

SHOPPING CENTER LEASE

THE STATE OF TEXAS §
THE COUNTY OF BEXAR §

This lease is entered into as of the _____ day of _____, 20____, by and between the Landlord and Tenant hereinafter named.

ARTICLE I.
DEFINITIONS and GENERAL PROVISIONS

1.1 (a) "Landlord": Randolph Plaza Shopping Center, L.L.C.

(b) Landlord's Address: c/o Delta Properties
18585 Sigma, Suite 106
San Antonio, TX 78258

(c) "Tenant": _____

(d) Tenant's Address: _____

(e) Tenant's trade name: _____

(f) "Demised Premises": in Randolph Plaza Shopping Center (herein referred to as the "Shopping Center") in the city of San Antonio, Bexar County, Texas, and more fully described as **Lots 2, 3 and f of an 8.8 acre tract out of the G. Malpez Survey #67 & M. Torres survey #81, County Block 5054 Bexar, County a store unit approximately ___ square feet in area, ~~being approximately _____ feet by _____ feet~~ (measured to the exterior of outside walls and to the center of interior walls), said premises being known as Pat Booker Road, Universal City, TX 78148 and reflected on the attached site plan Exhibit "D".**

(g) Lease term: Commencing on the ___ day of _____, 20____; or the date upon which Tenant opens the premises to the public for business, whichever date shall first occur. The "Commencement Date" shall continue for ___ year and ___ months; provided that if the Commencement Date is a date other than the first day of a calendar month, the lease term shall be extended for said number of years and months in addition to the remainder of the calendar month following the Commencement Date. Tenant, at the request of the Landlord, shall execute and deliver a short form of lease specifying the date of commencement and expiration of the lease term within thirty (30) days after the lease term commences, identical to Declaration of Lease Term attached hereto as Exhibit "C".

(h) Minimum guaranteed rental: \$_____ per month, payable in advance.

(i) Prepaid amount(s): \$_____ being rental, common area maintenance, tax and insurance, and water charges for the month(s) of _____ of the Lease term.

(j) 1. Percentage rental rate: _____%
2. Base gross sales amount: \$_____

(k) Common area maintenance payment: \$_____ per month, payable in advance.

(l) Base tax and insurance year: 20____

(m) Security deposit: \$_____

(n) Permitted use: _____

(o) Renewal Option(s): _____ as further defined in Exhibit "E".

1.2 Each of the foregoing definitions and basic provisions shall be construed in conjunction with and limited by the references thereto in the other provisions of this lease.

ARTICLE II.
GRANTING CLAUSE

2.1 Landlord hereby demises and leases unto Tenant and Tenant hereby takes from Landlord, for the consideration and upon the terms and conditions herein set forth, the demised premises for the term specified in Article I, Section 1.1, commencing on the date fixed by Article I, Section 1.1.

**ARTICLE III.
ACCEPTANCE OF PREMISES**

3.1 Upon opening the demised premises for business, Tenant shall be deemed to have accepted the same as in full compliance with Landlord's covenants and obligations herein. As a material part of the consideration for this Agreement, Landlord and Tenant agree that Tenant is taking the demised premises "AS IS" with any and all latent and patent defects and that there is no warranty by Landlord that the demised premises are fit for a particular purpose, including any and all covenants and obligations for the performance of the Landlord's Work referenced in Exhibit "A". Tenant acknowledges that it is not relying upon any representation, statement or other assertion with respect to the condition of the demised premises, or of the performance of the Landlord's Work referenced in Exhibit "A", but is relying upon its own examination, or that of Tenant's representative, of the demised premises and the performance of the Landlord's Work referenced in Exhibit "A". Tenant accepts the demised premises, and the performance of the Landlord's Work referenced in Exhibit "A", under the express understanding there are no express or implied warranties regarding the condition of the demised premises, or of the performance of the Landlord's Work referenced in Exhibit "A", and Tenant thereupon waives any and all deviations or deficiencies regarding the demised premises and its condition as well as those of the performance of the Landlord's Work referenced in Exhibit "A."

**ARTICLE IV.
RENT**

4.1 Tenant shall pay to Landlord as minimum rental the sum per month specified in Article I, Section 1.1, payable in advance on the first day of each calendar month throughout the lease term without any right of offset or deduction, whatsoever. On the first rental installment date, Tenant shall also pay the minimum rent due for any portion of the preceding calendar month that may be included in the lease term.

4.2 In addition to minimum rental, Tenant shall pay, as percentage rental, that sum by which the percentage specified in Article I, Section 1.1 of gross sales, as gross sales are herein after defined, made in each lease year, shall exceed the Base Gross Sales Amount specified in Article I, Section 1.1, made in such lease year. Percentage rental shall be payable as required by Article V, hereof.

4.3 The term "gross sales" as used herein shall include the entire amount of the sales price, whether for cash or otherwise, of all sales of merchandise (including gift and merchandise certificates), services, and other receipts whatsoever of all business conducted in or from the demised premises. Each sale upon installment or credit shall be treated as a sale for the full price in the month during which such sale was made, irrespective of the time when Tenant shall receive payment from its customer. No deduction shall be allowed for uncollected or uncollectible account.

Gross sales shall not include, however, any sums collected and paid for any sales or excise tax imposed by any duly constituted governmental authority where the amount of such tax is separately charged to the customer, nor shall it include the exchanges of merchandise between the stores of Tenant, if any, where such exchanges are made solely for the convenient operation of the business of Tenant and not for the purpose of consummating a sale which has therefore been made at, in, from or upon the demised premises, nor sales of Tenant's fixtures.

4.4 All rental due herein shall be paid to Landlord at the address specified in Article I, Section 1.1 hereof or such other address as may be specified by Landlord by notice.

4.5 All rents and assessments are due on the first day of each month, in advance. All moneys that are not received by the Landlord by the fifth (5th) day of each month shall be subject to a late charge in an amount equal to five (5%) percent of such installment; and the failure to pay such amount within ten (10) days after demand thereof shall be in addition to all of Landlord's other rights and remedies herein or at law and shall not be construed as liquidated damages or as limiting Landlord's remedies in any manner.

**ARTICLE V.
SALES REPORTS AND RECORDS**

5.1 Within ten (10) days after the expiration of each calendar month of each year, the Tenant shall prepare and deliver to Landlord, at the place where rent is payable, a statement of gross sales made during such calendar month (or partial calendar month).

