition and repair the exterior structural walls, load bearing walls, the outside face of the exterior walls, foundations, exterior roofs and all Utility Facilities serving the Premises on a non-exclusive basis (except to the extent that the applicable utility provider is responsible for the repair and maintenance of any such Utility Facilities). Landlord shall be under no obligation to maintain, repair or replace any portion of the Premises (except as otherwise expressly set forth in this Section 12.1.1), nor shall Landlord be liable for any failure to make any such repairs or to perform any maintenance required of Landlord hereunder unless Tenant has notified Landlord, in writing, of the need of such repairs or maintenance, and such failure shall then persist for an unreasonable period of time after such written notice. Landlord agrees that it shall use reasonable efforts to perform any repairs it is required or permitted to perform under this Section 12.1.1 in such manner and at such times as to not unreasonably disturb Tenant's business operations, except in the case of an emergency. In the event such work is performed by Landlord and said work renders the Premises untenable for a period of at least two (2) complete and consecutive days thereafter, then commencing on the third (3rd) such day, Fixed Minimum Rent shall be abated proportionately with the degree in which the Tenant's use of the Premises is impaired and such abatement shall continue during the period in which Tenant is unable to operate its business in the Premises as a result of such work.

12.1.2. **Tenant's Obligations.** Tenant shall at all times during the Term, and at its sole cost and expense, maintain, keep and repair the Premises in good order, condition and repair. Such obligations of Tenant shall include, without limitation, the maintenance, repair and replacement of interior surfaces of exterior and demising walls, exterior doors and entrances, locks and closing devices, all plate glass, frames, moldings and trim of all doors and windows, all partitions, door surfaces, floor covering, fixtures, equipment and appurtenances thereof, lighting, plumbing fixtures (including any grease traps, grease lines and piping exclusively serving the Premises), toilet facilities and fixtures, windows, window sashes, showcases, storefronts, security grilles and similar enclosures, all of Tenant's signs (including the Storefront Sign) and any HVAC exclusively serving the Premises (provided that maintenance work regarding parts of the HVAC or plumbing systems which protrude outside of the Premises shall be completed by a contractor selected by Landlord, as a Reimbursed Cost). Tenant shall promptly, at its sole cost and expense, comply, and cause the Premises to comply, with all Governmental Regulations affecting the Premises and Tenant's activities in the Center. Notwithstanding anything to the contrary contained in this Lease (including Section 12.1.1), all alterations, demolitions and improvements (whether structural or non-structural, interior or exterior) required by any Governmental Regulations arising from Tenant's use or occupancy of the Premises, Tenant's conduct of business upon the Premises, Tenant's obligations as an employer and/or the construction, installation or placement of any Improvements or Personal Property upon the Premises shall be undertaken by Tenant, at Tenant's sole cost and expense, if upon the Premises, and by Landlord as a Reimbursed Cost, if elsewhere in the Center.

12.2. **Refurbishment.** Tenant shall maintain the Premises in a first class condition.

12.3. **Improvements.** Tenant shall make no Improvements without Landlord's express, prior written consent in each instance. Notwithstanding anything contained in this Section 12.3 to the contrary, upon thirty (30) days' prior written notice to Landlord, Tenant shall be permitted to replace existing shelving and display units within the Premises and install new floor coverings and re-paint the Premises as Tenant may find necessary or convenient for its purposes ("Cosmetic Remodel") without Landlord's consent in the first (1st) such instance; provided, however, such Cosmetic Remodel is (a) not performed in connection with a Refurbishment, (b) not performed prior to the expiration of the two (2)-year period immediately following any Refurbishment and (c) performed in accordance with the provisions of this Section 12.3 and Exhibit C. All Improvements shall be performed by Tenant (at its sole cost and expense) in such a manner as to not impede access to the premises of any other Occupant or of any part of the Common Area, and in a good and workman-like manner, with diligence, using materials of at least the same specifications, grade and quality as required pursuant to the Tenant Package. All Improvements shall be (a) performed under the supervision of a licensed architect and/or licensed structural engineer retained and compensated by Tenant, as shall be appropriate for such work, (b) in strict conformance with detailed drawings which have received the prior, written approval of Landlord, and (c) in strict conformance with Exhibit C, the Tenant Package and with all Governmental Regulations. Upon Landlord's receipt of Tenant's proposed plans in connection with any Improvements, Landlord shall review and, in writing to Tenant, either approve, or disapprove with reasonable detail, said plans. Prior to commencing any Improvements, Tenant shall deliver to Landlord a copy of the building permit with respect thereto, if the same is required by any Governmental Regulations in connection with any such Improvements.

12.3.1. **Non-Structural Alterations.** Notwithstanding anything contained in Section 12.3 to the contrary, provided (a) Tenant's Improvements are non-structural and do not change or otherwise affect Tenant's storefront, the Building or the Building systems (which systems shall include, without limitation, water, gas, heat, electricity, steam, chilled water, hot water, lighting, power, HVAC, telephone service, sewer service, fire/life safety and all other systems and services made available for the general use, convenience and/or benefit of more than one [1] Occupant of the Building), (b) the cost of such Improvements does not exceed a total of \$15,000.00, (c) the Improvements comply with Governmental Regulations, (d) Tenant has obtained the necessary permits and governmental approvals for the Improvements and (e) Tenant provides Landlord written



notice no less than ten (10) days prior to undertaking the Improvements, then Tenant may perform such Improvements without Landlord's consent and without submitting plans for such. Improvements as otherwise required by Section 12.3 and Exhibit C; however, such Improvements shall be undertaken subject to the other provisions set forth in Section 12.3.

12.4. **Liens.** Tenant shall keep the Premises, the Building and the Center free from any liens and other claims arising out of work performed, materials furnished, or obligations incurred by or on behalf of Tenant. Tenant shall give Landlord at least ten (10) business days' prior written notice of the expected date of commencement of any work to be performed by or on behalf of Tenant except for Tenant's Work required to be completed as set forth in this Lease. Landlord shall have the right at all times to keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Premises, the Center and any other party having any interest therein, against mechanics' and materialmen's liens. If, as a result of any work performed or materials furnished or obligations incurred for the benefit of the Premises, any claim of lien is filed against the Premises or any part of the Center or any similar action affecting title to such property is commenced, the party receiving notice of such lien or action shall immediately give the other party written notice thereof. If Tenant fails, within twenty (20) days following the imposition of any lien or the filing of a lawsuit seeking foreclosure of such lien, to cause such lien to be released of record by payment or by recording of a proper statutory discharge of lien bond, Landlord shall have, in addition to all other remedies provided herein and at law, the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums expended by Landlord and all costs and expenses incurred by Landlord in connection therewith (including reasonable attorneys' fees), together with interest at the Agreed Rate from the date expenditure is first made by Landlord, shall be payable to Landlord by Tenant within ten (10) days after Landlord's written demand to Tenant.

### 13. SURRENDER OF PREMISES

13.1. **Surrender.** Prior to the Expiry Date or date of earlier termination of this Lease, Tenant shall perform all of the following (collectively, "Surrender Obligations") at its sole cost and expense: (a) remove all of its Personal Property, exclusive of Attached Fixtures, from the Premises and the Center, (b) restore the Premises to the condition in which the Premises existed prior to installing such Personal Property to the extent the Premises were altered or in any manner modified to accommodate the same, and (c) repair all damage caused by or in connection with Tenant's performance of the Surrender Obligations (including without limitation thereto, repairing the floor and patching and painting the walls if damaged beyond ordinary wear and tear, and leaving the Premises in a clean and rentable condition). Upon the Expiry Date or date of earlier termination of this Lease, Tenant shall surrender to Landlord the Premises, broom-clean and in good condition, except for ordinary wear and tear and destruction to the Premises pursuant to Article 23, to the extent Tenant is not required to restore the same pursuant to Article 23. If Tenant's performance of the Surrender Obligations would damage or otherwise affect the Building structure, Tenant shall give Landlord prior written notice thereof and Landlord may elect to perform selected Surrender Obligations as a Reimbursed Cost.

13.2. **Improvements and Personal Property.** Landlord may dispose of any Personal Property remaining on the Premises after the Expiry Date or date of earlier termination of this Lease in accordance with applicable statutes relating to the disposition of abandoned property. If no such statutes exist, Landlord may retain or dispose of such Personal Property and title to any such Personal Property which Landlord elects to retain shall vest in Landlord. Tenant waives all claims against Landlord for any damage or loss to Tenant arising out of Landlord's retention or disposition of any such Personal Property as provided for in this Article 13 and shall be liable to Landlord for Landlord's costs of removing, storing, and disposing of any such Personal Property which Tenant fails to remove from the Premises prior to the Expiry Date or date of earlier termination of this Lease, as well as all costs of restoring the Premises required as a result of removing such Personal Property. All Improvements (including any Attached Fixtures) shall become the property of Landlord upon the Expiry Date or date of earlier termination of this Lease.

13.3. **Holding Over.** If Tenant holds over after the Expiry Date or date of earlier termination of this Lease without the express written approval by Landlord, (a) such tenancy shall be at sufferance only and not a renewal of this Lease or an extension of the Term, (b) monthly installments of Fixed Minimum Rent, Percentage Rent and Additional Rent shall be payable in an amount equal to two (2) times the Fixed Minimum Rent, Percentage Rent and Additional Rent in effect as of the last full calendar month of the Term (not taking into consideration any Rent abatement to which Tenant might have been entitled for such month), and each shall be due and payable at the times specified therefor in this Lease and (c) such tenancy shall be subject to every other term, covenant and agreement contained herein other than any provisions for rent concessions, Landlord's Work, or optional rights of Tenant requiring Tenant to exercise the same by written notice (such as any options to extend the Term). Nothing contained in this Section 13.3 shall be construed as consent by Landlord to any holding over by Tenant (or limit any of Landlord's rights and remedies incident to a holding over under this Lease, at law or in equity), and nothing in this Section 13.3 shall affect Landlord's right to require Tenant to perform all obligations under this Article 13 and surrender possession of the Premises to Landlord as provided in this Lease upon the Expiry Date or date of earlier termination of this Lease or at any time subsequent thereto as Landlord shall specify. Notwithstanding anything contained in this Section 13.3 to the contrary, in the event Landlord and Tenant are engaged in active, good-faith negotiations to enter into a new lease for the Premises after the Expiry Date and the Fixed Minimum Rent which will be payable under the new lease has been agreed upon in writing by Landlord and Tenant, Tenant shall be permitted to retain possession of the Premises after the Expiry Date, and Tenant shall pay to Landlord, in lieu of the adjusted Rent set forth hereinabove, such negotiated and agreed-upon Fixed Minimum Rent plus all Additional Rent payable in accordance with the terms of this Lease. At such time as the new lease is executed, the terms of said new lease shall be applied retroactively to commence concurrently with the expiration of the Term. In the event the new lease is not fully executed prior to the earlier to occur of (a) the date which is the sixtieth (60th) day immediately following the Expiry Date or (b) the date which is the third (3rd) day immediately following the date Landlord has delivered written notice to Tenant that Landlord has elected to cease negotiations with Tenant, the foregoing provisions of this paragraph shall be of no further force and effect, and Tenant shall thereafter pay the adjusted Rent set forth hereinabove, as well as any outstanding Rent pursuant to the provisions of this paragraph; and, further, Landlord shall be entitled to exercise any and all available remedies with respect to Tenant's failure to perform its Surrender Obligations.

13.4. **No Merger on Surrender of Lease.** The voluntary or other surrender of this Lease by Tenant, or a mutual termination thereof, shall not work as a merger. Such surrender or termination shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies. The delivery of keys to the Premises to Landlord or its agent and/or the taking of physical possession of the Premises by Landlord shall not constitute a surrender or termination of this Lease absent Landlord's written agreement that this Lease has been so surrendered or terminated.

#### 14. ASSIGNMENT AND SUBLETTING

14.1. **Prohibited Transactions.** Tenant is prohibited from (a) Assigning this Lease or Subletting the Premises to a governmental agency or instrumentality thereof and/or (b) mortgaging, pledging or encumbering this Lease or Tenant's interest in the Premises to any entity and/or (c) making any Involuntary Assignment.

14.2. **Landlord's Consent Required.** Except for Transfers pursuant to Sections 14.13 and 14.14 Tenant shall not effect a Transfer, by operation of law or otherwise, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld (subject to the provisions of this Article 14). Any attempt by Tenant to effect a Transfer without such consent of Landlord shall be voidable by Landlord and, at Landlord's election, shall constitute an incurable default under this Lease.

14.3. **Tenant's Application.** If Tenant desires to effect a Transfer, Tenant shall submit in writing to Landlord at least forty-five (45) days prior to the proposed effective date of the Transfer a notice

of intent to Transfer ("Request to Transfer"). Each Request to Transfer must contain, or be accompanied with, each of the following: (a) the name of the proposed Transferee and, if not a natural person, details of the legal and beneficial ownership structure of Transferee, (b) a statement of the nature of the Transfer (e.g., a sublease, assignment or concession agreement) and of any related transactions (e.g., details of any sale of the business, details of a merger and copies of operative documents involved in the related transactions), (c) a detailed description of the proposed Transferee's business to be conducted upon the Premises, (d) details of the terms and provisions of the proposed Transfer and the Proposed Transfer Date (which shall be no later than ninety [90] days after Landlord's receipt of the Request to Transfer), (e) a current, audited financial statement for the proposed Transferee, (f) statements of income or profit and loss of the proposed Transferee for a period of no less than three (3) years prior to the date Landlord receives the Request to Transfer, (g) reasonable, written history and details of the proposed Transferee's previous business experience, (h) if the Transfer is a Subletting, a conformed copy of the final, proposed Subletting instrument(s), together with a statement by Tenant and Transferee that such instrument(s) is/are true copies of instrument(s) which the parties intend to execute and (i) the Review Fee. If the foregoing information is not sufficient, in Landlord's judgment, for Landlord to determine which of Landlord's rights to exercise under this Article 14, Landlord shall promptly request, and Tenant shall promptly furnish to Landlord, other and/or additional pertinent and reasonable information concerning the proposed Transfer and the proposed Transferee as Landlord shall require to make such determination.

**14.4. Standards for Approval and Disapproval.** In determining whether to grant or withhold its consent to a proposed Transfer, Landlord may consider any reasonable factor. Without limiting the conditions that may be construed as a reasonable factor, it is deemed reasonable that Tenant demonstrate to Landlord's reasonable satisfaction each of the following: (a) the proposed Transferee has sufficient financial worth to fully and timely discharge all of the then remaining obligations of Tenant under this Lease, (b) the proposed Transferee is of sound business reputation, (c) the use of the Premises by the proposed Transferee will be the Permitted Use, (d) the proposed Transferee is likely to maintain the same levels and increases in Percentage Rent as Tenant is anticipated to generate during the remaining Term of this Lease, (e) the proposed Transferee has sufficient retail experience to successfully undertake its business at the Premises, (f) the proposed Transferee does not occupy premises in the Center, (g) the proposed Transferee has not delivered a letter of intent to Landlord or Landlord's agent to lease space in the Center and (h) the proposed Transferee is not actively negotiating with Landlord or Landlord's agent to lease space in the Center. Furthermore, if Tenant is then in default of any obligation of Tenant under this Lease, it shall be reasonable for Landlord to elect, in its sole discretion, to deny its consent to such proposed Transfer so long as such default exists. Notwithstanding anything to the contrary contained in this Lease, if Tenant or any proposed Transferee claims that Landlord has unreasonably withheld or delayed its consent under this Article 14 or otherwise has breached or acted unreasonably under this Article 14, their sole remedies shall be a declaratory judgment and an injunction for the relief sought without any monetary damages, and Tenant hereby waives all other remedies, including, without limitation, any right at law or in equity to terminate this Lease, on its own behalf and, to the extent permitted under all applicable laws, on behalf of the proposed Transferee.

**14.5. Landlord's Notification to Tenant**

**14.5.1. Notification to Tenant.** Within thirty (30) days after Landlord's receipt of the Request to Transfer and all of the information required pursuant to Section 14.3, Landlord shall notify Tenant in writing that Landlord has elected to (a) terminate this Lease pursuant to Section 14.5.2 ("Notice of Transfer Termination"), or (b) consent to such proposed Transfer (subject to the provisions hereof), or (c) withhold consent to such proposed Transfer.

