

**LEASE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF LEWISVILLE, TEXAS**

**AS LANDLORD**

**AND**

**BOYS & GIRLS CLUBS OF GREATER TARRANT COUNTY**

**TRADE NAME: BOYS & GIRLS CLUBS OF GREATER TARRANT COUNTY**

**AS TENANT**

**1001 S. EDMONDS LANE**

This Lease (the "Lease") is made and entered into the date set forth below by and between the CITY OF LEWISVILLE, TEXAS, a home rule city and municipal corporation of Denton, County, Texas, herein called "Landlord," and Boys & Girls Clubs of Greater Tarrant County, a Texas 501c3 corporation, herein called "Tenant".

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound hereby, agree with each other as follows:

## **ARTICLE I: BASIC LEASE PROVISIONS AND DEFINITIONS**

### **Section 1.01. Basic Lease Provisions and Definitions.**

Wherever used in this Lease, the following terms shall have the meanings indicated. Each reference in this Lease to any of the Basic Lease Provisions in this Section 1.01 shall be deemed and construed to incorporate all of the terms provided under such Basic Lease Provision, provided that the Basic Lease Provisions shall be controlled by the specific terms and provisions of this Lease relating to the subject matter of the Basic Lease Provision.

#### **Date of Lease:**

Date of Lease: July 1, 2025

#### **Center and Demised Premises:**

<b>Center:</b>	1001 S. Edmonds Lane
<b>Center Address:</b>	1001 S. Edmonds Lane, Lewisville, TX 75067
<b>Demised Premises or Premises</b> (See Section 2.01):	Approximately 221 square feet, as depicted on Exhibit A attached hereto and made a part hereof.

#### **Landlord and Tenant:**

<b>Landlord's Address for Notices:</b>	City of Lewisville, c/o City Manager's Office, 151 West Church Street, Lewisville, Texas 75057, Attention: City Manager Email: <a href="mailto:ClairePowell@cityoflewisville.com">ClairePowell@cityoflewisville.com</a>
--	--

<b>With a Copy to:</b>	City of Lewisville, P.O. Box 299002, Lewisville, TX 75029 c/o City Attorney's Office Email: <a href="mailto:lpaster@cityoflewisville.com">lpaster@cityoflewisville.com</a>
------------------------	--

**Landlord's Address for Rent Payments:**

City of Lewisville,  
c/o Finance Director,  
P.O. Box 299002,  
Lewisville, TX 75029

**Tenant's Name and Billing Address:**

Boys & Girls Clubs of Greater Tarrant County  
3218 East Belknap Street,  
Fort Worth, TX 76111  
Phone: (682) 500-0850  
Email: daphne@bgcgctc.org

**Trade Name (See Section 5.01):**

Boys & Girls Clubs of Greater Tarrant County

**Permitted Use:**

**Permitted Use**  
(See Section 5.01):

Tenant shall use and operate the Demised Premises solely for the purpose of enabling all young people to reach their full potential as productive, caring, responsible citizens.

Tenant shall not use the Demised Premises, or permit the use thereof, for any other use or purpose.

**Lease Term:**

**Lease Term:**

The Lease Term shall be month to month beginning on the Commencement Date.

**Commencement Date:**

July 1, 2025.

**Possession Date:**

The date Landlord makes the Demised Premises available to Tenant. Tenant shall take possession of the Demised Premises on the Possession Date.

**Expiration Date:**

The Lease shall expire on the date following thirty (30) days' written notice from Landlord, unless sooner terminated as otherwise provided herein.

**Rent:**

**Minimum Annual Rent**  
(See Section 4.01):

\$830.25 per month from the Commencement Date through to the Expiration Date.

**Late Fee on Late Payments**  
(See Section 4.10):

Twenty-five dollars (\$25.00) per day

**Interest on Late Payments**  
(See Section 4.10):

Ten percent (10%) per annum calculated as of the due date.

**Late Payment:**

Any payment not made within five (5) days after its due date.

**Additional Rent:**

**Security Deposit**  
(See Section 19.01):

NONE

**Rent Deposit:**  
(See Section 4.01(b))

NONE

**Tax on Rentals**  
(See Section 4.01(b))

All amounts provided for in this Article I are before taxes. If the Center is located in a jurisdiction that imposes a sales tax or other tax on rentals, such tax is in addition to, and not included in, the amounts provided for in this Lease and shall be paid by Tenant as Additional Rent unless specifically stated to the contrary.

**Miscellaneous:**

**Tenant's Insurance Requirements**  
(See Article XV):

Commercial General Liability:

\$1,000,000.00 per occurrence; \$2,000,000.00 in the aggregate

Personal property:

Full Replacement

Other:

Umbrella Liability \$1,000,000; if applicable, business auto coverage policy or hired and non-owned vehicles

**Broker (See Section 22.07):**

NONE

**ARTICLE II: DEMISED PREMISES**

**Section 2.01. Demised Premises.**

(a) Landlord, in consideration of the rents to be paid and the covenants to be performed by Tenant, hereby leases the Demised Premises to Tenant, and Tenant hereby leases the Demised Premises from Landlord, for the Lease Term. All measurements of the Demised Premises and of leasable area are made from the inside of exterior walls and from the center of interior walls. Landlord reserves the right to change the name of the Center at any time in its sole discretion.

(b) It is expressly agreed that nothing contained in this Lease shall be construed as a grant or rental of (and the Demised Premises shall not include) (i) any space above the finished ceiling of the Demised Premises (or, if none, above the bottom edge of the framework supporting the roof), (ii) any rights in the roof or exterior of the building within which the Demised Premises is located, (iii) the space below the finished floor of the Demised Premises or (iv) the land upon which the Demised Premises is located.

#### **Section 2.02. Condition of the Demised Premises.**

Tenant acknowledges that it is familiar with the Demised Premises and except as specifically set forth herein to the contrary, there is no work of any sort to be performed by Landlord and no representation or warranty by Landlord as to the fitness of the Demised Premises, or any equipment servicing the Demised Premises, or as to any use permitted herein. Any and all work to the Demised Premises necessary for Tenant to open and operate its business in accordance with the terms of this Lease (the "Tenant's Work") shall be Tenant's obligation to perform at Tenant's sole cost and expense. Tenant will indemnify and defend Landlord and save it harmless from and against any and all claims, actions, suits at law or equity, judgments, expenses, costs, liabilities, fines and debts in connection with any injury, loss or damage during any period of Tenant's Work.

#### **Section 2.03. Surrender of the Demised Premises.**

At the Expiration Date or upon the earlier termination of this Lease in accordance with the terms and provisions hereof, Tenant shall quit and surrender the Demised Premises in "broom clean" condition and in the same condition as the Demised Premises were in upon delivery of possession, reasonable wear and tear excepted, and shall surrender all keys for the Demised Premises to the Center's property manager and shall inform the property manager of all combinations of locks, safes and vaults, if any, in the Demised Premises. Any alterations, additions, improvements and fixtures paid for by Tenant or installed by Tenant upon the interior or exterior of the Demised Premises (whether or not approved by Landlord), other than unattached moveable trade fixtures and decorations, shall at the Expiration Date or upon the earlier termination of this Lease in accordance with the terms and provisions hereof, at Landlord's option, become the property of Landlord. If Landlord chooses not to retain such alterations, additions, improvements and fixtures, then Tenant shall, prior to the Expiration Date or earlier termination of this Lease, remove such of these as Landlord chooses at Tenant's expense and shall restore the Demised Premises to its condition immediately preceding Tenant's installation of such alterations, additions, improvements and fixtures. Should Tenant desire to leave any personal property in the Demised Premises, it shall request permission in writing from Landlord, describing such property, not less than thirty (30) days prior to such surrender; and absent such permission in writing, all such property shall be removed by Tenant. Tenant's obligation to observe or perform the covenants contained in this Section shall survive the expiration or earlier termination of the Lease Term.

### **ARTICLE III: TERM OF LEASE**

#### **Section 3.01. Lease Term.**

The Lease Term shall be for the period set forth in Section 1.01, unless sooner terminated in accordance with the terms and provisions of this Lease. "Lease Year" shall mean the twelve (12)

consecutive calendar months commencing with the first day of the first full calendar month of the Lease Term, and thereafter with each succeeding anniversary thereof. If the Commencement Date is other than the first day of a calendar month, the first Lease Year shall include the period from the Commencement Date through the end of the month in which the Commencement Date occurs.

### **Section 3.02. Commencement of Lease Term.**

(a) The Lease Term, and Tenant's obligation to pay "Rent" (as defined in Section 4.09) shall commence on the Commencement Date and shall expire on the Expiration Date, as such terms are defined in Section 1.01.

(b) The parties hereby acknowledge that certain obligations under various Articles herein may commence prior to the Commencement Date including, but not limited to, Tenant's obligations to take possession and construct the Demised Premises, to obtain insurance, to indemnify Landlord, to waive certain Landlord liability and to pay for all utilities; and the parties agree to be bound by all of such obligations from and after the date of this Lease.

### **Section 3.03. Holding Over.**

Tenant shall not have the right to remain in possession of the Demised Premises after either the Expiration Date or the earlier termination of the Lease without having first received Landlord's written consent. If Tenant remains in possession of the Demised Premises thereafter without Landlord's consent, such possession shall be a default under the Lease and Tenant shall be deemed a holdover tenant on the following terms and conditions: Tenant's use and occupancy of the Demised Premises shall be at a rate equal to 150% of the total of the Minimum Annual Rent as was due during the final month of the Lease Term plus all Additional Rent due in accordance with the terms of the Lease calculated on a per diem basis; Tenant shall be fully obligated to perform all of the terms and conditions contained in the Lease except as expressly modified by this paragraph; Landlord shall not be obligated or liable to Tenant for any failure to perform under the Lease; and Tenant shall not be deemed a "month-to-month" tenant. Tenant's failure to pay for its use and occupancy at the rate set forth above shall be a default under the Lease granting Landlord all rights available to it at law and at equity as well as under the provisions of Article XXI. If Tenant has remained in possession of the Demised Premises after the Expiration Date or earlier termination of the Lease, Tenant shall vacate and surrender the Demised Premises to Landlord within three (3) days after written notice to Tenant. The provisions of this Section 3.03 shall survive the expiration of the Lease Term or the earlier termination of the Lease.

### **Section 3.04. Lease Termination.**

Landlord has the right to terminate the Lease with 30 days' notice to Tenant. Tenant has the right to terminate the Lease with 30 days' notice to Landlord with no additional fee.

## **ARTICLE IV: RENT**

### **Section 4.01. Minimum Annual Rent.**

(a) Tenant hereby covenants and agrees to pay to Landlord the Minimum Annual Rent set forth in Section 1.01, without any prior demand therefor and without any offset or deduction

whatsoever, in equal monthly installments on or before the first day of each month during the Lease Term, in advance, at the address set forth in Section 1.01 or at such other place designated by Landlord. All Rent shall be pro rated for any partial month at the beginning or end of the Lease Term.

(b) A rent deposit (the "Rent Deposit") in the amount set forth in Section 1.01 is due and payable upon the execution of this Lease.

