

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6

7
8
9
10
11
12
13
14

15
16
17
18
19

20
21
22
23
24
25
26

28

1 WHEREAS, ARTIFICE, LLC (the "CVIP PARTICIPANT") is a tenant on the real
2 property located at 1025 SOUTH FIRST STREET and is undertaking certain exterior
3 improvements to the property in accordance with the Commercial VIP Program; and
4

5 WHEREAS, the Agency has considered the findings that no other reasonable
6 means of financing the building, facilities or structures or other improvements on the Site are
7 available; and
8

9 WHEREAS, the Governing Body of the Agency has determined that the
10 Commercial VIP Agreement (the "Agreement" and attached hereto as Exhibit A), which
11 provides for the contribution of funds to Participant for making physical, visual improvements
12 to the building on the Site, all as more fully set forth in the Agreement, is in compliance with
13 and in furtherance of the goals and objectives of the Redevelopment Plan; and
14

15 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Governing Board of
16 the Agency that the Agreement is hereby approved and determined to be in compliance with
17 and in furtherance of the goals and objectives of NRS 279 and the Redevelopment Plan, and the
18 Chairperson of the Governing Board of the Agency is hereby authorized and directed to
19 execute the Agreement for and on behalf of the Agency, and to execute any and all additional
20 documents (including any Attachments to the Agreement) and to perform any additional acts
21 necessary to carry out the intent and purpose of the Agreement.
22
23
24
25
26
27
28

1 THE FOREGOING RESOLUTION and CVIP AGREEMENT was passed,
2 adopted and approved this ____ day of _____, 2010.
3

4 CITY OF LAS VEGAS
5 REDEVELOPMENT AGENCY
6

7 By: _____
8 OSCAR B. GOODMAN, Chairman

9 ATTEST:

10 _____
11 BEVERLY K. BRIDGES, MMC
12 SECRETARY

13 APPROVED AS TO FORM:

14 
15 _____
16 11-29-10 Date
17
18
19
20
21
22
23
24
25
26
27
28

**CITY OF LAS VEGAS REDEVELOPMENT AGENCY
COMMERCIAL VISUAL IMPROVEMENT AGREEMENT
AND GRANT OF FACADE EASEMENT**

THIS COMMERCIAL VISUAL IMPROVEMENT AGREEMENT AND GRANT OF FAÇADE EASEMENT (the "Agreement") is entered into this _____ day of _____, _____, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body in the State of Nevada (hereinafter referred to as the "Agency") and CMS NEVADA, LLC/ S&F GENESEE, LLC ("Owner") and ARTIFICE, LLC ("Tenant")

Recitals

WHEREAS, the City of Las Vegas Redevelopment Agency ("Agency") administers and funds and is funded by the Agency for the purposes of improving the physical appearance of, and encouraging reinvestment in existing commercial structures; and

WHEREAS, in furtherance of the Redevelopment Plan (the "Redevelopment Plan") for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), the Agency approved a Commercial Visual Improvement Program (the "Commercial VIP") for the purpose of assisting property owners and their tenants in the rehabilitation of their buildings in order to revitalize and promote the economic stability of the redevelopment area; and

WHEREAS, pursuant to the implementation of the Commercial VIP, the Agency wishes to acquire an easement in gross on and upon the exterior walls of buildings (the "Facade Easement"), and a maintenance agreement for the Façade Easement Area (the "Building Façade Maintenance Agreement") located on that certain property, as more particularly described in the "Legal Description of the Site", attached hereto as Attachment " 1 " and incorporated herein, subject to the Owner's and Tenant's agreement to rehabilitate and improve the exterior walls and faces of the buildings on the Property in accordance with this Agreement and the Commercial VIP Guidelines (the "CVIP Guidelines"), incorporated herein by reference. The Property is located within or is contiguous to the boundaries of the redevelopment area; and

WHEREAS, in consideration for the acquisition of the Façade Easement, the Agency shall reimburse the Tenant for any Pre-approved Qualified Exterior Improvements to a maximum of **\$50,000.00**, and the Tenant has provided a 100% matching cash contribution to the Agency's participation to ensure that the Tenant has a vested interest in the completion of its site improvements and to ensure a high leveraging of public resources and such improvements are significant in character, as determined by the Agency; and

WHEREAS, the Owner and Tenant desires to participate in the Commercial VIP pursuant to the terms and provisions of this Agreement and the Owner has provided their consent to the proposed exterior improvements on the property, as evidenced by Attachment " 8 " – VIP Real Property Owner Consent.

NOW, THEREFORE, in consideration of the mutual covenants and agreement contained herein, the AGENCY, OWNER and TENANT do hereby agree as follows:

SECTION 1: SCOPE OF AGREEMENT. The purpose of this agreement is to effectuate the Redevelopment Plan by contributing funds to that certain property, as more particularly described in the "Legal Description of the Site," attached hereto as Attachment " 1 " and incorporated herein by reference. Implementation of this Agreement will further the goals and objectives of the Redevelopment Plan. This Agreement is subject to the provisions of the Redevelopment Plan which the City Council of the City of Las

Vegas adopted on March 5, 1986, by Ordinance No. 3218, as amended. Said Redevelopment Plan, as it now exists and as it may be subsequently amended, is incorporated herein by reference and made a part hereof as though fully set forth herein.

SECTION 2: PARTIES TO THE AGREEMENT. The Agency is a public body, corporate and politic, exercising governmental functions and powers, and organized and existing under the Community Redevelopment Law of the State of Nevada (NRS 279.382, et seq.). The principal office of the Agency is located at 400 Stewart Avenue, Las Vegas, Nevada, 89101. "Agency", as used in this Agreement, includes the City of Las Vegas Redevelopment Agency and any assignee of or successor to its rights, powers and responsibilities. The Owner and Tenant warrants that, either through a majority interest, or has a valid and binding leasehold interest for five (5) years successive to the Effective Date of this Agreement (as defined hereinafter), the Site. Such ownership or leasehold interest is demonstrated by Attachment " 2 ", "Proof of Ownership or Leasehold Interest", which is attached hereto and is incorporated herein by reference. "Owner", as used in this Agreement, includes not only the Owner but also any assignee of, or successor to, its rights, powers and responsibilities. The Agency and the Owner individually may be referred to as "party" or collectively as "parties" hereinafter.

SECTION 3: GRANT OF FAÇADE EASEMENT AND MAINTENANCE AGREEMENT. The Owner agrees to grant and convey and the Agency agrees to acquire and accept conveyance of a nonexclusive easement in gross (the "Facade Easement") on and upon that certain area described in Exhibit A of Attachment " 2 ", attached hereto and incorporated herein (the "Facade Easement Area"), subject to the following conditions:

- a. The purchase price for the Facade Easement shall be an amount up to one hundred percent (100%) of the façade improvements, with a not to exceed a maximum of thirty-four thousand dollars (\$50,000.00), for "Pre-approved Qualified Exterior Improvements". Pre-approved Qualified Exterior Improvements which shall be considered for reimbursement includes the following: painting, cleaning, tuck pointing, façade repair/replacement, window repair/replacement, doorways, lighting, new or substantially rehabilitated signage, window tinting, new or replacement awnings, permanent landscaping, parking lots, and rear access renovations. All Pre-approved Qualified Exterior Improvements must be seen from the public right-of-way. The final purchase price will be determined when the project improvements are completed and Tenant has submitted paid invoices from contractor(s) to the Agency.
- b. Owner and/or Tenant shall have provided Agency with all the documents required for participation in the CVIP, as set forth in the CVIP Guidelines in a form acceptable to and approved by the Agency, including without limitation an executed Facade Easement Deed, in substantially the form attached hereto as Attachment " 3 " and a Building Façade Maintenance Agreement, in substantially the form attached hereto as Attachment " 4 ".
- c. Agency shall pay Owner and/or Tenant the Purchase Price within forty-five (45) days after submission of paid invoices by Owner and/or Tenant for the Project improvements, and inspection and approval of such Improvements, in accordance with the CVIP Guidelines.
- d. The Agency shall cause the Facade Easement Deed and the Building Façade Maintenance Agreement to be recorded against the Property promptly after completion of the Project improvements and upon payment of the Purchase Price by the Agency to the Owner and/or Tenant. The Facade Easement and the Building Façade Maintenance Agreement shall commence upon such recordation and shall terminate on the date five (5) years thereafter.

- e. Owner and/or Tenant, if any, hereby agrees to maintain the Property, including without limitation the Facade Easement Area and the Project improvements to be constructed thereon, in accordance with the maintenance provisions set forth in the Building Façade Maintenance Agreement, Attachment " 4 " attached hereto. Owner and/or Tenant agrees that all material future changes to the exterior surfacing of the building(s) on the Property, including the Facade Easement Area, shall be subject to the approval of the Agency, which approval shall not be unreasonably withheld. No painting or exterior surfacing which, in the opinion and judgment of Agency, are inharmonious with the general surroundings shall be used on the exterior of any buildings now or to be located on the Property. This covenant shall run with the land for a period of five (5) years from the date the Facade Easement Deed is recorded against the Property. Owner and/or Tenant shall be in default of this Agreement if Owner breaches any of the obligations under this Section 3 or Attachment " 4 ".
- f. The Agency shall not use or exercise any right granted by the Facade Easement or do anything in a manner that will damage or impair the Facade Easement Area or the structural integrity of the building.

SECTION 4: OWNER'S AND/OR TENANT'S REPURCHASE OPTION. The Agency hereby grants the Owner and/or Tenant the option to repurchase the Facade Easement (the "Option") from the Agency pursuant to the following terms and conditions:

- a. Option Term. The term of the Option (the "Option Term" or "Option") shall commence upon recordation of the Facade Easement Deed and shall continue until the termination of the Facade Easement. In order to exercise the Option, the Owner and/or Tenant must give sixty (60) days written notice to the Agency that it wishes to exercise the Option.
- b. Repurchase Price. If the Owner exercises the Option, the Agency agrees to sell and the Owner agrees to repurchase the Facade Easement in an amount equal to the unamortized portion of the Purchase Price amortized on a straight-line basis over five (5) years. The Amortization Schedule is set out in Exhibit C of Attachment " 3 ", attached hereto and incorporated herein (the "Amortization Schedule").
- c. Title, Escrow and Closing Costs. The Owner and/or Tenant shall each all title, escrow and closing costs and fees associated with the repurchase of the Facade Easement. The Owner and/or Tenant shall execute such documents and take such actions as may be necessary to effectuate such repurchase.
- d. The Owner's and/or Tenant's right to this Option and the terms and conditions of this Option shall be contained in the Facade Easement Deed to be recorded on the Property.

SECTION 5: IMPROVEMENTS TO THE SITE AND PROJECT BUDGET. The Tenant shall make improvements to the Site, or to the buildings, fixtures or appurtenances thereon, according to the Scope of Work and Tentative Schedule of Improvements, which is attached hereto as Attachment " 5 " and by this reference is made a part hereof. The Scope of Work and Tentative Schedule of Improvements shall provide a line item budget, acceptable to the Agency, for all work to be performed. Within 45 days of execution of this Agreement by the Agency, Tenant agrees to commence, or cause the commencement of, rehabilitation and improvement of the Site, including the Façade Easement Area, pursuant to the plans and other documents submitted by Owner and/or Tenant and approved by Agency in accordance with the CVIP Guidelines. Tenant shall complete the improvements within 120 days of commencement of work. Additional time may be given upon approval of the Agency, which approval shall not be unreasonably withheld. The improvements to the site also shall be referred to as the "Project" hereinafter. The Agency

shall maintain a right of access to the Site, provided that the Agency gives the Owner and/or Tenant a minimum of twenty-four (24) hours written, advance notice prior to entering the Site.