**14.5.2. Termination.** If Landlord delivers the Notice of Transfer Termination to Tenant, then (a) this Lease shall terminate upon the Proposed Transfer Date and (b) upon the Proposed Transfer Date, provided Tenant has performed all Surrender Obligations, Tenant shall be released from all further obligations accruing under this Lease from and after the Proposed Transfer Date. Landlord may lease the Premises, or any portion thereof, to the prospective Transferee without liability to Tenant.

14.5.3. **Consent.** If Landlord consents to a proposed Transfer, Landlord may, in its sole discretion and notwithstanding any contrary provision contained in this Lease, make such consent contingent upon increasing the Fixed Minimum Rent (and increases thereto, if any, as specified in this Lease) effective as of the Proposed Transfer Date by an amount equal to the highest annual Percentage Rent payable by Tenant during the Term.

14.6. **Required Subletting Instrument and Assignment Instrument Provisions.** Each and every Transfer shall be documented by an Assignment instrument or a Subletting instrument, as the case may be, and a true copy of the same executed by the parties thereto shall be delivered to Landlord prior to the Proposed Transfer Date. Each and every Assignment instrument and Subletting instrument shall contain such terms and conditions as are described in the Request to Transfer and be expressly subject and subordinate to each and every provision contained in this Lease. Each Transferee shall expressly assume in writing for the benefit of Landlord the obligations of Tenant under this Lease and shall be liable jointly and severally with Tenant for the payment of the Rent and the performance of all the terms, covenants, conditions and agreements herein contained on Tenant's part to be performed for the Term. If Landlord approves the proposed Transfer, Landlord shall prepare and deliver to Tenant, for execution by Tenant and the proposed Transferee, counterparts of Landlord's reasonable and customary assignment instrument, in the case of an Assignment, or consent instrument, in the case of a Subletting, and Tenant shall have thirty (30) days to cause the same to be executed, without modification, by both Tenant and the proposed Transferee and delivered to Landlord, together with all required attachments thereto.

14.7. **Tenant's Duty to Subtenant.** Landlord shall have no obligation whatsoever to perform any duty to or respond to any request from any Subtenant. Tenant shall have the obligation of administering the terms of all Subletting instrument(s).

14.8. **No Release of Tenant.** No Transfer shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent or Transfer, including Tenant's obligation to obtain Landlord's express prior written consent to any other Transfer (which right of consent shall not negate or waive any provision contained in this Article 14).

14.9. **Assignment of Rents and Attornment.** Except for Transfers pursuant to Section 14.13, Tenant immediately and irrevocably assigns to Landlord, as security for Tenant's obligations under this Lease, all rent from any Subletting of all or any part of the Premises, and Landlord, as assignee for Tenant for purposes hereof or a receiver for Tenant appointed on Landlord's application, may collect such rents and apply the same toward Tenant's obligations under this Lease; except that, until the occurrence of an act of default by Tenant, Tenant shall have the right and license to collect such rents. In the event of termination, re-entry, or dispossession of Tenant by Landlord under this Lease, Landlord may, at its sole discretion by express written notice to Tenant or the Transferee or both, take over all of the right, title and interest of Tenant as sublessor under any Subletting instrument, and such Transferee shall, at Landlord's sole discretion, attorn to Landlord, except that Landlord shall not be (a) liable for any previous act or omission of Tenant under the Subletting instrument, (b) subject to any offset that theretofore accrued to the Transferee against Tenant, (c) bound by any previous modification of the Subletting instrument not expressly consented to in writing by Landlord and (d) bound by any previous prepayment of Rent or Security Deposit which has not been expressly delivered by Tenant to Landlord.

14.10. **Additional Consideration Upon a Transfer.** Except for Transfers pursuant to Section 14.13, in the event of an Assignment, each month one-half (½) of any consideration paid to Tenant by any Transferee during such month for such Assignment shall be paid to Landlord. In the event of a Subletting, each month one-half (½) of any consideration paid to Tenant by any Transferee during such month for any portion of Tenant's interest in this Lease shall be paid to Landlord to the extent the full amount of such consideration (i.e., before being divided between Landlord and Tenant) exceeds the percentage (equal to the percentage of the Floor Area of the Premises being Sublet) of Tenant's Rent obligations hereunder during such month.

14.11. **Review Fee.** Simultaneously with the delivery to Landlord of the Request to Transfer, and except for transfers pursuant to Section 14.13 or Section 14.14, Tenant shall pay to Landlord a fee in

the amount of Five Hundred Dollars (\$500.00) ("Review Fee") for Landlord's review of each such transaction.

**14.12. Corporate and Partnership Transfers.** If Tenant is a privately-held corporation, or is an unincorporated association, limited liability company or partnership, the cumulative or aggregate transfer, assignment or hypothecation of twenty-five percent (25%) or more of the total stock, or the legal or beneficial interest, in such corporation, association, company or partnership, whether in a single transaction or a series of related or unrelated transactions, and whether on a direct or indirect basis, shall be deemed a Transfer.

**14.13. Inter-Corporate Transfers.** Notwithstanding anything contained in this Article 14 to the contrary, provided Tenant is the tenant entity named in the first paragraph at page 1 of this Lease, and is not in default under this Lease Landlord's consent shall not be required for Transfers to a corporation (a) into or with which Tenant is merged or consolidated, (b) to which substantially all of Tenant's assets are transferred or (c) that Controls, is Controlled by, or is under common Control with Tenant, provided that, in any of such events, each and every one of the following has been satisfied:

14.13.1. The successor of Tenant has a tangible net worth and working capital, computed in accordance with generally accepted accounting principles, equal to or greater than Tenant's net worth and working capital as of the Effective Date. Proof reasonably satisfactory to Landlord of such net worth shall be delivered to Landlord within ten (10) days of the effective date of such transaction.

14.13.2. Any such Transfer shall be subject to all of the terms and provisions of this Lease (including, without limitation, the Permitted Use), and such Transferee shall assume, in a written document reasonably satisfactory to Landlord and delivered to Landlord prior to the effective date of such Transfer, all the obligations of Tenant under this Lease.

14.13.3. Tenant shall remain fully liable for all obligations to be performed by Tenant under this Lease (if applicable).

14.13.4. Tenant shall notify Landlord in writing within ten (10) days of the effective date of such transaction by providing Landlord with the name of such resulting entity and such other details as Landlord may reasonably request.

14.13.5. Such Transfer is not a subterfuge by Tenant to avoid its obligations under this Lease.

**14.14. Additional Permitted Transfers.** Notwithstanding anything to the contrary contained in this Article 14, provided Tenant is the tenant entity named in the first paragraph at page 1 of this Lease, and is not in default under this Lease, Tenant shall have the right to sublease the Premises to a Bona Fide Franchisee (as defined herein) subject to the following conditions: (1) Tenant shall give Landlord written notice within ten (10) days of the effective date along with all documentation necessary to verify the conditions required by this Section 14.14; (2) Tenant shall remain fully liable during the remainder of the Term; (3) any such sublease shall be subject to the terms, covenants and conditions of this Lease and any sublessee shall expressly assume the obligations of Tenant under this Lease in a document prepared by Landlord; and (4) the use of the Premises shall be restricted to the Permitted Use permitted in Section 1.11. The term "Bona Fide Franchisee" shall be defined as a franchisee of General Nutrition Corporation in accordance with a bona fide and legally valid franchising program established by General Nutrition Corporation providing adequate and ongoing training, supervision, and control over its franchisees. Furthermore, any sublease with a Bona Fide Franchisee shall be subject to the following additional conditions: (i) Tenant shall retain a reversionary interest in the Lease; (ii) the sublease shall be subordinate to the Lease; and (iii) the sublessee shall have been qualified by General Nutrition Corporation as having a net worth and business experience necessary, according to commercially reasonable judgment, to operate a successful business in the manner and quality permitted under this Lease.

## **15. TRANSFER OF LANDLORD'S INTEREST**

15.1. **Transfer of Landlord's Interest.** Landlord shall have the right to sell or transfer its ownership of all or any part of the Center to one or more third parties. If Landlord sells or transfers its interest in the Premises (other than a transfer for security purposes), (a) Landlord shall be released from all obligations and liabilities accruing thereafter under this Lease and Landlord's successor shall be deemed to have assumed Landlord's obligations thereafter accruing under this Lease and (b) Tenant agrees to attorn to the purchaser or assignee, provided such purchaser or assignee accepts the Premises subject to this Lease.

## **16. COMMON AREA**

16.1. **Common Area.** During the Term, Tenant and the Tenant Parties shall have the non-exclusive right in common with Landlord and all others to whom Landlord has or shall give the same or similar rights, to use the Common Area for its intended purposes subject to (a) the right of Landlord, Occupants and their respective invitees, customers, agents, employees and independent contractors to use the Common Area, (b) any Superior Agreements, and (c) each provision of this Lease. Landlord shall, or shall cause others to, operate, repair, equip and maintain the Common Area in a manner deemed by Landlord in its business judgment to be reasonable and appropriate. The Common Area shall be subject to the exclusive control and management of Landlord. Landlord may, from time-to-time, impose parking charges at the Center.

## **17. LANDLORD'S RESERVATION OF RIGHTS**

17.1. **Reservation of Rights.** Landlord reserves the right, at any time, and from time-to-time to: (a) expand, reduce, remove, demolish, change, renovate or construct any existing or new improvements at the Center, and (b) expand, reduce or otherwise change the size, configuration or boundaries of the Center. Landlord shall have complete and exclusive control of the design, structure, construction, materials, colors, architectural elements and aesthetics of all improvements and Common Area at the Center, as well as all activities undertaken by Landlord and other Occupants in connection therewith. This Lease does not grant any rights to light or air over or about the Center. Landlord reserves exclusively to itself the use of all of the following: (i) roofs and exterior walls, (ii) telephone, electrical, utility, communication and janitorial closets, (iii) equipment rooms, building risers or similar areas that are used by Landlord for the provision of services, (iv) portions of the Premises for the repair, maintenance and replacement of machinery, pipes, conduits, utility lines and the like serving other Occupants and/or the Center in a manner and in locations which do not unreasonably interfere with Tenant's use of the Premises, and (v) the areas beneath, adjacent to and above the Premises (including the plenum within the Premises).

17.2. **Changes to the Center.** Landlord shall have the right and privilege at all times of determining the nature and extent of the Common Area and the Center and of making such changes, rearrangements, additions and reductions therein from time-to-time as Landlord deems desirable, including, without limitation, the location, relocation, enlargement, reduction, addition and/or elimination of driveways, malls, entrances and exits, automobile parking spaces, employee and customer parking areas, buildings and other structures, the direction and flow of traffic, establishment of protected areas, landscaped areas and any and all other facilities of the Common Area, the right at any time to locate on the Common Area permanent and/or temporary RMUs, and/or other building(s) and/or other improvements of any type and the right at any time to enclose or un-enclose any portions of the Common Area and/or Mall. Landlord reserves the right to utilize portions of the Common Area, from time-to-time, for shows, rides, entertainments, displays, advertising, educational purposes, demonstrations, civic and charitable functions and other uses which, in Landlord's judgment, may attract the public to the Center or create goodwill, community interest or other beneficial interest with respect to the Center. Landlord shall have the right to convert Common Area to leasable space and to convert leasable space to Common Area, from time-to-time. Landlord shall have the right (a) to close, if necessary, all or any portion of the Common Area to such extent as may be reasonably necessary to prevent a dedication thereof or the accrual of any rights of any person or of the public therein, (b) to close temporarily all or any portion of the

Common Area to discourage non-customer use, (c) to use portions of the Common Area while engaged in making additional improvements, repairs or alterations to the Center, (d) to transfer, in whole or in part, any of Landlord's rights and/or obligations under Article 16 to any Occupant or to any other party as Landlord may from time-to-time determine and (e) to do and perform such other acts in, to and with respect to, the Common Area as Landlord shall determine, in its business judgment, to be appropriate for the Center. Notwithstanding any contrary provision contained in this Lease, services and facilities may be discontinued, and access to the Premises and the Center restricted, in whole or in part, during such times as the Center is not open for business, and any other times as are necessary for temporary purposes such as repairs, alterations, strikes and other reasonable purposes. Landlord has no obligation to, and has made no representations that it shall, repair, alter, remodel, improve, renovate, decorate, demolish and/or add improvements to the Building or the Center, or any part thereof, and no representations respecting the condition of the Building or the Center have been made by Landlord to Tenant. In the event Landlord exercises its rights pursuant to this Section and such action renders the Premises untenable for a period of at least two (2) complete and consecutive days thereafter, then commencing on the third (3rd) such day, Fixed Minimum Rent shall be abated proportionately with the degree in which the Tenant's use of the Premises is impaired and such abatement shall continue during the period in which Tenant is unable to operate its business in the Premises as a result of such action.

17.3. **Right to Lease.** Subject to the provisions of this Lease, Landlord reserves the absolute right to effect such other tenancies in the Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific occupant or type or number of occupants shall, at any time, occupy any space in the Center. Landlord shall have the full right to lease space in the Center to any person or entity and for any purpose Landlord shall deem appropriate, including retail, office, non-retail, residential, mixed use and commercial purposes.

17.4. **Entry by Landlord.** Landlord and its representatives (including contractors) shall have the right at all reasonable times upon reasonable prior notice to Tenant (and at all times without notice in the event of an emergency), to enter the Premises (a) for any purpose permitted by law, (b) to ascertain if the Premises are in good order, condition and repair, (c) to post notices of nonresponsibility or other notices which Landlord may deem necessary for its protection, (d) to show the Premises to prospective purchasers, mortgagees or ground or underlying lessors (each of which may then also enter the Premises), (e) to perform any obligation required of, or right permitted to, Landlord under this Lease, (f) to take possession of the Premises due to an event of default in the manner provided for in this Lease or (g) to perform environmental assessments. During the twelve (12) months prior to the Expiry Date, Landlord may show the Premises to brokers, prospective tenants and their representatives. Landlord shall use good faith efforts during any entry upon the Premises pursuant to this Section 17.4 not to unreasonably interfere with Tenant's conduct of business. No exercise by Landlord of any rights in this Section 17.4 shall entitle Tenant to any damage for any injury or inconvenience occasioned thereby nor to any abatement of Rent.

17.5. **Relocation**

17.5.1. **Substitute Premises.** Landlord, at its option, may elect by not less than one hundred twenty (120) days' prior written notice to Tenant ("Notice of Relocation"), to substitute for the Premises other retail space in the Center designated by Landlord and acceptable to Tenant ("Substitute Premises"), provided that the Floor Area of the Substitute Premises shall contain no less than ninety percent (90%) or no more than one hundred ten percent (110%) of the Floor Area of the Premises. In no event shall Landlord relocate Tenant hereunder (a) more than one (1) time during the Term, or (b) between November 1 and December 31, or on the first Tuesday of any month, (c) in order to lease the Premises to a tenant of less than 5,000 square feet selling predominately vitamins and health supplies or (d) under the escalator. The Notice of Relocation shall be accompanied by a floor plan, a depiction of the approximate location of the Substitute Premises, and the Floor Area of the Substitute Premises. Tenant shall vacate and surrender the Premises and shall occupy, and open for business in the Substitute Premises promptly (and, in any

event, not later than fifteen [15] days) after Landlord has substantially completed the work to be performed by Landlord in the Substitute Premises pursuant to Section 17.5.2(a). If the Floor Area of the Substitute Premises is less than the Floor Area of the Premises, Fixed Minimum Rent and Base Sales shall be proportionately reduced and Fixed Costs and Tenant's Share of Variable Costs shall be recalculated on the basis of the Floor Area of the Substitute Premises. If the Floor Area of the Substitute Premises is greater than the Floor Area of the Premises, Fixed Minimum Rent and Base Sales shall not be increased and Fixed Costs and Tenant's Share of Variable Costs shall continue to be calculated on the basis of the Floor Area of the Premises (and not the Floor Area of the Substitute Premises). Landlord shall use reasonable efforts in the relocation to minimize any period which Tenant cannot operate for business. Fixed Minimum Rent and Additional Rent shall abate during any period when the Premises must be closed for business as a result of the relocation and shall continue to abate until Tenant is open for business in the Substitute Premises (but such opening date shall not exceed 15 days after the date Landlord delivers possession of the Substitute Premises to Tenant with Landlord's Work hereunder substantially complete). Substitute Premises as used herein shall mean any retail space that is located within the area approximately cross-hatched on Exhibit H (or comparable area if the configuration of the Center has changed or will change to the extent that Exhibit H is rendered inapplicable); provided, however, in no event shall Landlord be obligated to offer any location to Tenant which Landlord is prevented or restricted from leasing to Tenant in accordance with such covenants of Landlord respecting radius, location, use, or exclusivity as may be contained in any other lease, financing agreement or any other agreement affecting the Center.