(c) Intentionally Deleted

**Section 4.02. Intentionally Deleted**

**Section 4.03. Intentionally Deleted**

**Section 4.04. Intentionally Deleted**

**Section 4.05. Intentionally Deleted**

**Section 4.06. Intentionally Deleted.**

**Section 4.07. Intentionally Deleted.**

**Section 4.08. Intentionally Deleted.**

**Section 4.09. Additional Rent.**

(a) In addition to Minimum Annual Rent and, if applicable, Percentage Rent, all other payments to be made by Tenant to Landlord shall be deemed to be, and shall become, additional rent hereunder ("Additional Rent"), whether or not the same be designated as such. Unless otherwise provided elsewhere in this Lease, Additional Rent shall be due and payable upon the earlier of ten (10) days after demand is made therefor or together with the next succeeding installment of Minimum Annual Rent. Landlord shall have the same remedies for failure to pay Additional Rent as for a non-payment of Minimum Annual Rent.

(b) Six (6) months prior to the Expiration Date, Landlord shall have the right to calculate and render estimated bills to Tenant for all Additional Rent charges accruing through the Expiration Date, and Tenant shall pay same immediately upon receipt of said bills. Within one (1) month after the calculation of the actual amounts due for the Additional Rent charges estimated hereunder, Landlord and Tenant shall make appropriate adjustments of such estimated payments and the party owing money shall remit same to the other party within ten (10) days of the submission by Landlord to Tenant of said final calculation. The provisions of this paragraph shall supersede any inconsistent provisions of this Lease to the contrary and shall survive the expiration or earlier termination of this Lease.

(c) As used herein, "Rent" shall mean Minimum Annual Rent, Percentage Rent, if any, and Additional Rent, individually or in the aggregate.

(d) Tenant's obligation to pay any and all Rent under this Lease shall continue and shall cover all periods up to and through the Expiration Date. Tenant's obligation to pay any and all Rent under this Lease, and Landlord's and Tenant's obligation to make the adjustments referred to in Section 4.12 below, shall survive any expiration or termination of this Lease.

(e) Unless otherwise specifically stated herein or except as otherwise directed by written notice from Landlord or to such other address as to which Landlord has given Tenant written notice, all payments of Rent shall be made to Landlord at the address noted in Section 1.01 for rent payments or to such other address as to which Landlord has given Tenant written notice. Periodically during the Lease Term, Landlord shall assign to Tenant a "tenant number" or "lease number" or other similar identifying number.

#### **Section 4.10. Interest, Late Charges and Returned Check Fees.**

(a) If any check from Tenant delivered in full or partial payment of any amounts due hereunder is not honored because of insufficient funds, uncollected funds, or any other reason, Tenant shall pay to Landlord an administrative charge of Fifty Dollars (\$50.00) per dishonored check and, at Landlord's option, all subsequent payments due from Tenant hereunder shall be made by cash, bank draft, certified check, money order or electronic funds transfer directly to the order of Landlord, its managing agent or designee.

(b) In the event of a late payment, as defined in Section 1.01, then a late fee in the amount set forth in Section 1.01 shall become immediately due to Landlord, as liquidated damages for failure to make timely payment. Said late fee shall be Additional Rent and shall be payable together with the next installment of Minimum Annual Rent.

(c) All late payments shall bear interest at the rate set forth in Section 1.01 until received by Landlord in readily available funds. Said interest shall be Additional Rent and shall be payable together with the next installment of Minimum Annual Rent.

#### **Section 4.11. Trash Removal.**

Tenant shall be responsible for disposing of trash from the Demised Premises by placing it in the outside trash container.

### **ARTICLE V: USE OF THE DEMISED PREMISES**

#### **Section 5.01. Use of the Demised Premises.**

(a) Tenant shall use and operate the Demised Premises solely for the Permitted Use set forth in Section 1.01, only under the trade name set forth in Section 1.01 hereof and in full compliance with all governmental rules, regulations and requirements including, without limitation, obtaining and maintaining any and all licenses, permits and approvals necessary for the operation of Tenant's business at the Demised Premises. Tenant shall not use, or permit the use, of the Demised Premises for any other use or purpose whatsoever and shall not operate its business at the Demised Premises, or permit any operation, under any other trade name whatsoever.



(b) The Permitted Use, as set forth in Section 1.01 hereof, setting forth the nature of the business to be conducted by Tenant in the Demised Premises shall not be deemed or construed to constitute a representation or warranty by Landlord that such business may be conducted in the Demised Premises, or is lawful or permissible under the certificate of occupancy, if any, issued for the building of which the Demised Premises forms a part, or is otherwise permitted by law.

(c) In consideration of the Rent, and the covenants and agreements contained herein, Landlord leases the Demised Premises to Tenant, and Tenant hereby rents it, so that Tenant may operate a business at the Demised Premises in accordance with the Permitted Use. Tenant covenants and agrees that it shall operate its business only in accordance with the Permitted Use and without creating any nuisances and that Tenant's use of the Demised Premises is in all events subject to: the Lease terms and conditions; matters of public record; public or private restrictions affecting Landlord or the Center; any mortgages, ground leases or other agreements or restrictions of record; and all applicable governmental rules and regulations.

#### **Section 5.02. Intentionally Deleted.**

#### **Section 5.03. General Prohibited Uses.**

Tenant shall not use the Demised Premises or permit the Demised Premises to be used (i) for any purpose or in any manner that violates any legal requirement and/or the requirements of the insurance underwriter(s) of the Center; (ii) for the sale, rental or display of drug paraphernalia, or any goods and/or services that, in the sole and absolute discretion of Landlord, are inconsistent with the image of a community or family-oriented center; (iii) as a massage parlor, adult bookstore or second-hand store; (iv) to operate any video, pinball or other gaming machines; (v) to keep live animals of any kind unless otherwise permitted by this Lease; (vi) to sell any irregular merchandise or "seconds" unless such merchandise is so advertised and marked; (vii) to conduct a "discount operation" or to advertise or permit anything to be done that will categorize Tenant's business as a "discount operation" unless specifically permitted to the contrary in Tenant's Permitted Use or (viii) for the conducting of any fire, auction, bankruptcy, "going-out-of business", "lost-our-lease" or other similar sales. Tenant shall keep the Demised Premises, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, odors or nuisances.

Tenant shall not perform any acts or carry on any practice which may be a nuisance or disturbance to business invitees or the general public.

#### **Section 5.04. Storage, Office Use.**

Tenant shall warehouse, store and/or stock in the Demised Premises only such goods, wares and merchandise as Tenant intends to offer for sale at retail at, in, from or upon the Demised Premises. This shall not preclude occasional emergency transfers of merchandise to other stores of Tenant, if any. Tenant shall use for office, clerical or other non-selling purposes only such space in the Demised Premises as is from time to time reasonably required for Tenant's business in the Demised Premises. Tenant shall not perform in the Demised Premises any office or clerical function for any other store or business.

#### **Section 5.05. Tenant's Operation of Business.**

(a) Tenant shall continuously operate and keep open to the public one hundred percent (100%) of the Demised Premises during the entire Lease Term. Tenant shall keep its store adequately staffed with employees and shall carry a full stock of merchandise of such size, character and quality as shall be reasonably designed to produce the maximum volume of Gross Sales. Tenant shall conduct its business in the Demised Premises in a manner typical for such type of business in the city or trade area in which the Center is located.

(b) Tenant will keep the Demised Premises open for business during hours designated by Landlord, from time to time, as the Center's hours of operation.

(c) Tenant shall refer to the Center by its name in all advertising by Tenant.

#### **Section 5.06. Failure of Tenant to Operate its Business.**

Except where the Demised Premises are untenable by reason of fire, casualty or causes beyond Tenant's control not resulting from the negligent act or omission to act of Tenant, its servants, agents, employees, invitees, licensees and concessionaires and without limiting any other rights or remedies which may be available to Landlord, if Tenant (i) fails to take possession of the Demised Premises on the Possession Date; (ii) fails to commence Tenant's Work, as hereafter defined, within ten (10) days after the Possession Date and Landlord's approval of Tenant's plans and specifications, as required by Section 6.01, or thereafter fails to prosecute Tenant's Work diligently and continuously to completion; (iii) fails to open for business full staffed on the Commencement Date; (iv) vacates, abandons or deserts the Demised Premises; (v) ceases operating its store in the Demised Premises; or (vi) fails to open or maintain any or all of the hours of operation designated by Landlord to the extent required herein then, in any such event, Landlord shall have in addition to all remedies herein provided, the right to terminate this Lease and/or to collect the Minimum Annual Rent as liquidated damages and not as a penalty, calculated on a per diem basis, for each and every day or part thereof that Tenant shall fail to do business in strict compliance with the provisions of the Lease.

#### **Section 5.07. Rules and Regulations.**

Landlord may, from time to time, amend or add to the rules and regulations for the use and care of the Demised Premises, the buildings of which the Demised Premises are a part, and the common areas and Common Facilities, and Tenant agrees to comply with such amendments or additions immediately upon receipt of notice thereof.

#### **Section 5.08. Quiet Enjoyment.**

Tenant, upon paying the rents and performing all of the terms of this Lease on its part to be performed, shall peaceably and quietly enjoy the Demised Premises subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease or agreements to which this Lease is subordinated.

#### **Section 5.09. Environmental.**

(a) Tenant shall not use or suffer the Demised Premises to be used in any manner so as to create an environmental violation or hazard, nor shall Tenant cause or suffer to be caused any chemical contamination or discharge of a substance of any nature which is noxious, offensive or harmful or which under any law, rule or regulation of any governmental authority having jurisdiction constitutes a hazardous substance or hazardous waste. Tenant shall not violate or suffer to be violated any governmental law, rule, regulation, ordinance or order, including those of any federal, state, county or municipal entity, agency or official.

(b) Tenant shall immediately notify Landlord in writing of any environmental concerns of which Tenant is, or becomes, aware or which are raised by any private party or government agency with regard to Tenant's business or the Demised Premises. Tenant shall notify Landlord immediately of any hazardous substances released at the Demised Premises, whether it is released by Tenant or otherwise.

(c) Without limiting the foregoing, but as additional covenants thereto, Tenant specifically agrees that (i) Tenant shall not generate, manufacture, refine, transport, treat, store, handle, dispose or otherwise deal with any hazardous substances or hazardous waste as now or hereafter defined by applicable law; (ii) if at any time during the Lease Term there shall be required, with respect to the Demised Premises or any part thereof, any act pursuant to or in compliance with applicable law, including the filing of any required notice of sale or negative declaration affidavits or the preparation or effectuation of any remediation plans, Tenant shall immediately advise Landlord of same and Tenant shall be solely responsible for the cost of such compliance; and (iii) Tenant shall defend, indemnify and hold Landlord harmless against any claims, actions, fines, penalties, liability, loss, cost or expense, including consultants' and attorneys' fees and costs (whether or not legal action has been instituted), incurred by reason of any failure by Tenant to comply with any environmental law now or hereafter in effect. For the purposes of this provision, the term Tenant shall be deemed to include Tenant, Tenant's agents, servants, employees and invitees.