5.2 Within sixty (60) days after the expiration of each Lease year and within sixty (60) days after the termination of this Lease, if this Lease should not terminate at the end of a Lease year, Tenant shall prepare and deliver to Landlord, at the place where the rent is then payable, a consolidated statement of all reports (as prepared in Section 5.1 above) of gross sales made during such Lease year (or partial Lease year) preceding the due date of such statement, certified to be correct by an independent certified public accountant, together with percentage rent payment due if any.

5.3 Tenant shall keep in the demised premises a permanent accurate set of books and record of all sales of merchandise and revenues derived from business conducted in the demised premises or at such other location as theretofore specified by written notice.

5.4 In the event Landlord is dissatisfied with the statement of gross sales as submitted by Tenant, Landlord shall have the right to have a certified public accountant make a special audit of all books and records, wherever located, pertaining to sales made in or from the demised premises. If such statements are found to be incorrect to an extent of more than three (3%) percent over the figures submitted by Tenant, Tenant shall pay for such special audit; otherwise, the cost of such audit shall be paid by Landlord. Tenant shall promptly pay to Landlord any deficiency as the case may be, which is established by such audit.

ARTICLE VI. COMMON AREAS

6.1 The term "Common Area" is defined for all purposes of this Lease as that part of the Shopping Center intended for the common use of all tenants, including among other facilities (as such may be applicable to the Shopping Center) parking area, private streets and alleys, landscaping, curbs, loading area, sidewalks, malls and promenades (enclosed or otherwise), lighting facilities, drinking fountains, meeting rooms, public toilets, and the like but excluding space in buildings (now or hereafter existing) designed for rental for commercial purposes, as the same may exist from time to time, and further excluding streets and alleys maintained by a public authority. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, as well as the dimensions, identity and type of any buildings in the Shopping Center. Tenant shall not solicit business within the Common Area or take any action which would interfere with the rights of other persons to use the Common Area. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to make repairs or alterations or to prevent the public from obtaining prescriptive rights.

6.2 Landlord shall be responsible for the operation, management, and maintenance of the Common Area, the manner of maintenance and the expenditures therefore to be in the sole discretion of Landlord.

6.3 Tenant agrees to pay as additional rental, upon demand, a proportionate share of all Common Area Maintenance cost paid by Landlord, computed on the ratio that the total floor area of the demised premises bears to the gross leasable area included on Landlord's Tract (it being agreed that no part of common area shall be included in the gross leasable area). Within ten (10) days from Tenant's receipt from Landlord of a statement of the actual Common Area Maintenance costs for such lease year, Tenant shall pay to Landlord the amount of the excess, if any, between Tenant's actual Pro Rata shares of Common Area Maintenance costs over the estimated amount theretofore paid by Tenant for such period. If Tenant's actual Pro Rata share of Common Area Maintenance costs for any lease year during the Lease Term is less than the estimated amount theretofore paid by Tenant for such year, such excess amount paid by Tenant shall (i) be credited against the next maturing installments due from Tenant to Landlord for Tenant's actual Pro Rata share of Common Area Maintenance costs, or (ii) if paid for the last year of the Lease term, be refunded by Landlord to Tenant upon termination of Lease.

6.4 Landlord may from time to time adjust the estimated monthly Common Area Maintenance payment as stated in Article I, Section 1.1 to more accurately reflect the actual Common Area Maintenance costs incurred by Landlord.

6.5 As used in this lease, the term "Common Area maintenance costs" shall mean the total of all items of expense relating to operating, managing, equipping, policing and protecting (if Landlord so elects), lighting, repairing, replacing and maintaining the utility of the common facilities in the same condition as when originally installed (normal wear and tear excepted and excluding items of a capital nature). Such costs and expense shall include, but not be limited to, removal of rubbish, dirt and debris; costs of planting, replanting, and replacing flowers and landscaping, and supplies required therefore, costs of seasonal and permanent decorating, costs of painting and striping the parking lot and curbing, and all costs of utilities used in connection therewith, including, but not limited to, all costs of maintaining speed ramps (if any), lighting facilities, and storm drainage systems; the costs of heating and cooling the enclosed malls (if any), and all premiums for liability, property damage, and Worker's Compensation

insurance; wages, unemployment taxes, social security taxes, and personal property taxes; fees for required licenses and permits together with an administrative fee for Landlord equal to five percent (5%) of the total gross income received during the calendar year.

ARTICLE VII. USE AND CARE OF PREMISES

7.1 The demised premises may be used and occupied only for the purpose or purposes specified in Article I, Section 1.1 and for no other purpose or purposes without the prior written consent of Landlord. Tenant shall not at any time leave the premises vacant, but shall in good faith continuously throughout the term of this lease conduct and carry on in the entire demised premises the type of business for which the demised premises are leased.

7.2 Tenant shall not conduct within the demised premises any fire auction or bankruptcy sale. Tenant shall not permit any objectionable or unpleasant odors to emanate from the premises; nor place or permit any radio, television, loud speaker or amplifier or sign or devices emitting flashing lights or odors on the roof or outside the demised premises or where the same can be heard, seen or smelled from outside the building; nor place any antenna, awning or other projection on the exterior of the demised premises.

7.3 Tenant shall not, without the Landlord's prior written consent, keep anything within the premises nor use the premises for any purposes which increases the insurance premium cost or invalidates any insurance policy carried on the demised premises or other parts of the Shopping Center. If the Landlord should consent to such use and occupancy by Tenant, Tenant shall pay on demand, as additional rent, the additional insurance premiums resulting from such use and occupancy. All property kept or stored or maintained within the premises by Tenant shall be at Tenant's sole risk.

ARTICLE VIII. MAINTENANCE AND REPAIR OF PREMISES

8.1 Landlord, at its sole cost and expense, shall keep in good order, condition and repair the entire exterior of the building on the demised premises including the roof, foundation, and exterior walls but excluding entrances, window(s) and store front glass and window moldings.

8.2 Tenant shall not abuse the demised premises and shall suffer no waste. Tenant, at its sole cost and expense, shall keep in good order, condition and repair (including replacement) the remainder of the demised premises, including (a) exterior entrances; (b) window(s) and store front glass and window moldings; (c) all floor coverings, ceilings, interior walls and doors; and (d) fixtures, equipment and appurtenances thereto, including lighting, ~~heating~~, plumbing fixtures, escalators, elevators ~~and air conditioning systems~~; and shall keep the demised premises in a neat and clean condition and free from rubbish.