SECTION 6: CONTRACTOR SELECTION REQUIREMENTS. If the Project exceeds \$10,000, then the Owner and/or Tenant in compliance with NRS 279.478 must obtain three (3) or more competitive bids from properly licensed contractors. If the Owner and/or Tenant is unable to obtain (3) or more competitive bids, the Owner and/or Tenant shall provide the Agency, upon request, with documentation detailing when and which licensed contractor(s) were contacted.

SECTION 7: DESIGN REVIEW COMMITTEE. For reviewing the architectural and engineering design of the Project, the Agency has appointed a Design Review Committee comprised of one or more staff members from the following City of Las Vegas municipal departments: Office of Business Development; Planning and Development Department; Land Development, Public Works; Development Coordination, Public Works; and City of Las Vegas Department of Building & Safety. At its discretion, the Agency may solicit input from additional City staff depending on the individual needs of the Project. The Design Review Committee shall meet on an ad hoc basis. The Design Review Committee shall recommend approval or disapproval of the Project Scope of Work. If the Project is disapproved, the Agency shall retain the right to ask the Owner and/or Tenant to make changes to the proposed Scope of Work.

SECTION 8: COMPLIANCE WITH APPLICABLE DEVELOPMENT STANDARDS. The Owner and/or Tenant must comply with all development standards applicable to the Scope of Work, including but not limited to, the Zoning Code of the City of Las Vegas, the Building Code of the City of Las Vegas, and the Fire Code of the City of Las Vegas. Additional development standards may apply depending on the specific location of the Site.

SECTION 9: FAILURE TO COMPLETE WORK. If the contractor selected by the Owner and/or Tenant fails to complete all of the work specified in the Scope of Work, then the Agency may pursue any and all equitable remedies available under this Agreement, as more specifically described in Section 13 hereinafter.

SECTION 10: UNRELATED IMPROVEMENTS. Nothing herein is intended to limit, restrict or prohibit the Owner and/or Tenant from undertaking any other work in or about the subject premises which is unrelated to Commercial VIP provided for in this Agreement.

SECTION 11: COMPLIANCE WITH THE REDEVELOPMENT PLAN AND EMPLOYMENT PLAN. The Agency finds that the Project as contemplated by this Agreement complies with the Commercial VIP Guidelines and therefore would be deemed a substantial benefit to the Redevelopment Area. The Agency finds that the Project, upon completion, would achieve one or more of the following:

1. Encourage new commercial development;
2. Create or retain jobs for nearby residents;
3. Increase local revenues from private revenue sources;
4. Increase levels of human activity in the Redevelopment Area;
5. Possess attributes that are unique, either as to type of use or level of quality and design;
6. Require for their construction, installation or operation the use of qualified and trained labor; or
7. Demonstrate greater social or financial benefits to the community that would a similar set of buildings, facilities, structures or other improvements not paid for by the Agency.

The Agency has also considered the opinions of persons who reside in the Redevelopment Area or the immediate vicinity of the Redevelopment Area. In addition, the Agency has compared the level of spending proposed by the Agency and the projections of future revenue made on the buildings, facilities, structures or other improvements.

The Tenant has declared that no other reasonable means of financing are available to undertake the improvements to the Property because the return on investment is not reasonable and the improvements are being financed through cash on hand and/or debt financing through a private lender. Furthermore, the Owner and/or Tenant would not undertake the full set of improvements contemplated in the Agreement through resources reasonably available to the Owner and/or Tenant pursuant to the Participant Affidavit and Employment Plan, attached hereto as Attachment " 7 " and by this reference made a part hereof.

The Tenant has also declared and provided the Agency with an Employment Plan, which is attached hereto as Attachment " 7 " and by this reference is made a part hereof. The Tenant, for itself and its successors and assigns, represents that in the construction of improvements on the Site provided for in this Agreement, the Tenant shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

SECTION 12: CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested. The Owner and/or Tenant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. No member, official or employee of the Agency shall be personally liable to the Owner and/or Tenant in the event of any default or breach by the Agency or for any amount which may become due to the Participant or on any obligations under the terms of this Agreement. Pursuant to Resolution RA-4-99 adopted by the governing board of the Agency effective October 1, 1999, Owner and/or Tenant warrants that it has disclosed, on the Disclosure of Principals form attached hereto as Attachment " 6-A " and Attachment "6-B" and incorporated herein by reference, all persons and entities holding more than 1% (one percent) interest in Owner and/or Tenant or any principal member of Owner and/or Tenant. Throughout the term hereof, Owner and/or Tenant shall notify City in writing of any material change in the above disclosure within 15 (fifteen) days of any such change.

SECTION 13: DEFAULTS AND REMEDIES. Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The nondefaulting party shall notify the defaulting party that a default exists and that the defaulting party must cure same within thirty (30) days of receipt of the notice of default. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with reasonable diligence and during any period of curing shall not be in default. In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the District Court, County of Clark State of Nevada, in any other appropriate court in that county, or in the Federal District Court in the appropriate district of Nevada. The nondefaulting party may also, at its option, cure the breach and sue in any court of proper jurisdiction to collect the reasonable costs incurred by virtue of curing or correcting the defaulting party's breach. Further, the nondefaulting party may file legal action to require the defaulting party to specifically perform the terms and conditions of this Agreement. Upon occurrence of an Event of Default by either the Participant or the Agency during the existence of this Agreement, the non-defaulting party, at its option, may institute an action for specific performance of the terms and obligations (including the payment of any monetary obligation) of this Agreement. During the existence of this Agreement and upon the occurrence of a Owner and/or Tenant Event of Default, the Agency shall have the right to terminate, and this Agreement shall so terminate, the date that the written notice of termination is received by the Owner and/or Tenant or such other date as may be specified in the written notice. In the event of termination of this Agreement by the Agency, the Owner and/or Tenant agrees to return any and all Agency Funds heretofore paid to the Owner and/or Tenant

pursuant to the provisions of this Agreement within ten (10) calendar days after the termination date. Failure to return any and all Agency Funds paid to the Owner and/or Tenant shall entitle the Agency to sue the Owner and/or Tenant for specific performance as provided in this Section and to pursue the Agency's remedies, legal and equitable, for such damages as permitted by law.

SECTION 14: SUBSEQUENT AGENCY APPROVALS. Any approvals of the Agency required and permitted by the terms of this Agreement may be given by the Executive Director of the Agency or such other person that the Agency designates in writing.

SECTION 15: TERM. The term of this Agreement shall end upon the completion of all duties and obligations to be performed by each of the parties hereto.

SECTION 16: SEVERABILITY. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

SECTION 17: GOVERNING LAW. The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

SECTION 18: NOTICES. Notices shall be in writing and shall be given by personal delivery, by deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or by express delivery service, freight prepaid, in each case by delivery to the Owner and/or Tenant and the Agency at the addresses set forth in this Agreement or at such other address as a party may designate in writing. The date notice given shall be the date on which the notice is delivered, if notice is given by personal deliver, or five (5) calendar days after the date of deposit in the mail or with an express delivery service, if the notice is sent through the United States mail.

SECTION 19: CAPTIONS. The captions contained in this Agreement are for the convenience of the parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

SECTION 20: ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This includes Attachment " 1 " through Attachment " 7 " inclusive, attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and the Owner and/or Tenant and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision. All amendments hereto must be in writing and signed by the appropriate authorities of Agency and the Owner and/or Tenant.

SECTION 21: TIME FOR AGENCY TO ACCEPT AGREEMENT. This Agreement has been approved on _____, 2010 by the Las Vegas Redevelopment Agency. The effective date of this Agreement shall be the date when this Agreement has been signed by the Agency ("Effective Date").

Date of Agency Approval:

_____, 2010.

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: _____
OSCAR B. GOODMAN, CHAIRMAN
"Agency"

APPROVED AS TO FORM:

M. Q. Q. ESQ
Counsel to the Agency Date
11-24-10

ATTEST:

BEVERLY K. BRIDGES, MMC
Secretary

OWNER – CMS NEVADA, LLC/ S&F GENESEE, LLC TENANT – ARTIFICE, LLC

By: _____
DAVID MOZES

By: _____
TRINITY SCHLOTTMAN

Its: OWNER

Its: MANAGING MEMBER

LIST OF ATTACHMENTS

ATTACHMENT " 1 "	LEGAL DESCRIPTION OF THE PROPERTY
ATTACHMENT " 2 "	PROOF OF OWNERSHIP OR LEASEHOLD INTEREST
ATTACHMENT " 3 "	FORM OF FAÇADE EASEMENT DEED
ATTACHMENT " 4 "	FORM OF BUILDING FAÇADE MAINTENANCE AGREEMENT
ATTACHMENT " 5 "	SCOPE OF WORK AND TENTATIVE SCHEDULE OF IMPROVEMENTS
ATTACHMENT "6-A "	DISCLOSURE OF PRINCIPALS – PROPERTY OWNER
ATTACHMENT "6-B"	DISCLOSURE OF PRINCIPALS - TENANT
ATTACHMENT " 7 "	PARTICIPANT AFFIDAVIT & EMPLOYMENT PLAN
ATTACHMENT "8"	VIP REAL PROPERTY OWNER CONSENT

ATTACHMENT 1

LEGAL DESCRIPTION OF THE PROPERTY

LOT FIFTEEN (15) IN BLOCK NINE (9) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 51 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.



AIR COMMERCIAL REAL ESTATE ASSOCIATION STANDARD INDUSTRIAL/COMMERCIAL MULTI-TENANT LEASE - GROSS

NEVADA

1. Basic Provisions ("Basic Provisions").

1.1 Parties: This Lease ("Lease"), dated for reference purposes only June 15, 2010 is made by and between CMS Nevada LLC (in its capacity as Manager of S & F Genesee LLC, Fixel Investment Group LLC, CMS Mission Arts LLC, Fixel Nevada LLC, and Mozes Nevada LLC) ("Lessor") and Artifice LLC

1.2(a) Premises: That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 1025 S 1st Street, Suite located in the City of Las Vegas, County of Clark, State of Nevada, with zip code 89101, as outlined on Exhibit "A" attached hereto ("Premises") and generally described as (describe briefly the nature of the Premises): the eastern portion of the building with approximately 3,523 square feet fronting on Boulder Avenue

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("Building") and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "Project." (See also Paragraph 2)

1.2(b) Parking: (see 2.6 and Addendum) unreserved vehicle parking spaces (See also Paragraph 2.6)
1.3 Term: 4 years and 0 months ("Original Term") commencing July 1, 2010 ("Commencement Date") and ending June 30, 2014 ("Expiration Date"). (See also Paragraph 3)

1.4 Early Possession: If the Premises are available Lessee may have non-exclusive possession of the Premises commencing June 5, 2010 ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 Base Rent: \$2,642.25 per month ("Base Rent"), payable on the first (1st) day of each month commencing April 1, 2011. (See also Paragraph 4)

☒ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 5.0
1.6 Lessee's Share of Common Area Operating Expenses: N/A percent (N/A) ("Lessee's Share")
In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.