(d) Tenant expressly acknowledges its understanding and agreement that, during the Lease Term or at or after the Expiration Date (or earlier termination of this Lease), certain notices, filings (and, possibly, sampling plans, remediation plans and remediation work) may be required by law and, if this occurs, then Tenant shall in its own name or, if required, in the name of Landlord, comply, at Tenant's sole cost and expense, with all such applicable notices, filings and other required actions, and defend, indemnify and hold Landlord harmless from all costs and expenses related to the same. However, Tenant shall file no documents or take any other action under this Section without Landlord's prior written approval thereof, and Landlord shall also have the right to file such documents or take such action instead or on behalf of Tenant (but still at Tenant's sole cost and expense), and Tenant shall cooperate with Landlord in so doing. Tenant shall (i) provide Landlord with copies of any documents filed by Tenant pursuant to any environmental law; (ii) permit Landlord to be present at any inspection, on or off site, and at any meetings with government environmental officials; and (iii) provide Landlord with an inventory of materials and substances dealt with by Tenant at the Demised Premises, as well as such additional information for government filings or determinations as to whether there has been compliance with an environmental law.

(e) Landlord shall have the right to enter the Demised Premises at any time to conduct tests to discover the facts of any alleged or potential environmental problem.

## **ARTICLE VI: TENANT'S CONSTRUCTION AND MAINTENANCE**

### **Section 6.01. Intentionally Deleted.**

### **Section 6.02. Tenant's Construction, Installations and Alterations.**

(a) All work or equipment, other than Landlord's Work, if any, shall be performed by Tenant at its own cost and expense and Tenant shall, without limitation, fully equip the Demised Premises with all trade equipment, furniture, operating equipment, furnishings, fixtures and exterior signs and any other equipment necessary for the proper operation of Tenant's business. Whenever Tenant is performing work within the Demised Premises, Tenant shall commence such work as soon as is practical and shall diligently prosecute such work to its completion as soon as is practical after its commencement. All fixtures installed by Tenant shall be new or completely reconditioned. Tenant shall not do any construction work or alterations, nor shall Tenant install any equipment other than trade fixtures without first obtaining Landlord's written approval and consent. Tenant shall present to Landlord plans and specifications for such work at the time approval is sought in accordance with Section 6.01 above. Tenant shall commence its work promptly following Landlord's approval of Tenant's plans and specifications and shall diligently and continuously prosecute its work to completion so as to open for business no later than the Commencement Date.

(b) Tenant agrees that Tenant's Work shall not be done in a manner which would create any work stoppage, picketing, labor disruption or dispute or any interference with the business of Landlord or any tenant or occupant of the Center (any such violation, stoppage, picketing or disruption hereinafter referred to as a "Conflict"). Tenant shall immediately stop work or other activity if Landlord notifies Tenant that continuing such work or activity would cause a Conflict. Tenant shall indemnify and hold Landlord harmless from any loss, cost or liability suffered or incurred by Landlord as a result of Tenant's violation of the provisions of this paragraph. Tenant's violation of the terms hereof shall constitute a default hereunder and shall entitle Landlord to exercise any remedies that are available to Landlord at law, in equity or hereunder, including, without limitation, obtaining an injunction. Landlord may, in its sole discretion, require that Tenant use union contractors and sub-contractors.

(c) Tenant may not perform any major repairs, renovations, remodeling or alterations to the Demised Premises.

### **Section 6.03. Signs, Awnings and Canopies.**

(a) Tenant shall not place or suffer to be placed or maintain any sign, awning or canopy in, upon or outside the Demised Premises or in the Center, nor shall Tenant place in the display windows any sign, decoration, lettering or advertising matter of any kind, without first obtaining Landlord's written approval and consent in each instance. Tenant shall maintain any such sign or other installation as may be approved in good condition and repair.

(b) At the Expiration Date or earlier termination of the Lease, Tenant shall remove all of its signs and shall repair all damage caused by the initial installation and subsequent removal of such signage.

#### **Section 6.04. Laws, Waste or Nuisance.**

From and after the date Landlord makes the Demised Premises available to Tenant, Tenant shall, at its own cost and expense: (i) comply with all governmental laws, orders and regulations affecting the Demised Premises now or hereafter in force including, without limitation, the Americans With Disabilities Act; (ii) comply with and execute all rules, requirements, and regulations of the Board of Fire Underwriters, Landlord's insurance companies and other organizations establishing insurance rates; and (iii) not suffer, permit or commit any waste or nuisance. Tenant shall not perform any acts or carry on any practices which may injure the building or be a nuisance or menace to other tenants or the public.

#### **Section 6.05. Mechanic's Lien.**

Tenant shall promptly pay all contractors and materialmen, so as to minimize the possibility of a lien attaching to the Demised Premises and/or the Center, and should any such lien be made or filed, Tenant shall bond against or discharge the same within ten (10) days after the filing thereof. Notwithstanding the foregoing, in any case when more than Three Thousand and 00/100 Dollars (\$3,000.00) of work is to be performed by or for Tenant, Tenant shall, unless Landlord consents otherwise in writing, file an effective waiver of liens which will, under applicable law, preclude the possibility of an effective mechanic's lien. In the event Tenant shall fail to bond or discharge a filed lien within the time provided for herein, Landlord, at its option, in addition to all other rights and remedies provided herein, may bond or pay the lien or claim without inquiring into the validity thereof. Tenant shall immediately, upon demand, reimburse Landlord for the amount so paid and the expenses related thereto including an administrative charge of fifteen percent (15%), plus legal interest thereon, as Additional Rent. Upon prior notice to Tenant, Landlord or Landlord's representatives shall have the right to go upon and inspect the Demised Premises at all reasonable times and shall have the right to post and keep posted thereon notices of non-responsibility, or such other notices which Landlord may deem to be proper for the protection of Landlord's interest in the Demised Premises. Tenant shall, before the commencement of any work which might result in the filing of a mechanics' or materialmen's lien, give Landlord written notice of Tenant's intention to do so in sufficient time to enable the posting of such notices. 20

#### **Section 6.06. Intentionally Deleted.**

### **ARTICLE VII: MAINTENANCE OF BUILDING; ACCESS TO DEMISED PREMISES**

#### **Section 7.01. Repairs.**

Landlord shall make any repairs or improvements of any kind upon the Demised Premises to include necessary exterior or structural repairs. From and after the Possession Date, Tenant shall, at its own cost and expense, take good care of the interior of the Demised Premises, and the fixtures and equipment therein and appurtenances thereto, including, but not limited to, the exterior and interior windows, doors and entrances; ceiling tiles; floor coverings; interior walls, columns and partitions; electrical, lighting, plumbing and sewage facilities. Tenant hereby waives any rights it

may have to make repairs or perform maintenance as provided in any law, ordinance or regulation which may now exist or hereafter be enacted or enforced, which confers upon Tenant the right to make any repairs to the Demised Premises for the account of Landlord.

If Tenant installs any electrical equipment that overloads the lines in the Demised Premises or the Center, Tenant shall, at Landlord's option, be required to make whatever changes to such lines as may be necessary to render the same in good order and repair and in compliance with all insurance requirements and all legal requirements. If Landlord makes repairs by reason of Tenant's negligent act, Landlord may deem the cost of such repairs Additional Rent, and such cost shall be due and payable within ten (10) days after Landlord's demand therefor. In the event of the failure of Tenant to make repairs or perform any act required by this Lease promptly as herein agreed.

Landlord, in addition to any other rights, may as of right enter upon the Demised Premises without notice and make such repairs or perform such acts at the expense of Tenant, the cost thereof to be charged to Tenant as Additional Rent.

#### **Section 7.02. Access to Demised Premises.**

(a) Landlord shall have the right to place, maintain and repair all utility equipment of any kind in, upon, around and under the Demised Premises as may be necessary for the service of the Demised Premises and other portions of Landlord's property and Landlord (for itself and other tenants in the Center) hereby reserves the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires, utilities and structural elements leading through, under and over the Demised Premises in locations which will not unreasonably interfere with Tenant's use thereof so long as same are installed below the finished floor, within or along a wall or column, or above or along the finished ceiling. Landlord shall also have the right to enter the Demised Premises at all reasonable times to inspect or to exhibit the same to prospective purchasers, mortgagees, ground lessors and tenants, and to make such repairs, additions, alterations or improvements as Landlord may deem desirable. Landlord shall be allowed to take all material in, to and upon the Demised Premises that may be required in connection with such repairs, additions, alterations or improvements without the same constituting an eviction of Tenant in whole or in part by reason of loss or interruption of Tenant's business or otherwise and Tenant shall have no claim for damages. Rent may be abated if tenant cannot operate business due to work of Landlord. If Tenant shall not be personally present to permit an entry into the Demised Premises when for any reason an entry therein shall be permissible, Landlord may enter the same by a master key or in an emergency by the use of force without rendering Landlord liable therefor and without in any manner affecting the obligations of Tenant under this Lease. The provisions of this Section shall in no way be construed to impose upon Landlord any obligation whatsoever for the maintenance or repair of the building or any part thereof except as otherwise herein specifically provided. During the six (6) months prior to the expiration of this Lease, Landlord may place upon the Demised Premises "for lease," "to let" or "for sale" signs, or other similar signs, which Tenant shall permit to remain thereon. Landlord shall have the exclusive right to use all or any part of the roof and exterior side walls of the Demised Premises for any purpose.

(b) If the Demised Premises contain means of access to the roof or basement, Landlord shall have the right to enter the Demised Premises at all times to gain access to said roof or

basement to inspect same and to make such repairs, additions, alterations or improvements as Landlord may deem desirable.

## **ARTICLE VIII: REAL ESTATE TAXES**

**Section 8.01. Intentionally Deleted.**

**Section 8.02. Intentionally Deleted.**

**Section 8.03. Intentionally Deleted.**

**Section 8.04. Intentionally Deleted.**

## **ARTICLE IX: COMMON AREAS AND FACILITIES**

**Section 9.01. Control of the Center and the Common Facilities by Landlord.**

(a) All parking areas, sidewalks, access roads and facilities furnished, made available or maintained by Landlord in or near the Center, including employee parking areas, truck ways, driveways, loading docks and areas, delivery areas, multi-story parking facilities (if any), package pickup stations, elevators, escalators, pedestrian sidewalks, malls, courts and ramps, landscaped areas, roofs, retaining walls, stairways, bus stops, first-aid and comfort stations, lighting facilities, sanitary systems, utility lines, water filtration and treatment facilities and the areas and improvements provided by Landlord for the general use in common of tenants and others in the Center and their customers (all herein called "Common Facilities") shall at all times be subject to the exclusive control and management of Landlord.

(b) The purpose of the site plan attached hereto as Exhibit A is to show the approximate location of the Demised Premises and is not to be deemed to be a warranty, representation or agreement on the part of Landlord that the Center will be exactly as depicted thereon or that tenants depicted thereon (if any) are now in occupancy or will be in occupancy at any time during the Lease Term. Landlord shall have the right from time to time to: ; close all or any portion of said areas or facilities to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; add to or subtract from the buildings in the Center; make alterations or additions to and to build additional stories on the building in which the Demised Premises are contained and to build adjoining the same; to close temporarily all or any portion of the parking areas or facilities to discourage non-customer parking; and do and perform such other acts in and to said Common Facilities as Landlord in its reasonable discretion deems advisable for the use thereof by tenants and their customers. Landlord will operate and maintain the Common Facilities in such a manner as Landlord, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ and discharge all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the Common Facilities.