8.3 Tenant shall not make any alterations, additions or improvements to the demised premises without the prior consent of Landlord, except for the work described in Exhibit "B" and the installation of unattached movable trade fixtures which may be installed without drilling, cutting or otherwise defacing the premises. **Upon Landlords request and upon the termination of this lease agreement or any extension thereof, any alterations made by tenant, approved or not approved by Landlord, shall be removed by tenant at tenants expense and any resulting damage to the demised premises shall be repaired and placed in its original condition, reasonable wear and tear excepted.**

8.4 If there be any conflict between the provisions of the above Sections of this Article VIII and the provisions of Articles XII, XIII, XVI, XX, the provisions of said Articles XII, XIII, XVI, XX shall control.

ARTICLE IX. LANDLORD'S RIGHT OF ACCESS; USE OF ROOF

9.1 Landlord shall have the right to enter upon the Demised Premises at any time for the purpose of inspecting the same, or of making repairs to the Demised Premises, or of making repairs, alterations or additions to adjacent premises, or of showing the demised premises to prospective purchasers, lessees or lenders.

9.2 Use of the roof above the Demised Premises is reserved to Landlord.

ARTICLE X. SIGNS; STORE FRONTS

10.1 Tenant shall not, without Landlord's prior written consent (a) make any changes to the store front or (b) install any exterior lighting decorations, paintings, awnings, canopies or the like or (c) erect or install any signs, window or door lettering, placards, decorations or advertising media of any type which can be viewed from the exterior of the demised premises, excepting only dignified displays of customary type for its display windows. All signs, lettering, placards, decorations and advertising media shall conform in all respects to the sign criteria established by Landlord for the Shopping Center from time to time in the exercise of its sole discretion, and shall be subject to the prior written approval of Landlord as to construction, method of attachment, size, shape, height, lighting, color and general appearance. All signs shall be kept in good condition and in proper operating order at all times.

ARTICLE XI. UTILITIES

11.1 Tenant shall promptly pay all charges and deposits for electricity, water, gas, telephone service, sewage service and other utilities furnished to the demised premises, as well as pay to Landlord _____ per month for **water/sewer/garbage**, to be adjusted from time to time as necessary.

ARTICLE XII. INDEMNITY AND PUBLIC LIABILITY INSURANCE

12.1 Tenant shall keep all buildings and other improvements located, or being constructed on, the leased premises insured against loss or damage by fire, with extended coverage endorsement or its equivalent. This insurance shall be carried by insurance companies authorized to transact business in Texas, selected by Tenant and approved by Landlord. The insurance shall be paid for by Tenant and shall be in amounts not less than ninety-five percent (95%) of the fair insurable value of the buildings and other improvements. Such policy or policies of insurance shall name both Landlord and Tenant as a named insured and shall provide that This Lease is made upon the express condition that at all times during the term of this lease, any loss of \$5,000.00 or less shall be payable solely to Tenant, which sum Tenant shall use for repair and restoration purposes, and any loss over \$5,000.00 shall be made payable jointly to Landlord and Tenant. In addition, all such policies shall contain endorsements providing for 30 days notice of termination or cancellation to the Landlord, and its mortgagee, if any.

Liability Insurance

12.2 Tenant shall, at its own expense, procure and maintain, at all times during the term of this lease, liability insurance for any and all claims for property damage and personal injury. This insurance shall be carried by one or more insurance companies duly authorized to transact business in Texas, selected by Tenant and approved by Landlord, and shall be paid for by Tenant. The insurance provided pursuant to this section shall be in the amount of not less than \$1,000,000.00 for property damage and not less than \$1,000,000.00 for one person and \$3,000,000.00 for one accident for personal injury. This insurance shall protect Landlord and Tenant against liability to any employees or servants of Tenant and to any other person or persons whose property damage or personal injury arises out of or in connection with the occupation, use, or condition of the demised premises. Tenant expressly agrees that Landlord shall be named as a primary co-insured under the policy and that Tenant=s insurance described herein shall be primary. In addition, all such policies shall contain endorsements providing for 30 days notice of termination or cancellation to the Landlord, and its mortgagee, if any.

Construction Liability Insurance

12.3 Tenant agrees to obtain and maintain (to the extent reasonably procurable) construction liability insurance at all times when demolition, excavation, or construction work is in progress on the demised premises. This insurance shall be carried by insurance companies authorized to transact business in the State of Texas, selected by Tenant and approved by Landlord, and shall be paid for by Tenant. The insurance shall have limits of not less than \$1,000,000.00 for property damage and \$1,000,000.00 for one person and \$3,000,000.00 for one accident for personal injury and shall protect Landlord and Tenant, as well as any other person or persons Tenant may designate, against all liability for injury or damage to any person or property in any way arising out of demolition, excavation, or construction work on the premises. Tenant expressly agrees that Landlord shall be named as a primary co-insured under the policy and that Tenant=s insurance described herein shall be primary. In addition, all such policies shall contain endorsements providing for 30 days notice of termination or cancellation to the Landlord, and its mortgagee, if any.

Certificates of Insurance

12.4 Tenant shall furnish Landlord with certificates of all insurance evidencing all coverage required by this article. Tenant agrees that if it does not keep this insurance in full force and effect, Landlord may notify Tenant of this failure, and if Tenant does not deliver to Landlord certificates showing all such insurance to be in full force and effect within ten (10) days after this notice, Landlord may, at its option, take out and/or pay the premiums on the insurance needed to fulfill Tenant's obligations under the provisions of this article. Upon demand from Landlord, Tenant shall reimburse Landlord the full amount of any insurance premiums paid by Landlord pursuant to this section, with interest at the rate of eighteen percent (18%) per annum from the date of Landlord's demand until reimbursement by Tenant.

12.5 Fifteen days prior to the expiration of any policy of insurance required under the terms of this Lease, the Tenant shall deliver to Landlord a binder renewing each such policy of insurance which binder shall provide that at least 30 days written notice of any change in or cancellation of the insurance shall be given by the insurance company to the Landlord and Landlord's mortgagee, if any. The Tenant shall promptly pay the premiums for the renewal of insurance and deliver to the Landlord, or Landlord's mortgagee, the original policy and duplicate receipt evidencing payment thereof.