1.7 Base Rent and Other Monies Paid Upon Execution:

- (a) Base Rent: \$2,642.25 for the period 04/01/2011-04/30/2011
(b) Common Area Operating Expenses: \$ TRD for the period 07/01/2010-07/31/2010
(c) Security Deposit: \$2,000.00 ("Security Deposit") (See also Paragraph 5)
(d) Other: \$ for
(e) Total Due Upon Execution of this Lease: \$5,642.25

1.8 Agreed Use: Tavern / Urban Lounge / Bar

(See also Paragraph 6)

1.9 Insuring Party: Lessor is the "Insuring Party". (See also Paragraph 8)

1.10 Real Estate Brokers: (See also Paragraph 15)

(a) Representation: The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes):

- ☐ represents Lessor exclusively ("Lessor's Broker");
☐ represents Lessee exclusively ("Lessee's Broker"); or
☐ represents both Lessor and Lessee ("Dual Agency").

(b) Payment to Brokers: Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers for the brokerage services rendered by the Brokers the fee agreed to in the attached separate written agreement or if no such agreement is attached, the sum of N/A or N/A % of the total Base Rent payable for the Original Term, the sum of N/A or N/A % of the total Base Rent payable during any period of time that the Lessee occupies the Premises subsequent to the Original Term and/or the sum of N/A or N/A % of the purchase price in the event that the Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises

1.11 Guarantor: The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.12 Attachments: Attached hereto are the following, all of which constitute a part of this Lease.

☒ an Addendum consisting of Paragraphs 5.3 through 6.2

INITIALS

INITIALS

- ☒ a site plan depicting the Premises;
☐ a site plan depicting the Project;
☐ a current set of the Rules and Regulations for the Project;
☐ a current set of the Rules and Regulations adopted by the owners' association;
☐ a Work Letter;
☐ other (specify): _____

2. Premises.

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("Unit") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required services set forth in Paragraph 7.4(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading docks, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 5 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repair to the fire sprinkler systems, roof, foundation, and/or bearing walls - see Paragraph 7).

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes that were in effect at the time that each such improvement, or portion thereof, was constructed, and also with all applicable laws, covenants or restrictions of record, regulations, and ordinances in effect on the Start Date ("Applicable Requirements"). Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed. If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense.** If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("Capital Expenditure"), Lessor and Lessee shall allocate the cost of such work as follows.

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the 1st day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

(d) As long as Lessee neither so rents in possession of the Premises, Lessee is solely responsible for the remediation of any hazardous substances in, on, or around the Premises, regardless of whether caused by Lessee or any previous tenant or occupant of the Premises. However, Lessee reserves the right to terminate this Lease, at its sole discretion, within thirty (30) days following written notice to Lessor of hazardous substances in need of remediation, with proof or findings thereof. If Lessee chooses not to proceed with its hazardous substance remediation for any reason, in the event that Lessee does not relinquish possession of the Premises within thirty (30) days following notice to Lessor thereof, then the terms of this Section 2.3(d) shall be null and void.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the

INITIALS

PAGE 2 OF 17

INITIALS

electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

~~2.5 Lessee as Prior Owner/Occupant. The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.~~

2.6 Vehicle Parking. Lessee shall be entitled to the non-exclusive, shared use of any and all surface parking spaces (those not contained in a multi-level parking structure) owned by Lessor ~~use the number of Parking Spaces specified in Paragraph 4.2(b)~~ on those portions of the Common Areas designated from time to time by Lessor for parking. ~~Lessee shall not use more parking spaces than said number.~~ Said parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "Permitted Size Vehicles." Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Paragraph 2.9. No vehicles other than Permitted Size Vehicles may be parked in the Common Area without the prior written permission of Lessor. In addition:

(a) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(b) Lessee shall not service or store any vehicles in the Common Areas.

(c) If Lessee permits or allows any of the prohibited activities described in this Paragraph 2.6, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove or tow away the vehicle involved and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

(d) Lessor has no obligation to monitor or secure the parking areas in order to prevent neighborhood businesses from using Lessee's Common Area parking area. Lessor will be given subordination with Lessor's contracted towing company to tow vehicles from the Common Area parking areas in the event of unauthorized neighborhood parking violations occurring. Lessee has no obligation to police the Common Area parking areas, but Lessor encourages Lessee to do so in order to ensure the customers have adequate parking accessibility and convenience.

(e) In the event that Lessor initiates parking area fees for one or more of its Common Area surface parking areas (those not contained in a multi-level parking structure), Lessee's customers will be permitted to park for free. Lessee's employees are expressly prohibited from parking in any Common Area parking areas. During the term of this Lease, Lessee's principals are permitted to park in any of the Common Area parking areas (surface or multi-level) at no charge. In the event that a multi-level parking structure is built and used for Common Area parking areas, then Lessor will be abated one hundred (100) free 2-hour valuations per day for distribution to its paid customers only.

2.7 Common Areas - Definition. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Project and interior utility raceways and installations within the Unit that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Project and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

2.8 Common Areas - Lessee's Rights. Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and invitees, during the term of this Lease, the non-exclusive right to use, in common with others entitled to such use, the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Project. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor or Lessor's designated agent, which consent may be revoked at any time. In the event that any unauthorized storage shall occur, then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee, which cost shall be immediately payable upon demand by Lessor.

2.9 Common Areas - Rules and Regulations. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Project and their invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants of the Project.

2.10 Common Areas - Changes. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(c) To designate other land outside the boundaries of the Project to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or alterations to the Project, or any portion thereof; and

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Project as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

3. Term.

3.1 Term. The Commencement Date, Expiration Date and Original Term of this Lease are as specified in Paragraph 1.3.

3.2 Early Possession. Any provision herein granting Lessee Early Possession of the Premises is subject to and conditioned upon the Premises being available for such possession prior to the Commencement Date. Any grant of Early Possession only conveys a non-exclusive right to occupy the Premises. If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Lessee's Share of Common Area Operating Expenses, Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such Early Possession shall not affect the Expiration Date.

3.3 Delay in Possession. Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to


INITIALS


INITIALS

Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or change the Expiration Date. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 90 days after the Commencement Date, as the same may be extended under the terms of any Work Letter executed by Parties, Lessee may, at its option, by notice in writing within 10 days after the end of such 90 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to tender possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 3.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

4. Rent

4.1 **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent ("Rent").

4.2 **Common Area Operating Expenses.** Lessee shall pay to Lessor during the term hereof, in addition to the Base Rent, Lessor's Share (as specified in Paragraph 4.6) of all Common Area Operating Expenses, as hereinafter defined, during each calendar year of the term of this Lease, in accordance with the following provisions:

(a) The following costs relating to the ownership and operation of the Project are defined as "Common Area Operating Expenses":
(i) Costs relating to the operation, repair and maintenance, in neat, clean, good order and condition, but not the replacement (see subparagraph (ii)), of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, pathways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, reefs, exterior walls of the buildings, building systems and roof drainage systems.

(ab) Exterior signs and any tenant directories.

(ac) Any fire sprinkler systems.

(ad) All other areas and improvements that are within the exterior boundaries of the Project but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to serve the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management and security services, owner's association dues and fees, the cost to repair the exterior of any structure and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance and repair of Common Areas and Common Area equipment.

(v) Any increases above the Base Real Property Taxes (as defined in Paragraph 10).

(vi) Any "Insurance Cost Increases" (as defined in Paragraph 8).

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Project.

(ix) The cost of any capital improvement to the Building or the Project not covered under the provisions of Paragraph 2.3 provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12 year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(b) Any Common Area Operating Expenses and Real Property Taxes that are specifically attributable to the Unit, the Building or to any other building in the Project or to the operation, repair and maintenance thereof, shall be allocated entirely to such Unit, Building or other building. However, any Common Area Operating Expenses and Real Property Taxes that are not specifically attributable to the Building or to any other building or to the operation, repair and maintenance thereof, shall be equitably allocated by Lessor to all buildings in the Project.

(c) The inclusion of the improvements, facilities and services set forth in Subparagraph 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless the Project already has the same. Lessor already provides the services or Lessor has agreed elsewhere in this Lease to provide the same or some of them.

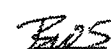
(d) Lessee's Share of Common Area Operating Expenses is payable monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expense. Within 60 days after written request (but not more than once each year) Lessor shall deliver to Lessee a reasonably detailed statement showing Lessee's Share of the actual Common Area Operating Expenses for the preceding year. If Lessee's payments during such year exceed Lessee's Share, Lessor shall credit the amount of such over-payment against Lessee's future payments. If Lessee's payments during such year were less than Lessee's Share, Lessee shall pay to Lessor the amount of the deficiency within 10 days after delivery by Lessor to Lessee of the statement.

(e) Common Area Operating Expenses shall not include the cost of replacing equipment or capital components such as the roof, foundations, exterior walls or Common Area capital improvements, such as the parking lot paving, elevators, fences that have a useful life for accounting purposes of 5 years or more.

(f) Common Area Operating Expenses shall not include any expense paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, other tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any statement or invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of \$25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent and Common Area Operating Expenses, and any remaining amount to any other


INITIALS


INITIALS

outstanding charges or costs.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent increases during the term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the initial Security Deposit bore to the initial Base Rent. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. **Use**

6.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. ~~Other than guide, signal and coping eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles.~~ Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the Building or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Project. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "Hazardous Substance" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises; (ii) regulated or monitored by any governmental authority; or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "Reportable Use" shall mean (i) the installation or use of any above or below ground storage tank; (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority; and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier, toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from areas outside of the Project not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which suffered as a direct result of Hazardous Substances on the Premises prior to Lessee taking possession or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee taking possession, unless such remediation measure is required as a result of Lessee's use (including "Alterations", as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

INITIALS

PAGE 5 OF 17

INITIALS

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 9.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or \$100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or \$100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

(h) **PREVIOUS USE INDEMNIFICATION.** Lessor and Lessee both hereby acknowledge that hazardous substances may have been used by previous occupants of the Premises. Lessor and Lessee hereby indemnify one another from any liability resulting from the presence or former presence of hazardous substances on the Premises, provided however, that Lessor and/or Lessee are not culpable for such hazardous substance usage.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense, fully, diligently and in a timely manner, materially comply with all Applicable Requirements, the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to such Requirements, without regard to whether said Requirements are now in effect or become effective after the Start Date. Lessee shall, within 10 days after receipt of Lessor's written request, provide Lessor with copies of all permits and other documents, and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements. Likewise, Lessee shall immediately give written notice to Lessor of: (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold; or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises.

6.4 **Inspection; Compliance.** Lessor and Lessor's "Lender" (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 9.1) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority. In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination. In addition, Lessee shall provide copies of all relevant material safety data sheets (MSDS) to Lessor within 10 days of the receipt of written request therefor.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations

7.1 Lessee's Obligations

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment, electrical, lighting facilities, boilers, pressure vessels, fixtures, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, plate glass, and skylights but excluding any items which are the responsibility of Lessor pursuant to Paragraph 7.2. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) HVAC equipment, (ii) boiler and pressure vessels, and (iii) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month). Lessee shall pay interest on the unamortized balance but may prepay its obligation at any time.

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 4.2 (Common Area Operating Expenses), 6 (Use), 7.1 (Lessee's Obligations), 9 (Damage or Destruction) and 14 (Condemnation), Lessor, subject to reimbursement pursuant to Paragraph 4.2, shall keep in good order, condition and repair the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Paragraph 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises. Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

7.3 Utility Installations; Trade Fixtures; Alterations

(a) **Definitions.** The term "Utility Installations" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the


INITIALS


INITIALS

Premises. The term "Trade Fixtures" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "Alterations" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion. "Lessee Owned Alterations and/or Utility Installations" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during this Lease as extended does not exceed a sum equal to 3 months' Base Rent in the aggregate or a sum equal to one month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor.