**Section 9.02. Intentionally Deleted.**

**Section 9.03. License.**

Notwithstanding anything to the contrary herein contained, the Common Facilities are to be used and occupied under a revocable license, and if any such license be revoked, or if the amount of such areas be diminished or their locations changed, Landlord shall not be subject to any liability, nor shall Tenant be entitled to any compensation or diminution or abatement of Rent, nor shall such revocation or diminution of such areas be deemed a constructive or actual eviction. Notwithstanding the above, if Tenant cannot operate then Rent shall be abated for the time Tenant cannot reasonably operate.

**Section 9.04. Excavation.**

If an excavation shall be made upon land near or adjacent to the Demised Premises, Tenant shall permit the person or persons performing such excavation license to enter upon the Demised Premises for the purpose of doing such work as Landlord or such person or persons shall deem necessary to preserve the wall or the building of which the Demised Premises forms a part from damage and to support the same by proper foundations, without any claim for damages or indemnification against Landlord or diminution or abatement of Rent Notwithstanding the above, if Tenant cannot operate then Rent shall be abated for the time Tenant cannot reasonably operate.

**Section 9.05. Intentionally Deleted.**

**Section 9.06. Intentionally Deleted.**

**ARTICLE X: UTILITIES**

**Section 10.01. Utilities.**

(a) Landlord shall be solely responsible for and promptly pay all charges for trash and rubbish removal, heat, water, electricity, sewers or any other utility used or consumed in or for the Demised Premises commencing from the Possession Date.

(b) Tenant shall cooperate with Landlord and or the electric service provider at all times and shall allow Landlord, the electric service provider, access to the electric lines, feeders, risers, wiring, and any other equipment or machinery within the Demised Premises.

(c) Landlord shall in no way be liable or responsible for any loss, damage or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption or defect in the supply or character of the electric energy furnished to the Demised Premises, or if the quality or character of the electric energy supplied is no longer available or suitable for Tenant's requirements and no such change, failure, defect, unavailability or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of Rent, or relieve Tenant from any of its obligations under this Lease.



## **ARTICLE XI: ASSIGNMENT; SUBLEASE**

### **Section 11.01. Assignment or Subletting.**

(a) Notwithstanding any references to assignees, subtenants, concessionaires or other similar entities in this Lease, Tenant shall not (i) assign or otherwise transfer, mortgage or encumber this Lease or any of its rights hereunder, (ii) sublet the Demised Premises or any part thereof, or permit the use of the Demised Premises or any part thereof by any persons other than Tenant or its agents or (iii) permit the assignment or other transfer of this Lease, or any of Tenant's rights hereunder, by operation of law or otherwise. Any such attempted or purported transfer, assignment, mortgaging or encumbering of this Lease or any of Tenant's interest therein and any attempted or purported subletting or grant of a right to use or occupy all or a portion of the Demised Premises in violation of the foregoing, whether voluntary or involuntary, or by operation of law or otherwise, in addition to being a default under this Lease, shall be null and void and shall not confer any rights upon any purported transferee, assignee, mortgagee or occupant. Further, any violation under the preceding sentence shall, at Landlord's option, terminate this Lease without relieving Tenant of any of its obligations hereunder for the balance of the stated Lease Term. Nothing contained elsewhere in this Lease shall authorize Tenant to enter into any franchise, concession, license, permit, subtenancy, departmental operation arrangements or the like, except pursuant to the provisions of this Article XI.

(b) If Tenant requests Landlord's consent in writing to an assignment or transfer of Tenant's interest in this Lease, or a sublease of all or a portion of the Demised Premises, Landlord shall have the right, without regard to whether Landlord's withholding its consent to such a proposed assignment, transfer or sublease would be construed to be unreasonable and in lieu of consenting thereto, to terminate this Lease by giving Tenant notice of Landlord's desire so to do, in which event this Lease shall terminate on the date specified by Landlord in such notice, all as if such date were the date specified in Section 1.01 hereof as the Expiration Date.

## **ARTICLE XII: RELOCATION – INTENTIONALLY DELETED**

## **ARTICLE XIII: INTENTIONALLY DELETED**

## **ARTICLE XIV: NOTICES**

### **Section 14.01. Notices.**

(a) Any notice by Tenant to Landlord must be served by certified mail, return receipt requested, postage prepaid, hand delivered or by Federal Express or other nationally recognized overnight delivery service, addressed to Landlord at the address set forth in Section 1.01, or to such other address as Landlord may designate by written notice. If the holder of an outstanding mortgage on the Center has given Tenant written notice of its interest in this Lease, then Tenant shall not have any remedies against either Landlord or said holder of a mortgage unless and until said holder has received written notice from Tenant of a default and a reasonable time to cure the default has passed.

(b) Any notice by Landlord to Tenant must be served by certified mail, return receipt requested, postage prepaid, hand delivered or by Federal Express or other nationally recognized

overnight delivery service, addressed to Tenant at the address set forth in Section 1.01, or at such other address as Tenant shall designate by written notice.

(c) Any notice given in conformance with the above shall be deemed received on the earlier of (i) three days after the date given to the delivery service or (ii) the date on which the noticed party receives or refuses receipt of the notice.

## **ARTICLE XV: INDEMNITY; PROPERTY AND LIABILITY INSURANCE**

### **Section 15.01. Indemnity.**

From and after the Possession Date, Tenant shall indemnify and defend Landlord and save it harmless from and against any suits, actions, damages, claims, judgments, costs, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising from, or out of, any occurrence in, upon, at or from the Demised Premises, or the occupancy or use by Tenant of the Demised Premises, or any part thereof, or occasioned wholly, or in part, by any act or omission of Tenant, its agents, contractors, employees, servants, invitees, licensees or concessionaires, (including use of the sidewalks and Common Facilities within the Center). In case Landlord shall, without fault on its part, be made a party to any litigation commenced by or against Tenant, then Tenant shall protect and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees.

### **Section 15.02. Insurance.**

(a) (i) From and after the Possession Date, Tenant shall maintain, at its sole cost and expense (i) "Special Form" insurance coverage (or its then equivalent successor) which shall include extended coverage insurance, in an amount adequate to cover one hundred percent (100%) of the cost of replacement of all, fixtures, non-structural components of the walls and storefronts, equipment, inventory, decorations and improvements in the Demised Premises in the event of a loss and (ii) all inclusive "Commercial General Liability" insurance (or its then equivalent successor), in the broadest and most comprehensive forms generally available with "General Aggregate Amount and Per Occurrence Limits" of liability as set forth in Section 1.01, or the equivalent. Landlord shall be named as an additional insured on a primary basis under the policy providing the coverage required in item (ii) above. Tenant shall also obtain all insurance coverages required to operate its business at the Demised Premises including, without limitation, workers compensation coverage, if required. If Tenant fails to procure the required insurance, Landlord may, but shall not be required to, obtain same for Tenant and Tenant shall reimburse Landlord, within ten (10) days of demand, for the cost thereof as Additional Rent.

(ii) All companies providing Tenant's insurance shall have and maintain a minimum AM Best rating of A-X. Tenant may not self-insure any part of the required liability insurance coverages nor may the total of Tenant's deductibles and self-insurance retentions exceed One Thousand Dollars (\$1,000) without having first received Landlord's written consent. If Tenant requests Landlord's consent to maintain deductibles greater than permitted above, such request must be accompanied by certified statements of Tenant's net worth (exclusive of goodwill) for the then current period and for the Tenant's prior two (2) fiscal years. If such net worth is in excess of

One Million Dollars (\$1,000,000), then Landlord's consent shall not be unreasonably withheld or delayed.

(b) Landlord makes no representation or warranty to Tenant that the amount of insurance to be carried by Tenant under the terms of this Lease is adequate to fully protect Tenant's interest. If Tenant believes that the amount of any such insurance is insufficient, Tenant is encouraged to obtain, at its sole cost and expense, such additional insurance as Tenant may deem desirable or adequate. Tenant acknowledges that Landlord shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Tenant hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

(c) Prior to the Possession Date, at least ten (10) days prior to the cancellation or termination of Tenant's insurance policies and within ten (10) days after Landlord's written request therefor, Tenant shall provide Landlord with certificates of insurance evidencing that Tenant has insurance coverages at least equal to the coverages required herein, that Tenant's insurance is in full force and effect and that Landlord is named as an additional insured under Tenant's liability insurance policies.

**Section 15.03. Intentionally Deleted.**

**Section 15.04. Intentionally Deleted.**

**Section 15.05. Waiver of Subrogation.**

Landlord and Tenant hereby waive all rights to claims for damages as against the other and the other's insurance companies, and Landlord's and Tenant's insurance policies shall contain provisions requiring that the respective insurance companies waive all rights of subrogation as against Landlord and Tenant and as against the other's insurance companies, which either party has, or which may arise hereafter, for: damage to the Demised Premises or the Center; damage to real or personal property located in the Center; loss of business; any loss for which either party may be reimbursed as a result of insurance coverage affecting any loss suffered by it; or any other loss caused by perils typically covered by extended coverage, building contents, store contents and business interruption insurance coverages.

**Section 15.06. Insured's Release.**

Landlord and Tenant mutually agree that with respect to any loss which is covered by insurance then being carried by them respectively, or required to be carried, the one carrying or required to carry such insurance and suffering said loss hereby releases the other of and from any and all claims with respect to such loss to the extent of such insurance carried or required to be carried.

**Section 15.07. Notice to Landlord.**

Tenant shall give prompt notice to Landlord in case of fire or accidents in the Demised Premises, or in the building of which the Demised Premises is a part, or of any defects therein or in any

fixtures or equipment. Tenant, within twenty-four (24) hours of any fire or accident, shall give written notice to Landlord of any damage claimed. Tenant shall not be entitled to any abatement or diminution of Minimum Annual Rent pursuant to Section 17.01 hereof for any period during which it prevents Landlord from repairing that portion of the damages, if any, which it is Landlord's obligation to repair, nor for any period beyond the aforementioned twenty-four (24) hours during which it has failed to notify Landlord.