12.6 All liability, fire and extended coverage insurance and boiler insurance carried either by Landlord or Tenant covering losses arising out of the destruction or damage to the demised premises or its contents or to other portions of the Shopping Center shall provide for a waiver of rights of subrogation against Landlord and Tenant on the part of the insurance carrier.

INDEMNIFICATION OF LANDLORD

12.7 TENANT AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD HARMLESS FROM AND AGAINST ANY CLAIMS OR CAUSES OF ACTION FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER, TO ANY PERSON, ENTITY OR PROPERTY, ARISING FROM ANY USE OF THE DEMISED PREMISES, OR ANY PART OF THE DEMISED PREMISES, OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE, IMPROVEMENT, EQUIPMENT, OR FACILITY ON THE DEMISED PREMISES OR CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF TENANT, OR ANY OF ITS AGENTS, EMPLOYEES, LICENSEES, OR INVITEES, OR BY OR FROM ANY ACCIDENT, FIRE OR OTHER CASUALTY ON THE LAND OR OCCASIONED BY THE FAILURE OF TENANT TO MAINTAIN THE PREMISES IN A SAFE CONDITION. TENANT WAIVES ALL CLAIMS AND DEMANDS ON ITS OWN BEHALF AGAINST LANDLORD FOR ANY SUCH LOSS OR DAMAGE OR INJURY. TENANT LIKewise AGREES TO DEFEND, INDEMNIFY AND HOLD LANDLORD HARMLESS FROM ALL LIABILITY ARISING FROM THE LANDLORD'S ALLEGED NEGLIGENCE, REGARDLESS OF THE TYPE OF NEGLIGENCE ALLEGED. TENANT'S DUTY OF INDEMNIFICATION TO LANDLORD SHALL COVER ANY CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST LANDLORD, EVEN THOSE ALLEGED TO ARISE FROM THE LANDLORD'S NEGLIGENCE, COMPARATIVE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE, SOLE NEGLIGENCE, JOINT NEGLIGENCE, GROSS NEGLIGENCE OR ANY OTHER ACT OR OMISSION ON THE ON THE PART OF THE LANDLORD.

12.8 Landlord shall carry insurance for fire, extended coverage, vandalism, malicious mischief and other endorsements deemed desirable by Landlord insuring the Shopping Center wherein the demised premises are located, excluding therefrom Tenant's merchandise, trade fixtures, furnishings, personal property and plate glass, in such amounts and with such deductibles as may be deemed desirable by Landlord. Tenant shall carry insurance for amount and with such deductibles as may be deemed desirable by Landlord. Tenant shall carry insurance for fire, extended coverage, vandalism and malicious mischief and other endorsements deemed desirable by Tenant covering the demised premises and items excluded from coverage by the Landlord in the full insurable amount thereof.

12.9 If the cost of maintaining such insurance by Landlord should increased in any year subsequent to the Base Year (as specified in Article I Section 1.1), Tenant agrees to pay as additional rental, upon demand, a proportionate share of such increase, computed on the ratio that the total floor area of the demised premises bears to the gross leasable area included within the Shopping Center.

ARTICLE XIII. DAMAGES BY CASUALTY

13.1 If the demised premises shall be damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenable in whole, or part, Landlord shall at its own expense cause such damage to be repaired, and the rent shall not be abated. If by reason of such occurrence the demised premises shall be rendered untenable only in part, Landlord shall at its own expense cause the damage to be repaired, and the fixed minimum rent meanwhile shall be abated

proportionately as to the portion of the demised premises rendered untenable. If the demised premises shall be rendered wholly untenable by reason of such occurrence, the Landlord shall at its own expense cause such damage to be repaired, and the fixed minimum rent shall abate until the demised premises have been restored and rendered tenantable, or Landlord may at its election terminate this Lease and the tenancy hereby created by giving to Tenant within the sixty (60) days following the date of said occurrence, written notice of Landlord's election so to do and, in the event of such termination, rent shall be adjusted as of such date.

13.2 In the event that fifty (50%) percent or more of the rentable area of the Shopping Center shall be damaged or destroyed by fire or other cause, notwithstanding that the demised premises may be unaffected by such fire or other cause, Landlord may terminate this Lease and the tenancy hereby created by giving to Tenant five (5) days prior written notice of Landlord's election so to do, which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

13.3 Notwithstanding the provisions of Section 13.1 of this Article, if the demised premises shall be damaged by fire or other causes resulting from the fault or negligence of Tenant or Tenant's agents, employees, invitees, visitors or uninvited visitors the same shall be repaired by and at the expense of Tenant under the direction and supervision of Landlord and rent shall not be abated.

ARTICLE XIV. EMINENT DOMAIN

14.1 If ten (10%) percent or more of the floor area of the demised premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or by private purchase in lieu thereof, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease, effective on the date physical possession is taken by the condemning authority.

14.2 If less than ten (10%) percent of the floor area of the demised premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or by private purchase in lieu thereof, this Lease shall not terminate, however the minimum guaranteed rental (but not percentage or additional rental) payable herein during the unexpired portion of this Lease shall be reduced in proportion to the area taken, effective on the date physical possession is taken by the condemning authority and Landlord shall make all necessary repairs or alterations within the scope of Landlord's original work necessary to make the demised premises an architectural whole.

ARTICLE XV. ASSIGNMENT AND SUBLETTING

15.1 Without the prior written consent of the Landlord, which consent shall not be unreasonably withheld, neither the Tenant nor the Tenant's legal representatives or successors in interest by operation of law or otherwise, shall assign or mortgage this Lease, or sublet the whole or any part of the demised premises or permit the demised premises or any part thereof to be used or occupied by others.

15.2 Any transfer, sale or other disposition of all or substantially all of the corporate stock of a corporate Tenant shall be deemed an assignment.

ARTICLE XVI. TAXES

16.1 Tenant shall be liable for all taxes levied against personal property and trade fixtures placed by Tenant in the demised premises. If any such taxes are levied against Landlord or Landlord's property and if Landlord elects to pay the same or if the assessed value of Landlord's property is increased by inclusion of personal property and trade fixtures placed by Tenant in the demised premises and Landlord elects to pay the taxes based on such increase, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is primarily liable herein.

16.2 Landlord shall be responsible for the payment of all real estate taxes including all ad valorem taxes, charges, assessments against the Shopping Center together with interest, penalties or other charges which may accrue thereon.