(c) **Lien; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein. Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, and Lessor shall have the right to post and record notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor and the Premises against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs.

7.4 Ownership; Removal; Surrender; and Restoration.

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease, Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal of any term of all or any part of any Lessee Owned Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Notwithstanding the foregoing, if this Lease is for 12 months or less, then Lessee shall surrender the Premises in the same condition as delivered to Lessee on the Start Date with NO allowance for ordinary wear and tear. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee-owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall also completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 26 below.

8. Insurance; Indemnity.

8.1 Payment of Premium Increases.

(a) As used herein, the term "Insurance Cost Increase" is defined as any increase in the actual cost of the insurance applicable to the Building under the Project and required to be carried by Lessor, pursuant to Paragraphs 8.2(b), 8.3(a) and 8.3(b), ("Required Insurance"), over and above the Base Premium, as hereinafter defined, calculated on an annual basis. Insurance Cost Increase shall include, but not be limited to, requirements of the holder of a mortgage or deed of trust covering the Premises, Building and/or Project, increased valuation of the Premises, Building and/or Project, and/or a general premium rate increase. The term Insurance Cost Increase shall not, however, include any premium increases resulting from the nature of the occupancy of any other tenant of the Building. The "Base Premium" shall be the annual premium applicable to the 12-month period immediately preceding the Start Date. If, however, the Project was not insured for the entirety of such 12-month period, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the Start Date, assuming the most nominal use possible of the Building. In no event, however, shall Lessee be responsible for any portion of the premium cost attributable to liability insurance coverage in excess of \$2,000,000 procured under Paragraph 8.2(b).

(b) Lessee shall pay any Insurance Cost Increase to Lessor pursuant to Paragraph 4.2. Premiums for policy periods commencing prior to, or extending beyond, the term of the Lease shall be prorated to coincide with the corresponding Start Date or Expiration Date.

8.2 Liability Insurance.

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$1,000,000 per occurrence with an annual aggregate of not less than \$2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Manager or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that


INITIALS


INITIALS

its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 Property Insurance - Building, Improvements and Rental Value.

(a) **Building and Improvements.** Lessor shall obtain and keep in force a policy or policies of insurance in the name of Lessor, with loss payable to Lessor, any ground-lessee, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed \$5,000 per occurrence.

(b) **Rental Value.** Lessor shall also obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days ("Rental Value Insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period.

(c) **Adjacent Premises.** Lessee shall pay for any increase in the premiums for the property insurance of the Building and for the Common Areas or other buildings in the Project if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

(d) **Lessee's Improvements.** Since Lessor is the insuring Party, Lessor shall not be required to insure Lessee Owned Alterations and Utility Installations unless the item in question has become the property of Lessor under the terms of this Lease.

8.4 Lessee's Property, Business Interruption Insurance, Worker's Compensation Insurance.

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **Worker's Compensation Insurance.** Lessee shall obtain and maintain Worker's Compensation Insurance in such amount as may be required by Applicable Requirements.

(d) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 Insurance Policies. Insurance required herein shall be by companies maintaining during the policy term a "General Policyholders Rating" of at least A-, VII, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates with copies of the required endorsements evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

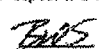
8.6 Waiver of Subrogation. Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 Indemnity. Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 Exemption of Lessor and Its Agents from Liability. Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the Building, or from other sources or places; (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 Failure to Provide Insurance. Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existence of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or \$100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the


INITIALS


INITIALS

failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9. Damage or Destruction.

9.1 Definitions.

(a) "Premises Partial Damage" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 3 months or less from the date of the damage or destruction, and the cost thereof does not exceed a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1

(b) "Premises Total Destruction" shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 3 months or less from the date of the damage or destruction and/or the cost thereof exceeds a sum equal to 6 month's Base Rent. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) "Insured Loss" shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) "Replacement Cost" shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) "Hazardous Substance Condition" shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the insuring Party shall promptly contribute the shortage in proceeds as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 8.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend the Lease or to purchase the Premises, then Lessee may preserve this Lease by: (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value Insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 60 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than 60 days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within 30 days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such 30 days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.


INITIALS

PAGE 9 OF 17


INITIALS

9.7 **Termination; Advance Payments.** Upon termination of this Lease pursuant to Paragraph 6.2(g) or Paragraph 8, an equitable adjustment shall be made concerning advance Base Rent and any other advance payments made by Lessee to Lessor. Lessor shall, in addition, return to Lessee so much of Lessee's Security Deposit as has not been, or is not then required to be, used by Lessor.

10. **Real Property Taxes**

10.1 **Definitions.**

(a) **"Real Property Taxes."** As used herein, the term "Real Property Taxes" shall include any form of assessment, real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Project, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Project address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Project is located. The term "Real Property Taxes" shall also include any tax, fee, levy, assessment or charge, or any increase therein: (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Project, (ii) a change in the improvements thereon, and/or (iii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

(b) **"Base Real Property Taxes."** As used herein, the term "Base Real Property Taxes" shall be the amount of Real Property Taxes, which are assessed against the Premises, Building, Project or Common Areas in the calendar year during which the Lease is executed. In calculating Real Property Taxes for any calendar year, the Real Property Taxes for any real estate tax year shall be included in the calculation of Real Property Taxes for such calendar year based upon the number of days which such calendar year and tax year have in common.

10.2 **Payment of Taxes.** Except as otherwise provided in Paragraph 10.3, Lessor shall pay the Real Property Taxes applicable to the Project, and said payments shall be included in the calculation of Common Area Operating Expenses in accordance with the provisions of Paragraph 4.2.

~~10.3 **Additional Improvements.** Common Area Operating Expenses shall not include Real Property Taxes specified in the tax assessor's records and work sheets as being caused by additional improvements placed upon the Project by other tenants or by Lessor for the exclusive enjoyment of such other tenants. Notwithstanding Paragraph 10.2 hereof, Lessee shall, however, pay to Lessor at the time Common Area Operating Expenses are payable under Paragraph 4.2, the entirety of any increase in Real Property Taxes if assessed solely by reason of Alterations, Trade Fixtures or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.~~

~~10.4 **Joint Assessment.** If the Building is not separately assessed, Real Property Taxes allocated to the Building shall be an equitable proportion of the Real Property Taxes for all of the land and improvements included within the tax parcel assessed, such proportion to be determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Lessor's reasonable determination thereof, in good faith, shall be conclusive.~~

10.5 **Personal Property Taxes.** Lessee shall pay prior to delinquency all taxes assessed against and levied upon Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee contained in the Premises. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11. **Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. As part of its required work, Lessee will be responsible for the installation of submetering devices wherever possible so that Lessee will be able to invoice Lessee and other tenants in the building. In the event the installation of submetering device is not possible, then Lessor will use reasonable efforts to equitably divide the various CAM responsibilities among the various building tenants. Notwithstanding the provisions of Paragraph 4.2, if at any time in Lessor's sole judgment, Lessor determines that Lessee is using a disproportionate amount of water, electricity or other commonly metered utilities, or that Lessee is generating such a large volume of trash as to require an increase in the size of the trash receptacle and/or an increase in the number of times per month that it is emptied, then Lessor may increase Lessee's Base Rent by an amount equal to such increased costs. There shall be no abatement of Rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

12. **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "assign or assignment") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. "Net Worth of Lessee" shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, i.e. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by

INITIALS

INITIALS

such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from any person other than Lessee pending approval or disapproval of an assignment. Neither a delay in the approval or disapproval of such assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefore to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed assignee or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, together with a fee of \$500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested. (See also Paragraph 38)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such obligations as are contrary to or inconsistent with provisions of an assignment or sublease to which Lessor has specifically consented to in writing.

(g) Lessor's consent to any assignment or subletting shall not transfer to the assignee or sublessee any Option granted to the original Lessee by this Lease unless such transfer is specifically consented to by Lessor in writing. (See Paragraph 39.2)

12.3 Additional Terms and Conditions Applicable to Subletting. The following terms and conditions shall apply to any subletting by Lessee of all or any part of the Premises and shall be deemed included in all subleases under this Lease whether or not expressly incorporated therein.

(a) Lessee hereby assigns and transfers to Lessor all of Lessee's interest in all Rent payable on any sublease, and Lessor may collect such Rent and apply same toward Lessee's obligations under this Lease, provided, however, that until a Breach shall occur in the performance of Lessee's obligations, Lessee may collect said Rent. In the event that the amount collected by Lessor exceeds Lessee's then outstanding obligations any such excess shall be refunded to Lessee. Lessor shall not, by reason of the foregoing or any assignment of such sublease, nor by reason of the collection of Rent, be deemed liable to the sublessee for any failure of Lessee to perform and comply with any of Lessee's obligations to such sublessee. Lessee hereby irrevocably authorizes and directs any such sublessee, upon receipt of a written notice from Lessor stating that a Breach exists in the performance of Lessee's obligations under this Lease, to pay to Lessor all Rent due and to become due under the sublease. Sublessee shall rely upon any such notice from Lessor and shall pay all Rents to Lessor without any obligation or right to inquire as to whether such Breach exists, notwithstanding any claim from Lessee to the contrary.

(b) In the event of a Breach by Lessee, Lessor may, at its option, require sublessee to atorn to Lessor, in which event Lessor shall undertake the obligations of the sublessor under such sublease from the time of the exercise of said option to the expiration of such sublease, provided, however, Lessor shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13 Default; Breach; Remedies.

13.1 Default; Breach. A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period.

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 5 days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the Premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 41, (viii) material data safety sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 2.9 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "debtor" as defined in 11 U.S.C. § 101 or any successor statute therein (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days, provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.


INITIALS


INITIALS

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.
(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor; (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty; (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing; (iv) a Guarantor's refusal to honor the guaranty; or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 Remedies. If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) 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 rental loss that the Lessee proves could have been reasonably avoided; (iii) 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 rental loss that the Lessee proves could be reasonably avoided; and (iv) any other amount necessary to compensate Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (ii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through any provisional remedy of summary eviction, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 Inducement Recapture. Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as "Inducement Provisions", shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions of this Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor, notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 Late Charges. Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or \$100, whichever is greater. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 Interest. Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("Interest") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.5 Breach by Lessor.

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "Condemnation"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or

possession, whichever first occurs. If more than 10% of the floor area of the Unit, or more than 25% of the parking spaces, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages. Lessee waives all right to any part of such award including any rights pursuant to NRS 37.115, that Lessee shall, however, be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

15. Brokerage Fees

15.1 Additional Commission. If a separate brokerage fee agreement is attached then in addition to the payments owed pursuant to Paragraph 1.10 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires from Lessor any rights to the Premises or other premises owned by Lessor and located within the Project, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule attached to such brokerage fee agreement.

15.2 Assumption of Obligations. Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.10, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 Representations and Indemnities of Broker Relationships. Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16. Estoppel Certificates.

(a) Each Party (as "Responding Party") shall within 10 days after written notice from the other Party (the "Requesting Party") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "Estoppel Certificate" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 2 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17 Definition of Lessor. The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

18. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

19. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

20. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor, or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

21. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

22. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Lessor and Lessee each represents and warrants to the Brokers that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises. Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party.