## **ARTICLE XVI: LIABILITY OF LANDLORD**

### **Section 16.01. Waiver of Liability.**

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS LEASE TO THE CONTRARY, TENANT AGREES THAT IT SHALL LOOK SOLELY TO THE ESTATE AND PROPERTY OF LANDLORD IN THE LAND AND BUILDING OF WHICH THE DEMISED PREMISES IS A PART, SUBJECT TO PRIOR RIGHTS OF ANY MORTGAGEE OR TRUSTEE OF THE DEMISED PREMISES, FOR THE COLLECTION OF ANY JUDGMENT (OR OTHER JUDICIAL PROCESS) REQUIRING THE PAYMENT OF MONEY BY LANDLORD IN THE EVENT OF ANY DEFAULT OR BREACH BY LANDLORD WITH RESPECT TO ANY OF THE TERMS, COVENANTS AND CONDITIONS OF THIS LEASE TO BE OBSERVED AND/OR PERFORMED BY LANDLORD AND NO OTHER ASSETS OF LANDLORD SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER PROCEDURES FOR THE SATISFACTION OF TENANT'S REMEDIES. IN THE EVENT LANDLORD TRANSFERS THIS LEASE, EXCEPT AS COLLATERAL SECURITY FOR A LOAN, UPON SUCH TRANSFER LANDLORD WILL BE RELEASED FROM ALL LIABILITY AND OBLIGATIONS HEREUNDER, PROVIDED THAT THE TRANSFEREE ASSUMES THE OBLIGATIONS OF THIS LEASE.**

### **Section 16.02. Tenant's Risk of Loss.**

Tenant shall store its property in and shall occupy the Demised Premises and all other portions of the Center at its own risk and releases Landlord, to the full extent permitted by law, from all claims of every kind resulting from loss of life, personal or bodily injury or property damage. Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage to either the person or property of Tenant or to Tenant's merchandise, equipment, fixtures or other personal property or to Tenant's business, arising from any cause. In no event shall Landlord be liable to Tenant for any indirect or consequential damages.

### **Section 16.03. No Partnership.**

Landlord neither is nor shall, in any way or for any purpose, become a partner of Tenant in the conduct of its business or otherwise, or joint venturer or a member of a joint enterprise with Tenant. The provisions of this Lease relating to the Percentage Rent payable hereunder, if any, are included solely for the purpose of providing a method whereby Rent is to be measured and ascertained.

#### **Section 16.04. Consent Clause.**

Unless Landlord's consent or approval is required by the express terms of this Lease not to be unreasonably withheld, such consent or approval may be withheld or delayed by Landlord in its sole and arbitrary discretion. If in this Lease it is provided that Landlord's consent or approval as to any matter will not be unreasonably withheld, and it is established by a Court or other body having final jurisdiction that Landlord has been unreasonable, the sole effect of such finding shall be that Landlord shall be deemed to have consented to or approved the matter for which its consent or approval was requested. Landlord shall not be liable to Tenant in any respect for money or money damages by reason of withholding or delaying its consent or approval.

#### **Section 16.05. Successors.**

All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the respective heirs, executors, administrators, successors and assigns of the said parties. Each provision to be performed by Tenant shall be construed to be both a covenant and a condition and, if there shall be more than one Tenant, they shall all be bound jointly and severally by these provisions. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as provided in Article XI hereof. Notwithstanding the foregoing, in the event Landlord or any successor owner shall convey or otherwise dispose of the Demised Premises, all liabilities and obligations on the part of Landlord or successor owner under this Lease arising or accruing after such conveyance shall cease and terminate and thereupon all such liabilities and obligations shall be binding upon the new owner. No mortgagee or trustee, or assignee thereof, who succeeds to the interest of Landlord as a result of foreclosure or as a result of a deed-in-lieu of foreclosure transfer shall be liable or obligated to Tenant, or anyone claiming by or through Tenant, or bound by (i) any payment of any installment of Rent made more than thirty (30) days before the due date of such installment, (ii) any claim arising from an act or omission of or default by Landlord under this Lease or (iii) any credits, claims, setoffs or defenses against the Rent due and payable hereunder.

### **ARTICLE XVII: DAMAGE CLAUSE**

#### **Section 17.01. Destruction.**

If the Demised Premises shall be partially damaged by any casualty covered under Landlord's insurance policy, Landlord shall, upon receipt of the insurance proceeds, repair the same to the condition set forth in Exhibit B and the Minimum Annual Rent shall be abated proportionately as to that portion of the Demised Premises rendered untenable. The Breakpoint (if the Breakpoint is a fixed amount, that is not determined by dividing the Minimum Annual Rent by the Percentage Rent Rate) if any, shall also be reduced by the same proportion. Landlord shall not be required to expend more than the proceeds of its insurance in repairing the Demised Premises. If (a) the Demised Premises (i) by reason of such occurrence is rendered wholly untenable, (ii) should be damaged as a result of a risk which is not covered by Landlord's insurance or (iii) should be damaged in whole or in part during the last three (3) years of the Lease Term or of any renewal term hereof, or (b) the building of which the Demised Premises is a part (whether or not the Demised Premises is damaged), or all of the buildings which then comprise the Center should be damaged to the extent of twenty-five percent (25%) or more of the then monetary value thereof or

(c) if any or all of the buildings or Common Facilities are damaged, whether or not the Demised Premises are damaged, to such an extent that the Center cannot, in the sole judgment of Landlord, be operated as an integral unit, then, in any of such events described in (a) through (c) above, Landlord may either elect to repair the damage to the condition set forth in Exhibit B (other than damage to Tenant's fixtures, furniture, equipment, other personal property and any other portions of the Demised Premises or any property located therein for which Tenant is required to or does insure or as to which Tenant shall be responsible to repair or restore as provided below) or may cancel this Lease by notice of cancellation given within one hundred eighty (180) days after such event and thereupon this Lease shall expire, and Tenant shall vacate and surrender the Demised Premises to Landlord. Tenant's liability for Rent upon the termination of this Lease shall cease as of the later of (y) the day following the event or damages or (z) the date upon which Tenant ceased to do business at the Demised Premises. In the event Landlord elects to repair the damage insured under Landlord's policies, any abatement of Rent shall end upon the date that Landlord completes Landlord's obligations to restore the Demised Premises. Nothing in this paragraph shall be construed to abate Percentage Rent, if any, but the computation of Percentage Rent shall be based upon the Breakpoint, as the same may be reduced hereunder. If the damage is caused by the negligence of Tenant or its employees, agents, invitees, concessionaires, or contractors, there shall be no abatement of Rent. Unless this Lease is terminated by Landlord, Tenant shall repair and refixture the interior of the Demised Premises in a manner and to at least a condition equal to that existing prior to its destruction or casualty and the proceeds of all insurance carried by Tenant on its property and improvements shall be held in trust by Tenant for the purpose of said repair and replacement.

## **ARTICLE XVIII: CONDEMNATION**

### **Section 18.01. Condemnation.**

(a) If the whole of the Demised Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the Lease Term shall cease and terminate as of the date of title vesting in the condemn or in such proceeding and all Rent shall be paid up to that date and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term of this Lease.

(b) If any part of the Demised Premises or of the Center shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such partial taking or condemnation shall render the Demised Premises and/or the Center unsuitable for the business of Tenant as determined by Landlord, then the Lease Term shall cease and terminate as of the date of title vesting in the condemn or in such proceeding, and Tenant shall have no claim against Landlord for the value of any unexpired Lease Term. In the event of a partial taking or condemnation which is not extensive enough to render the Demised Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Demised Premises to the condition set forth in Exhibit B less the portion lost in the taking, and this Lease shall continue in full force and effect. Landlord shall not be required to expend in such restoration more than the proceeds of the award which is reserved for such purpose. The Minimum Annual Rent and the Breakpoint (if the Breakpoint is a fixed amount, that is not determined by dividing the Minimum Annual Rent by the Percentage Rent Rate), if any, shall be reduced in the proportion that the area of the Demised Premises taken bears to the entire area contained in the Demised Premises.

(c) In the event of any condemnation or taking as hereinbefore provided, whether whole or partial, Tenant shall not be entitled to any part of the award, as damages or otherwise, for such condemnation and Landlord is to receive the full amount of such award. Tenant hereby expressly waives any right or claim to any part thereof and assigns to Landlord any share of such an award as may be granted to it.

(d) Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Demised Premises, and although Tenant hereby expressly waives all claims against Landlord, Tenant shall have the right to claim and recover from the condemning authority, not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damages to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

## **ARTICLE XIX: SECURITY DEPOSIT**

### **Section 19.01. Security Deposit.**

(a) Tenant herewith deposits with Landlord the security deposit set forth in Section 1.01 (hereinafter referred to as "Security"), as security for the full and faithful performance by Tenant of every provision of this Lease and all obligations of Tenant under this Lease. In the event that Tenant is in default hereunder, Landlord may use, apply or retain the whole or any part of the Security for the payment of (i) any Rent or any other sum of money which Tenant may not have paid or which may become due after the occurrence of a default, (ii) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease, (iii) any sum which Landlord may expend or be required to expend by reason of Tenant's default, including any costs, damages or deficiency in the reletting of the Demised Premises as hereinafter provided. The use, application or retention of the Security or any portion thereof by Landlord shall not prevent Landlord from exercising any other right or remedy provided for hereunder or at law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. Should the Security, or any part thereof, be appropriated and applied by Landlord pursuant to the terms hereof, Tenant shall, within seven (7) days of the sending by Landlord of a written demand, remit to Landlord as Additional Rent an amount sufficient to restore the Security to its original balance, and Tenant's failure so to remit shall be an immediate monetary default without additional notice required.

(b) In the event that Tenant shall fully and faithfully comply with all of the provisions of this Lease, the Security, or any balance thereof, shall be returned to Tenant after the later of (i) the Expiration Date or (ii) the date upon which Tenant has vacated the Demised Premises.

(c) In the event of a transfer of Landlord's interest in the Demised Premises, Landlord shall have the right to transfer the Security to the transferee thereof. In such event, Landlord shall be deemed released by Tenant from all liability for the return of such Security, and Tenant agrees to look solely to such transferee for the return of said Security. In the event that a mortgagee, trustee or the like succeeds to the interest of Landlord either by foreclosure or deed-in-lieu of

foreclosure, Tenant agrees to look to Landlord for its Security Deposit and not to the mortgagee or trustee succeeding to Landlord's interest herein.

(d) Tenant shall have no legal power to assign or encumber the Security, and the return of the Security to the original Tenant shall completely relieve Landlord of liability with regard thereto. No action of Landlord in enforcing any default shall be deemed such a termination of this Lease so as to entitle Tenant to recover said Security. No mortgagee, trustee or master landlord shall be liable for the return of Security.

## **ARTICLE XX: PRIORITY OF LEASE**

### **Section 20.01. Subordination, Attornment, Power of Attorney.**

Tenant has been informed and understands that Landlord is now, or may be in the future, a tenant under a lease of the land and/or entire building of which the Demised Premises forms a part. This Lease is and shall be, at Landlord's option, subject and subordinate to all ground or underlying leases and to all mortgages, deeds of trust or liens resulting from any other method of financing or refinancing which now or hereafter affects such leases or the real property of which the Demised Premises forms a part and to all renewals, modifications, consolidations, replacements and extensions thereof. This Section shall be self-operative and no further instrument of subordination shall be necessary. In confirmation of such subordination, Tenant shall execute promptly any certificate that Landlord may request. In the event that any ground or underlying lease is terminated, or any mortgage or deed of trust is foreclosed or title transferred as a result of a deed-in-lieu of foreclosure, this Lease shall not terminate or be terminable by Tenant unless Tenant is specifically named in any termination or foreclosure judgment or final order, and Tenant shall attorn to any such successor lessor and recognize such lessor as Landlord under this Lease. In the event of a sale or assignment of Landlord's interest in the building of which the Demised Premises forms a part, Tenant shall attorn to the purchaser and recognize such purchaser as Landlord under this Lease. In the event that any ground or underlying lease is terminated as aforesaid or any mortgage foreclosed or the property transferred by deed-in-lieu of foreclosure, Tenant agrees, at Landlord's, master landlord's, trustee's or mortgagee's option, to enter into a new lease covering the Demised Premises for the remaining Lease Term and otherwise on the same terms, conditions and rentals as herein contained. Tenant hereby appoints Landlord, master landlord, trustee or mortgagee as Tenant's irrevocable attorney-in-fact to execute any documents required to carry out the intent of this Section on behalf of Tenant. Notwithstanding anything contained in this Lease to the contrary, if the holder of any mortgage or deed of trust elects to have this Lease superior to its mortgage or deed of trust, then, upon Tenant being notified to that effect by such encumbrance holder, this Lease shall be deemed prior to the lien of said mortgage or deed of trust, whether this Lease is executed prior to or subsequent to the date of said mortgage or deed of trust.