16.3 If during any real estate tax year subsequent to the base tax year (as defined in Article I, Section 1.1) general real estate taxes, assessments, and governmental charges levied against the entire premises and the Shopping Center for such tax year shall exceed the general real estate taxes, assessments and governmental charges levied for the base tax year, Tenant shall pay to Landlord, as additional rental,

upon demand, a proportionate share of such increase, computed on the ratio that the total floor area of the demised premises bears to the gross leasable area included within the Shopping Center.

**ARTICLE XVII.
DEFAULT BY TENANT AND REMEDIES**

17.1 The following events shall be deemed to be events of default by Tenant under this lease:

(a) Tenant shall fail to pay any installment of rent or any other obligation herein involving the payment of money and such failure shall continue for a period of five (5) days after the date due.

(b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than as described in subsection (a) above, and shall not cure such failure within fifteen (15) days after written notice thereof to Tenant.

(c) Tenant or any guarantor of Tenant's obligations under this lease shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(d) Tenant or any guarantor of Tenant's obligations under this lease shall file a petition for relief under any chapter of the Bankruptcy Code, as amended, or any similar law, or if such a petition shall be filed against Tenant or any guarantor of Tenant's obligations under this lease.

(e) A receiver or Trustee shall be appointed for the demised premises or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

(f) Tenant shall desert or vacate or shall commence to desert or vacate the demised premises or any substantial portion of the demised premises or shall remove or attempt to remove, without the prior written consent of Landlord, all or a substantial value of Tenant's goods, wares, equipment, fixtures, furniture, or other personal property.

(g) Tenant shall do or permit to be done anything which creates a lien upon the premises.

17.2 A Security Deposit specified in Article I, Section 1.1 (m) shall be held by Landlord without interest as security for the performance by Tenant's covenants and obligations under this Lease, it being expressly understood that such deposit is not an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Upon the occurrence of any event of default by Tenant, Landlord may, from time to time, without prejudice to any other remedy provided by law, use such fund to the extent necessary to make good any arrears of rent and any other damage, injury, expense or liability caused to Landlord by such event of default and Tenant shall pay to Landlord on demand the amount so applied in order to restore the security deposit to its original amount. If Tenant is not then in default herein, any remaining balance of such deposit shall be returned by Landlord to Tenant upon termination of this Lease.

17.3 Upon the occurrence of any such events of default, Landlord shall have the option to pursue the following remedy:

Without any notice or demand whatsoever, Landlord may enforce the performance of this Lease in any manner provided by law. At its option, Landlord may terminate or forfeit the Lease if such default continues for a period of ten (10) days after Tenant receives written notice from Landlord of such default and their intention to declare the Lease forfeited, such notice to be sent by certified United States mail, return receipt requested, to Tenant at the address stated herein. After such ten (10) day period shall have expired, unless Tenant shall have completely removed or cured said default (or unless such default is of such a nature that it is incapable of being remedied within such ten (10) day period, and provided that Tenant diligently prosecutes the remedy of such default until same is completely corrected), this Lease shall cease and come to an end as if it were the day originally fixed herein for the expiration of the term, except that Tenant shall remain liable for all defaults, and Landlord's agent or attorney shall have the right, without further notice or demand, to reenter upon the premises and remove all persons and property therefrom without being guilty of, or liable for, any manner of trespass and without prejudice to any remedy for arrears of rent or breach of covenant; and Landlord's agent or attorney may rent or lease the premises for any rent obtainable for the account of Tenant, and Tenant shall remain liable to Landlord for any deficiency. It is expressly agreed that in the event Tenant shall continue to hold the premises after demand therefore at the termination of this Lease or for default or breach of this Lease, that Landlord shall be entitled to secure a mandatory injunction to recover possession thereof. This remedy, however, shall be cumulative of and not in lieu of any other rights and remedies granted herein or by law. In the

event of any default by Tenant herein, Landlord may remedy such default and/or bring suit for damages and Tenant shall reimburse Landlord upon demand for all expenses including, without limitation, attorney's fees in connection therewith, which shall not, in any case, be less than ten (10%) percent of the sum to be recovered.

**ARTICLE XVIII.
LANDLORD'S CONTRACTUAL SECURITY INTEREST**

18.1 Landlord shall have a first lien upon, and security interest in, all of the fixtures, furniture, equipment, stock, goods, merchandise and other property placed on the demised premises during the term of the Lease, to secure the payment of rentals and other sums due herein for the entire term of the Lease. In addition to the remedies granted by law, Landlord shall have and may exercise with respect to said collateral, all of the rights, remedies and powers of a secured party under the Uniform Commercial Code, including, without limitations, the right and power to sell at public or private sale or sales, or otherwise dispose of, lease or utilize, the collateral and any part of parts thereof in any manner authorized or permitted under said code upon default by Tenant. Tenant agrees that Landlord may, at any time during the term of this Lease and without the prior written approval of Tenant, prepare and file a financing statement appropriate for use under the Uniform Commercial Code.

**ARTICLE XIX.
HOLDING OVER**

19.1 In the event Tenant remains in possession of the demised premises after the expiration of this Lease and without the execution of a new lease, it shall be deemed to be occupying said premises as a tenant from month to month at a rental equal to the rental (including any percentage rental) herein provided plus fifty (50%) percent of such amount and otherwise subject to all the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month to month tenancy.

**ARTICLE XX.
SUBORDINATION; ATTORNMENT**

20.1 This Lease is and shall always be subordinate to any mortgage or mortgages which now or shall at any time be placed upon the demised premises or any part thereof, and the Tenant agrees to execute and deliver any instrument, without cost, which may be deemed necessary to further effect the subordination of this Lease to any such mortgage or mortgages. However, this subordination agreement shall be on the express condition that this Lease shall be recognized by the mortgagee and that the Tenant's rights shall remain in full force and effect during the term of this Lease so long as Tenant shall continue to perform all of the covenants and conditions to this Lease.

20.2 In the event a mortgagee or prospective mortgagee should so require, Tenant shall deliver to Landlord, from time to time, for delivery to such mortgagee:

- (a) An acknowledgment of the assignment of rentals and other sums due herein to the mortgagee and agreement to be bound thereby.
- (b) An agreement requiring Tenant to advise the mortgagee of damage to or destruction of the demised premises by fire or other casualty requiring its reconstruction and/or requiring Tenant to give the mortgagee written notice.