23. Notices.

23.1 Notice Requirements. All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter


INITIALS


INITIALS

designate in writing.

23.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

24. **Waivers.**

(a) No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

(b) The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of monies or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

(c) **THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.**

25. **Disclosures Regarding The Nature of a Real Estate Agency Relationship.**

(a) Parties acknowledge: (i) receipt from Brokers of a Nevada Real Estate Division "Duties Owed by a Nevada Real Estate Licensee" form, a "Confirmation Regarding Real Estate Agent Relationship" form, and, if one Broker is acting for both Lessor and Lessee, a "Consent to Act" form, and (ii) that they have read and understand such forms and the duties owed to them by Brokers. The Parties also agree to execute and deliver to Brokers said forms. **NOTE:** The use of a broker in a real estate transaction does not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction. If legal or tax advice is desired, a Party should consult a competent professional.

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party. The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease, provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker.

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential.

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

27. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

29. **Binding Effect; Choice of Law.** This Lease shall be binding upon the parties, their personal representatives, successors and assigns and be governed by the laws of the State in which the Premises are located. Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located.

30. **Subordination; Attornment; Non-Disturbance.**

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, "Security Device"), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as "Lender") shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership; (b) be subject to any offsets or defenses which Lessee might have against any prior lessor; (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor which was not paid or credited to such new owner.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a "Non-Disturbance Agreement") from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 90 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 90 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents.

provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31. **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party or Broker who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party or Broker of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

32. **Lessor's Access; Showing Premises; Repairs.** Showing Premises, Repairs. Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect on Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

33. **Auctions.** Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

34. **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "For Sublease" signs which may be placed only on the Premises, Lessee shall not place any sign upon the Project without Lessor's prior written consent. All signs must comply with all Applicable Requirements. Lessor reserves the right to place upon the Project ordinary "For Sale" signs during periods in which the building is for sale, provided however, that any "For Sale" sign is not placed on any of the exterior surfaces that are a part of the Lessee's Premises.

35. **Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises, provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

36. **Consents.** Except as otherwise provided herein, whenever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request.

~~37. Guarantors.~~

~~37.1 Execution. The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association.~~

~~37.2 Default. It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty; (b) current financial statements; (c) an Estoppel Certificate; or (d) written confirmation that the guaranty is still in effect.~~

38. **Quiet Possession.** Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

39. **Options.** If Lessee is granted an option, as defined below, then the following provisions shall apply.

39.1 **Definition.** "Option" shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor; (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor; (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not the Defaults are cured, during the 12 month period immediately preceding the exercise of the Option.

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a).

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if, after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease.

40. **Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

41. **Reservations.** Lessor reserves the right: (i) to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, (ii) to cause the recording of parcel maps and restrictions, and (iii) to create and/or install new utility raceways, so long as


INITIALS


INITIALS

such easements, rights, dedications, maps, restrictions, and utility raceways do not unreasonably interfere with the use of the Premises by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate such rights.

42. **Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

43. **Authority; Multiple Parties; Execution.**

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

44. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

45. **Offer.** Preparation of this Lease by either party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by all Parties hereto.

46. **Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

47. **Waiver of Jury Trial.** THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.

48. **Arbitration of Disputes.** An Addendum requiring the Arbitration of disputes between the Parties and/or Brokers arising out of this Lease ☒ is ☐ is not attached to this Lease.

49. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

LESSOR AND LESSEE HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES.

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.
2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES ARE LOCATED IN A STATE OTHER THAN NEVADA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at: Las Vegas, NV

On: JUNE 15, 2010

Executed Las Vegas, NV

On: _____

By LESSOR:

CMS Nevada LLC

a Nevada limited liability company

By: _____

Name Printed: David Mozes

Title: Manager

By LESSEE:

Artifice LLC

a Nevada limited liability company

By: _____

Name Printed: Brett Wesley Sperry

Title: Managing Member

By: _____

Name Printed: _____

Title: _____

By: _____

Name Printed: _____

Title: _____

Address: 1182 E Carson Avenue
Las Vegas, NV 89101-5360

Telephone: (702) 430-6141

Facsimile: (702) 522-1485

Federal ID No. _____

Address: 1112 S Casino Center Boulevard
Las Vegas, NV 89101

Telephone: (702) 433-4433

Facsimile: (702) 433-1834

Federal ID No. _____

INITIALS

PAGE 16 OF 17

INITIALS

BROKER:

BROKER:

Att:

Att:

Title:

Title:

Address:

Address:

Telephone: ()

Telephone: ()

Facsimile: ()

Facsimile: ()

Federal ID No.

Federal ID No.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

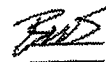
(c) Copyright 1996 By AIR Commercial Real Estate Association.

All rights reserved.

No part of these works may be reproduced in any form without permission in writing.


INITIALS

PAGE 17 OF 17


INITIALS



NEVADA

RENT ADJUSTMENT(S) STANDARD LEASE ADDENDUM

Dated June 15, 2010

By and Between (Lessor) CMS Nevada LLC (in its capacity as Manager of
all ownership entities)

(Lessee) Artifice LLC

Address of Premises: 1035 S 1st Street, Suite
Las Vegas NV 89101

Paragraph 50

A. RENT ADJUSTMENTS:

The monthly rent for each month of the adjustment period(s) specified below shall be increased using the method(s) indicated below:

(Check Method(s) to be Used and Fill in Appropriately)

☐ I. Cost of Living Adjustment(s) (COLA)

a. On (Fill in COLA Dates): _____

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers).
for (Fill in Urban Area): _____

All Items

(1982-1984 = 100), herein referred to as "CPI"

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): the ☐ first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month"). The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

☐ II. Market Rental Value Adjustment(s) (MRV)

a. On (Fill in MRV Adjustment Date(s)): _____

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions.

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

Jan

PAGE 1 OF 2

BWS

INITIALS

INITIALS

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e., the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

- 1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and
- 2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☒ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
July 1, 2011	\$2,747.94
July 1, 2012	\$2,857.86
July 1, 2013	\$2,972.17

B. **NOTICE:**
Unless specified otherwise herein, notice of any such adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. **BROKER'S FEE:**
The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 657-8777. Fax No.: (213) 657-8618.


INITIALS


INITIALS



NEVADA

OPTION(S) TO EXTEND STANDARD LEASE ADDENDUM

Dated June 15, 2010

By and Between (Lessor) CMS Nevada LLC (in its capacity as Manager of
all ownership entities)

By and Between (Lessee) Artifice LLC

Address of Premises: 1025 S 1st Street, Suite
Las Vegas NV 89101

Paragraph 51

A. OPTION(S) TO EXTEND:

Lessor hereby grants to Lessee the option to extend the term of this Lease for Two (2) additional Thirty-Six (36) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions:

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least 4 but not more than 6 months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below: (Check Method(s) to be Used and Fill in Appropriately)

- ☐ I. Cost of Living Adjustment(s) (COLA)
a. On (Fill in COLA Dates): _____

the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one): ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area): _____

All items (1962-1984 = 100), herein referred to as "CPI".

b. The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one): ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month": _____)

The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.

c. In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.

- ☒ II. Market Rental Value Adjustment(s) (MRV)
a. On (Fill in MRV Adjustment Dates): 07/01/2014 and 07/01/2017

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:

1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions

Jim
INITIALS

PAGE 1 OF 2

BWS
INITIALS

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☐ broker ("Consultant" - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3 arbitrators shall within 30 days of the appointment of the third arbitrator reach a decision as to what the actual MRV for the Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If either of the Parties fails to appoint an arbitrator within the specified 15 days, the arbitrator timely appointed by one of them shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entire cost of such arbitration shall be paid by the party whose submitted MRV is not selected, i.e. the one that is NOT the closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon the establishment of each New Market Rental Value:

1) the new MRV will become the new "Base Rent" for the purpose of calculating any further Adjustments, and

2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

☒ III. Fixed Rental Adjustment(s) (FRA)

The Base Rent shall be increased to the following amounts on the dates set forth below:

On (Fill in FRA Adjustment Date(s)):	The New Base Rent shall be:
July 1, 2014	(see Section II above)
July 1, 2015	TBD - 4% annual increases
July 1, 2016	TBD - 4% annual increases
July 1, 2017	(see Section II above)
July 1, 2018	TBD - 4% annual increase
July 1, 2019	TBD - 4% annual increase

B. NOTICE:

Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:

The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8816.


INITIALS


INITIALS



NEVADA

ADDENDUM

Date: June 15, 2010

By and Between (Lessor) CMS Nevada LLC (in its capacity as Manager of ownership LLCs)
(Lessee) Artifice LLC

Address of Premises: 1025 S 1st Street, Suite
Las Vegas NV 89101

Paragraphs 53-62

The following is a Rider/Addendum to the "Standard Industrial/Commercial Multi-Tenant Lease-Gross" between the undersigned Lessor and Lessee, and forms a part of said instrument. In the event of any inconsistency between the terms of this Rider/Addendum and the "Standard Industrial/Commercial Multi-Tenant Lease-Gross", the terms of this Rider/Addendum shall control.

53. Lessee is to install its own submetering device for the purpose of accurately determining Lessee's actual electrical usage. Lessee will reimburse Lessor for its proportionate measured share of electrical usage within ten (10) days written notice by Lessor thereof. In the event that Lessee is unable or unwilling to submeter its electrical usage, then Lessee will pay its prorata share of the total electrical usage on the 1025 Building meter. For the purposes of calculating Lessee's prorata share of electrical usage, Lessor will use Lessee's average total weekly operating hours as the numerator and ALL 1025 Building lessees' average total weekly operating hours as the denominator. Additionally, Lessee will reimburse Lessor for its prorata share of common area electrical usage (if any -- would apply only to emergency exit vestibules, common area restrooms if Lessee does not have its own restrooms, and exterior signage and lighting).

54. Lessee is to install its own submetering device for the purpose of accurately determining Lessee's actual water usage. Lessee will reimburse Lessor for its proportionate measured share of electrical usage within ten (10) days written notice by Lessor thereof. In the event that Lessee is unable or unwilling to submeter its water usage, then Lessee will pay its prorata share of the total water usage on the 1025 Building meter. For the purposes of calculating Lessee's prorata share of water usage, Lessor will use Lessee's total square footage as the numerator and ALL 1025 Building food/beverage lessees' square footage as the denominator. Additionally, Lessee will reimburse Lessor for its prorata share of common area water usage (if any -- would apply only to parking lot maintenance and landscaping irrigation within the Project even if such water use is on different water meters).

55. In the event Lessor and/or its successors fail to lease at least 7,000 additional square feet of additional food/beverage, art studio/museum/gallery, creative office, banquet event space, and/or retail boutique space within the 1017, 1023, and/or 1025 S 1st Street building campus by the Rent Commencement Date, then the then applicable Base Rent will be reduced by \$0.35 per square foot until such time as this co-tenancy requirement is met.

56. The Project currently consists of buildings and land at 1017, 1023, and 1025 S 1st Street, in addition to land at 1022 S Casino Center Blvd. Lessee acknowledges that Lessor plans to expand the Project with the acquisition of additional land in and around the current campus. In the event that the Project expands, Lessee will cooperate with Lessor in negotiating and executing reasonable amendments to this Lease to provide for the proper inclusion of the new real estate in the Project.