### **Section 20.02. Estoppel.**

Tenant shall, within ten (10) days after request by Landlord, execute and deliver to Landlord a written declaration in form satisfactory to Landlord and substantially similar to Exhibit E, attached hereto: (a) ratifying this Lease; (b) expressing the Commencement Date and Expiration Date hereof; and (c) certifying (i) that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended (except by such writings as shall be stated), (ii) that all



conditions under this Lease to be performed by Landlord have been satisfied; (iii) that there are no defenses or offsets against the enforcement of this Lease by Landlord, or stating those claimed by Tenant; (iv) the amount of advance rental, if any, (or none if such is the case) paid by Tenant; (v) the date to which rental has been paid; and (vi) the amount of security deposited with Landlord. Such declarations shall be executed and delivered by Tenant, from time to time, as may be requested by Landlord. Landlord's mortgage lenders and/or purchasers shall be entitled rely upon the same.

### **Section 20.03. Recording.**

Tenant agrees, upon request of Landlord, to execute for recording a short form memorandum of this Lease. Notwithstanding the foregoing, Tenant shall not record this Lease, or a memorandum thereof, without the prior written consent of Landlord. Any recording of this Lease shall be at the sole cost and expense of the party requesting recordation.

## **ARTICLE XXI: LANDLORD'S REMEDIES**

### **Section 21.01. Default.**

Any one of the following shall be deemed to be an "Event of Default":

(a) Failure on the part of Tenant to make payment of Rent or any other monetary amount due under this Lease within five (5) days after its due date.

However, if: (i) Landlord shall have sent to Tenant a notice of such default, even though the same shall have been cured and this Lease not terminated; and (ii) during the twelve (12) month period following the sending of said notice of default by Landlord to Tenant, Tenant thereafter shall default in the timely payment of any Rent or monetary payment, the same shall be deemed to be an Event of Default upon Landlord giving Tenant written notice thereof, without the five (5) day grace period set forth above.

(b) With respect to a non-monetary violation of this Lease, failure of Tenant to cure the same within the minimum time period within which Tenant is required by the terms of this Lease to cure the violation after Landlord has sent to Tenant notice of such violation (or if not such time period is specified, within fifteen (15) days after Landlord has sent Tenant notice of such violation). Tenant shall be obligated to commence forthwith, to prosecute diligently and continuously, and to complete as soon as possible the curing of such violation; and if Tenant fails so to do, the same shall be deemed to be an Event of Default.

However, if: (i) Landlord shall have sent to Tenant a notice of such default, even though the same shall have been cured and this Lease not terminated; and (ii) during the twelve (12) month period following the sending of said notice of default by Landlord to Tenant, Tenant thereafter shall default in any non-monetary matter, the same shall be deemed to be an Event of Default upon Landlord giving Tenant written notice thereof and Tenant shall have no grace period within which to cure the same.

(c) The commencement of any of the following proceedings, with such proceeding not being dismissed within sixty (60) days after it has begun: (i) the estate hereby created being taken

on execution or by other process of law; (ii) Tenant, or any surety or guarantor of Tenant, being judicially declared bankrupt or insolvent according to law; (iii) an assignment being made of the property of Tenant, or any surety or guarantor of Tenant, for the benefit of creditors; (iv) a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer being appointed to take charge of all or any substantial part of Tenant's property, or that of the Tenant's surety or guarantor, by a court of competent jurisdiction; or (v) a petition being filed for the reorganization of Tenant, or any surety or guarantor of Tenant, under any provisions of the Bankruptcy Code or any federal or state law now or hereafter enacted.

(d) Tenant, or any surety or guarantor of Tenant, filing a petition for reorganization or for rearrangement under or otherwise availing itself of any provisions of, the Bankruptcy Code or any federal or state law now or hereafter enacted providing a plan or other means for a debtor to settle, satisfy or extend the time for the payment of debts (a "Bankruptcy Filing"). In the event that Tenant, or any surety or guarantor of Tenant, makes a Bankruptcy Filing, the then present term of this Lease shall cease as of the day prior to the Bankruptcy filing and a new term ("Bankruptcy Term") shall commence as of the date of the Bankruptcy filing and all Rent and other charges due and payable under the Lease for the month in which the date of the Bankruptcy Filing occurs, whether or not actually paid by the Tenant, shall be pro rated on a daily basis. The per diem amounts attributable to the period from the first day of the month in which the date of the Bankruptcy Filing occurs through the day immediately preceding the date of the Bankruptcy Filing shall be deemed pre-petition and the per diem amounts attributable to the period from the date of the Bankruptcy Filing through to the end of the month in which the date of the Bankruptcy Filing occurs shall be deemed due as of the commencement date of the Bankruptcy Term which, if not already paid, shall be and become immediately due and payable by Tenant to Landlord. All of the terms and conditions of the Lease other than the determination of Rent and other charges due and payable in the month in which the Bankruptcy Filing occurs as a result of the Bankruptcy Term, including but not limited to the expiration date of the Lease, Rent increases and the like, shall remain as set forth in the Lease without regard to this paragraph and without regard to the Bankruptcy Term.

(e) Excepting only those days on which Tenant is prevented from remaining open by virtue of strike, fire, unavoidable casualty or other event beyond the control of Tenant, (financial inability shall never be deemed to be an event beyond Tenant's control) and Tenant agrees promptly to advise Landlord of any such event and closing and further agrees to reopen as soon thereafter as possible, if Tenant shall close for business for more than one (1) day during any Lease Year, or for more than three (3) days in the aggregate during the Lease Term, when required by this Lease to be open or if Tenant shall abandon or vacate the Demised Premises.

(f) Excepting only those periods when Tenant is prevented from performing by virtue of strike, fire, unavoidable casualty or other event beyond the control of Tenant, (financial inability shall never be deemed to be an event beyond Tenant's control) and Tenant agrees promptly to advise Landlord of any such event and closing and further agrees to reopen as soon thereafter as possible, the failure of Tenant (i) to take possession of the Demised Premises on the Possession Date, (ii) to proceed diligently and continuously with Tenant's Work, (iii) to complete its initial alterations and equipping of the Demised Premises, or (iv) to have opened for business on the Commencement Date shall be considered for the purposes hereof to be an abandonment of the Demised Premises by the Tenant and an Event of Default.

## **Section 21.02. Landlord's Remedies.**

If an Event of Default occurs, in addition to any right Landlord may have at law or in equity including, without limitation, the right to seek injunctive relief or specific performance against the Tenant, Landlord may:

(a) Elect to re-enter or take possession of the Demised Premises pursuant to legal proceedings or any notice provided for herein and may either terminate this Lease or, without terminating this Lease, (i) remove all persons and property from the Demised Premises without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby and (ii) make such alterations and repairs as may be necessary in order to relet the Demised Premises for a term, rental rate and conditions as Landlord, in its sole discretion, may deem advisable. Upon reletting, rentals received by Landlord from such reletting shall be applied first to the payment of any indebtedness other than Minimum Annual Rent due hereunder from Tenant; second to the payment of any costs and expenses of such reletting, including brokerage fees, reasonable attorneys' fees and costs of alterations and repairs; third to the payment of the most current Minimum Annual Rent owed at that time; and the residual, if any, shall be held by Landlord and applied in payment of future Minimum Annual Rent as the same may become due and payable hereunder from Tenant. If such rentals received from such reletting are less than that to be paid by Tenant, Tenant shall be liable for the deficiency to Landlord. Any such deficiency shall be calculated and due monthly. No such re-entry or taking possession of the Demised Premises by Landlord shall be construed as an election on its part to terminate this Lease or to accept a surrender thereof.

(b) Whether or not Landlord elects to re-enter or take possession of the Demised Premises in accordance with subsection (a) above, Landlord may, at any time after the occurrence of an Event of Default, elect to terminate this Lease. Should Landlord elect to terminate this Lease then, in addition to any other remedies Landlord may have available to it, Landlord may recover from Tenant all damages incurred by reason of such breach, including the cost of recovering the Demised Premises and the worth at the time of such termination of the excess, if any, of the amount of Minimum Annual Rent, Percentage Rent, Additional Rent and all other charges reserved in this Lease, payable over the remainder of the stated Lease Term, over the then-reasonable rental value of the Demised Premises, all of which amounts shall be immediately due and payable from Tenant to Landlord as if by terms of this Lease it were payable in advance. Landlord may immediately proceed to distrain, collect, or bring action for the worth of the whole Rent, as aforesaid, or any part thereof as aforesaid, as Rent being in arrears, or may enter judgment therefor in an amicable action in case of Rent in arrears, or may file a proof of claim in any bankruptcy or insolvency proceedings for such Rent, or Landlord may institute any other proceedings, whether similar to the foregoing or not to enforce payment thereof. In determining the Rent which would be payable by Tenant hereunder subsequent to an Event of Default, the Percentage Rent for each year of the unexpired Lease Term shall be equal to the average Percentage Rent paid by Tenant from the Commencement Date to the Event of Default, or during the preceding three (3) full Lease Years, whichever period is shorter.

(c) Treat all or any part of the Rent reserved hereunder as immediately due and payable, it being understood that the method of monthly or other periodic payments provided for herein are

for the convenience of Tenant and available to Tenant only if Tenant is not in default under this Lease.

(d) Cure such default for the account of Tenant (without waiving any claim for breach of this Lease); said right to cure shall include, without limitation, the right to pay or do any act which requires the expenditure of any sums of money by reason of the failure or neglect of Tenant to perform any of the provisions of this Lease, and in the event Landlord shall, at its election, pay such sums or do such acts requiring the expenditure of monies, Tenant agrees to pay Landlord, upon demand, all such sums and the sum so paid by Landlord, together with maximum legal interest thereon, shall be deemed Additional Rent and be payable as such.

#### **Section 21.03. Debtor-in-Possession.**

Tenant agrees that this Lease is a lease of "real property in a Center" and that a debtor in possession and/or trustee in bankruptcy acting pursuant to the provisions of the revised bankruptcy code, may assume this Lease only if, in addition to such other conditions of this Lease and applicable law, such debtor's in possession and/or trustee's use is compatible with the retail operations at the Center, as a whole, and does not conflict with any other use or violate any exclusive use at the Center and said debtor in possession and/or trustee shall provide Landlord with such written assurances of future performance as are acceptable to Landlord.