17.5.2. **Landlord's Obligations.** If Tenant is relocated to Substitute Premises, then Landlord shall, at Landlord's expense, (a) construct the Substitute Premises to the extent and condition of Tenant Improvements (specifically excluding telephone and other communications equipment and/or cabling) which existed in the Premises at the time the Notice of Relocation was delivered to Tenant, and move fixtures from the Premises to the Substitute Premises to the extent such fixtures can reasonably be moved without damage to such fixtures or, in the event such fixtures cannot be moved without damage, furnish and install fixtures at least equal in kind and quality to those fixtures which are contained in the Premises at the time the Notice of Relocation is delivered to Tenant, (b) provide personnel to perform under Tenant's direction the moving of Tenant's property from the Premises to the Substitute Premises, (c) promptly reimburse Tenant for actual and reasonable out-of-pocket costs incurred by Tenant in connection with the relocation of any telephone and other communications equipment from the Premises to the Substitute Premises, and (d) abate or encapsulate any Hazardous Materials which were in the Substitute Premises prior to Tenant's possession, to the extent required by law (and in the event any abatement of Hazardous Materials hereunder substantially interferes with Tenant's ability to open for business hereunder, then for each day of such interference, a day shall be added to the 15 day period as set forth in Section 17.5.1). Tenant shall cooperate with Landlord to facilitate the prompt completion by Landlord of Landlord's obligations under this Section 17.5.2 and the prompt surrender by Tenant of the Premises within the time frames herein set forth. Without limiting the generality of the preceding sentence, Tenant shall (i) promptly provide to Landlord any approvals or instructions, any plans and specifications and any other information reasonably requested by Landlord relating to the relocation of Tenant and (ii) promptly perform any work, other than Landlord's obligations under this Section 17.5.2, required to prepare the Substitute Premises for Tenant's occupancy. Tenant shall not be entitled to any compensation for any inconvenience or interference with Tenant's business or to any abatement or reduction of Rent (other than as set forth in Section 17.5.1) in connection with any relocation under this Section 17.5.

17.5.3. **Application of Lease.** From and after the date Tenant vacates and surrenders the Premises to Landlord as provided in Section 17.5.1, this Lease (a) shall no longer apply to the Premises, except with respect to obligations which accrued on or before such surrender date and have not been fully discharged and (b) shall apply only to the Substitute Premises and the Substitute Premises shall thereafter be the "Premises" under this Lease.



17.5.4. **Mutual Right to Terminate Lease.** Notwithstanding anything to the contrary contained in this Lease, if Tenant and Landlord are unable to agree upon the Substitute Premises pursuant to this Section 17.5, then either party may give notice to the other party of its intent to terminate this Lease. If either party delivers the Relocation Termination Notice to the other, (a) Tenant shall perform all of the Surrender Obligations, and this Lease shall terminate thirty (30) days after the date the Relocation Termination Notice is delivered and (b) provided (i) Tenant is not then in default under this Lease beyond the expiration of any applicable notice and/or cure period and (ii) within thirty (30) days after Landlord's written request therefor (which request may be made in the Relocation Notice or at any time thereafter), Tenant has delivered to Landlord the Close Out Package, together with copies of paid invoices and such other backup information as Landlord may reasonably request for the items specified in the Tenant Package, then Landlord shall pay to Tenant, within thirty (30) days following the date Tenant has vacated and surrendered possession of the Premises to Landlord in the condition required by this Section, the Unamortized Amount. In the event Tenant elects to terminate this Lease as provided hereinabove, anytime during the thirty (30)-day period immediately following Landlord's receipt of the Relocation Termination Notice, Landlord shall have the right to negate Tenant's termination by written notice to Tenant; and, in such event, Tenant's termination shall be null and void, provided Tenant shall not be required to relocate as set forth in Section 17.5.1.

## 18. NOTICES

18.1. **Notices.** Any notice, demand or communication required or permitted to be given by one party to the other shall be in writing and addressed to Landlord's Address for Notices or Tenant's Address for Notices, as the case may be, or to such other address(es) and/or to such other parties as one party may from time-to-time reasonably designate in writing to the other party, and shall be (a) personally served, (b) deposited in the United States mail, duly registered or certified with postage fully prepaid thereon or (c) delivered by an overnight courier service that confirms delivery. Either party may, by written notice similarly given, designate a different address for notice purposes. Notice shall be effective upon receipt or refusal to receive, in the event of personal service; or upon receipt or refusal to receive (but in no event more than three [3] days after the date first mailed in the manner herein required), in the event of depositing notice in the United States mails; or upon receipt or refusal to receive, in the event of delivery by overnight courier service.

## 19. DEFAULTS BY TENANT

19.1. **Defaults.** The occurrence of any one or more of the following events shall constitute a default by Tenant under this Lease:

19.1.1. **Monetary.** The failure by Tenant to make any payment of Rent or of any other sum required to be made by Tenant when due (however Tenant shall have up to five [5] days after written notice from Landlord to cure such default).

19.1.2. **Failure to Timely Open.** If Tenant should fail to complete Tenant's Work on or before the twentieth (20<sup>th</sup>) day following the Required Opening Date or, fail at any time during the Term, to keep the Premises open for business fully fixtured, staffed or stocked on the days and hours required by this Lease.

19.1.3. **Abandonment and Vacation.** The vacation or abandonment of the Premises by Tenant. "Vacation" means any absence by Tenant from the Premises for fourteen (14) or more consecutive days (unless said Vacation is due to a Casualty or Taking pursuant to Articles 23 and 24 respectively).

19.1.4. **Cross-Default.** Intentionally Omitted.

19.1.5. **Bankruptcy.** The making by Tenant of any general assignment for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case

of a petition filed against Tenant, the same is dismissed within sixty [60] days), or the appointment of a trustee or receiver to take possession of, or the attachment, execution or other judicial seizure of, substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days.

19.1.6. **Other Non-Monetary Defaults.** The failure by Tenant or any of the Tenant Parties to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant not previously covered by Section 19.1.1 through Section 19.1.5 above (however Tenant shall have up to twenty [20] days after written notice from Landlord to cure such default except if the nature of Tenant's default is such that it cannot be cured solely by payment of money and more than twenty [20] days are reasonably required for its cure, then Tenant shall be obligated to commence such cure within the twenty [20]-day period and thereafter diligently prosecute such cure to completion).

19.2. **Sufficiency of Notices.** Any notice required or permitted by this Article 19 shall be in lieu of, and not in addition to, any notice required under any Governmental Regulations providing for notice and any cure period. Landlord may (at its discretion) serve a statutory notice to quit, a statutory notice to pay rent or quit, or a statutory notice of default, as the case may be, to effect the giving of any notice required by this Article 19. No notice and opportunity to cure is conferred upon Tenant with regard to any default except as expressly set forth in Section 19.1.

19.3. **Involuntary Assignment.** An Involuntary Assignment shall constitute a default by Tenant and Landlord shall have the right to elect to terminate this Lease, in which case this Lease shall not be treated as an asset of Tenant. All sums payable by Tenant under this Lease shall be and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Such sums which are not paid or delivered to Landlord shall be held in trust for the benefit of Landlord, and shall be promptly paid or turned over to Landlord upon demand. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations of Tenant arising under this Lease on and after the date of such assignment, and all of the terms and provisions of this Lease shall be binding upon such assignee. Any such assignee shall upon demand execute and deliver such instruments and documents reasonably requested by Landlord confirming such assumption.

## 20. LANDLORD'S REMEDIES

20.1. **Landlord's Remedies.** Upon a default hereunder, should Tenant fail within the time period, if any, specified in Article 19 to fully cure such default, then without limiting Landlord in the exercise of any other right or remedy at law or in equity which Landlord may have (all remedies provided herein being non-exclusive and cumulative), Landlord may do any one or more of the following:

20.1.1. **Continue Lease.** Landlord may continue this Lease in effect after Tenant's default and recover Rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time-to-time, without terminating this Lease, enforce all of its rights and remedies under this Lease, including the right to recover all Rent and other monetary charges as they become due.

20.1.2. **Terminate Lease.** Landlord may terminate Tenant's right to possession by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default including (without limitation) the following: (a) the worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; plus (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably

avoided; plus (d) any other amount and court costs necessary to compensate Landlord for all the detriment proximately caused by Tenant's default or which in the ordinary course of things would be likely to result therefrom (including, without limiting the generality of the foregoing, the amount of any commissions, finder's fee, advertising costs, remodeling costs and attorneys' fees in connection with obtaining a replacement tenant); plus (e) at Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time-to-time by applicable law. As used in subparagraphs (a) and (b) of this Section 20.1.2, the "worth at the time of award" shall be computed by allowing interest at the Agreed Rate, and, as used in subparagraph (c) of this Section 20.1.2, the "worth at the time of award" is to be computed by discounting such amount at the discount rate of the U.S. Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%). For the purpose of determining the amount of Tenant's Share of Variable Costs which constitute "unpaid Rent which would have been earned after termination" or which constitute "unpaid Rent for the balance of the term" (as referenced in subparagraphs [b] and [c] hereof), such amounts shall be deemed to increase annually for the balance of the Term by an amount equal to the average annual percentage increase in Variable Costs during the three (3) calendar years preceding the year in which the Lease was terminated, or, if such termination shall occur prior to the expiration of the third calendar year occurring during the Term of this Lease, then the amount of Tenant's Share of Variable Costs shall be deemed to increase monthly for the balance of the Term by an amount equal to the average monthly percentage increase in Tenant's Share of Variable Costs during all of the calendar months preceding the month in which the Lease was terminated.

20.1.3. **Collect Sublease Rents.** Landlord may collect sublease rents (or appoint a receiver to collect such rents) and otherwise perform Tenant's obligations at the Premises, it being agreed, however, that neither the filing of a petition for the appointment of a receiver for Tenant nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

20.1.4. **Cure Default.** Landlord may proceed to cure the default at Tenant's sole cost and expense, without waiving or releasing Tenant from any obligation hereunder. If at any time Landlord pays any sum or incurs any expense as a result of or in connection with curing any default of Tenant (including any administrative fees provided for herein and reasonable attorneys' fees), the amount thereof shall be immediately due as a Reimbursed Cost.

20.1.5. **Disposition of Property.** Landlord may dispose of any Personal Property remaining on the Premises in accordance with applicable statutes relating to the disposition of abandoned property. If no such statute exists, Landlord shall have the right to retain possession of all of the Personal Property left in the Premises or, at Landlord's option, to require Tenant at any time to forthwith remove same, and if not so removed within three (3) business days, to take title and possession of the same and to sell or otherwise dispose of the same, without any liability (a) to Tenant for such property or (b) to pay to Tenant the proceeds from the sale thereof.

20.2. **No Offsets.** All covenants and agreements to be performed by Tenant under this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any offset to or abatement of Rent, except as otherwise expressly provided in this Lease. Tenant hereby waives any right to plead all non-compulsory counterclaims or offsets in any action or proceeding brought by Landlord against Tenant for any default. This waiver shall not be construed, however, as a waiver of any right of Tenant to assert any non-compulsory counterclaims or offsets in any separate action brought by Tenant.

## 21. DEFAULTS BY LANDLORD

21.1. **Defaults by Landlord.** If Landlord fails to perform or observe any of the terms, covenants or conditions contained in this Lease on its part to be performed or observed within thirty (30) days after written notice of default from Tenant or, when more than thirty (30) days shall be required because of the nature of the default, if Landlord shall fail to commence to cure such default after written notice thereof from Tenant and thereafter diligently pursue such cure to completion, said failure shall constitute a default by Landlord under this Lease. If any or all of the Premises or any interest of Landlord in this Lease or the Rent are at any time subject to any mortgage or deed of trust and if Tenant is given

notice of the name and address of the Mortgagee, then Tenant shall give written notice of any default by Landlord to the Mortgagee concurrently when providing Landlord notice, specifying the default in reasonable detail. If Landlord fails to cure such default within the applicable cure period, Tenant shall give written notice of such failure to Mortgagee affording Mortgagee the same opportunity to cure as provided Landlord in this Section. If Mortgagee does perform on behalf of Landlord, such default shall be deemed cured.

**21.2. Limitations on Recovery Against Landlord.** The aggregate liability of Landlord and the Landlord Parties to Tenant for any default by Landlord under this Lease or arising in connection herewith or with the operation, management, leasing, repair, renovation, alteration of, or any other matter relating to, the Center or the Premises shall be limited solely and exclusively to an amount equal to the interest of Landlord in the Center, and neither Landlord nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of liability contained in this Article 21 shall inure to the benefit of Landlord and the Landlord Parties and each of their respective partners, heirs, successors and assigns. Under no circumstances shall any present or future partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust), have any liability for the performance of Landlord's obligations under this Lease. Neither Landlord nor Tenant shall be liable to the other under any circumstances for consequential or punitive damages.

## **22. COSTS OF SUIT**

**22.1. Costs of Suit.** If either party brings action for relief against the other, declaratory or otherwise, arising out of this Lease, including any suit by Landlord for the recovery of Rent or possession of the Premises, the non-prevailing party shall pay the prevailing party its reasonable costs, fees and expenses incurred in connection with and in preparation for said action, including its reasonable attorneys' fees.

## **23. DAMAGE AND DESTRUCTION**

**23.1. Insured Casualty.** Upon the occurrence of an Insured Casualty to the Premises, Landlord shall promptly and diligently, subject to reasonable delays for insurance adjustment and payment, issuance of permits or other matters beyond Landlord's reasonable control, and subject to all other terms of this Article 23, restore the damaged Premises (except for such work with respect to the Premises which is the responsibility of Tenant pursuant to this Article 23). Tenant, at its sole cost and expense, shall be responsible for the prompt and diligent repair and restoration of all items constituting Improvements and Personal Property (which repair and restoration work shall be completed no later than sixty [60] days after the completion of Landlord's work under this Section 23.1). All repair and restoration activities by Landlord and Tenant shall be conducted in accordance with Exhibit C and the Tenant Package. In the event the Center is damaged by a Casualty to the extent that more than fifty percent (50%) of the Center's Floor Area is untenable, then provided the Premises suffered no damage from said Casualty and Landlord elects to rebuild, Tenant shall have the option, upon written notice to Landlord given within thirty (30) days of said Casualty, to (i) remain open for business within the Premises in which case Fixed Minimum Rent shall abate and in lieu thereof Tenant shall pay an amount equal to six percent (6%) of its Gross Sales monthly in arrears on or before the twentieth (20<sup>th</sup>) day of each month during such time of Fixed Minimum Rent abatement, or (ii) close for business and Tenant shall be entitled to an abatement of Fixed Minimum Rent and Tenant's Share of Costs during such time of closure. Tenant's right to an abatement of Fixed Minimum Rent or to close with an abatement of Fixed Minimum Rent and Tenant's Share of Costs, as the case may be, shall continue until such time as seventy-five percent (75%) or more of the Center's Floor Area is open and occupied by other Occupants.

**23.2. Uninsured Casualty.** Upon the occurrence of an Uninsured Casualty to the Premises, Landlord shall have the right (in its sole discretion) to elect either to commence repair and restoration of the Premises (in which event this Lease shall continue in full force and effect and Landlord and Tenant shall diligently perform their respective repair and restoration obligations required pursuant to Section 23.1) or not to perform such repair and restoration, in which event this Lease shall cease and terminate

sixty (60) days after Landlord's notice of its election to terminate. Landlord shall give Tenant notice of its election under this Section 23.2 within ninety (90) days following the later of (a) the date of such Uninsured Casualty, or (b) the date that Landlord's insurers determine that the Casualty is an Uninsured Casualty.

23.3. **Rent Abatement.** Landlord shall not be liable for any inconvenience or annoyance to Tenant or the Tenant Parties, or injury to Tenant's business, resulting in any way from any Casualty or repair and restoration work. If any Casualty damages the Premises, or if the Premises are not reasonably accessible and are not used by Tenant due to any Casualty to the Common Area, Tenant shall be entitled to an abatement of Fixed Minimum Rent during such time the Premises are unfit for occupancy for the Permitted Use and are not so occupied or used by Tenant, or the Premises are not reasonably accessible and are not used by Tenant due to damage to the Common Area. However, if the Casualty is due to the gross negligence or willful misconduct of Tenant or any of the Tenant Parties, Tenant shall be responsible for any reasonable, applicable insurance deductible (which shall be payable to Landlord upon demand) and there shall be no Rent abatement.

23.4. **Major Destruction.** Notwithstanding any of the foregoing provisions of this Article 23, should there be a Major Destruction of the Center at any time during the Term, Landlord shall have the right to terminate this Lease by written notice to Tenant, which notice shall be given within one hundred twenty (120) days following the date of such Major Destruction (in which case such termination shall then take effect on the date specified in Landlord's termination notice).

23.5. **Insurance Proceeds.** In the event of termination of this Lease pursuant to this Article 23, Landlord and Tenant shall each be released from any liability or obligation under this Lease (except as otherwise provided for in this Lease) arising after the date of such termination. In the event of such termination, all proceeds from Tenant's insurance (including self-insurance and deductibles) covering the Improvements (but excluding proceeds for Personal Property) shall be payable to Landlord provided, however, all proceeds attributable to the unamortized portion of Tenant's Improvements (less any amount payable by Landlord for such portion of Tenant's Improvements) with a straight-line amortization schedule and an amortization period equal to the Term shall be payable to Tenant. In no event shall Tenant be entitled to share in Landlord's insurance proceeds or to take any action which would result in a reduction of Landlord's insurance proceeds.

## 24. CONDEMNATION

24.1. **Total Taking.** If there is a Taking of the entire Premises, this Lease shall terminate as of the date of such Taking, and Landlord and Tenant shall have no further liability or obligation (except as otherwise provided for in this Lease) arising under this Lease after such date.

24.2. **Partial Taking; Right to Terminate.** If more than twenty-five percent (25%) of the Floor Area of the Premises is taken, or if by reason of any Taking, regardless of the amount so taken, the remainder of the Premises is rendered unusable for the Permitted Use, Landlord and Tenant shall each have the right to terminate this Lease as of the date Tenant is required to vacate the portion of the Premises which is the subject of such Taking, upon giving notice of such election within thirty (30) days after the Taking. In addition, if there is a Taking of fifteen percent (15%) or more of the Floor Area of the Center and/or fifteen percent (15%) or more of the parking areas of the Center, Landlord shall have the right to terminate this Lease upon ninety (90) days' written notice to Tenant. In the event of any termination of this Lease pursuant to this Article 24, Landlord and Tenant shall be released from any liabilities and obligations under this Lease (except as otherwise provided for in this Lease) arising after the date of termination. Landlord and Tenant shall, after learning of any Taking, promptly give notice thereof to each other. No temporary Taking of the Premises or any part of the Center (meaning a Taking of less than nine [9] months) shall terminate this Lease.

24.3. **Restoration and Rent Abatement.** If this Lease does not terminate pursuant to Sections 24.1 or 24.2 above, then Tenant shall continue to occupy that portion of the Premises not taken and the parties shall proceed as follows: (a) Landlord shall, at its sole cost and expense, restore the

Premises remaining to a complete unit of like quality and character as existed prior to such Taking (except for such work with respect to the Premises which is the responsibility of Tenant pursuant to this Section 24.3), (b) Tenant, at its sole cost and expense, shall be responsible for the repair and restoration of the Improvements and Personal Property and (c) Fixed Minimum Rent and any Additional Rent that is calculated on the basis of Floor Area shall be calculated on the basis of the remaining Floor Area of the Premises.

24.4. **Award.** No award for any partial or entire Taking shall be apportioned, and Tenant hereby assigns to Landlord any and all rights of Tenant now or hereafter arising in or to the same or any part thereof. Tenant may file a separate claim for an award at its sole cost and expense for, and nothing contained herein shall be deemed to give Landlord any interest in, or to require Tenant to assign to Landlord, any award made to Tenant for compensation for loss of business or for damage to or loss of Personal Property; provided, however, that no such claim shall diminish or otherwise affect the awards otherwise payable to Landlord and each of Landlord's Designees.

## 25. HAZARDOUS MATERIALS

25.1. **Compliance.** Tenant covenants and agrees that Tenant shall, at all times during the Term and at its sole cost and expense, comply with and assume responsibility and liability under all Environmental Laws applicable to occupancy or use of or operations at the Premises by Tenant and the Tenant Parties. In the event that Tenant proposes to undertake any Improvements, Tenant shall comply (at Tenant's sole cost) with Landlord's criteria (as established from time to time) for testing and remediation of Hazardous Materials.

25.2. **Notification.** Tenant agrees that should it or any of the Tenant Parties know of (a) any violation of Environmental Laws relating to the Premises, or (b) the escape, release or threatened release of any Hazardous Materials in, on, under or about the Premises, Tenant shall promptly notify Landlord in writing of such violation, escape, release or threatened release, and that it will provide all warnings of exposure to Hazardous Materials in, on, under or about the Premises in strict compliance with all applicable Environmental Laws.

25.3. **Hazardous Materials.** Tenant shall at no time use, analyze, generate, manufacture, produce, transport, store, treat, release, dispose of or permit the escape of, or otherwise deposit in, on, under or about the Premises or the Center, any Hazardous Materials, or permit or allow any of the Tenant Parties to do so.

25.4. **Hazardous Materials Existing Prior to Delivery Date.** If required by law, Landlord shall, at Landlord's cost, be responsible for the abatement or encapsulation of any Hazardous Materials which were in the Premises prior to Tenant's possession (under the Existing Lease) (or which were introduced by Landlord during Tenant's possession). In the event any abatement of Hazardous Materials introduced into the Premises by Landlord substantially interferes with Tenant's ability to perform Tenant's Work prior to the Rent Commencement Date, then for each day of such interference, one (1) day shall be added to the Required Opening Date as set forth in Section 1.5. In the event that such abatement of Hazardous Materials introduced into the Premises become untenable then in that event, Tenant's obligations to pay the Rent (except the tax charge) shall be abated during the period Landlord is performing such abatement of Hazardous Materials.

## 26. SUBORDINATION AND ESTOPPEL

26.1. **Subordination.** Tenant covenants and agrees that (a) this Lease is and shall automatically and without further act or deed by Tenant be subject and subordinate to any mortgages, deeds of trust, security deeds or other security instruments, and any ground leases or underlying leases presently existing or hereafter placed upon all or any portion of the Center (each a "Mortgage") and to any and all advances to be made thereunder, and to any interest accrued thereon, and to all renewals, replacements, modifications, consolidations and extensions thereof or participation thereof, (b) any mortgagee, grantee, master lessor, beneficiary or trustee (each a "Mortgagee") may elect to have this Lease made a prior lien to its Mortgage, and in the event of such election and upon notification by such

Mortgagee to Tenant to that effect, this Lease shall be deemed prior in lien to said Mortgage, whether this Lease is dated prior to or subsequent to the date of any such Mortgage and (c) Tenant shall execute and deliver whatever instruments may reasonably be required by Landlord or any present or prospective Mortgagee to acknowledge such subordination or priority (as applicable) in recordable form. If any proceeding is brought for default under any Mortgage to which this Lease is subject, or in the event of foreclosure, deed in lieu of foreclosure or the exercise of the power of sale under any Mortgage covering the Premises and if requested by Landlord's successor, Tenant shall attorn to the successor and shall recognize that successor as Landlord under this Lease. Such successor shall not be (i) liable for any previous act or omission of Landlord under this Lease, (ii) subject to any offset that theretofore accrued to Tenant against Landlord or (iii) bound by any previous prepayment of Rent or Security Deposit which have not been expressly delivered by Landlord to such successor. If so requested, Tenant shall enter into a new lease with that successor on the same terms and conditions as are contained in this Lease (for the unexpired Term of this Lease then remaining).

26.2. **Estoppel Certificate.** Tenant shall, from time-to-time within ten (10) days after prior written notice from Landlord, execute, acknowledge and deliver to Landlord a statement in writing in such form as may be reasonably required by Landlord (a) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any; (b) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder (or specifying such defaults if they are claimed); and (c) containing such other matters as are set forth in such form. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that this Lease is in full force and effect, without modification except as may be represented by Landlord, that there are no uncured defaults in Landlord's performance, and that not more than one (1) month's Fixed Minimum Rent has been paid in advance.

## 27. MISCELLANEOUS

27.1. **Amendments.** No provision of this Lease may be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

27.2. **Application of Payments.** Landlord shall have the right to apply payments received from Tenant pursuant to this Lease, regardless of Tenant's designation of such payments, to satisfy any obligations of Tenant hereunder, in such order and amounts as Landlord, in its sole discretion, may elect. Notwithstanding any contrary provision in this Lease, if Landlord is obligated to credit or refund any amount owed by Landlord to Tenant and if at such time there is any outstanding Rent due Landlord, Landlord may elect to apply such credit and/or refund toward such outstanding Rent.

27.3. **Audits.** Landlord and Tenant shall each have the right to audit the other party's books and records respecting Gross Sales and Tenant's Share of Variable Costs (respectively) upon not less than twenty (20) days' prior written notice to the other party. Such audits shall be conducted during business hours by a non-contingency fee auditor who was not previously employed by the other and is not employed by a competitor of the other at such offices as the audited party shall reasonably specify. A party may not conduct an audit (a) more than once in each Lease Year or (b) while such party is in default of the Lease. If an audit should disclose that the audited party shall have understated Gross Sales or overstated Tenant's Share of Variable Costs (as applicable) by more than five percent (5%), then the audited party shall pay to the other party all reasonable costs and expenses relating to such audit (including, without limitation, reasonable travel costs) in addition to paying any additional amounts due under this Lease or refunding any overpayment made under this Lease as a result of such understatement or overstatement, as applicable. The results of any such audit shall be kept confidential and not disclosed to any third parties (except to the extent required by law). Neither party shall have the right (whether at law, at equity or under this Lease) to audit (1) Gross Sales or Tenant's Share of Variable Costs (as applicable) except on the express terms and conditions provided in this Section 27.3 or (2) the amount payable by Tenant as Fixed Costs under this Lease.

27.4. **Authority of Signatories.** Each person executing this Lease on behalf of Landlord and Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such party, and that such party is qualified to do business in the state where the Center is located, and shall deliver appropriate certification to that effect if requested.

27.5. **Binding Effect.** Except as otherwise expressly provided in this Lease, all of the provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

27.6. **Brokers.** Landlord and Tenant shall each indemnify, defend and hold the other harmless from and against, all damages (including reasonable attorneys' fees and costs) resulting from any claims that may be asserted against Landlord or Tenant by any broker, finder, or other person with whom the indemnifying party has or purportedly has dealt.

27.7. **Captions and Form.** The names of Articles and Sections are for convenience only and shall not be used to interpret or construe the meaning of any provision in this Lease. All references to Articles, Sections and Exhibits are references to Articles and Sections contained in this Lease and Exhibits attached to this Lease unless otherwise expressly provided. Landlord and Tenant acknowledge and agree that (a) this Lease has been freely negotiated by Landlord and Tenant; and (b) in no event shall any ambiguity, controversy, dispute or disagreement over the interpretation, validity or enforceability of this Lease or any of its covenants, terms or conditions, any inference, presumption or conclusion whatsoever be drawn against Landlord by virtue of the initial draft of this Lease having been generated by Landlord.

27.8. **Choice of Law.** This Lease shall be governed by the laws of the state where the Center is located.

27.9. **Confidentiality. Intentionally Omitted.**

27.10. **Counterparts.** This Lease may be executed in counterparts with the same effect as if both parties hereto had executed the same document. All counterparts shall be construed together and shall constitute a single Lease.

27.11. **Execution by Landlord.** The submission of this document to Tenant does not constitute an offer to lease, or a reservation of, or an option for, the Premises. This document becomes effective and binding only upon Landlord's delivery to Tenant of a counterpart executed by both Landlord and Tenant. Until this Lease is executed by both Landlord and Tenant and delivered by Landlord to Tenant, Landlord and its agents may continue to negotiate with third parties for the leasing of all or portions of the Premises. No act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

27.12. **Exhibits.** All exhibits affixed to this Lease are made a part of, and are incorporated into, this Lease. In particular, the Center Rider, attached as Exhibit E, reflects certain provisions particular to the Center and the state in which the Premises are located. If there are any inconsistencies between this Lease and the provisions of Exhibit E, the provisions of Exhibit E shall prevail.

27.13. **Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war or terrorism, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, civil commotions, fire or other Casualty, in each case if due to a cause beyond the reasonable control of the party obligated to perform, and other causes beyond the reasonable control of the party obligated to perform, except with respect to the obligations imposed with regard to Rent payable by Tenant pursuant to this Lease and Tenant's obligations under Section 12.1.2 (collectively, "Force Majeure") shall, notwithstanding anything to the contrary contained in this Lease, excuse the performance of such party for a period equal to any such prevention, delay or stoppage and, therefore, if this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay in such party's performance caused



by a Force Majeure. For purposes of this Section 27.13, a cause shall not be deemed beyond a party's control if it is within the control of such party's agents, employees or contractors.

27.14. **Independent Covenants.** This Lease shall be construed as though the covenants herein between Landlord and Tenant are independent and not dependent and Tenant hereby expressly waives the benefit of any statute to the contrary.

27.15. **Labor Harmony.** Tenant shall cause its contractors to perform all construction work in the making and/or installation of any alterations or improvements in a manner so as to avoid labor disputes at the Center. In the event that a labor dispute arises, Tenant shall immediately undertake such action as is necessary to eliminate such dispute or potential dispute, including, but not limited to, (i) removing all disputants from the job site until such time as the labor dispute no longer exists, (ii) seeking a judgment for a breach of contract between Tenant and Tenant's contractor, (iii) requiring its contractors to erect dual gates to insulate the labor dispute; and (vi) procuring appropriate legal and injunctive relief by filing charges with the National Labor Relations Board's regional office.

27.16. **Landlord and Tenant.** The words "Landlord" and "Tenant" include the plural as well as the singular. Words used in the neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there is more than one person or entity constituting Landlord or Tenant, the obligations imposed hereunder upon Landlord or Tenant are joint and several. If Tenant consists of a husband and wife, the obligations of Tenant hereunder extend individually to the sole and separate property of each of them as well as to their community property. The obligations contained in this Lease to be performed by Landlord shall be binding on Landlord's successors and assigns only during their respective periods of ownership of the Premises.

27.17. **Merger.** This Lease contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Lease, and no prior agreement, negotiations, brochures, arrangements, or understanding pertaining to any such matter shall be effective for any purpose unless expressed herein. Tenant has not relied upon any representations, covenants, warranties, promises, agreements, conditions or undertakings, oral or written, made by Landlord or any of the Landlord Parties concerning or relating to the (a) Center, (b) Occupants, (c) Premises, (d) Lease, (e) Tenant's obligation to pay Rent or Additional Rent or (f) the Tenant's business, other than set forth within the Lease. Tenant acknowledges that it has thoroughly and independently investigated the potential for the success of its operations in the Center and has not relied upon any inducements or representations on the part of Landlord or any of the Landlord Parties other than those contained within this Lease. Tenant also acknowledges, understands and agrees that, to the extent any projections, materials or discussions have related to Tenant's projected or likely sales volume, customer traffic, or Tenant's success or profitability, that any and all such projections, materials and discussions are based solely upon Landlord's past experiences with other Occupants or upon standardized marketing studies, and have not been relied upon by Tenant, and any such discussions or marketing studies shall not be construed as a promise or guarantee that Tenant will realize the same or similar results.

27.18. **Modification of Lease.** Should any current or prospective Mortgagee require a modification of this Lease, which modification will not cause an increased cost or expense to Tenant or in any other way materially and adversely change the rights and obligations of Tenant hereunder, then, and in such event, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are reasonably required therefor and to deliver the same to Landlord within ten (10) days following a request therefor. At the request of Landlord or any Mortgagee, Tenant agrees to execute a short form of Lease and deliver the same to Landlord within ten (10) days following the request therefor.

27.19. **Name of Center.** Landlord expressly reserves the right at any time, after no less than sixty (60) days' notice to Tenant, to change the name of the Center without any liability to Tenant. Tenant shall use the Center's name in referring to the location of the Premises in all newspaper, radio, television and other advertising with respect to Tenant's business at the Premises.

27.20. **No Consent or Approval.** Landlord's or Tenant's consent to or approval of any act by the other requiring its consent or approval shall not constitute a consent or approval of any subsequent act by the other.

27.21. **No Violation.** Tenant hereby warrants and represents that neither its execution of nor performance under this Lease shall cause Tenant to be in violation of any agreement, instrument, contract, law, rule or regulation by which Tenant is bound.

27.22. **No Warranty.** In executing and delivering this Lease, Tenant has not relied on any representations, including, but not limited to, any representation as to the amount of any item comprising Variable Costs or the amount of Variable Costs in the aggregate or that Landlord is furnishing the same services to other tenants, at all, on the same level or on the same basis as to Tenant, or any warranty or any statement which is not set forth herein or in one or more of the exhibits attached hereto.

27.23. **Nondiscrimination.** Tenant covenants for itself, its heirs, executors, administrators, successors, and assigns and all persons claiming under or through it or them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, marital status, sexual orientation, national origin, ancestry, age, physical handicap or medical condition, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, and Tenant and any person claiming under or through Tenant shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, subtenants, licensees, vendees or customers in the Premises.

27.24. **Nonrecordability of Lease.** Tenant shall not record this Lease or a memorandum hereof without Landlord's express prior written consent, which consent may be withheld in Landlord's sole discretion.

27.25. **OFAC Certification**

27.25.1. **Representation and Warranty.** Tenant represents and warrants that:

27.25.1.1. It is not, and shall not become, a person or entity with whom Landlord is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, without limitation, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended ["Executive Order 13224"]), or other governmental action and is not, and shall not, engage in any dealings or transactions or otherwise be associated with such persons or entities; and

27.25.1.2. It is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation with whom Landlord is restricted from doing business under the regulations of OFAC (including, but not limited to, Executive Order 13224) or other governmental action and is not and shall not engage in any dealings or transactions, employ or otherwise be associated, with such person, group, entity or nation.

27.25.2. **Default.** Any breach of the representation and/or warranty contained in this Section 27.25 shall constitute a non-curable default and is grounds for immediate termination of this Lease by Landlord. Any such exercise by Landlord of its remedies under this Section 27.25 shall not constitute a waiver by Landlord to recover (a) any Rent due under this Lease and (b) any damages arising from such breach by Tenant.

27.26. **Quiet Enjoyment.** So long as Tenant timely pays all Rent, timely performs its covenants and obligations under this Lease and recognizes any successor to Landlord in accordance with the terms of this Lease, Tenant shall lawfully and quietly have, hold and enjoy the Premises during the Term without

hindrance or molestation by Landlord or anyone claiming by, through or under Landlord, subject, however, to all Superior Agreements.

27.27. **REIT Qualifications.** Landlord and Tenant agree that all Rent paid to Landlord under this Lease shall qualify as "rents from real property" as defined in Internal Revenue Code Section 856(d) and as further defined in Treasury Regulation Section 1.856-4, as each is amended from time-to-time. Should the requirements of the said Internal Revenue Code Section or Treasury Regulation Section be amended so that any rent no longer qualifies as "rents from real property" for the purposes of the Internal Revenue Code or the Treasury Regulation, the Rent payable to Landlord shall be adjusted so that such Rent will qualify as "rents from real property" under the Internal Revenue Code and Treasury Regulation; provided that such adjustments required pursuant to the provisions of this Section 27.27 shall not increase the monetary obligations of Tenant. If any adjustment of Rent under this Section 27.27, or if Landlord in good faith determines that its status as a real estate investment trust under the provisions of the Internal Revenue Code or the Treasury Regulation will be jeopardized because of any provision of this Lease, Tenant shall, without charge therefor and within ten (10) days after Landlord's written request therefor, execute and deliver to Landlord such amendments to this Lease as may be reasonably required by Landlord to avoid such jeopardy; provided such amendments do not increase the monetary obligations of Tenant or in any other manner materially increase Tenant's obligations or materially decrease Tenant's rights under this Lease.

27.28. **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venturer or any association between Landlord and Tenant.

27.29. **Rules.** Landlord shall have the right at any time to establish, modify, amend and enforce reasonable and non-discriminatory Rules. Tenant shall (and shall cause all of the Tenant Parties to) comply with all Rules.

27.30. **Security.** Landlord may from time-to-time elect to obtain or cease to provide security services and/or devices for the protection of the Common Area. To the extent that such security services and devices are provided, they are not intended to provide protection for the Premises or the persons thereon or the contents thereof and, therefore, Tenant shall obtain any and all security services and/or devices as Tenant shall reasonably require for the protection of the Premises, the Tenant Parties, and Improvements and Personal Property. No firearms or other devices that could cause grievous bodily harm shall be used, possessed or carried by any of Tenant's security services, or any of Tenant or the Tenant Parties, unless Landlord shall have agreed to the same in writing (which consent Landlord may grant or withhold in its sole discretion) and Tenant shall have provided Landlord with such instruments as Landlord shall require to protect Landlord and the Landlord Parties from any and all liability in connection with the use of such firearms or devices.

27.31. **Severability.** If any provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and every other term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

27.32. **Submittal of Financial Statement.** At any time and from time-to-time during the Term, but not more often than once in any calendar year, within fifteen (15) days after request therefor by Landlord, Tenant shall supply to Landlord and/or any of Landlord's Designees a current financial statement, profit and loss statements for the business at the Premises, and/or such other reasonable financial information as may be required by any such party. Such information shall be confidential and Landlord shall not divulge such information, except to any actual or prospective purchaser of Landlord's interest in the Premises or to any actual or prospective lender or as may otherwise be required for Landlord to undertake its obligations and rights under this Lease.

27.33. **Superior Agreements.** This Lease and Tenant's rights hereunder are subject and subordinate in all respects to all Superior Agreements.

27.34. **Survival.** Every obligation to pay Rent, every indemnification of one party by the other and every provision relating to Hazardous Materials shall survive the expiration or earlier termination of this Lease, unless and to the extent otherwise expressly provided in this Lease.

27.35. **Time.** Time is of the essence of this Lease and each and every provision hereof, except as may be expressly provided otherwise.

27.36. **Waivers**

27.36.1. **Waiver of Default.** No delay or omission in the exercise of any right or remedy of Landlord or Tenant for any default by the other shall impair such right or remedy or be construed as a waiver. Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

27.36.2. **Waiver of Redemption by Tenant.** Tenant hereby waives for Tenant and for all those claiming under Tenant all right now or hereafter existing to redeem by order or judgment of any court or by any legal process or writ, Tenant's right of occupancy of the Premises after any termination of this Lease.

27.36.3. **Waiver of Right to Repair.** Except as otherwise expressly provided herein, there shall be no abatement of Rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of any repairs, alterations or improvements in or to any portion of the Premises or the Center or in or to the fixtures, appurtenances and equipment therein. Tenant hereby waives the right to make repairs at Landlord's expense under the provisions of any laws permitting repairs by a tenant at the expense of a landlord.

27.36.4. **Waivers Respecting Casualty and Taking.** The provisions of Articles 23 and 24 constitute an express agreement between Landlord and Tenant with respect to any Casualty and Taking, respectively. Therefore, any statute or regulation of the state in which the Premises are located with respect to any rights or obligations concerning damage, destruction or condemnation and any other Article of this Lease, shall have no application to this Lease as to any Casualty or Taking, respectively, as to which Articles 23 and 24 shall govern and prevail.

27.36.5. **Waiver of Trial by Jury and Venue Selection.** LANDLORD AND TENANT EACH 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 OR TENANT'S USE OR OCCUPANCY OF THE PREMISES, INCLUDING ANY CLAIM OF INJURY OR DAMAGE, AND ANY EMERGENCY AND OTHER STATUTORY REMEDY WITH RESPECT THERETO. LANDLORD AND TENANT ALSO AGREE THAT THE VENUE OF ANY SUCH ACTION, PROCEEDING OR COUNTERCLAIM SHALL BE IN THE CITY, COUNTY AND STATE IN WHICH THE CENTER IS LOCATED OR AT SUCH OTHER CITY AND COUNTY AS MAY BE DETERMINED BY LANDLORD IN ITS SOLE AND ABSOLUTE DISCRETION.

**///SIGNATURES ON FOLLOWING PAGE///**

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the day and year first above written.

**LANDLORD:**

**GREEN ACRES ADJACENT LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TENANT:**

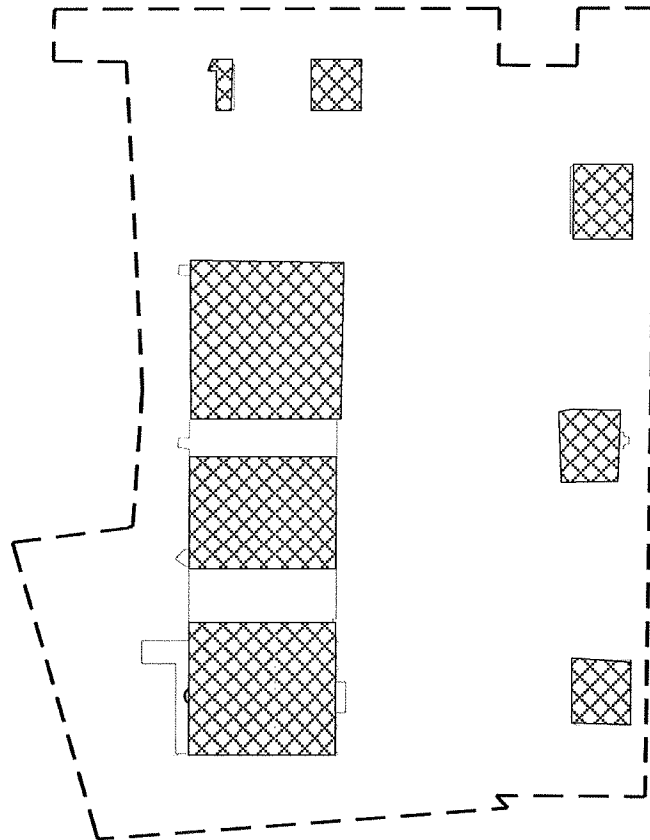
**GNC HOLDINGS, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: Eric Ravotti

Title: Chief Development Officer

**EXHIBIT A  
DEPICTION OF CENTER**



**LEGEND:**

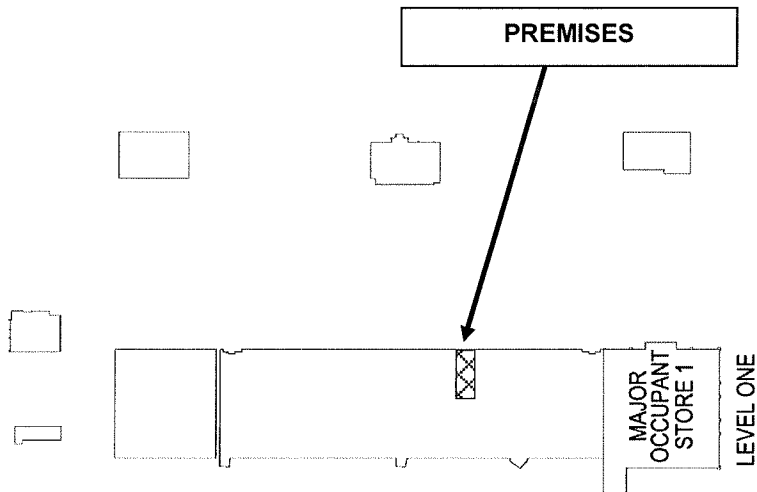
— — — CENTER BOUNDARY LINE



## GREEN ACRES COMMONS

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, vary, add to or omit whole or in part any structures, and/or improvements, and/or Common Area, and/or land area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and distances are approximate. This plan is not to be scaled. Landlord does not covenant or represent that any Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing as set forth in this plan is a representation, agreement or easement right except as specifically set forth in the Lease.

# EXHIBIT B DEPICTION OF PREMISES



## GREEN ACRES COMMONS LEVEL ONE

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, modify, change, or otherwise amend the plan and the area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. Measurements and distances are approximate. This plan is not to be scaled. Landlord does not warrant or represent that any Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing set forth in this plan is a representation, agreement or covenant right except as specifically set forth in the Lease.



**EXHIBIT C**  
**PROVISIONS FOR THE DESIGN**  
**AND CONSTRUCTION OF THE PREMISES**  
**(AS IS WITH REMODEL)**

**1. GENERAL PROVISIONS**

1.1. **Purpose.** This Exhibit C sets forth certain provisions with respect to Landlord's Work and Tenant's Work.

1.2. **Definitions.** Capitalized terms used in this Exhibit C without definition shall have the meaning ascribed to such terms in the Tenant Package.

1.3. **References.** Unless otherwise expressly provided in this Exhibit C, references to Articles, Sections and captions are references to Articles, Sections and captions contained in this Exhibit C.

1.4. **Conflict.** In the event of a direct conflict between the provisions of this Exhibit C and the Tenant Package, this Exhibit C shall control.

**2. TENANT PACKAGE**

2.1. **Tenant Package.** Tenant acknowledges that Landlord has made available to Tenant on Landlord's website ([www.macerich.com](http://www.macerich.com)) a Tenant Package which shall govern all of Tenant's Work. Tenant shall, and Tenant shall cause, Tenant's Architect, Tenant's engineer and Tenant's Contractor and subcontractors to, in all respects comply with, and Tenant's Work shall in all respects be subject to, the Tenant Package. "Tenant Package" means the package(s) containing, among other materials, the following: (a) Tenant Design and Construction Criteria, (b) Sign Criteria and Plan Submittal Guidelines, (c) Contractors' Rules and Regulations and (d) Technical Manual. The Tenant Package is hereby incorporated herein and made a part of this Exhibit C by this reference.

**3. DESCRIPTION OF LANDLORD'S WORK**

3.1. **Landlord's Work Defined.** "Landlord's Work" means the work, if any, which Landlord is expressly obligated to undertake pursuant to this Article 3. Landlord shall have no obligation to improve, remodel, alter or otherwise modify or prepare the Premises or the Center in connection with Tenant's occupancy, except as follows (and Landlord will obtain any permits required to perform Landlord's Work as set forth below):

- 3.1.1. Re-demise the Premises pursuant to the TZR dated 2-20-18. Demising walls shall be taped sanded and ready to paint.
- 3.1.2. Paint, clean and reclad storefront as necessary to bring storefront to a like-new condition.
- 3.1.3. Install a complete 200 amp electrical service at 120/208V to the rear of the Premises.
- 3.1.4. Install duplex receptacles on all demising walls, one every 20' or per code.
- 3.1.5. Install any required exit signs and emergency lights per code.
- 3.1.6. Install a 1" data conduit with pull string to rear of the Premises.
- 3.1.7. Provide a fire alarm system for the Premises as-delivered.
- 3.1.8. Install an ADA compliant restroom in the rear of the Premises with a ¾" water line and a 4" sewer line.



3.1.9. Provide HVAC system with a minimum of one ton per 350 square feet of Floor Area of the Premises and include all ductwork, diffusers, power wiring, control wiring and roof cuts, so as to air condition the entire Premises. All equipment to be new or like-new condition with a one year warranty on parts and labor.

3.1.10. Provide a code compliant sprinkler system for the Premises as delivered.

3.2. **Center.** Landlord or its predecessor-in-interest has constructed the Center, and the Building and other improvements upon the Center (exclusive of improvements constructed by or on behalf of each present and prior Occupant). Tenant has inspected the Center, the Building, the Utilities, the types, quantities and qualities of the Utilities, and the other systems and Tenant has found the same to be suitable, sufficient and in acceptable condition for the purpose of Tenant conducting the Permitted Use upon the Premises. Landlord shall have no obligation to undertake any work or furnish any additional materials upon any part of the Center or to provide any additional Utilities or other systems for the benefit of the Premises.

3.3. **Tenant Coordinator.** Landlord shall designate a person, or persons, as Tenant Coordinator ("Tenant Coordinator") who alone shall have authority on behalf of Landlord to oversee and manage the review and approval of Preliminary Documents, Construction Documents, As-Built Documents, Plan Revisions and other matters specified in this Exhibit C and the Tenant Package. No matter shall be deemed approved by Landlord under this Exhibit C or the Tenant Package unless approved in writing by the Tenant Coordinator. Landlord may, from time-to-time and upon written notice to Tenant's Representative, name another person or persons as Tenant Coordinator.

#### 4. DESCRIPTION OF TENANT'S WORK

4.1. **Condition of Premises.** Upon the Delivery Date, Tenant shall accept delivery of the Premises in an "As Is" condition and "With All Faults" and Landlord shall have no obligation to improve, remodel, alter or otherwise modify or prepare the Premises for Tenant's occupancy except to the extent otherwise expressly stated in Article 3 as "Landlord's Work", if any. Tenant hereby represents each of the following: (a) Tenant or its authorized representative has inspected the Premises and has made all inquiries, tests and studies that it deems necessary in connection with its leasing of the Premises, (b) Tenant is relying solely on Tenant's own inspection, inquiries, tests and studies conducted in connection with, and Tenant's own judgment with respect to, the condition of the Premises and Tenant's leasing thereof and (c) Tenant is leasing the Premises without any representations or warranties, express, implied or statutory by Landlord, or Landlord's agents, brokers, finders, consultants, counsel, employees, officers, directors, shareholders, partners, trustees or beneficiaries.

4.2. **Tenant's Work Defined.** If Article 3.2 of the Lease requires Tenant to perform any of Tenant's Work upon the Premises, then such work shall be governed by this Article 4.2. "Tenant's Work" means the purchase, installation, construction and performance of the improvements and duties specified in the Approved Plans and as described in the Tenant Package for a full and complete remodel of the Premises, and the purchase, installation and construction of all Tenant's furniture, equipment and Personal Property, all at Tenant's sole cost and expense (except to the extent otherwise expressly provided in the Tenant Package) and in compliance with applicable Governmental Regulations. All Tenant's Work shall be performed by a licensed, bondable contractor retained by Tenant and approved in advance, in writing, by Landlord ("Tenant's Contractor"). Tenant's Contractor shall construct Tenant's Work in a good and workmanlike manner and complete Tenant's Work in accordance with the Approved Plans, the Lease and the Tenant Package, and in compliance with all Governmental Regulations.

4.3. **Tenant's Architect.** Tenant shall engage the services of a licensed architect ("Tenant's Architect") to prepare the Preliminary Documents, Construction Documents and As-Built Documents.

4.4. **No Mezzanines.** No mezzanines shall be permitted upon the Premises. The approval of the Preliminary Documents or Construction Documents containing any depictions of mezzanines shall not constitute either Landlord's approval of any mezzanine upon the Premises or a waiver of the prohibition

against mezzanines set forth in this Section 4.4. As used herein, the term "mezzanine" shall apply to all mezzanines regardless of purpose and shall include, without limitation, mezzanines used for storage.

4.5. **On-Site Corrections.** Tenant Coordinator reserves the right to make any on-site corrections to any of the Approved Plans.

4.6. **Scope of Approval.** Landlord's approval of the Preliminary Documents, the Construction Documents and the Approved Plans shall not constitute any representation or warranty by Landlord that the same are complete or sufficient for (a) purposes of Tenant's design, (b) purposes of constructing the Premises or any part of the Premises or (c) complying with any Governmental Regulations. Landlord shall not be liable to Tenant if the Preliminary Documents, the Construction Documents or the Approved Plans fail to satisfy any of the provisions specified in (a), (b) and/or (c) preceding and Tenant shall not be relieved of any of its obligations under this Exhibit C, the Tenant Package, the Lease or Governmental Regulations on account of any such approval by Landlord.

4.7. **Intentionally Omitted.**

4.8. **Plan Revisions.** If Tenant requires any changes, additions, deletions or other modifications to the Approved Plans, Tenant shall submit revised Construction Documents clearly identifying all changes, additions, deletions and other modifications ("Plan Revisions") to Tenant Coordinator for approval on behalf of Landlord. Tenant Coordinator shall promptly review the Plan Revisions and approve, conditionally approve or disapprove the Plan Revisions. Plan Revisions shall be at the sole cost and expense of Tenant.

4.9. **Landlord's Right to Access.** Throughout the entire course of Landlord's Work and Tenant's Work, Landlord, Landlord's authorized representatives (including Tenant Coordinator) and Landlord's contractors shall have access to the Premises and shall have the right to inspect the progress of Tenant's Work, Tenant's and Tenant's Contractor's compliance with the provisions of the Lease, this Exhibit C and the Tenant Package, and to install such portions of Landlord's Work that first requires all or some portion of Tenant's Work to be completed. If Landlord or any of Landlord's representatives or contractors shall enter the Premises during the course of Tenant's Work, Landlord shall use commercially reasonable efforts to avoid interfering with the progress of Tenant's Work upon the Premises.

4.10. **Commencement of Tenant's Work.** Promptly following (a) the Delivery Date, (b) Landlord's approval of the Approved Plans, (c) Tenant's receipt of all permits and licenses required by governmental authorities and (d) the complete satisfaction of all requirements under the Lease, this Exhibit C and the Tenant Package which Tenant and Tenant's Contractor are obligated to perform prior to commencing construction of Tenant's Work, Tenant shall cause Tenant's Contractor to commence Tenant's Work in accordance with the Approved Plans, the Lease, this Exhibit C and the Tenant Package and to diligently pursue the same to completion and to initially open the Premises for business on or before the Required Opening Date.

4.11. **Construction Deposit.** Tenant and Landlord acknowledge and agree that Tenant has furnished Macerich Company, Landlord's agent, a deposit in the amount of \$3,000.00 ("Construction Deposit") to insure that, in connection with Tenant's Work and the presence at the Center and other centers owned and/or managed by Landlord, Macerich Company, its parent or affiliates, of Tenant's Contractor, the subcontractor and their respective employees, agents, suppliers and contractors, each respective Center is maintained in a clean, neat and safe condition and there is no damage to the Center or the premises of any Occupant and Tenant Contractor and all subcontractors comply with the provisions of this Exhibit C. Such Construction Deposit is kept on account by Landlord as a corporate deposit for General Nutrition Corporation for application in connection with the performance of any Tenant work at any of the centers owned and/or managed by Landlord, Macerich Company, its parent or affiliates. Landlord shall have no obligation to keep the Construction Deposit separate from its general funds nor shall Tenant's Contractor be entitled to interest on the Construction Deposit. Landlord shall have the right to use, apply or retain the Construction Deposit for the payment or reimbursement of (a) any fine which Landlord is permitted to assess against Tenant's Contractor and (b) any sums expended by Landlord to

correct any of the preceding conditions on behalf of the Tenant's Contractor; provided that, except in the case of any damage to any part of a center (which Landlord shall repair at Tenant's expense) Landlord has first notified Tenant's Contractor of the need to make such correction and Tenant's Contractor has failed within three (3) days following receipt of such notification to fully and finally make such correction. If the Construction Deposit or any portion of the Construction Deposit is used, applied or retained as permitted by this Section and as the result thereof the balance of the Construction Deposit falls below \$2,000.00 to Tenant shall immediately deposit with Macerich Company such additional sums required to restore the Construction Deposit to the amount specified above. Landlord shall be obligated to refund any remaining Construction Deposit at such time as Tenant elects, by written notice to Landlord, to once again pay a separate Construction Deposit at each location where Tenant performs work which is owned and/or managed by landlord, Macerich Company, its parent or affiliates.

## **5. CLOSE-OUT PACKAGE.**

5.1. **Close-Out Package.** Tenant shall perform and provide Landlord with each of the following within the time frame specified therefor all at Tenant's sole cost and expense (collectively, "Close-Out Package"):

5.1.1. **Compliance and Close Out Documentation.** All compliance and close out documentation as detailed in Section U of the Contractors' Rules and Regulations in connection with the performance of Tenant's Work.

5.1.2. **Affidavit of Improvements Cost.** Tenant shall deliver to Landlord, within thirty (30) days after the substantial completion of Tenant's Work (a) an affidavit, certified as true and correct by an Authorized Officer of Tenant, setting forth in reasonable detail the amounts paid by Tenant for the leasehold improvements made by Tenant (less any amounts paid by Landlord toward such leasehold improvements and specifically excluding all costs for Personal Property), and (b) all paid invoices for Tenant's Work.

## **6. CONSTRUCTION ALLOWANCE**

6.1. **Construction Allowance.** So long as Tenant is not in default of this Lease, Tenant shall be entitled to receive from Landlord a one-time contribution for the purchase of, and payment for, Qualified Items up to a maximum of \$75,000.00 ("Construction Allowance").

6.2. **Qualified Items.** "Qualified Items" means (a) the contract price for contractors and subcontractors who undertake improvements upon the Premises pursuant to this Exhibit C and (b) the materials purchased and installed or constructed as improvements upon the Premises pursuant to the provisions of this Exhibit C (excluding, however, Personal Property).

6.3. **Disbursement of the Construction Allowance.** The Construction Allowance shall be paid to Tenant in the following manner:

6.3.1. **Disbursement of the Construction Allowance.** The Construction Allowance may be recaptured by Tenant until the Construction Allowance has been exhausted from up to 100% of each payment of Fixed Minimum Rent due and payable after the later to occur of (a) the date Tenant initially opens the Premises for business to the public, (b) the date Landlord receives the complete Close-Out Package, (c) the date Landlord receives a form W-9, Request for Taxpayer Identification Number and Certification (or any substitute form designated by the United States federal government), for Tenant, completed and signed by Tenant or an Authorized Officer of Tenant, as the case may be, and (d) the date Landlord receives written request therefor from Tenant. Any credit against Fixed Minimum Rent pursuant to this Section 6.3 will not affect Tenant's obligations to pay Percentage Rent or Additional Rent and, for purposes of calculating Percentage Rent, Fixed Minimum Rent shall not be deemed to have been abated by the provisions of this Section 6.3. In the event the Lease terminates prior to exhaustion of the recapture amount, no remaining amount will be refunded to Tenant. In the event Tenant is in default of the Lease prior to the exhaustion of the entire recapture amount, Landlord may apply any outstanding amounts owed

by Landlord against the amounts owing by Tenant under the Lease until the rent credit is fully credited. Tenant shall deliver the information set forth in (b), (c) and (d) above to [tcpheoenix@macerich.com](mailto:tcpheoenix@macerich.com) or to the following address:

Tenant Coordination Administration  
% Macerich  
11411 North Tatum Boulevard  
Phoenix, AZ 85028-2399

6.4. **Landlord's Right to Dispute.** Landlord's payment of any or all of the Construction Allowance shall not constitute Landlord's approval or acceptance of the work furnished or materials supplied for the Premises. Landlord may dispute in good faith any request for payment based upon material non-compliance of any of Tenant's Work with the Approved Plans or due to any materially substandard work as identified in good faith by Landlord ("Substandard Work"). If Landlord identifies any Substandard Work, Landlord shall provide Tenant with a detailed statement identifying the Substandard Work, and Landlord may withhold payment from the Construction Allowance until Landlord receives reasonable evidence that the Substandard Work has been corrected. If Tenant disputes Landlord's determination of Substandard Work, the matter shall be resolved by the Landlord's designated architect and Tenant's Architect. Landlord's obligation to disburse the Construction Allowance shall be suspended during any period when Tenant is disputing Landlord's determination of Substandard Work.

6.5. **Event of Termination Prior to Expiry Date.** If due to aa Trigger Event this Lease is terminated prior to the Expiry Date, then the unamortized portion of the Construction Allowance which was theretofore disbursed by Landlord to Tenant (amortized on a straight-line basis over the initial Term) shall become immediately due and payable to Landlord and any portion of the Construction Allowance which had not been disbursed by Landlord to Tenant as of such date shall be retained by Landlord and Tenant shall have no right or claim thereto. The term "Trigger Event" means any one or more of the following: (a) a termination of the Lease pursuant to Articles 19 (Defaults by Tenant) and 20 (Landlord's Remedies) or (b) a termination fo the Lease pursuant to Article 23 (Damage and Destruction) or (c) a termination of the Lease pursuant to Article 24 (Condemnation).

**EXHIBIT D**  
**CERTAIN DEFINED TERMS**

**1. INTENT**

1.1. **Intent.** The purpose of this Exhibit D is to set forth certain defined terms which are used in the Lease. Terms which are not defined in this Exhibit D are defined in the Lease or the Exhibits attached to the Lease.

1.2. **References.** All references to Articles, Sections and captions contained in this Exhibit D are Articles, Sections and captions contained in the Lease unless otherwise provided.

**2. CERTAIN DEFINED TERMS**

2.1. **Additional Rent** means all amounts payable by Tenant under this Lease, other than Fixed Minimum Rent and Percentage Rent.

2.2. **Address for Payment of Rent** means the address specified at Section 1.19.

2.3. **Administrative Charge** means fifteen percent (15%) of the subject sum. The Administrative Charge is intended to reimburse Landlord for additional administrative costs incurred by Landlord for providing work, materials or services.

2.4. **Affiliate** means any entity that Controls, is Controlled by or is under common Control with another specified entity.

2.5. **Agreed Rate** means the prime commercial rate of interest charged from time-to-time by Wells Fargo Bank, National Association (or, if the same does not exist, such other comparable bank selected by Landlord), plus two percent (2%) per annum, but not to exceed the maximum rate of interest allowable under law.

2.6. **Annual Base Sales** means the annual figure specified at Section 1.10, as the same may be adjusted from time-to-time pursuant to this Lease.

2.7. **Annual Fixed Minimum Rent** means the annual rent sum specified at Section 1.8, as the same may be adjusted from time-to-time pursuant to this Lease.

2.8. **Annual Sales Statement** means a written statement in the form attached as Exhibit G to the Lease certified to be true and correct by an Authorized Officer of Tenant.

2.9. **Approved Plans** means the final set of plans for Landlord's Work and/or Tenant's Work (as the case may be) which have received the final written approval of both Landlord and Tenant to the extent required by any applicable provisions of this Lease and the Tenant Package.

2.10. **Assignment, Assign and Assigning** mean any assignment of Tenant's interest in the Lease and **Assignment Instrument** means the instrument by which an Assignment is made.

2.11. **Attached Fixtures** means such trade fixtures, equipment and other Personal Property which is attached or affixed to the Premises (including, without limitation, carpeting, flooring, lighting, light fixtures, electrical systems, communications wiring and cabling, built-in shelving, built-in furniture and the cash wrap).

2.12. **Authorized Officer** means (a) each natural person who executed the Lease (or the most recent amendment of the Lease), if Tenant is one or more natural persons, (b) an authorized officer, if Tenant is a corporation, (c) an authorized or managing partner, if Tenant is a partnership or a limited liability partnership or (d) an authorized member, if Tenant is a limited liability company.

2.13. **Bankruptcy Code** means the Bankruptcy Code 11 U.S.C. 101 *et seq.*, as amended from time-to-time.

2.14. **Building** means the building, if any, of which the Premises are a part.

- 2.15. **Casualty** means fire or any other casualty.
- 2.16. **Center** means that certain commercial project, the name and approximate location of which is specified at Section 1.1.
- 2.17. **Center Hours** is defined at Section 1.15.
- 2.18. **Claims** means, collectively, claims, charges, liabilities, obligations, penalties, causes of action, liens, damages, costs and expenses, including reasonable attorneys' and other expert and third party fees and costs.
- 2.19. **Close-Out Package** is defined at Exhibit C.
- 2.20. **Common Area** means all improvements, facilities, equipment, signs, land and areas (as each may be enlarged, reduced, dedicated to retail use, replaced, increased, removed, demolished or otherwise altered in any way by Landlord) within the exterior boundaries of the Center which are now or hereafter made available for general use, convenience or benefit of more than one (1) Occupant, which may include, but shall not be limited to, parking areas, access and perimeter roads, driveways, loading docks, pedestrian malls and courts (whether enclosed or unenclosed), corridors, stairs, ramps, elevators, escalators, first-aid stations, security stations, drinking fountains, toilets, public washrooms, community halls, auditoriums, and other public facilities, parcel pick-up stations and landscaped areas. Common Area shall include any other land which Landlord, by means of purchase, lease or otherwise, acquires, and which land is not presently part of the Center, to the extent Landlord designates all or any portion of such land available as Common Area.
- 2.21. **Competing Interest** is defined at Section 10.4.
- 2.22. **Control, Controlled and Controls** mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity.
- 2.23. **Costs** means both Fixed Costs and Variable Costs (or Tenant's Share of Variable Costs, as the context of the sentence, paragraph or Section may require).
- 2.24. **Delivery Date** means the date Landlord delivers possession of the Premises to Tenant. Notwithstanding the foregoing, in no event shall Tenant be required to accept delivery of the Premises prior to June 1, 2023 unless Tenant agrees in writing.
- 2.25. **Effective Date** is defined in the preamble to this Lease.
- 2.26. **Intentionally Omitted (Form)**
- 2.27. **Environmental Laws** means any and all federal, state and local laws, regulations, ordinances, codes and policies, and any and all judicial or administrative interpretations thereof by governmental authorities, as now in effect or hereinafter amended or enacted, relating to:
- 2.27.1. Pollution or protection of the environment, natural resources or health and safety; including, without limitation, those regulating, relating to, or imposing liability for emissions, discharges, releases or threatened releases of Hazardous Materials into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, release, transport or handling of Hazardous Materials; and
- 2.27.2. The use of chemical, electrical, radiological or nuclear processes, radiation, sophisticated electrical and/or mechanical equipment, sonar and sound equipment, lasers, and laboratory analysis and materials.
- 2.28. **Excluded Floor Area** means the total Floor Area of all of the following (but excluding the Floor Area of the Premises) designated for occupancy by: Major Occupant Stores, premises having an exterior entrance (but only if the Center contains an enclosed mall), movie theatres, pad sites, premises of educational facilities or offices, restaurants, mezzanines, storage areas, premises used or occupied by

Temporary Tenants, Landlord's management office(s), merchants' association offices, marketing service offices, maintenance buildings and offices, equipment rooms utilized by Landlord for the maintenance of the Common Area, and such facilities and areas the primary purpose of which is to afford services, convenience or recreation to customers and invitees of the Center or for municipal and community purposes, which include, without limitation, post offices, security and/or police offices, child care facilities, and rooms used for community or public meetings.

2.29. **Executive Order 13224** is defined at Section 27.25.1.1.

2.30. **Expiry Date** means the date specified at Section 1.7.

2.31. **First Fixed Costs Adjustment Date** is defined at Section 1.25.

2.32. **Fixed Costs** means the annual figure specified at Section 1.25, as the same may be adjusted from time-to-time pursuant to this Lease.

2.33. **Fixed Costs Adjustment Date** is defined at Section 5.7.1.

2.34. **Fixed Minimum Rent** means Annual Fixed Minimum Rent and/or Monthly Fixed Minimum Rent (as the case may be).

2.35. **Floor Area** means (a) with respect to areas in the Center that are available from time-to-time for the exclusive use and occupancy by an Occupant, Landlord's calculation of the number of square feet of floor area of all floors in such subject space measured from the exterior faces of all exterior walls (and from the extensions thereof in the case of openings) and from the center line of interior demising walls inclusive of the floor area of mezzanines and basements (unless otherwise excluded) and (b) with respect to RMUs, Landlord's calculation of the floor area of the footprint of each of the RMUs. Landlord and Tenant stipulate to all Floor Area calculations made from time-to-time by Landlord.

2.36. **Floor Area of the Premises** means the number of square feet of Floor Area specified at Section 1.3.

2.37. **Force Majeure** is defined at Section 27.13.

2.38. **Governmental Regulations** means all laws, statutes, ordinances, rules, regulations, zoning codes, building codes, standards and requirements now or hereafter in force of all governmental and quasi-governmental authorities, and of all board of fire insurance underwriters, having jurisdiction of the Premises or the Center.

2.39. **Grand Opening Charge.** Intentionally Omitted.

2.40. **Grand Opening Event.** Intentionally Omitted

2.41. **Gross Sales** is defined at Section 7.1.1.

2.42. **Guarantor(s)** means those person(s) and/or entities whose name(s) appear at Section 1.22.

2.43. **Hazardous Materials** means any and all substances, chemicals, wastes, sewage or other materials that are now or hereafter regulated, controlled or prohibited by any Environmental Laws, including, without limitation, any (a) substance defined as a "hazardous substance", "extremely hazardous substance", "hazardous material", "hazardous chemical", "hazardous waste", "toxic substance" or "air pollutant" by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, *et seq.*; the Clean Air Act, 42 U.S.C. Section 7401, *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; or the Occupational Safety and Health Standards, 25 C.F.R. 1910-1000 *et seq.*, or regulations promulgated thereunder, all as amended to date and as amended hereafter; (b)

hazardous substance, hazardous waste, toxic substance, toxic waste or hazardous material, waste, chemical or compound described in any other Environmental Laws; and (c) asbestos, polychlorinated biphenyls, urea formaldehyde insulation, flammable or explosive or radioactive materials, gasoline, oil, motor oil, waste oil, petroleum (including, without limitation, crude oil or any component thereof), petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, and other regulated chemical products.

2.44. **HVAC** means heating, ventilating and air conditioning system(s).

2.45. **Intentionally Omitted (Form)**

2.46. **Improvements** means all existing and future fixtures, installations, alterations, replacements, additions, changes and improvements to the Premises.

2.47. **Index** means the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, U.S. City Average, Subgroup "All Items" (1982-84=100). If the foregoing Index is not available, then the successor or substitute index published by the Bureau of Labor Statistics shall be used by Landlord as the Index. If the Bureau of Labor Statistics does not publish such successor or substitute Index, a reliable governmental or other non-partisan publication evaluating substantially the same consumer information shall be used by Landlord for the Index. If Landlord uses any substitute or successor index or other publication, the same shall be converted to a basis of 100 if the basis used for such other index or publication is less than 100.

2.48. **Insured Casualty** means damage or destruction the repair of which is fully covered by insurance proceeds made available to Landlord for repair and restoration pursuant to any insurance policy required to be carried by Landlord under the terms of this Lease.

2.49. **Insuring Party** is defined in Section 8.1.3.

2.50. **Involuntary Assignment** means any transfer of interest of Tenant in the Lease by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy, or in any bankruptcy or insolvency proceeding) and each of the following acts shall be considered an Involuntary Assignment: (a) If Tenant is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under any bankruptcy law in which Tenant is the bankrupt; or, if Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other such person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (b) if a writ of attachment or execution is levied on this Lease; (c) if, in any proceeding or action to which Tenant is a party, a receiver is appointed with authority to take possession of the Premises; or (d) there is any assumption, assignment, sublease or other transfer under or pursuant to the Bankruptcy Code.

2.51. **Intentionally Omitted (Form)**

2.52. **Landlord** is defined in the preamble to this Lease.

2.53. **Landlord Parties** means, collectively, the Manager, Landlord's Designees and the respective past, present and future partners, officers, directors, shareholders, beneficiaries, trustees, employees, agents and independent contractors of both Landlord and Manager.

2.54. **Landlord's Address for Notices** means the address specified at Section 1.17.

2.55. **Landlord's Broker(s)** means the broker(s), if any, specified at Section 1.20.

2.56. **Landlord's Designees** means, collectively, the Manager, the Mortgagee, any lessors under any ground or underlying leases liening the Premises and such person(s) designated by Landlord as having an insurable interest in the Premises.

2.57. **Landlord's Sales Reporting Address** means the address for Landlord set forth at Section 1.24.



- 2.58. **Landlord's Work** is defined at Exhibit C.
- 2.59. **Lease** is defined in the preamble to this Lease.
- 2.60. **Lease Year** means, as to the first Lease Year, the period from the Rent Commencement Date through the immediately following December 31, and as to each subsequent Lease Year, the period of January 1 of a given year through the immediately following December 31 of the same year; however, the last Lease Year shall end upon the Expiry Date.
- 2.61. **Major Destruction** means any destruction (whether or not an Insured Casualty) (a) to the extent of more than twenty five percent (25%) of the full replacement cost of any of the Premises, the Building, the parking structures located at the Center or the Center, as the case may be, as of the date of destruction, (b) that will take in excess of one (1) year to complete repair and restoration, or (c) that occurs at any time during the last twenty four (24) months of the Term.
- 2.62. **Major Occupant** means each Occupant (if any) occupying premises containing at least 15,000 square feet of contiguous Floor Area operating under a single trade name.
- 2.63. **Major Occupant Stores** means (a) each of the premises (if any) identified on Exhibit A as a "Major Occupant Store" and (b) the premises occupied, or designated for occupancy, by Major Occupants.
- 2.64. **Mall** means (a) that portion of the Common Area which is contained in the enclosed mall, if the Center contains an enclosed mall, or (b) the Common Area of the Center, if the Center does not contain an enclosed mall.
- 2.65. **Manager** means such entity with whom Landlord then has an agreement to manage the Center.
- 2.66. **Mezzanine** is defined at Exhibit C.
- 2.67. **Monthly Fixed Minimum Rent** means the monthly rent sum specified at Section 1.8, as the same may be adjusted from time-to-time pursuant to this Lease.
- 2.68. **Monthly Sales Statement** means a written statement in the form attached as Exhibit G to the Lease certified to be true and correct by an Authorized Officer of Tenant.
- 2.69. **Mortgage** and **Mortgagee** are each defined in Section 26.1.
- 2.70. **Notice of Relocation** is defined at Section 17.5.1.
- 2.71. **Notice of Transfer Termination** is defined at Section 14.5.1.
- 2.72. **Occupant** means any entity, inclusive of Tenant and exclusive of Landlord (except to the extent Landlord operates any retail business open to the public in the Center), entitled by any form of instrument to occupy Floor Area in the Center.
- 2.73. **OFAC** is defined at Section 27.25.1.1.
- 2.74. **Percentage Rent** means the amount, if any, equal to the product obtained by multiplying the Percentage Rent Rate by the amount of Gross Sales for each Lease Year during the Term that is in excess of the Annual Base Sales for each such Lease Year.
- 2.75. **Percentage Rent Rate** means the rate specified at Section 1.9.
- 2.76. **Permitted Exclusions** is defined at Section 7.1.2.
- 2.77. **Permitted Use** means the use specified at Section 1.11.
- 2.78. **Personal Property** means all of the following which do not otherwise constitute Attached Fixtures: Tenant's trade fixtures, equipment, appliances, furniture, displays, Storefront Sign, other signs, inventory, merchandise and other personal property.

- 2.79. **Intentionally Omitted.**
- 2.80. **Plan Revisions** is defined at Exhibit C.
- 2.81. **Premises** means that certain space identified at Section 1.2.
- 2.82. **Proposed Transfer Date** means the effective date of such Transfer, as specified by Tenant in writing to Landlord.
- 2.83. **Radius** is defined at Section 1.16.
- 2.84. **Real Estate Taxes** means, without limitation, all taxes (except for franchise, gift, estate, inheritance or net income taxes [unless and then only to the extent that net income taxes are a substitute for real estate taxes]), assessments and reassessments (whether resulting from any new construction, renovation or replacement of existing improvements or a transfer of all or any portion of the Center or otherwise), whether special or general, bonds, permit fees, license fees, license taxes, levies and penalties imposed, assessed or levied against the Center or any portion thereof by any authority having the direct or indirect power to impose, assess or levy the same, including, without limitation, any city, county, state or federal government or agency thereof, or any school, agricultural, lighting, drainage, fire, street, sanitary, community facilities or other improvement district thereof; all taxes, fees and/or charges on the operation and use of the Center or Common Area imposed by any federal, state or local governmental entity; taxes on Landlord's personal property used in connection with the maintenance or operation of the Center or made available for general use, convenience or benefit of more than one (1) Occupant; all impositions (whether or not such impositions constitute tax receipts to governmental agencies) in substitution, partially or totally, of any impositions now or previously included within the definition of real estate taxes, including, without limitation, those imposed or required by governmental agencies to increase tax increments to governmental agencies and for such services as fire protection, street, sidewalk and road maintenance, refuse removal and/or for other governmental services formerly provided without charge to property owners or occupants (it being the intention of Landlord and Tenant that all such new and/or increased impositions and all similar impositions be included within the definition of Real Estate Taxes for purposes of this Lease); interest on the foregoing to the extent any of the same are paid in installments; and the costs of professionals and counsel to analyze tax bills and/or prosecute any challenges, protests, refunds and appeals.
- 2.85. **Refund Date** means the date which is the later of (a) the Expiry Date or date of earlier termination of this Lease, or (b) the date Tenant has fully performed all of its Surrender Obligations under Section 13.1.
- 2.86. **Refurbishment** is defined at Section 12.2.
- 2.87. **Refurbishment Notice** is defined at Section 12.2.
- 2.88. **Reimbursed Cost(s)** means Landlord's cost for performing specific work or services, or providing materials on behalf of Tenant, together with interest at the Agreed Rate, calculated from the date Landlord performs such work or services, or provides such materials, until the date that any such cost(s) are paid by Tenant. Tenant shall pay any Reimbursed Costs within ten (10) days after Landlord's written demand therefor.
- 2.89. **Relocation Termination Notice** is defined at Section 17.5.4.
- 2.90. **Rent** means Fixed Minimum Rent, Percentage Rent and Additional Rent.
- 2.91. **Rent Commencement Date** means the date specified at Section 1.6.
- 2.92. **Rent Inquiry Address** means the addresses for Landlord and Tenant, respectively, set forth at Section 1.23.
- 2.93. **Request to Transfer** is defined at Section 14.3.
- 2.94. **Required Opening Date** means the date specified at Section 1.5.

- 2.95. **Review Fee** is defined at Section 14.11.
- 2.96. **RMUs** means sales areas, display areas, carts, kiosks and other retail merchandising units of Occupants located from time-to-time in the Common Area.
- 2.97. **Rules** means such rules and regulations established from time-to-time by Landlord with respect to the Center.
- 2.98. **Security Deposit. Intentionally Omitted.**
- 2.99. **Storefront Sign** means the sign for the Premises facing onto the Mall which shall contain no name other than the Trade Name.
- 2.100. **Subletting** and **Sublet** mean a subletting of all or any portion of the Premises or any concession, franchise or license with respect to the Premises.
- 2.101. **Substitute Lease** is defined at Section 17.5.
- 2.102. **Superior Agreements** means all mortgages, deeds of trust, ground leases, reciprocal easement agreements, declarations, covenants, conditions, restrictions, easements, rights-of-way and other matters of record (whether placed of record on, prior to, or after the Effective Date) affecting all or any portion of the Center, as the same may be modified, amended and supplemented from time-to-time.
- 2.103. **Surrender Obligations** is defined at Section 13.1.
- 2.104. **Taking** means any taking or appropriation for public or quasi-public use by the right of eminent domain or otherwise by a taking in the nature of inverse condemnation, with or without litigation, or a transfer by agreement in lieu thereof.
- 2.105. **Temporary Tenants** means all Occupants under leases, licenses or other agreements each with an original stated term of twelve (12) months or less.
- 2.106. **Tenant** is defined in the preamble to this Lease.
- 2.107. **Tenant Coordinator** is defined at Exhibit C.
- 2.108. **Tenant Package** is defined at Exhibit C.
- 2.109. **Tenant Parties** means, collectively, Tenant's Occupants and the respective past and present officers, directors, shareholders, invitees, customers, agents, employees and independent contractors of both Tenant and Tenant's Occupants.
- 2.110. **Tenant's Address for Notices** means the address specified at Section 1.18.
- 2.111. **Tenant's Architect** is defined at Exhibit C.
- 2.112. **Tenant's Broker(s)** means the broker(s), if any, specified at Section 1.21.
- 2.113. **Tenant's Contractor** is defined at Exhibit C.
- 2.114. **Tenant's Occupants** means all concessionaires, licensees, subtenants, assignees and others holding any rights to, or interest in, any part of the Premises under Tenant.
- 2.115. **Tenant's Receipts** is defined at Section 7.2.
- 2.116. **Tenant's Records** is defined at Section 7.2.
- 2.117. **Tenant's Representative** is defined at Exhibit C.
- 2.118. **Tenant's Share** means a fraction, the numerator of which is the Floor Area of the Premises and the denominator of which is the Floor Area of the Center (inclusive of the Premises, but exclusive of the Excluded Floor Area), which is from time-to-time occupied and open for business.
- 2.119. **Tenant's Work** is defined at Exhibit C.

- 2.120. **Term** means the period of time specified at Section 1.4.
- 2.121. **Trade Name** means the name(s) specified at Section 1.12.
- 2.122. **Transfer** and **Transferring** mean either an Assignment or a Subletting or both, as the case may be.
- 2.123. **Transferee** means all of the following: Concessionaire(s), franchisee(s), licensee(s), assignee(s) and subtenant(s), as the case may be.
- 2.124. **Unamortized Amount** shall mean an amount equal to the remaining unamortized net cost paid by Tenant for Improvements (less all amounts either [a] paid by Landlord toward such Improvements, or [b] spent by Tenant on Personal Property) amortized as of the effective date of any termination on a straight line basis over the initial term of the Lease commencing on the Rent Commencement Date.
- 2.125. **Uncontrollable Costs** means the aggregate amount of Landlord's costs and expenses associated with (a) providing snow and ice removal, (b) furnishing electricity to the Common Area and (c) maintaining property and liability insurance for the Center to the extent any increases in (a), (b), or (c) above are in excess of the percentage adjustments to Fixed Costs calculated on a cumulative basis in accordance with Section 5.7.1.
- 2.126. **Uninsured Casualty** means damage or destruction resulting from any flood, earthquake, act of war, act of terrorism, nuclear reaction, nuclear radiation or radioactive contamination, or any other casualty of any kind or nature whatsoever which is not an Insured Casualty.
- 2.127. **Utilities** means all water, gas, sewer, heat, electricity, steam, chilled water, conditioned water, hot water, sprinklers, fire-safety systems, lighting, power, HVAC, telephone service and other telecommunications services, sewer service, refuse removal service and all other utilities and related services.
- 2.128. **Utility Facilities** means any and all systems, machinery, facilities, installations, supply lines, transformers, pipes, conduits, ducts, penetrations, components, appurtenances and equipment, located on or at the Center, for the generation or supply of any Utilities (including, without limitation, any central plants and individual HVAC units owned or maintained by Landlord).
- 2.129. **Vacation** is defined at Section 19.1.3.
- 2.130. **Variable Costs** means Real Estate Taxes together with an Administrative Charge calculated on Real Estate Taxes.

**EXHIBIT E**  
**CENTER RIDER**  
**GREEN ACRES COMMONS**

**1. GENERAL PROVISIONS**

1.1. **Purpose.** This Exhibit E sets forth certain provisions particular to the Center and the state in which the Premises are located.

1.2. **Prevailing Provisions.** If there are any inconsistencies between the Lease and the provisions of this Exhibit E, the provisions of this Exhibit E shall prevail.

1.3. **Definitions.** Unless otherwise expressly defined in this Exhibit E, all capitalized words shall have the meanings specified in the Lease.

**2. AMENDMENT AND SUPPLEMENTS**

The following Articles and Sections of the Lease are amended and supplemented as follows:

2.1. **Article 2 (Premises)** is amended by adding the following new Section(s) to the end thereof:

**New York Real Property Law.** If a Section of this Article provides that the Premises are occupied upon the Effective Date by another Occupant, then the provisions thereof are intended to constitute 'an express provision to the contrary' within the meaning of Section 223-a of the New York Real Property Law, as the same may be amended from time-to-time, or under any similar statute now or hereafter in force, or under any present or future laws or case decisions to the same effect.

**Impact Fees.** Tenant shall pay, at the option of Landlord, either to Landlord or to the applicable governmental agency, Tenant's Share of any and all impact fees, water resource fees, and any other similar fees. If any of said fees have been or will be paid by Landlord, then Tenant shall promptly pay to Landlord Tenant's Share thereof upon written demand therefor or, at the option of Landlord, Landlord may deduct such sum(s) from any sum(s) which may be owing from Landlord to Tenant under the provisions of this Lease or any Exhibit thereto.

2.2. **Section 5.7.2 (Tenant's Share of Real Estate Taxes)** is amended by adding the following to the end thereof:

Notwithstanding anything to the contrary contained in this Lease, during the period commencing on the Effective Date through the earlier of (i) the expiration or earlier termination of this Lease or (ii) December 31, 2031 ("Stated Real Estate Taxes Expiration Date"), Tenant's Share of Real Estate Taxes including the Administrative Charge, shall be equal to \$6.00, which base amount should be increased by 3% per annum per square foot of the Premises per annum. On January 1, 2025 and each January 1st thereafter during the Term, Tenant's Share of Real Estate Taxes then in effect (or which would then have been in effect absent any abatement or reductions in Tenant's Share of Real Estate Taxes) shall be increased by 3%. In the event the Term extends beyond the Stated Real Estate Taxes Expiration Date, then from and after the Stated Real Estate Taxes Expiration Date Tenant's Share of Real Estate Taxes shall be calculated in accordance with the terms of this Lease, except for this Section 2.2 of Exhibit E.

2.3. **Section 8.2.8 (Policy Requirements)** is amended by adding the following to the end thereof:

Tenant shall include The Town of Hempstead Industrial Development Agency as an additional insured as well as the parties provided for under this Lease and as designated by Landlord pursuant to the terms of this Lease.

2.4. **Section 13.3 (Holding Over)** is amended by adding the following to the end thereof:

In addition to the other provisions of this Section, Tenant hereby expressly agrees that the acceptance by Landlord of any payments from Tenant after the expiration or earlier termination of this Lease shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding (the foregoing being an 'agreement expressly providing otherwise' within the meaning of Section 232-c of the Real Property Law of the State of New York) nor shall any such acceptance be deemed anything other than an acceptance of payment on account of the amounts to be paid by Tenant in accordance with the provisions of this Section. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings which Landlord may institute to enforce the provisions this Section.

2.5. **Section 20.1.2 (Terminate Lease)** is amended by adding the following to the end thereof:

In addition to the other provisions of this Section 16.1.2 Landlord reserves the right to terminate this Lease at any time after an event of default by Tenant which is not cured by Tenant within the applicable notice and/or cure period, if any, by giving written notice to Tenant specifying a date (not less than 5 business days from the date on which such notice is given) on which this Lease shall terminate provided such default has not been cured, and, on such date, the Term shall end, and all rights of Tenant under this Lease shall cease, but the foregoing provisions of this Section shall not relieve Landlord from first complying with all applicable provisions and proceedings required by law as conditions precedent for any such termination.

2.6. **Article 23 (Damage and Destruction)** is amended by adding the following new Section to the end thereof:

**Waiver.** Except as otherwise specifically provided herein, Tenant hereby expressly waives all rights to terminate this Lease under Section 227 of the New York Real Property Law, as the same may be amended from time-to-time, or under any similar statute now or hereafter in force as the result of such Casualty, or under any present or future laws or case decisions to the same effect.

2.7. **Article 27 (Miscellaneous)** is amended by adding the following new Section(s) to the end thereof:

**AGENCY PROVISIONS:** The following items 1-7 shall be collectively referred to as the Agency Provisions:

1. **Payment in Lieu of Taxes**

(a) **PILOT Program Defined.** The financial incentive program offered by the Town of Hempstead Industrial Development Agency (the "Agency"), for eligible proposals that involve the creation, expansion, improvement or retention of property and facilities within The Town of Hempstead by companies moving to or remaining in the Town, including all benefits and requirements contained therein (collectively, the "PILOT Program").

(b) **Reporting Requirements.** Tenant covenants on behalf of itself, its successors and assigns to timely complete and return to Landlord, the Agency, or its successors and assigns, not more often than twice per calendar year, a questionnaire in the form presented by Landlord or the Agency to Tenant concerning, in substance, the total payroll, its operations, the number of part time and full time employees Tenant employs at the Center, and such other matters as may be necessary for Landlord to comply with the terms of the PILOT Program and the Agency to make and submit its annual reports. Such information shall be provided within thirty (30) days following written request from the Agency or Landlord. Tenant shall furnish to the Agency within thirty (30) day of their filing, copies of all reports, if any, filed with the Securities and

Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to Tenant.

2. **Qualification as Project.** Tenant shall not take any action, or fail to take any action, which action or failure to act would cause the Center not to constitute a "project" as such quoted term is defined in Title 1 of Article 18A of the General Municipal Law of the State of New York, as amended (collectively, the "Act"). In accordance with Section 862(1) of the Act, the occupancy of the Premises by Tenant will not result in the removal of a facility or plant of the Tenant from one area of the State of New York to another area of the State or in the abandonment of one or more plants or facilities of Tenant located within the State of New York; provided, however that neither restriction shall apply if the Agency shall determine:

(i) that such occupation of the Premises by Tenant is reasonably necessary to discourage the Tenant from removing such other plant or facility to a location outside the State of New York, or

(ii) that such occupation of the Premises by Tenant is reasonably necessary to preserve the competitive position of Tenant in Tenant's business.

3. **No Warranty of Condition or Suitability by Agency.** THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE CENTER OR THAT IT IS OR WILL BE SUITABLE FOR TENANT'S PURPOSES OR NEEDS.

4. **Employment Opportunities; Notice of Jobs.** Tenant covenants and agrees that, in consideration of the participation of the Agency in the PILOT, Tenant will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, cause any new employment opportunities created in connection with the Premises to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Center is located (collectively, the "Referral Agencies"). Tenant also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

5. **Agency as Third Party Beneficiary.** The Agency is a third party beneficiary of these Agency Provisions with the full right to enforce all provisions hereof in an action at law or in equity.

6. **Confidential Information.** The Agency shall hold as confidential all non-public information provided by Tenant pursuant to the terms of this Lease except to the extent that the Agency is required by applicable law to disclose such information.

7. **Successors and Assigns.** The rights and obligations hereunder of the Agency under these Agency Provisions shall bind and inure to the benefit of the successors and assigns of the Agency.

2.8. **Exhibit C, Article 2 (Tenant Package)** is amended by adding the following to the end thereof:

Tenant acknowledges per the Tenant Package Tenant is required to use local building trades to complete all Tenant's Work.

2.9. **Exhibit D, Section 2.53 (Landlord Parties)** is amended by adding the following to the end thereof:

Landlord Parties shall also include the Town of Hempstead Industrial Development Agency of the Town of Hempstead, New York.

**EXHIBIT F**

***Exhibit F has been Intentionally Omitted***



**EXHIBIT G**  
**MONTHLY AND ANNUAL SALES STATEMENT FORM**

Center: \_\_\_\_\_

Store Name/Number: \_\_\_\_\_

	CERTIFIED TOTAL SALES	CERTIFIED PERMITTED EXCLUSIONS	CERTIFIED GROSS SALES
January	_____	_____	_____
February	_____	_____	_____
March	_____	_____	_____
April	_____	_____	_____
May	_____	_____	_____
June	_____	_____	_____
July	_____	_____	_____
August	_____	_____	_____
September	_____	_____	_____
October	_____	_____	_____
November	_____	_____	_____
December	_____	_____	_____
TOTALS	_____	_____	_____

Details have been attached explaining Permitted Exclusions as required by the applicable provisions of the Lease.

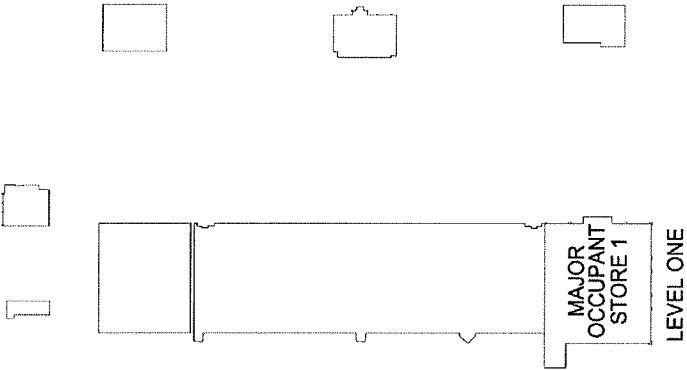
I certify that the sales indicated above are true and correct.

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Authorized Signatory

EXHIBIT H  
RELOCATION ZONE  
LEVEL ONE

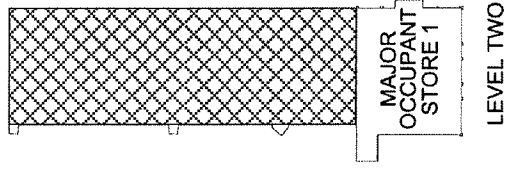


GREEN ACRES COMMONS LEVEL ONE

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, vary, add to or omit whole or in part any structures, and/or improvements, and/or Common Area, and/or land area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. A: Occupant indicated herein is to remain a tenant in the building and shall not be used for any other purpose. The plan is a representation, agreement or easement right except as specifically set forth in the Lease.



EXHIBIT H (Con't)  
RELOCATION ZONE  
LEVEL TWO



GREEN ACRES COMMONS LEVEL TWO

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, modify, change, add, delete, or otherwise alter the layout of the Center or a part thereof at any time without notice to the Tenant. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and distances are approximate. This plan is not to be used for any purpose other than as a general guide. Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing as set forth in this plan is a representation, agreement or statement of right except as specifically set forth in the Lease.



**Green Acres and Green Acres Commons – Parallel Provisions Check Sheet - GNC**

<b>PILOT Agreement Exhibit G Provision</b>	<b>Parallel Approved Macerich Lease Provision [Perm lease form]</b>	<b>Check if Provision Substantially Conforms</b>	<b>Explanation of Substantial Deviation</b>
2.1 and 2.2	Section 8.2, including 8.2.1 – 8.2.8 (w/includes self-insurance)	X	
2.3	Section 23.5 and Exhibit D, definition of <b>Insured Casualty</b> (alphabetically)	X	
2.4	Lines 15 – 19 of Section 8.2.8, Policy Requirements (and Exhibit E provision modifying 8.2.8 including the TOHIDA as an additional insured)	X	
3.1	Exhibit C, Section 3.2 and 4.1, and Exhibit E provision labeled “No Warranty of Condition or Suitability by Agency.”	X	
3.2	Sections 8.1.1 and 8.1.3, and Exhibit E, change to Exhibit D definition of Landlord Parties (final provision in Exhibit E unless something else is negotiated into Exhibit E.)	X	
3.3	17.4	X	
3.4 and 3.5	12.1.2 and 27.4	X	
3.6	Exhibit E, Agency Provision 1(a) and 2	X	
3.7(a)	12.1.2 (w/includes Tenant alteration language from formbook)	X	
3.7(b)	Art. 25	X	
3.8	Exhibit E, Agency Provision 1.(b) labeled “Reporting Requirements”	X	
3.9	Exhibit E, Agency Provision 4, Labeled “Employment Opportunities; Notice of Jobs.”	X	
3.10	Article 14 (w/includes Corporate, Affiliate & Franchise transfer language from our formbook)	X	
3.11, 1 <sup>st</sup> sentence	Section 7.2		
3.11, 2 <sup>nd</sup> sentence	Exhibit E, Agency Provision 1(b), labeled “Reporting Requirements.”	X	
3.12	Exhibit E, labeled Agency Provision 5, “Agency as Third Party Beneficiary”.	X	
3.13	Exhibit E, labeled Agency Provision 6, “Confidential Information”	X	
3.14	Exhibit E, Agency Provision 7, “Successors and Assigns”.	X	
NDA	Form provided		No