57. Notwithstanding the provisions of Section 2.6 in the Lease, parking is currently restricted to available land at 1017 S 1st Street and 1022 S Casino Center Blvd. Lessee will be permitted unlimited non-exclusive use of this parking area for customers only. Lessee will also be permitted unlimited non-exclusive use of any additional parking areas acquired by Lessor by lease or purchase during the term of this Lease. Lessor


INITIALS


INITIALS

reserves the right to establish parking charges to others and appropriate provisions for parking ticket validation by Lessee and that Lessee's clients who have been validated by Tenant shall park for the lowest available preferred rates then being offered by Lessor. Lessee will be allotted one hundred (100) free daily 2-hour validations for its customers' use and convenience. Lessor has no expressed or implied responsibility to control the parking areas or to secure the parking areas. In the event that Lessee wishes to have non-customers or off-Project neighbors towed from the parking areas, Lessor hereby authorizes Lessee to contact the contracted towing company to have non-client vehicles towed from the designated parking areas in order to preserve parking areas for tenants and customers. During periods where a valet service is used for stacking vehicles in the parking lot, Lessee agrees to allow the valet to move its vehicle to facilitate optimum use of the lot.

58. Lessee is receiving the benefit of nine (9) months of free rent from July 1, 2010 to March 31, 2011. During this period, Lessee will still be responsible for paying Lessor for its proportionate share of any applicable Common Area Operating Expenses.

59. Lessee accepts the Premises from Lessor on an "as-is, where-is" basis. Lessee acknowledges that it will need to install its own HVAC units, insulation, electrical sub-meter, and storefront glazing. Lessee acknowledges that it will need to construct its own entrance to the Premises someplace along its Boulder Avenue frontage. Lessee acknowledges that it might have to do some exterior sidewalk and/or asphalt alterations in order to make the storefront more ADA accessible.

60. Lessee is a Nevada limited liability company. Lessee will provide Lessor a copy of its Operating Agreement and Articles of Incorporation. Lessee must provide Landlord of any updates to these documents within thirty (30) days of any changes or amendments thereto.

61. Lessee, at Lessee's sole cost and expense, shall install and maintain on the exterior of the Premises signs for the business. Any sign and/or advertising matter must be kept clean and well-maintained.

62. Landlord shall provide the designated area for trash bins and pickup in Exhibit "A".


INITIALS


INITIALS



NEVADA

ARBITRATION AGREEMENT

Standard Lease Addendum

Dated June 15, 2010

By and Between (Lessor) CMS Nevada LLC (in its capacity as Manager of
all ownership entities)

(Lessee) Artifice LLC /

Address of Premises: 1025 S 1st Street, Suite
Las Vegas NV 89101

Paragraph 52

A. ARBITRATION OF DISPUTES:

Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including, but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B. DISPUTES EXCLUDED FROM ARBITRATION:

The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in the Lease. 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages. 3. Claims relating to (a) Lessor's exercise of any unlawful detainer or summary eviction rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law and 4. All claims arising under Paragraph 39 of this Lease.

C. APPOINTMENT OF AN ARBITRATOR:

All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration: ☐ pursuant to Nevada Revised Statutes Chapter 38 (the Uniform Arbitration Act of 2000) or any successor statute, ☒ before the American Arbitration Association ("AAA") under its commercial arbitration rules.

or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D. ARBITRATION PROCEDURE:

1. **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator may issue subpoenas and subpoenas duces tecum as provided for in the applicable statutory or case law.

2. **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and it may thereafter be confirmed as a judgment by the court of applicable jurisdiction, subject only to challenge on the grounds set forth in the applicable statutory or case law. The validity and enforceability of the Arbitrator's decision is to be determined exclusively by the court of appropriate jurisdiction pursuant to the provisions of this Lease. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however, elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter, the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

Xm
 INITIALS

PAGE 1 OF 1

Paul
 INITIALS

EXHIBIT A
of Attachment 2

DESCRIPTION OF THE FAÇADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face adjoining then Northern boundary of Boulder Ave, the Eastern boundary of First Street and other public areas, including all exterior wall planes, window, doors, fascias, awnings, parking area, and other architectural projections. Including in the area consisting of the building face is the Northern and Eastern boundaries of the property, as described in "*Attachment 1 – Legal Description of the Property*" and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

ATTACHMENT 3

FORM OF FACADE EASEMENT DEED

APN: 139-33-811-018

RECORDING REQUESTED BY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

AND WHEN RECORDED RETURN TO:

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
ATTN: Operations Officer

FACADE EASEMENT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, CMS NEVADA, LLC/ S&F GENESEE, LLC ("Grantor"), does hereby grant to the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic ("Grantee"), a nonexclusive facade easement (the "Facade Easement") in gross on and upon a portion of the real property described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"). The precise description of the area of the facade easement is described in Exhibit B attached hereto and incorporated hereby by reference (the "Facade Easement Area").

1. Grantee is responsible for carrying out the Redevelopment Plan for the City of Las Vegas Redevelopment Area (the "Redevelopment Area"). In furtherance of the Redevelopment Plan, Grantor and Grantee entered into a Commercial Visual Improvement Agreement and Grant of Facade Easement dated _____ (the "CVIP Agreement") which required the Grantor to improve the facades(s) of the building(s) on the Property in accordance with the CVIP Agreement and Grantee's Commercial Visual Improvement Guidelines.

2. Grantor shall maintain the Property and the Facade Easement Area in accordance with the Facade Easement Agreement, including without limitation, the provisions set forth in the Building Façade Maintenance Agreement, recorded against the Property by separate instrument. Grantor agrees that all material future changes to the exterior surface of the facades of the building that has been improved on the Property shall be subject to the approval of the Grantee, which approval shall not be unreasonably withheld. This covenant shall run with the land until five (5) years from the date this Facade Easement Deed is recorded against the Property.

3. Grantee may use the Facade Easement for the purpose of ensuring the repair and maintenance of the Facade Easement Area, including the Facade Improvements to be constructed thereon, in accordance with the Facade Easement Agreement.

4. The Facade Easement shall include ancillary rights of ingress and egress over any portion of the Property that is necessary in order to repair and maintain the Facade Improvements located on and within the Facade Easement Area.

5. Grantor covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry, age, sexual preference, physical handicap or medical condition in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall Grantor or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

6. The Grantee shall not use or exercise any right granted by the Facade Easement or do anything in a manner that will damage or impair the Facade Easement Area or the structural integrity of the building.

7. In the event of a violation of this Agreement by Grantor, the Grantee may, following reasonable notice to Grantor and after allowing thirty (30) days to correct said violation, institute a suit to enjoin such violation and to require the restoration of the Facade Improvements to their prior condition. In the alternative, the Grantee may enter upon the Property, correct any such violation and hold the Grantor and, his or her heirs, successors and assigns, responsible for the costs thereof in accordance with the Facade Easement Agreement and Building Facade Maintenance Agreement.

8. The Facade Easement granted herein shall terminate on the date which is five (5) years from the date of recordation of this Facade Easement Deed.

9. Grantor shall have the option to repurchase the Facade Easement granted herein (the "Option") from the Grantee pursuant to the terms and conditions set forth hereunder.

a. Option Term. The term of the Option (the "Option Term") shall commence thirty (30) days after recordation of the Facade Easement Deed and shall continue until five (5) years from the date of the recordation of this Facade Easement Deed. In order to exercise the Option, the Grantor must give sixty (60) days written notice to the Grantee that it wishes to exercise the Option.

b. Repurchase Price. If the Grantor exercises the Option, the Grantee agrees to sell and the Grantor agrees to repurchase the Facade Easement in an amount equal to the unamortized portion of the Purchase Price amortized on a straight-line basis

over five (5) years. The Amortization Schedule is set out in Exhibit C, attached hereto and incorporated herein (the "Amortization Schedule").

- c. Title, Escrow and Closing Costs. The Owner shall pay for all title, escrow and closing costs and fees associated with the repurchase of the Facade Easement. The Owner and Agency shall cooperate in good faith and execute such documents and take such actions as may be necessary to effectuate such repurchase.

10. The obligations and benefits imposed and granted in this Facade Easement Deed shall be binding on Grantor and all successor owners of the Property and inure to the benefit of the Grantee, its successors and assigns and are intended to run with the land.

11. The provisions of this Facade Easement Deed may be amended or terminated in full only by a written agreement between the Grantor and Grantee.

12. Nothing contained in this Facade Easement Deed shall be deemed to be a gift or dedication of any portion of Property to the general public or for the general public for any public purpose whatsoever, it being the intention of the parties to this Facade Easement Deed that the Facade Easement shall be strictly limited to and for the purposes expressed in this Facade Easement Deed.

13. This declaration shall be governed by and construed in accordance with the laws of the State of Nevada.

14. The Facade Easement granted herein shall be binding on and inure to the benefit of the successors and assigns of the parties and are intended to bind and burden the Property described in Exhibit A.

...
...
...

IN WITNESS WHEREOF, Grantor has executed this Facade Easement Deed as of this
____ day of _____, _____.

OWNER

CMS NEVADA, LLC/ S&F GENESEE, LLC

By: _____
DAVID MOZES
"GRANTOR"

ACCEPTED AND AGREED TO:

CITY OF LAS VEGAS REDEVELOPMENT
AGENCY

By: _____
OSCAR B. GOODMAN

Its: CHAIRMAN
"GRANTEE"

ATTEST:

BEVERLY K. BRIDGES, MMC
Secretary

APPROVED AS TO FORM

Counsel to the Agency Date

ACKNOWLEDGMENTS

STATE OF _____)
)ss.
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____,
2010 by DAVID MOZES as OWNER OF 1025 SOUTH FIRST STREET.

Notary Public in and for said County and
State

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____,
2010 by Oscar B. Goodman as Chairman of the City of Las Vegas Redevelopment Agency.

Notary Public in and for said County and
State

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT FIFTEEN (15) IN BLOCK NINE (9) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 51 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT B

DESCRIPTION OF THE FACADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face adjoining then Northern boundary of Boulder Ave, the Eastern boundary of First Street and other public areas, including all exterior wall planes, window, doors, fascias, awnings, parking area, and other architectural projections. Including in the area consisting of the building face is the Northern and Eastern boundaries of the property, as described in "*Attachment 1 – Legal Description of the Property*" and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

EXHIBIT C

FORM OF FAÇADE EASEMENT REPURCHASE PRICE AMORTIZATION SCHEDULE

1. Amount of Purchase Price: \$44,325.00 (Maximum)
2. Repurchase Price based on unamortized portion of Purchase Price amortized on straight-line basis over five (5) years as follows:

Anytime during first year: \$44,325.00

Anytime during second year: \$35,460.00

Anytime during third year: \$26,595.00

Anytime during fourth year: \$17,730.00

Anytime during fifth year: \$8,865.00

After five full years from recordation
of the Façade Easement Deed: \$0.00

ATTACHMENT 4

FORM OF BUILDING FAÇADE MAINTENANCE AGREEMENT

APN: 139-33-811-018

RECORDING REQUESTED BY

CITY OF LAS VEGAS
REDEVELOPMENT AGENCY

AND WHEN RECORDED RETURN TO:

City of Las Vegas Redevelopment Agency
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
ATTN: Operations Officer

BUILDING FAÇADE MAINTENANCE AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20____, between CMS NEVADA, LLC/ S&F GENESEE, LLC hereinafter referred to as "Owner" and the CITY of LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic, hereinafter referred to as "Agency" with reference to the following facts:

WHEREAS, Owner is the owner of that real property ("the Property") in the City of Las Vegas, County of Clark, State of Nevada, legally described in Exhibit "A" attached hereto by this reference, commonly known as 1025 SOUTH FIRST STREET, Las Vegas, Nevada and currently designated as Assessor's Parcel Nos. 139-33-811-018; and

WHEREAS, the Property is located within the City of Las Vegas Redevelopment Area (the "Redevelopment Area"), and in furtherance of the Redevelopment Plan for the Redevelopment Area, the Agency approved a Commercial Visual Improvement Program (the "Commercial VIP") for the purpose of revitalization and elimination of blighting influences in the Redevelopment Area; and

WHEREAS, Owner has rehabilitated the property facing the Facade Easement Area: Facade Easement Area: The area consisting of the building face adjoining then Northern boundary of Boulder Ave, the Eastern boundary of First Street and other public areas, including all exterior wall planes, window, doors, fascias, awnings, parking area, and other architectural projections. Including in the area consisting of the building face is the Northern and Eastern boundaries of the property, as described in "*Attachment 1 – Legal Description of the Property*" and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

Agency purchased a Facade Easement for the Property (hereinafter "the Facade Easement") which ensures that the building facades on the Property will be preserved in a manner consistent

with the Commercial Visual Improvement Agreement and Grant of Façade Easement dated _____
_____ (the "CVIP Agreement"); and

WHEREAS, by the terms of said Façade Easement, Owner is required to enter into an agreement for a period of five (5) years giving the Agency authority to lien the Property to ensure that the façade(s) covered by the Façade Easement, legally described in Exhibit " B " attached hereto (the "Façade Easement Area"), will be diligently maintained and that violations will be corrected promptly; and

WHEREAS, this agreement is entered into to ensure that the Property is maintained because both parties recognize that diligent maintenance is an integral part of preservation of the Property and one of the considerations for Agency's purchase of the Façade Easement;

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Purpose. The purpose of this agreement is to ensure diligent maintenance of the building facades on the Property facing public streets and/or alleys, the Façade Easement Area, in accordance with the plans approved by the City of Las Vegas Office of Redevelopment Agency and any other City of Las Vegas department that may have issued approvals and/or permits as of the date of this agreement, or as may be otherwise approved by City during the term of this agreement. Copies of the plans for the Façade Easement Area required to be maintained under this agreement and which are incorporated herein by this reference, are on file with the City of Redevelopment Agency, c/o Office of Business Development, 400 Stewart Avenue, Las Vegas, NV 89101.
2. Duty to Maintain Property. Owner covenants and agrees, for itself, its lessees, successors and assigns during the term of this agreement to diligently maintain and care for the Façade Easement Area in accordance with the plans approved by Agency. "Diligent maintenance" is persistent upkeep which employs the standard of care necessary to meet all requirements of applicable local ordinances and regulations and standards of workmanship in accordance with the generally accepted standards for maintenance observed by comparable uses located within the City of Las Vegas. In particular, Owner covenants that:
 - a) All exterior building facades shall be maintained, repaired, or used in accordance with the City of Las Vegas Building Code and the plans approved by, any and all, appropriate City of Las Vegas department(s) as of the date of this agreement, or as may be otherwise approved by Agency during the term of this agreement.
 - b) The exterior of the buildings and structures shall have effective weatherproofing and waterproofing, including non-deteriorated paint, uncracked or unbroken plaster, sound siding, sealing of doors and windows and adequate and approved roof covering.
 - c) All exterior doors, door hardware, handles, locksets and latchsets shall be in safe and operable condition, free of cracks, splits, holes, inadequate fastening and warpage.
 - d) All windows shall be secure, well sealed, unbroken, and with undamaged frames. No window bars, grills or grates of any kind shall be installed without the express approval of the City of Las Vegas Department of Building and Safety.

- e) All exterior lighting, including but not limited to security, carport, stairway or balcony, and building lighting, must be operable at all times as required by the City of Las Vegas Building Code.

- 3. Agency's Right to Cure Owner's Default. Owner shall be in default of this agreement if Owner breaches any of the Owner's obligations under Paragraph 2 above, and the breach is not cured within thirty (30) days (or such longer period as may be specified in the Notice of Breach) after the Agency gives notice ("Notice of Breach") to the Owner of the failure to perform, which Notice of Breach shall specify in reasonable detail the conditions constituting the breach. The Agency's Executive Director ("Director") (or, if that position no longer exists, an Agency official with comparable duties) or the Director's designee may impose conditions on any extension of time to cure the breach, which conditions may include but are not limited to (i) requiring Owner to post a cash deposit or surety bond in the amount of the estimated cost of curing the breach or default, and (ii) requiring that Owner commence curing the breach or default by a specified date and thereafter diligently and in good faith continue to cure the breach until completion of the cure.

In the event of default, in addition to any other remedies available to Agency at law or in equity, Agency in its sole and absolute discretion may enter the Property and cure the default at Owner's cost at any time after giving not less than thirty (30) days' notice ("Notice of Default") to Owner, which Notice of Default shall state the Agency's intent to enter the Property and shall specify in reasonable detail the work or correction the Agency intends to perform.

- 4. Hold Harmless. Owner shall waive any and all claims for damage or loss as a result of Agency's entry onto the Property. Owner shall defend, indemnify and hold harmless Agency, its employees, officers, agents and contractors from and against any and all liability, loss, expense, including reasonable attorney's fees or claims for injury or damage caused by or as a result of the Agency, its employees, officers, agents or contractors entry onto the Property. Notwithstanding the foregoing, the above waiver and indemnity shall not apply with respect to any negligent acts or omissions or willful misconduct by the Agency, its employees, officers, agents and/or contractors.
- 5. Agency's Cost of Cure. If Agency, acting through its own employees or through its contractors, enters the Property and cures the breach or default, Agency shall perform the work in a reasonably efficient, cost effective and competitively priced manner. The cost of curing the default shall be due and payable within ten (10) days after delivery of an invoice to Owner, and if paid at a later date shall bear interest at the rate of 10% per annum from the date of the invoice until Agency is reimbursed by Owner. Any warranties provided by Agency's contractors shall be assigned to Owner upon Owner's payment in full of the amounts due hereunder.
- 6. Additional Remedies. The Agency, in addition to the collection procedure set forth above in paragraph 4, may make the cost incurred in maintaining the Property a lien upon the Property by recording a notice with the Clark County Recorder. The lien may also include any and all costs incurred in recording the lien. The notice shall state that the Agency has incurred maintenance costs under the terms of this agreement and shall state the amount, together with a statement that it is unpaid. Such lien shall be immediately released upon Owner's payment of said costs.

7. Notices. Notices required or permitted to be given under the terms of this agreement shall be served personally, or by certified mail, return receipt requested, or by overnight courier, addressed as follows:

AGENCY: CITY OF LAS VEGAS REDEVELOPMENT AGENCY
400 Stewart Avenue, 2nd Floor
Las Vegas, NV 89101
Attn: Operations Officer

OWNER: CMS NEVADA, LLC/ S&F GENESEE, LLC
1182 EAST CARSON AVE
LAS VEGAS, NV 89101

TENANT: ARTIFICE, LLC
1112 SOUTH CASINO CENTER BLVD.
LAS VEGAS, NV 89104
TRINITY SCHLOTTMAN, MANAGING MEMBER

and, in the event that Owner hereafter conveys Property, to each successive Owner as shown on the tax rolls for Clark County.

8. Property Owner. If Owner conveys, grants or transfers the Property or a portion thereof to another, such grantee or transferee shall be responsible for complying with the terms and conditions of this agreement as to the Property or as to that portion thereof so conveyed and Owner shall have no further obligation hereunder as to said Property or that portion thereof. If Owner leases the Property or any portion thereof to another, the lease shall provide for Owner's right of entry to perform Owner's obligations under this agreement. The lease also shall provide for Agency's right of entry to inspect the Property for compliance with this agreement and in the event of breach to perform required maintenance in accordance with the procedure set forth in Paragraph 3. Owner shall advise the Executive Director of the Agency in writing of any changes in address of Owner and of the names and addresses of any subsequent owners of the property or any portion thereof.

9. Miscellaneous Terms and Provisions.

- a) If any provision of this agreement is adjudged invalid, the remaining provisions of it are not affected.
- b) Notice to Agency or Owner shall be considered to have been given when sent in the manner and to the addresses stated in Paragraph 6 above.
- c) This writing contains a full, final and exclusive statement of the agreement of the parties.
- d) By executing this agreement Owner, on its behalf and on behalf of any successor in interest, authorizes and grants to Agency or to Agency's agent, permission with 48 hours advance notice to enter upon the Property subject to this agreement to perform inspections of the façade improvements or to perform any work authorized by this

agreement in the event of breach by Owner of any covenant set forth in Paragraphs 2 above. However, the Agency shall coordinate the time of such inspections with the Owner in order to minimize the disruption of business or inconvenience to the Owner's customers.

10. Recordation: Covenant Running With the Land for Five Years. Upon recordation of the Façade Easement Deed and execution of this agreement by both parties, the Agency shall record this agreement with the Clark County Recorder's Office. Agency shall provide Owner a copy of the agreement showing the Recorder's stamp.

This agreement pertains to that area of the Property covered by the Façade Easement, and shall run with the land for a period of five (5) years from the date of recordation, including a period of time after the expiration of the Façade Easement. This agreement binds the successors in interest of each of the parties to it.

11. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions of this agreement shall defeat or render invalid the lien or charge or any first mortgage or deed of trust made in good faith and for value encumbering the Property, but all of said covenants, conditions and restrictions shall be binding upon and effective against any successor to the Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to the Property.
12. Attorneys' Fees. If any party to this agreement resorts to a legal action to enforce any provision of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to any other relief to which it may be entitled. This provision applies to the entire agreement.
13. Estoppel Certificate. Upon written request by Owner or a subsequent owner, Agency shall promptly execute and deliver an estoppel certificate, in a form reasonably approved by the Agency, addressed as indicated in the request, stating that the property is in compliance with this agreement, or not, and stating the amount of any outstanding fees or charges.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year set forth above.

By: _____ Date: _____
Name: DAVID MOZES
Title: OWNER

CITY OF LAS VEGAS REDEVELOPMENT AGENCY,
a public body, corporate and politic

By: _____ Date: _____
OSCAR B. GOODMAN
CHAIRMAN

ATTEST:

BEVERLY K. BRIDGES, MMC
Secretary

APPROVED AS TO FORM:

Counsel to the Agency Date

ACKNOWLEDGMENTS

STATE OF _____)
)ss.
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____,
2010 by DAVID MOZES as OWNER.

Notary Public in and for said County and
State

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on the ____ day of _____,
2010 by Oscar B. Goodman as Chairman of the City of Las Vegas Redevelopment Agency.

Notary Public in and for said County and
State

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

LOT FIFTEEN (15) IN BLOCK NINE (9) OF SOUTH ADDITION TO THE CITY OF LAS VEGAS, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 1 OF PLATS, PAGE 51 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

EXHIBIT B

DESCRIPTION OF THE FACADE EASEMENT AREA

Facade Easement Area: The area consisting of the building face adjoining then Northern boundary of Boulder Ave, the Eastern boundary of First Street and other public areas, including all exterior wall planes, window, doors, fascias, awnings, parking area, and other architectural projections. Including in the area consisting of the building face is the Northern and Eastern boundaries of the property, as described in "*Attachment 1 – Legal Description of the Property*" and other public areas, including all exterior wall planes, window, doors, fascias, awnings, landscaping, parking area and other architectural projections.