#### **Section 21.04. Landlord Lien.**

Landlord shall have at all times a valid lien for Minimum Annual Rent, Percentage Rent, Additional Rent and any and all other sums becoming due by Tenant, upon all goods, wares, equipment, fixtures, furniture and other personal property of Tenant situated on the Demised Premises and such property shall not be removed therefrom without the consent of Landlord until all arrearage in Minimum Annual Rent as well as any and all other sums then due to Landlord shall first have been paid and discharged. Upon the occurrence of an Event of Default, Landlord may, in addition to any other remedies provided herein or by law or equity, enter upon the Demised Premises and take possession of all Tenant's improvements, any and all goods, wares, equipment, fixtures, furniture and other personal property of Tenant thereon and may remove all persons and property from the Demised Premises by force, summary action or otherwise. Said property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant, all without service or notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. Landlord may sell said property with or without notice at public or private sale, with or without having such property at the sale, at which Landlord or its assigns may purchase and apply the proceeds thereof less any and all expenses connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Tenant agrees to execute and deliver to Landlord a Uniform Commercial Code Financing Statement perfecting Landlord's lien within thirty (30) days after Landlord's written request therefor.

Notwithstanding the foregoing, in the event Tenant requests Landlord to subordinate Landlord's lien rights granted herein to a bank, lending institution, or other secured party, Landlord agrees to execute and deliver to Tenant a Landlord's Subordination. Tenant shall pay Landlord Two Hundred Fifty Dollars (\$250.00) for Landlord's administrative costs (the "Administrative Fee")

and shall reimburse the Landlord for all out-of-pocket expenses (including, without limitation, reasonable attorney's fees) incurred in connection with processing the proposed Landlord Subordination; the Administrative Fee shall be payable by Tenant to Landlord together with Tenant's written request for Landlord's subordination of lien rights, and shall be non-refundable, whether or not Landlord grants or denies its consent. If such payment does not accompany Tenant's request, then Landlord shall have the right to treat the request as null and void and improperly delivered.

#### **Section 21.05. Redemption; Reinstatement.**

Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event Tenant is evicted or dispossessed for any cause, or in the event Landlord obtains possession of the Demised Premises. No receipt of monies by Landlord from or for the account of Tenant or from anyone in possession or occupancy of the Demised Premises after the termination of this Lease or after the giving of any notice of termination shall reinstate, continue or extend the Lease Term or affect any notice given to Tenant prior to the receipt of such money.

#### **Section 21.06. Waiver of Trial by Jury.**

**THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE DEMISED PREMISES, AND/OR ANY CLAIM OF INJURY OR DAMAGE. IN THE EVENT LANDLORD COMMENCES ANY PROCEEDINGS FOR DISPOSSESS OR POSSESSION OF THE DEMISED PREMISES OR FOR NON-PAYMENT OF MINIMUM ANNUAL RENT, PERCENTAGE RENT, ADDITIONAL RENT OR ANY OTHER SUM DUE FROM TENANT HEREUNDER, TENANT WILL NOT INTERPOSE ANY COUNTERCLAIM OR CROSSCLAIM OF WHATEVER NATURE OR DESCRIPTION IN ANY SUCH PROCEEDINGS. THIS SHALL NOT, HOWEVER, BE CONSTRUED AS A WAIVER OF TENANT'S RIGHT TO ASSERT SUCH CLAIMS IN ANY SEPARATE ACTION BROUGHT BY TENANT. HOWEVER, TENANT SHALL NOT MOVE TO CONSOLIDATE ANY SUCH ACTION WITH ANY ACTION BROUGHT BY LANDLORD AGAINST TENANT FOR DISPOSSESS OR POSSESSION OF THE DEMISED PREMISES OR FOR NON-PAYMENT OF RENT.**

#### **Section 21.07. Cross Default.**

In the event that, at any time during the Lease Term, Tenant (or any affiliated or related person or entity of or to Tenant) shall be in default under another lease (the "Other Lease") with Landlord (or any affiliated or related entity of Landlord) or with Landlord's predecessor-in-interest, Landlord may, at Landlord's option, deem such default under the Other Lease as a default by Tenant under this Lease (and Tenant shall thereafter be in default under this Lease) and Landlord may, at Landlord's option, deem any default under this Lease as a default under the Other Lease. In either event, Landlord may exercise all rights and remedies pursuant to this Lease and at law or in equity which Landlord may have upon a default by Tenant under this Lease. Without limiting

the foregoing, Landlord shall be permitted to add to amounts owing by Tenant to Landlord hereunder all amounts owing by the tenant to the landlord under the Other Lease.

**Section 21.08. Accord and Satisfaction.**

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest Rent then unpaid, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Notwithstanding anything contained herein to the contrary, if the Rent payments are made to a "lock-box", the Landlord shall not be bound by any endorsement or statement on any check or by any letter accompanying any check or payment as Rent made to such a "lock-box."

**Section 21.09. No Waiver.**

The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative remedies, and the exercise of any of them shall not be deemed to exclude Landlord's right to exercise any or all of the others. The waiver by Landlord of any breach or of the strict and/or prompt performance of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of Landlord's right to strictly enforce same in the future. The subsequent acceptance of Rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant of any terms, covenants or conditions of this Lease regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such Rent. No covenant, term or condition of this Lease shall be deemed to have been waived by Landlord unless such waiver be in writing by Landlord. No waiver by Landlord in respect to other tenants shall be deemed to constitute a waiver in favor of Tenant.

**Section 21.10. Intentionally Deleted.**

**Section 21.11. Legal Fees.**

If any legal fees are incurred in enforcing the terms of this Lease then the prevailing party shall be liable for such reasonable costs. Same shall be due and payable upon presentation of a bill therefor.

**ARTICLE XXII: MISCELLANEOUS PROVISIONS**

**Section 22.01. Tenant Defined; Use of Pronoun.**

The word "Tenant" shall be deemed and taken to mean each and every person or party mentioned as a tenant herein, be the same one or more; and if there shall be more than one tenant, (i) the liability of each shall be individual, joint and several and (ii) any notice required or permitted by the terms of this Lease may be given by or to any one thereof and shall have the same force and effect as if given by or to all thereof. The use of the neuter singular pronoun to refer to Landlord or Tenant shall be deemed a proper reference even though Landlord or Tenant may be an individual, a partnership, a corporation or a group of two or more individuals or corporations. The

necessary grammatical changes required to make the provisions of this Lease apply in the plural sense where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

#### **Section 22.02. Delivery of Lease.**

The submission by Landlord of this Lease shall not be construed as an offer to lease. Landlord shall be bound only upon the execution of this Lease by an authorized officer and the delivery of such executed Lease to Tenant. Tenant hereby waives and is estopped from asserting any rights with respect to the Demised Premises or against Landlord which may arise from any alleged oral agreement; oral lease; any acts or expenditures (including without limitation the return of this Lease to Landlord executed by Tenant and the payment of any sums on account hereof) or series of same taken or made by Tenant in reliance on the anticipated execution hereof by Landlord; or any letter from Landlord or its attorneys sent prior to the execution and delivery hereof by Landlord as aforesaid; it being expressly understood and agreed that Tenant shall under no circumstances have any such rights until said execution and delivery hereof by Landlord.

#### **Section 22.03. Entire Agreement.**

This Lease and the exhibits, riders and/or addenda, if any attached, set forth the entire agreement between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. If any provision contained in a rider or addenda is inconsistent with the provisions contained herein then the provisions contained in said rider or addenda shall supersede said provisions contained herein. The captions, numbers and index appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this Lease.

#### **Section 22.04. Partial Invalidity.**

If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

#### **Section 22.05. Applicable Law.**

The Lease and the rights and obligations of the parties arising hereunder, shall be construed in accordance with the laws of the state of in which the Center is located.

#### **Section 22.06. Rules of Construction.**

The parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any Addenda or Exhibits hereto.

#### **Section 22.07. Brokerage Commission.**

Tenant represents and warrants that there are no claims for brokerage commissions or finders' fees in connection with the execution of this Lease. Tenant agrees to indemnify Landlord against and hold it harmless from all liabilities arising from any such claim by any broker or finder including, without limitation, the cost of counsel fees. The foregoing representation, warranty and indemnification shall not apply with respect to the broker listed in Section 1.01, if any.

#### **Section 22.08. Force Majeure.**

Landlord and Tenant shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from doing so by a cause or causes beyond Landlord's control which shall include, without limitation, all labor disputes, riots, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any material, services or financing or through acts of God.

Pandemic. The parties acknowledge that as of the Effective Date there exists an announced global pandemic resulting from the novel coronavirus 2019 (2019-nCoV) now referred to as SARS-CoV-2 (the "Pandemic"). In the event governmental restrictions are imposed during the initial Term after the Commencement Date that forbid Tenant from operating in any manner in the Premises due to the Pandemic (the "Full Closure Order"), and Tenant cannot, and does not, operate at all in the Premises while such Full Closure Order forbids Tenant from operating at all in the Premises, then Tenant will have the one time option to defer the payment of Base Rent over the period (the "Full Closure Period") beginning on the first day of the first calendar month following the date Tenant ceases all operations in the Premises after the Full Closure Order is imposed and ending on the date that is the earlier of: (A) the date the Full Closure Order ceases to forbid Tenant from operating in any manner in the Premises due to the Pandemic; (B) the date Tenant is operating in any manner in the Premises; and (C) the last day of the third full calendar month following the date Tenant ceases all operations in the Premises after the Full Closure Order is imposed; provided, however, such option is subject to the following: (i) Tenant shall not be in Default of this Lease at the time such option is exercised; (ii) Tenant shall have provided Landlord written notice of the issuance of the Full Closure Order and Tenant's cessation of all operations at the Premises, which notice shall include a copy of the applicable Full Closure Order and the date Tenant ceased all operations in compliance with the Full Closure Order; and (iii) the Full Closure Period will not exceed three full calendar months. In the event of a Monetary Default by Tenant, all Base Rent deferred under this shall thereupon be immediately payable. Additional Rent shall not be deferred during the Full Closure Period and Tenant shall be required to pay all Additional Rent during the Full Closure Period.

#### **Section 22.09. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws.**

Tenant represents that neither Tenant, nor the principals, officers, partners, and/or members of Tenant: (i) are currently identified on the list maintained by the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC"), generally known as the "OFAC List" (formerly known as the Specially Designated Nationals and Blocked Persons List); (ii) are currently



identified on the lists maintained by the U.S. Department of Commerce (the “DOC List”) and/or the U.S. Bureau of Industry and Security (the “BIS List”); (iii) act for or on behalf of any person or persons listed on the OFAC List, the DOC List, the BIS List, and/or any other known list of denied persons, excluded persons, and excluded entities maintained by the federal agencies of the United States; and (iv) is a person or persons, or acts for or on behalf of any person or persons, with whom a citizen or business of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States of America.

**Section 22.10. Intentionally Deleted**

**Section 22.11. Intentionally Deleted**

**EXHIBITS:**

EXHIBIT A - Site Plan  
EXHIBIT B - Landlord's Work  
EXHIBIT C - Intentionally Deleted  
EXHIBIT D - Intentionally Deleted/Reserved  
EXHIBIT E - Estoppel

IN WITNESS WHEREOF, the parties have respectively signed and sealed this Lease as of the day and year first above written.

**SIGNATURES:**

**LANDLORD:**

City of Lewisville, a home rule city and  
municipal corporation of Denton County, Texas

By: Claire Powell  
Name: Claire Powell  
Title: City Manager  
Date of Execution 7-1-2025

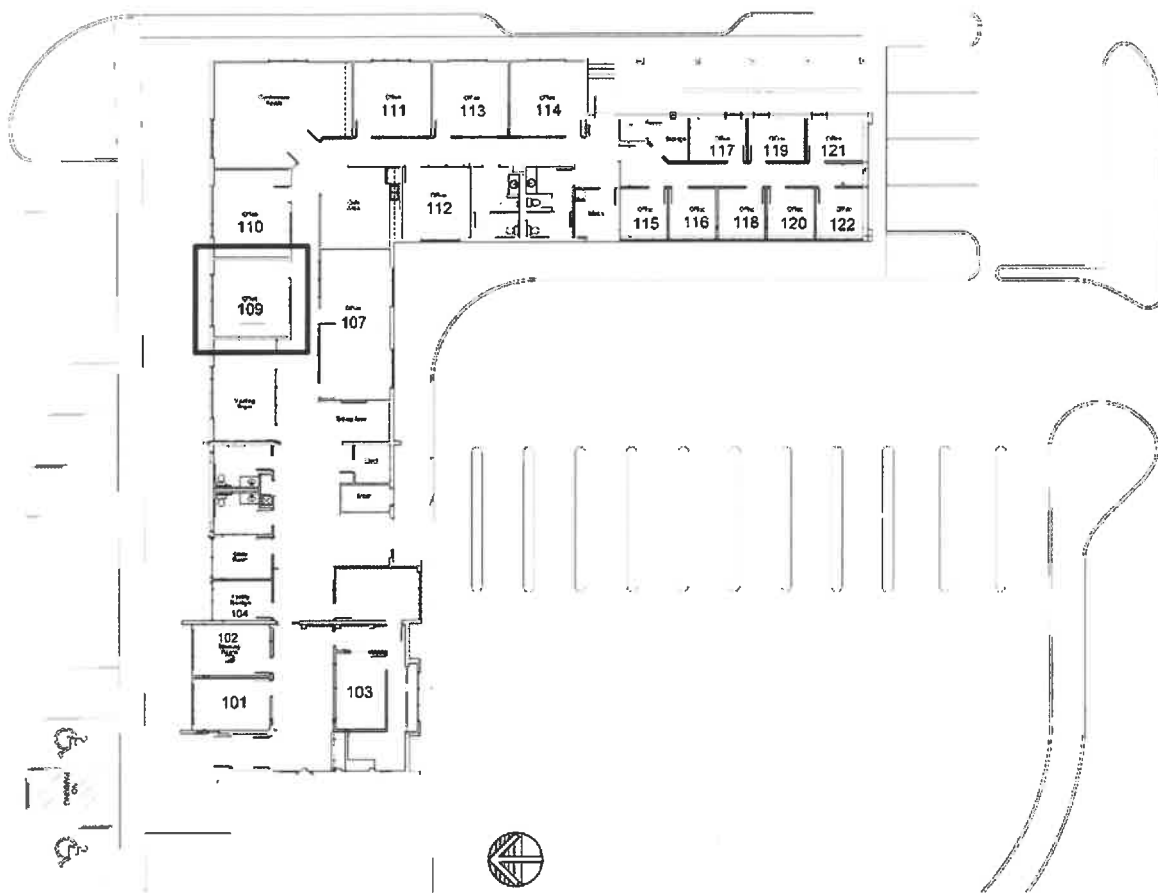
**TENANT:**

Boys & Girls Clubs of Greater Tarrant County,  
a Texas 501c3 corporation

By: Daphne Barlow Stigliano  
Name: Daphne Barlow Stigliano  
Title: CEO and President  
Date of Execution 06/30/25

## EXHIBIT A: CENTER

It is understood and agreed that the site plan attached hereto is merely for the purpose of showing the general layout of the Center and the approximate location of the Demised Premises and is not to be deemed to be a warranty, representation or agreement on the part of Landlord that the Center will be exactly as depicted therein or that tenants depicted therein (if any) are now in occupancy or will be in occupancy at any time during the Lease Term. The site plan is not final, is not to scale and is subject to change without notice to Tenant. Nothing contained therein shall be deemed to limit or restrict Landlord's right to change, alter or expand the Center, any buildings thereon, the land area, any improvements thereon, the parking areas, the Common Facilities or any other part or parts thereof. The Center, all private roads and driveways, all buildings, all land areas, the Common Facilities and parking areas and/or any part or parts thereof, all as the same may be provided from time to time, shall be deemed to be included in the Center.



## **EXHIBIT B: LANDLORD'S AND TENANT'S WORK**

**LANDLORD'S WORK:** None

Tenant acknowledges that it is familiar with the Demised Premises and except as specifically set forth herein to the contrary, there is no work to be performed by Landlord and no representation or warranty by Landlord as to the fitness of the Demised Premises, or any equipment servicing the Demised Premises, for any use permitted herein. Tenant is accepting the Demised Premises in its "AS IS / WHERE IS" condition. Any and all work to the Demised Premises necessary for Tenant to open and operate its business in accordance with the terms of this Lease shall be Tenant's obligation to perform at Tenant's sole cost and expense.

**TENANT'S WORK:**

Tenant's Work shall include all improvements necessary to operate Tenant's business all of which shall be at Tenant's sole cost and expense. The plans and specifications, if any are needed, and the detail and design shall be subject to the written approval of Landlord or Landlord's architect.

## EXHIBIT E: TENANT ESTOPPEL

### TENANT ESTOPPEL CERTIFICATE

City of Lewisville

Attn : City Manager and City Attorney

Re: Lease between the City of Lewisville, a home rule city and municipal corporation of Denton, County, Texas, as landlord ("Landlord"), and Boys & Girls Clubs of Greater Tarrant County as tenant ("Tenant") dated June 30, 2025, as amended (collectively "Lease") for space described as Approximately 221 square feet, as depicted on Exhibit A attached hereto and made a part hereof at 1001 S. Edmonds Lane, Lewisville, TX 75067 ("Demised Premises").

Gentlemen:

The undersigned is Tenant pursuant to the Lease described above. The undersigned hereby certifies, represents and warrants to you as of the date hereof as follows:

1. Attached hereto as Exhibit A is a true, complete and accurate copy of the Lease, and the Lease has not been modified, supplemented or superseded in any matter other than by the documents, if any, which are attached hereto. The Lease constitutes a complete statement of the agreements, covenants, terms and conditions of Landlord and Tenant with respect to the letting of the Demised Premises, and there are no other agreements or understandings between Landlord and Tenant with respect to the Demised Premises, the Lease, the letting or otherwise.
2. The current term of the Lease commenced on July 1, 2025 and will end on the date following 30 days' written notice from Landlord, unless sooner terminated as otherwise provided herein. Except as described below, Tenant has no:
  - a) options or other rights to renew or extend the term of the Lease or to cancel the Lease,
  - b) options or other rights to purchase the Demised Premises of which the Demised Premises is a part or rights of first refusal or first offer in respect thereof, or
  - c) options or other rights of first refusal or first offer in respect of any leasing thereof. (If there are any such options or rights, describe; if there is none write "NONE")
3. The Lease is in full force and effect and legal, valid, binding and enforceable.
4. To the best of Tenant's knowledge, there is no default under the Lease in the payment of rent or any other amounts or in the observance or performance of any other agreement, covenant, term or condition to be observed or performed by Landlord or Tenant, and the undersigned has no knowledge of any state of facts or events which, with the passage of time or the giving of notice, would constitute a default by Landlord or Tenant.
5. Tenant has received no rent or other concessions, except as specified below (write "NONE" if there is none):

6. Tenant has received no rent or other concessions that remain outstanding. The annual and monthly base and percentage rental, the indices payments, and the taxes, insurance, CAM and other operating expense payments and the dates to which they have been paid, are described below:

Base rental: \$830.25 per month  
Date paid through: June 30, 2025  
Other Payment Obligations: N/A  
Date paid through: N/A

7. Tenant has accepted possession and is in actual occupancy of the Demised Premises and there are no setoffs, defenses or counterclaims against enforcement of the obligations to be observed or performed under the Lease.
8. There is no work to be performed by Landlord that has not been completed, and there are no defects or deficiencies which entitle Tenant to cancel the Lease or to receive any other benefit or relief.
9. The undersigned has not deposited any funds to secure any of its obligations under the Lease and has not paid any advance rentals or other amounts, except as specified below (write "NONE" if there is none):
10. Tenant has no knowledge of any broker or other intermediary who is entitled to receive any leasing, brokerage or other compensation out of or with respect to rentals or other payments or rights or obligations under the Lease or with respect to the Lease itself.
11. Landlord has not waived the observance or performance by Tenant of any of the agreements, covenants, terms or conditions to be observed or performed by Tenant under the Lease.
12. To the best of Tenant's knowledge, Tenant has never permitted or suffered the generation, treatment, storage or disposal of any hazardous waste or any other hazardous or toxic substances in, on or about the Demised Premises or any adjacent property.
13. The party executing this Tenant Estoppel Certificate on behalf of Tenant is fully authorized and empowered to do so.

The certifications, representations and warranties herein made shall be binding upon the undersigned, its successors and assigns, and shall inure to your benefit and the benefit of your successors and assigns. Tenant acknowledges that Landlord may rely on this Tenant Estoppel Certificate in conjunction with its purchase and thereafter its ownership and operation of the so-called 1001 S. Edmonds Lane, Lewisville, TX 75067.

Dated: June 30, 2025.

**TENANT:**

Boys & Girls Clubs of Greater Tarrant County

By: Daphne Barlow Styliano

Name:	Daphne Barlow Stigliano
Title:	CEO and President

# WORD - Serve Lewisville Lease - BGCGTC Office10779795.3a

Final Audit Report

2025-06-30

Created:	2025-06-30
By:	Jen Nader (jnader@bgcgtc.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2Q-cPGCyYny0t8ezdAtezeLp2v2zsbhW

## "WORD - Serve Lewisville Lease - BGCGTC Office10779795.3a" History

-  Document created by Jen Nader (jnader@bgcgtc.org)  
2025-06-30 - 5:17:00 PM GMT
-  Document emailed to Daphne Barlow (daphne@bgcgtc.org) for signature  
2025-06-30 - 5:17:05 PM GMT
-  Email viewed by Daphne Barlow (daphne@bgcgtc.org)  
2025-06-30 - 8:25:07 PM GMT
-  Document e-signed by Daphne Barlow (daphne@bgcgtc.org)  
Signature Date: 2025-06-30 - 8:26:20 PM GMT - Time Source: server
-  Agreement completed.  
2025-06-30 - 8:26:20 PM GMT