**ARTICLE XXI.
MERCHANTS ASSOCIATION**

21.1 Tenant agrees that it will join and maintain membership in the merchants association, if any is formed, will pay such dues and assessments as may be fixed and determined from time to time by the association and will comply with such other bylaws, rules and regulations as adopted from time to time by the association.

**ARTICLE XXII.
NOTICES**

22.1 Whenever any notice is required or permitted herein such notice shall be in writing. Any notice or document required or permitted to be delivered herein shall be deemed to be delivered when actually received by the designated addressee, or, if earlier and regardless of whether actually received or not, when deposited in the United States Mail, postage prepaid, Certified Mail, Return Receipt Requested, addressed to the parties hereto at the respective addresses set out in Article I, Section 1.1 above (or at Landlord's option, to Tenant at the demised premises), or at such other addresses as they have theretofore specified by written notice.

**ARTICLE XXIII.
REGULATIONS**

23.1 Landlord and Tenant acknowledge that there are in effect federal, state, county and municipal laws, orders, rules, directives and regulations (collectively referred to hereinafter as the "Regulations") and that additional Regulations may hereafter be enacted or go into effect, relating to or affecting the demised premises or the Shopping Center, and concerning the impact on the environment of construction, land use, maintenance and operation of structures, and conduct of business. Subject to the express rights granted to Tenant under the terms of this lease, Tenant will not cause, or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would adversely affect the environment, or do anything to permit anything to be done that would violate any of said laws, regulations or guidelines. Moreover, Tenant shall have no claim against Landlord by reason of any changes Landlord may make in the Shopping Center or the demised premises pursuant to said Regulations or any charges imposed upon customers or other invitees pursuant to same.

**ARTICLE XXIV.
MISCELLANEOUS**

24.1 For the purposes of Article V, Article VI, Article XII, Article XVI, the Lease year shall be defined as the period between January 1st through December 31st, the first Lease year being the partial or full year from Commencement Date through December 31st and the last lease year being the partial or full year from January 1st through the termination Date.

24.2 Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of any partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

24.3 One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition. The consent or approval by either party to or of any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act.

24.4 The laws of the State in which the demised premises are located shall govern the interpretation, validity, performance and enforcement of this Lease. If any provision of this Lease should be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Lease shall not be affected thereby. Venue for any action under this Lease shall be the county in which rentals are due pursuant to Article I, Article IV of this Lease.

24.5 The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

24.6 Whenever herein the singular number is used, the same shall include the plural, and words of any gender shall include each other gender.

24.7 The terms, provisions and covenants contained in this Lease shall apply to, inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors in interest and legal representatives except as otherwise herein expressly provided.

24.8 If the Tenant executing this Lease is a corporation, then the undersigned officer personally represents and warrants that the Board of Directors of such corporation, in a duly held meeting, has extended to said officer the authority to execute this Lease and therefor to bind such corporation to all liabilities, obligations and duties as herein stated.

24.9 In the event of the discovery of the presence of toxic or hazardous substances, or contamination therefrom on the Premises which are found to have been caused by or resulted from acts which occurred after the Commencement Date of this Lease Agreement, and found to have been caused by or resulted from the actions of, or permitted by, Tenant, then Tenant shall be liable for any and all loss, damages, fines, costs expenses, in order to restore the premises to its non-contaminated original condition, causes of action, suits, claims of judgments arising from the presence of toxic or hazardous substances or the contamination therefrom on or about the premises. The Landlord agrees to indemnify and hold harmless the Tenant from and against any liability for hazardous materials that were on the demised premises prior to the commencement date or which was caused by the Landlord, its agents or employees. The covenants set forth in this paragraph shall survive the termination or expiration of this Lease.

24.10 Landlord reserves the right and option, upon at least thirty days written notice to Tenant to relocate Tenant to another location within the Shopping Center of equal or greater square footage as the space leased herein, at the same rental provided herein. If Landlord elects to so relocate Tenant, the new location will be chosen by Landlord in its sole discretion and shall thereafter constitute the premises covered by this lease. In the event of such relocation, Landlord shall pay for all of Tenant's moving costs and for the construction of improvements in the new location comparable to those in Tenants original location. In the event Landlord elects to relocate Tenant as provided above, Tenant shall have the right an option of terminating the lease, which option to terminate must be exercised by written notice to Landlord within fifteen days after Landlord mails its notice of relocation. Such termination of Lease shall take effect on the last day of the month next following the date of Tenant's exercise of its option to terminate. Tenant shall continue to pay rent and other charges under the lease to the effective date of termination.

24.11 Any controversy or claim arising out of, or relating to this Shopping Center Lease, shall first be mediated prior to the institution of any legal action being instituted in any court. The parties agree that mediation expenses will be shared equally.

24.12 This Lease contains the entire agreement between the parties, and no agreement shall be effective to change, modify or terminate this Lease in whole or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. **Landlord and Tenant hereby acknowledge that they are not relying on any representation or promise of the other, or of the Agent, except as may be expressly set forth in this Lease.**

24.13 Intentionally left blank.

24.14 Intentionally left blank.

24.15 This Lease consists of **Twenty-four** articles and **six** attached pages, including Exhibits "**A**" through "**F**" and any space left blank will be deemed to have been completed with the word "none". With the exception of Article III and Article IV, in the event any provision of an exhibit or other attached page(s) shall be inconsistent with a provision in the body of the Lease, the provisions as set forth in the exhibit shall be deemed to control.

EXECUTED AS OF THE DATE HEREINABOVE STATED.

LANDLORD: **Randolph Plaza Shopping Center, L.L.C.**

ATTEST OR WITNESS

BY: _____
CHARLES A. BOEMECKE

TITLE: **Member**

TENANT: ____

ATTEST OR WITNESS

BY: _____
NAME

TITLE: ____

EXHIBIT "A"

LANDLORD'S ARCHITECTURAL AND CONSTRUCTION WORK

Description of Landlord's Work

Article I.

Without waiver of Article III, section 3.1 of the Lease Agreement, Landlord hereby agrees to perform the following work to the premises.

As a material part of the consideration for this Agreement, Landlord and Tenant agree that Tenant is taking the demised premises "AS IS" with any and all latent and patent defects and that there is no warranty by Landlord that the demised premises are fit for a particular purpose, including any and all covenants and obligations for the performance of the Landlord's Work referenced in Exhibit "A". Tenant acknowledges that it is not relying upon any representation, statement or other assertion with respect to the condition of the demised premises, or of the performance of the Landlord's Work referenced in Exhibit "A", but is relying upon its own examination, or that of Tenant's representative, of the demised premises and the performance of the Landlord's Work referenced in Exhibit "A". Tenant accepts the demised premises, and the performance of the Landlord's Work referenced in Exhibit "A", under the express understanding there are no express or implied warranties regarding the condition of the demised premises, or of the performance of the Landlord's Work referenced in Exhibit "A", and Tenant thereupon waives any and all deviations or deficiencies regarding the demised premises and its condition as well as those of the performance of the Landlord's Work referenced in Exhibit "A."

EXHIBIT "B"

TENANT'S ARCHITECTURAL AND CONSTRUCTION WORK

Article I.

A. Tenant shall secure Landlord's written approval of all designs, plans, specifications and contracts for work to be performed by Tenant before beginning the work, and shall secure all necessary licenses and permits to be used in performing the work. Tenant's finished work shall be subject to Landlord's approval and acceptance.

B. Should Tenant require and Landlord approve any variation in the store front and/or interior finishing of the demised premises, and if such items are a part of Landlord's Work as described on Exhibit "A" of this lease, said variation shall be incorporated in the aforesaid plans to be furnished by Tenant, and Landlord agrees to reimburse Tenant for that part of the cost thereof equal to the cost of those parts of Landlord's Work described on Exhibit "A" of this lease. The amount of said reimbursement shall be determined at the time of Landlord's approval of designs, plans, specifications and contracts, and shall be incorporated within the approval.

C. Upon Landlord's request and upon the termination of this lease agreement or any extension thereof, any alterations made by tenant, approved or not approved by Landlord, shall be removed by tenant at tenant's expense and any resulting damage to the demised premises shall be repaired and placed in its original condition, reasonable wear and tear excepted.

Article II.

A. Signs: Tenant shall pay for all signs and the installation thereof, subject to the provisions of Section 10.1 of the lease.

B. Utilities: All service deposits shall be made at Tenant's expense.

C. All work undertaken by Tenant shall be at Tenant's expense, and shall not damage the building or any part thereof. Any roof penetration shall be performed by Landlord's bonded roofer and shall be effected only after Landlord has given consent, which consent shall in part be conditioned upon Tenant's plan to include redwood runners, or similar material acceptable to Landlord, in order to spread the weight of the equipment being installed.

EXHIBIT "C"

DECLARATION OF LEASE TERM

In accordance with Article I, Section 1.1(g) of one certain Lease dated the ____ day of ____, 20__, by and between **Randolph Plaza Shopping Center, L.L.C.** as Landlord and _____ as Tenant, the following dates hereby reflect the date of commencement and expiration respectively:

Commencement: ____ day of ____, 20__.

Expiration: ____ day of ____, 20__.

Executed this ____ day of ____, 20__.

LANDLORD: Randolph Plaza Shopping Center, L.L.C.

ATTEST OR WITNESS

BY: _____
Charles A. Boemecke

TITLE: **Member**

TENANT: ____

ATTEST OR WITNESS

BY: _____
name

TITLE: ____

EXHIBIT "D"

SITE PLAN

Approximate location
of demised premises

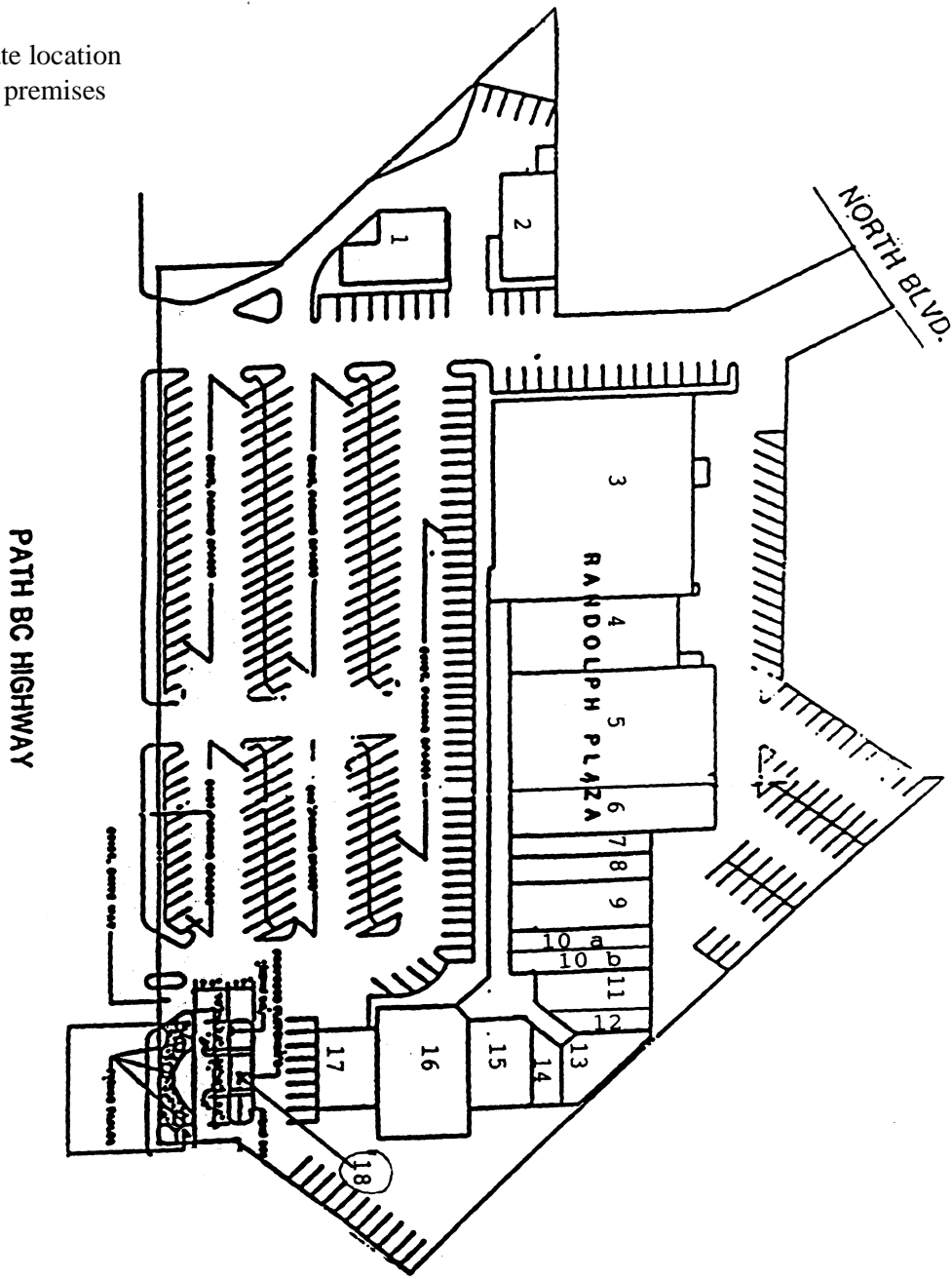


EXHIBIT "E"

RENEWAL OPTION

In accordance with Article I, Section 1.1(p) of one certain lease dated the ___ day of ___, 20___, Tenant is granted the option(s) to extend the term of this lease for ___ consecutive extended term(s) of ___ year(s) each, provided (a) Tenant is not in default at the time of exercise of the respective option, and (b) Tenant gives written notice of its exercise of the respective option at least **Ninety (90)** days prior to the expiration of the original term or the expiration of the then existing term. Each extension term shall be upon the same terms and conditions, except (i) Tenant shall have no further right of renewal after the last of the extension terms prescribed above, and (ii) the monthly minimum guaranteed rental shall be subject to upward adjustment at the end of each lease term (which adjustment shall apply to the succeeding lease term) in accordance with the following formula:

$$\text{Adjusted Rental} = \text{Base Rental} \times (\text{CPI-2}/\text{CPI-1})$$

In applying the above formula for rental adjustment, the following definitions shall prevail.

- (a) "Lease Term" means the then current term during which Tenant exercises its option to extend for another term.
- (b) "Base Rental" means the highest minimum guaranteed rental charged during the lease term in which the adjustment of rental is computed.
- (c) "Bureau" means the U.S. Department of Labor, Bureau of Labor Statistics or any successor agency that shall issue the indexes or data referred to in subparagraph (d).
- (d) "CPI" means the monthly indexes of the National Consumer Price Index for Urban Wage Earners and Clerical Workers (All items: 1982 equals 100) issued by the Bureau.
- (e) "CPI-1" means the average of the monthly CPI for twelve consecutive calendar month ending sixty days before the commencement of the lease term during which the adjustment of rental is computed.
- (f) "CPI-2" means the average of the monthly CPI for the twelve consecutive calendar months ending sixty days before the conclusion of the lease term during which the adjustment of rental is computed.
- (g) "Adjusted Rental" means the rental computed pursuant to the above formula; however, in no event will the Adjusted Rental be lower than the Base Rental in any formula computation.

If at the time of any such computation no CPI index is compiled and published by any agency of the Federal government, the statistics reflecting costs of living increases as compiled by any institution or organization or individual generally recognized as an authority by financial and insurance institutions shall be used as a basis for such adjustments.

In no event shall the minimum monthly guaranteed rental be decreased by reason of these provisions from the monthly sum due and payable by tenant to landlord during primary term of the lease agreement.

EXHIBIT "F"

**GUARANTY OF LEASE AGREEMENT BY AND BETWEEN
Randolph Plaza Shopping Center, L.L.C., AS LANDLORD AND
_____, AS TENANT**

_____ ("GUARANTOR") whose address is _____ as material inducement to and in consideration of **Randolph Plaza Shopping Center, L.L.C.** entering into a written Lease Agreement (the "Lease") with _____ ("Tenant") dated the same date as this Guaranty, unconditionally guarantees and promises to and for the benefit of Landlord that Tenant shall perform the provisions and covenants of the Lease that Tenant is to perform.

If Guarantor is more than one person, Guarantor's obligations are joint and several and are Independent of Tenant's obligations under the Lease. A separate action may be brought or prosecuted against any Guarantor whether the action is brought or prosecuted against any other Guarantor or Tenant, or all, or whether any other Guarantor or Tenant, or all, are joined in the action.

Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty.

The provisions of the Lease may be changed by Agreement between Landlord and Tenant at any time, or by course of conduct, without the consent of or without the consent of or without notice to Guarantor. This Guaranty shall guarantee the performance of the Lease as changed. Assignment of the Lease (as permitted by the Lease) shall not affect this Guaranty.

This Guaranty shall not be affected by Landlord's delay or failure to enforce any of its rights under the Lease or this Guaranty.

If Tenant defaults under the Lease, Landlord can proceed immediately against Guarantor or Tenant, or both, or Landlord can enforce against Guarantor, or Tenant, or both any rights that it has under the Lease or pursuant to applicable laws. If the Lease terminates and the Landlord has any rights it can enforce against Tenant after termination, Landlord can enforce those rights against Guarantor without giving previous notice to Tenant or Guarantor, or without making any demand on either or them.

Guarantor waives the right to require Landlord to (1) proceed against Tenant; (2) proceed against or exhaust any security that Landlord holds from Tenant; or (3) pursue any of the remedy in Landlord's power. Guarantor waives any defense by reason of any disability of Tenant, and waives any other defense based on termination of Tenant's liability from any cause. Until all of Tenant's obligations to Landlord under the Lease have been discharged in full, Guarantor has no right of subrogation against Tenant. Guarantor waives its right to participate in any security now or later held by Landlord. Guarantor waives all presentments, demands for performance notices of non-performance, protest, notice of protest, notice of dishonor, and of acceptance of this Guaranty, and waives all notice of existence, creation or incurring of new or additional obligations.

If Landlord disposes of its interest in the Lease, "Landlord", as used in this Guaranty, shall mean Landlord's successor and assigns of the Lease.

If Landlord is required to enforce Guarantor's obligations by legal proceedings, Guarantor shall pay to Landlord all cost and expenses incurred by Landlord in enforcement of this Guaranty Agreement, including, without limitation, reasonable attorney's fees and court costs.

Guarantor's obligations under this Guaranty Agreement shall be binding upon Guarantor, Guarantor's heirs, executors, successors and assigns.

EXECUTED this ____ day of _____, 20__

By: _____
Name