The Façade Easement granted herein shall terminate five (5) years from the date of execution of the recordation of this Façade Easement Deed without further action upon the City of Las Vegas Redevelopment Agency.

ATTACHMENT 5

SCOPE OF WORK AND TENTATIVE SCHEDULE OF IMPROVEMENTS

1. Exterior Shutters	\$7,800.00
2. Replace- Fill in Masonry Openings	\$13,500.00
3. Exterior Electric	\$5,150.00
4. Exterior Windows	\$9,150.00
5. Set/Case/Stain Openings	\$4,200.00
6. Exterior Framing- Parapet Reinforcement	\$8,500.00
7. Exterior Sign- Cabinet & Neon	\$10,100.00
8. Exterior Comic Sign	\$3,950.00
9. Exterior Concrete & Railings	\$14,800.00
10. Engineering Exterior Railings/Flatwork/Structural	\$3,700.00
11. <u>Exterior Paint & Signage</u>	\$7,800.00

TOTAL ESTIMATED PROJECT COSTS \$88,650.00

Estimated CVIP Grant \$44,325.00

*Note – Items in bold are “Pre-approved Qualified Exterior Improvements”.

Schedule of Improvements

Work will begin 45 days after approval of Agreement and should be complete within 120 days, depending on contractor's work schedule/work load.

Please Print Legibly

VIP Disclosure of Ownership/Principals

Real Property - Page 1 of 2

VIP Contracting Entity Information

Name Trinity Schlottman / Artifice, LLC
 Mailing Address 211 Tower Street, Las Vegas, NV 89101
 Business Phone 702-204-8737
 Tax ID or Social Security Number 272902013

Ownership InterestEstate in Severalty ☒Tenancy in Common ☐Joint Tenancy ☐**Disclosure of Ownership/Principals**

In the space below, the Contracting Entity must disclose all persons or entities holding more than one percent ownership interest in the real property.

Full Name & Title	Business Address	Business Phone
David Mizes	1182 E. Carson Ave, Las Vegas, NV 89101	702-430-6141

Additional Ownership/Principals

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals - Continuation" until full and complete disclosure is made. If continuation sheets are attached, please indicate the number of sheets: 0



VIP Disclosure of Ownership/Principals

Real Property - Page 2 of 2

Alternative Disclosure of Ownership/Principal

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this certificate in lieu of providing the information set forth on the previous page. A description of such disclosure documents must be included below.

Name of Attached Document _____

Date of Attached Document _____

Number of Pages _____

Certification of Disclosure of Ownership/Principal - Real Property

I certify, under penalty of perjury, that all the information provided in this certificate is current, complete and accurate.

Signature _____

Date 11/21/10 _____

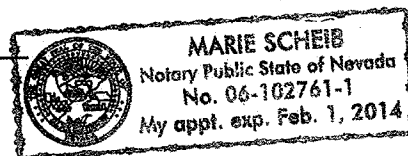
State of Nevada

County of Clark

This instrument was acknowledged before me on

November 22, 2010 (date) byDavid Mozes (name of person)

Marie Scheib
Notary Public



Please Print Legibly

VIP Disclosure of Ownership/Principals

Business - Page 1 of 2

VIP Contracting Entity Information

Name Trinity Schlottman - Artifice, LLC.
 Mailing Address 211 Tower Street, Las Vegas, NV 89101
 Business Phone 702-204-8737
 Tax ID or Social Security Number 272902013

Type of Business

Sole Proprietor _____ Partnership _____ Limited Liability Company ☒ Corporation _____

Disclosure of Ownership/Principals

In the space below, the Contracting Entity must disclose all persons or entities holding more than one percent ownership interest in the business.

Full Name & Title	Business Address	Business Phone
Trinity Schlottman	211 Tower Street, Las Vegas, NV 89101	702-204-8737
Stephen Rubysr	1112 S. Casino Center Blvd, Las Vegas, NV 89104	702-595-2998

Additional Ownership/Principals

The Contracting Entity shall continue the above list on a sheet of paper entitled "Disclosure of Principals - Continuation" until full and complete disclosure is made.
 If continuation sheets are attached, please indicate the number of sheets: 0



Please Print Legibly

VIP Disclosure of Ownership/Principals

Business - Page 2 of 2

Alternative Disclosure of Ownership/Principal

If the Contracting Entity, or its principals or partners, are required to provide disclosure (of persons or entities holding an ownership interest) under federal law (such as disclosure required by the Securities and Exchange Commission or the Employee Retirement Income Act), a copy of such disclosure may be attached to this certificate in lieu of providing the information set forth on the previous page. A description of such disclosure documents must be included below.

Name of Attached Document Secretary of State
 Date of Attached Document 10-27-10
 Number of Pages 1

Certification of Disclosure of Ownership/Principal - Business

I certify, under penalty of perjury, that all the information provided in this certificate is current, complete, and accurate.

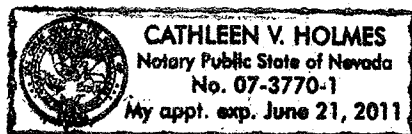
Signature [Signature]
 Date 10-28-10

State of Nevada
 County of Clark

This instrument was acknowledged before me on

October 28, 2010 (date) by
Trinity Haven Schlottman (name of person)

Cathleen V. Holmes
 Notary Public



CITY OF LAS VEGAS REDEVELOPMENT AGENCY



VIP Participant Affidavit and Employment Plan

Page 1 of 2

STATE OF NEVADA }
 } ss:
 COUNTY OF CLARK }

I, Trinity Schlotzman, being first duly sworn, depose and state under penalty of perjury as follows:

1. I am a corporate officer, managing member, or sole proprietor of the Artifice, a company duly organized in the State of Nevada as a LLC, (Corporation/LLC/Sole Proprietorship). The Participant is seeking the assistance of the city of Las Vegas Redevelopment Agency ("Agency") for making improvements to the property at 1025 S. 1st Street ("Site"), as more particularly described by the VIP agreement ("Agreement") being contemplated by the city of Las Vegas Redevelopment Agency at its public hearing to be held on _____.

2. I hereby warrant that I either own the site, or have a leasehold interest in the site for a minimum of five years subsequent to the effective date of this agreement.

Assistance from the Agency will allow me to make improvements to the site which I could not otherwise do. This will result in substantial benefit to the Redevelopment Plan Area and the neighborhood adjacent to the Site because of one or more of the following reasons (check one or more):

- a. Encourage the creation of new business or other appropriate development; ☒
- b. Create jobs or other business opportunities for nearby residents; ☒
- c. Increase local revenues from desirable sources; ☒
- d. Increase levels of human activity in the redevelopment area or the immediate neighborhood in which the redevelopment area is located; ☒
- e. Possess attributes that are unique, either as to type of use or level of quality and design; ☒
- f. Require for their construction, installation or operation the use of qualified and trained labor; ☒ and
- g. Demonstrate greater social or financial benefits to the community than would a similar set of buildings, facilities, structures or other improvements not paid for by the agency. ☐

3. No other reasonable means of financing those buildings, facilities, structures or other improvements are available, because of one or more of the following reason(s) as checked by the Participant:

- a. An inducement for new businesses to locate or existing businesses to remain within the redevelopment area in which the business would ordinarily choose to locate outside the redevelopment area if the grant were not provided. Evidenced by a "but for" letter or statement from the business owner.; ☐ or
- b. There is a public objective and/or requirement that is more stringent and/or costly to undertake than a business would ordinarily embark upon. Evidenced by state or city ordinance. ☐ or
- c. There has been a lack of rehabilitation in the area and it is deemed unreasonable for the business to invest in improving the area unless the grant is provided. Evidenced by photographs of the immediate surrounding area displaying the slum and blight. ☒ or
- d. The exterior improvements to the property or business do not have a direct affect on revenues therefore making such an investment is not deemed acceptable by a customary financial institution. Evidenced by a denial letter from a financial institution. ☐ or



VIP Participant Affidavit and Employment Plan

Page 2 of 2

- e. The visual improvement of the property or addition of the business to the area is so dramatic that it is a catalyst for economic development in the area. Evidenced by a positive economic impact analysis. ☐

Participant agrees to submit to the Agency its documentation which evidences that no reasonable means of financing are available to the Participant.

4. Participant hereby warrants the following:

- a. The property on which the project is situated is free of all Mechanic's Liens at the time of application. TS (initial)
- b. The applicant has no current bankruptcy proceedings, or past bankruptcy proceedings, whether corporate or personal, within the past five years. TS (initial)
- c. The applicant has no past-due federal, state, county or city of Las Vegas tax bills at the time of application. TS (initial)
- d. The applicant has no past-due bills or debts payable to the city of Las Vegas or the Redevelopment Agency. TS (initial)

5. Participant hereby acknowledges that existing opportunities for employment within the surrounding neighborhood of the redevelopment project are limited for neighborhood residents. Most residents must travel outside the neighborhood to find employment opportunities outside the redevelopment area, via public transportation or personal vehicles. Of the existing businesses within the neighborhood, many are family owned and have been in business for a long time. These existing businesses are not in an expansion mode and are not likely to employ neighborhood residents.

Furthermore, the project will help facilitate the continued expansion of employment opportunities by setting an example to other property/business owners to renovate their property/business and help create more employment opportunities through an expansion of business and renovation of vacant storefronts. The Project will allow neighborhood residents to apply for those positions (when available) for which they are qualified for as an employment opportunity. Appropriate measures will be taken to ensure that the neighborhood is aware of any job opportunities available from the business.

DATED this 28th day of October, 2010.

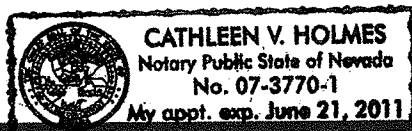
Authorized Signature: [Signature]

SIGNED AND SWORN TO before

me this 28th day of October, 2010, by Trinity Haven Schlottman

NOTARY PUBLIC

My Commission Expires:



CITY OF LAS VEGAS REDEVELOPMENT AGENCY



Please Print Legibly

VIP Real Property Owner Consent

STATE OF NEVADA }
 } ss:
 COUNTY OF CLARK }

I, DAVID MOZES, owner and/or authorized representative of APN# 139 33811018
 also commonly known as 1025 S 1ST ST hereby consent to the proposed exterior
 improvements on the above listed property **and** consent to the participation in the Visual Improvement Program
 which are to be undertaken by ARTIFICE LLC, the tenant and/or business owner.

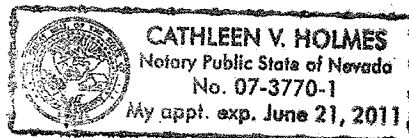
I also, hereby agree to and understand that in conjunction with participation in the Visual Improvement Program,
 the city of Las Vegas will record a non-exclusive façade easement deed and building maintenance agreement to
 the above listed property, at the completion of the pre-qualified improvements. The documents will be recorded in
 the Office of the County Recorder of Clark County, Nevada Records for a period of five years. The property owner
 and/or business owner will have the option to repurchase the façade easement and building maintenance
 agreement from the Agency during the five year period.

DATED this 25th day of OCTOBER, 2010.

Authorized Representative: *David M. M. M.*

SIGNED AND SWORN TO before

me this 25th day of October, 2010, by *Cathleen V. Holmes*



NOTARY PUBLIC

My Commission Expires:

